

**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

**MOTION RECORD
(Bond Compliance and Determination of Issues)**

VOLUME I OF II

May 6, 2019

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Agent under the Credit Agreement

TO: THE SERVICE LIST

**ONTARIO
SUPERIOR COURT OF JUSTICE
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INDEX

<u>TAB</u>	<u>DOCUMENT</u>
-------------------	------------------------

Volume I of II

1. Notice of Motion
2. Affidavit of Eden Orbach, sworn May 6, 2019
- A. Exhibit "A" – Affidavit of Eden Orbach, sworn December 5, 2018
- B. Exhibit "B" – Appointment Order, December 6, 2018
- C. Exhibit "C" – Performance Bond No. 6342957
- D. Exhibit "D" – Credit Agreement
- E. Exhibit "E" – Project Agreement

Volume II of II

- F. Exhibit "F" – Construction Contract

<u>TAB</u>	<u>DOCUMENT</u>
-------------------	------------------------

- | | |
|----|--|
| G. | Exhibit “G” – Contractor Direct Agreement |
| H. | Exhibit “H” – Lender’s Direct Agreement |
| I. | Exhibit “I” – Borrower General Security Agreement |
| J. | Exhibit “J” – Performance Guarantee of the Construction Guarantor |
| K. | Exhibit “K” – Letter from Geoff R. Hall to James W. McLellan, dated October 22, 2018 |
| L. | Exhibit “L” – E-mail from James W. McLellan to Geoff R. Hall, dated October 29, 2018 |
| M. | Exhibit “M” – Performance Bond Demand by Administrative Agent, dated November 16, 2018 |
| N. | Exhibit “N” – E-mail from James W. McLellan to Heather L. Meredith, dated November 21, 2018 |
| O. | Exhibit “O” – Letter from Receiver to Construction Contractor, dated December 7, 2018 |
| P. | Exhibit “P” – Letter from Receiver to Zurich, dated December 7, 2018 |
| Q. | Exhibit “Q” – Letter from Heather L. Meredith to Brendan Bissell and Mario J. Forte, dated December 7, 2018 |
| R. | Exhibit “R” – Letter from Heather L. Meredith to Brendan Bissell and Mario J. Forte, dated December 10, 2018 |
| S. | Exhibit “S” – Letter from Brendan Bissell to Receiver, dated December 11, 2018 |
| T. | Exhibit “T” – Letter from Heather L. Meredith to Brendan Bissell and Mario J. Forte, dated December 12, 2018 |
| U. | Exhibit “U” – Letter from Brendan Bissell to Heather L. Meredith, dated March 5, 2019 |
| V. | Exhibit “V” – E-mail from Brendan Bissell to Heather L. Meredith, dated March 8, 2019 |
| W. | Exhibit “W” – Letter from Heather L. Meredith to Brendan Bissell, dated March 19, 2019 |

<u>TAB</u>	<u>DOCUMENT</u>
-------------------	------------------------

- | | |
|-----|--|
| X. | Exhibit “X” – E-mail from Heather L. Meredith to Mario Forte et al., dated March 20, 2019 |
| Y. | Exhibit “Y” – Letter from Brendan Bissell to Heather L. Meredith, dated March 27, 2019 |
| Z. | Exhibit “Z” – Letter from Heather L. Meredith to Brendan Bissell, dated April 4, 2019 |
| AA. | Exhibit “AA” – E-mail from Morgan Troke to Odette Robinson et al., dated April 11, 2019 |
| BB. | Exhibit “BB” – E-mail from Trevor Courtis serving Notice of Motion, dated April 24, 2019 |
| CC. | Exhibit “CC” – Letter from Brendan Bissell to Heather L. Meredith et al., dated April 26, 2019 |
| DD. | Exhibit “DD” – Letter from Heather L. Meredith to Brendan Bissell, dated May 6, 2019 |
| EE. | Exhibit “EE” – Letter from Aryo Shalviri to Construction Contractor, dated May 1, 2019 |
| FF. | Exhibit “FF” – Letter from Morgan Troke to Construction Contractor, dated May 1, 2019 |

Tab 1

Court File No. CV-18-610233-00CL

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

NOTICE OF MOTION

(Bond Compliance and Determination of Issues)

Bank of Montreal, in its capacity as administrative agent (the “**Administrative Agent**”) pursuant to the credit agreement dated as of August 28, 2014, as amended (the “**Credit Agreement**”) between 2423402 Ontario Inc. (“**Project Co**”) as borrower, each of the financial institutions and other entities from time to time parties thereto (the “**Lenders**”), as lenders, and the Administrative Agent, will make a motion before a judge of the Ontario Superior Court of Justice (Commercial List) on a date to be set at 330 University Avenue, Toronto Ontario at a 9:30 appointment on April 30, 2019.

THE MOTION IS FOR:

1. An order (the “**Bond Compliance Order**”), among other things:
 - (a) Declaring that Bondfield Construction Company Limited (the “**Contractor**”) is, and has been declared by Project Co to be in default in respect of its obligations to Project Co under the construction contract between Contractor and Project Co dated August 28, 2014 (the “**Construction Contract**”) and that the letter from Alvarez & Marsal Inc., in its capacity as receiver of Project Co (the “**Receiver**”), to Zurich Insurance Company Ltd. (“**Zurich**”) dated December 7, 2018 (the “**Performance Bond Demand**”), was a proper demand under Performance Bond No. 6342957 (the “**Performance Bond**”) on behalf of Project Co;
 - (b) Declaring that, following receipt of the Performance Bond Demand, Zurich was obligated to promptly select and carry out one of the four options listed in the Performance Bond and that Zurich has failed to do so;
 - (c) Declaring that Zurich has acted in bad faith and/or in breach of contract in failing to select and carry out one of the four options listed in the Performance Bond;
 - (d) Directing Zurich to comply with the Performance Bond by promptly selecting and carrying out one of the four options listed in the Performance Bond and confirming in writing to the Administrative Agent, Cambridge

Memorial Hospital (the “**Hospital**”) and the Receiver which option it has selected (the “**Selected Option**”) within two business days of the making of this order and providing details as to how the Selection Option will be carried out.

2. An order (the “**Substantive Issues Order**”), among other things:
 - (a) declaring that the obligations of Zurich under the Performance Bond are not limited to the costs of completing the physical construction work under the Construction Contract, but extend to all of the collateral obligations of the Contractor under the Construction Contract including amounts for which Contractor is liable pursuant to Section 33.1 of Appendix A to the Construction Contract and Liquidated Damages pursuant to Article 12 of the Original Contract ;
 - (b) determining the quantum of the Balance of the Construction Contract Price (as defined in the Performance Bond), including Project Co’s right to set-off from the Guaranteed Price (as defined in the Construction Contract); and
 - (c) directing the Hospital, upon the Project reaching substantial completion, to release all amounts payable to Project Co in respect of the holdback held in trust by the Hospital (the “**Legislative Holdback**”) pursuant to the *Construction Act*, RSO 1990, c. C.30, as amended (the “**Construction Act**”), to the Lenders, which may be retained and set off by the Lenders

against any amounts owing with respect to the Project in priority to any claim from Zurich with respect thereto;

3. An order directing Zurich to pay the costs of the Administrative Agent and the Receiver associated with bringing this motion on a full indemnity basis and any amendments to the Appointment Order (defined below) to give effect thereto; and
4. Such other relief as this Honourable Court may allow.

THE GROUNDS FOR THE MOTION ARE:

1. Capitalized terms used herein and not otherwise defined have the meaning ascribed to them in either the Credit Agreement, the Construction Contract or the Project Agreement dated August 28, 2014 between the Hospital and Project Co (the “**Project Agreement**”).

Performance Bond Demands

2. The Performance Bond provides that when the Contractor is and is declared to be in default under the Construction Contract, Project Co having performed its obligations under the Construction Contract, Zurich is to “...promptly select and carry out one of the four following options” to rectify the default.
3. The Contractor is and has been declared to be in default under the Construction Contract. There have been delays and cost overruns in the Construction Work due to various and continuing defaults committed by the Contractor. Completion of the Project – which involves the construction of a new 254,000 square foot patient care wing and

extensive renovations to the existing “Wing B” of the Hospital - is more than two years beyond schedule.

4. The Administrative Agent made demand on the Performance Bond on November 16, 2018. Notwithstanding the express language in the Performance Bond, Zurich refused to recognize that the Administrative Agent had made a demand on the Performance Bond and failed to comply with its obligation to promptly select and carry out one of the four options listed in the Performance Bond. Instead, it raised a number of “technical” disputes in response, which the Lenders did not agree were genuine requirements.

5. In order to obviate these “technical” issues – and to create a path forward to the timely recommencement of Construction Work for the benefit of stakeholders, including the Hospital and its constituents - the Administrative Agent obtained an order appointing the Receiver on December 6, 2018 (the “**Appointment Order**”). The Appointment Order directed the Receiver to make a demand under the Performance Bond.

6. The Receiver, on behalf of Project Co, made the Performance Bond Demand on December 7, 2018 further to and in accordance with the Appointment Order. Zurich has not disputed the validity of the Performance Bond Demand. Nevertheless, nearly five months later, Zurich has failed in its obligation to promptly select and carry out an option to remedy the defaults in accordance with the express terms of the Performance Bond.

Zurich Has Acted in Bad Faith

7. Zurich has acted in bad faith and/or in breach of contract in failing to carry out its obligations under the Performance Bond. Among other things:

- (a) Zurich refused to recognize the demand on the Performance Bond made by the Administrative Agent on November 21, 2018, notwithstanding that the Administrative Agent clearly had the ability under the express language of the Performance Bond to make that demand, necessitating the appointment of the Receiver;
- (b) After the appointment of the Receiver, the Administrative Agent sought to arrange meetings so that any outstanding issues could be resolved and Construction Work could resume on the Project, only to be told by Zurich that such meetings were “premature”;
- (c) Zurich has still not officially recognized the Performance Bond Demand notwithstanding the indisputable defaults by the Contractor and demand made by the Receiver, a court officer, in accordance with the Appointment Order;
- (d) Zurich has continued to impose conditions to fulfilling its obligations under the Performance Bond that are not requirements under the Performance Bond;
- (e) Zurich has refused to provide formal written confirmation as to which option it is selecting under the Performance Bond, despite requests to do so from the Administrative Agent, which has limited the ability of stakeholders to move forward; and

- (f) Zurich has persistently delayed in providing draft documentation that Zurich itself has claimed is required. Specifically:
 - (i) Counsel to the Administrative Agent provided comments on the relevant documents on November 23, 2018 – two days after receipt. It was not until January 28, 2019 – the last business day before a scheduled court appearance, more than two months after comments were provided and three weeks after Zurich’s counsel indicated that they would be provided within the week – that Zurich provided revised drafts of the relevant documents; and
 - (ii) On March 7, 2019, counsel to the Administrative Agent provided a revised draft of the relevant documents to Zurich’s counsel. The draft was revised in a manner to seek to address the various issues between the parties. On March 27, 2019, Zurich’s counsel indicated that they were preparing a set of comments with Zurich, however these comments are *still* outstanding.

Bond Compliance Order is Appropriate

8. The issuance of the Bond Compliance Order will provide clarity to the various stakeholders associated with the Project, focus negotiations on the path forward and encourage Zurich to cease impeding those negotiations. It will instead facilitate the continuation of the Construction Work and the completion of the Project for the benefit of all stakeholders (including the Hospital staff, physicians and patients).

Zurich Has Raised Numerous “Technical” Disputes Under the Performance Bond

Sticks and Bricks

9. Zurich has asserted that its obligations under the Performance Bond are limited to the costs of completing the physical construction work under the Construction Contract (“**sticks and bricks**”). The Performance Bond references and incorporates the entirety of the Construction Contract as part of the Performance Bond. There is no language in the Performance Bond that limits the obligations of Zurich to sticks and bricks.

10. Indeed, option #3 of the Performance Bond states that Zurich is to “pay *all expenses incurred by the Obligee* as a result of the [Contractor’s] default relating directly to the performance of the Construction Work under the Construction Contract...”[emphasis added].

11. The Ontario Court of Appeal, when interpreting a similar performance bond also issued by Zurich in *Whitby Landmark Developments Inc. v. Mollenhauer Construction Ltd.*, 2003 CarswellOnt 3968 at paras. 14-27, held that the obligations of Zurich were not limited to sticks and bricks.

12. There is no legitimate basis to suggest Zurich’s obligations are limited to sticks and bricks in this case. Such an assertion is contrary to the language of the Performance Bond and the Ontario Court of Appeal decision on this issue that is directly on point.

Balance of the Construction Contract Price

13. There is no term in the Performance Bond requiring payment of the Balance of the Construction Contract Price to Zurich as a pre-condition of Zurich's performance under the Performance Bond. Rather, in option #3 under the Performance Bond, the Surety is required to, among other things, make available as work progresses "sufficient funds to pay to complete the [Contractor's] obligations in accordance with the terms and conditions of the Construction Contract, *less the Balance of the Construction Contract Price...*"[emphasis added]. There is no reference to the Balance of the Construction Contract Price in any other option under the Performance Bond.

14. The Performance Bond defines the Balance of the Construction Contract Price as the total amount of the Guaranteed Price "payable to the [Contractor] under the Construction Contract", less the amount properly paid to the Contractor under the Construction Contract.

15. The Hospital alleges it has suffered damages arising from defaults by Project Co and has certain rights of set-off in the Project Agreement that it has indicated that it intends to exercise against Project Co. Project Co has corresponding rights to set-off as against payments to the Contractor pursuant to the Construction Contract.

16. Zurich has disputed that these set-offs can be taken into account in calculating the Balance of the Construction Contract Price. Zurich alleges that it is entitled to receive the entire Remaining Original Contract Balance (less amounts properly paid by Project Co to Contractor under the Construction Contract) without taking into account what is actually 'payable to the Contractor under the Construction Contract' as required by the

Performance Bond. In taking this position, Zurich fails to make any deduction for the significant defaults and damages caused by the Contractor and ignores that such amounts would not be payable to the Contractor – the defaulting party - pursuant to the Construction Contract.

17. A proper reading of the Performance Bond considers the amounts actually payable to the Contractor under the Construction Contract which requires taking into account deductions permitted thereunder.

Entitlement to Holdback

18. The Hospital is currently holding the Legislative Holdback in trust as required by the Construction Act. Sections 11 and 12 of the Construction Act allow for payment of the Legislative Holdback to the Lenders. These provisions read as follows:

Where trust funds may be reduced

11 (1) Subject to Part IV, a trustee who pays in whole or in part for the supply of services or materials to an improvement out of money that is not subject to a trust under this Part may retain from trust funds an amount equal to that paid by the trustee without being in breach of the trust.

Application of trust funds to discharge loan

(2) Subject to Part IV, where a trustee pays in whole or in part for the supply of services or materials to an improvement out of money that is loaned to the trustee, trust funds may be applied to discharge the loan to the extent that the lender's money was so used by the trustee, and the application of trust money does not constitute a breach of the trust.

Set-off by trustee

12 Subject to Part IV, a trustee may, without being in breach of trust, retain from trust funds an amount that, as between the trustee and the person the trustee is liable to pay under a contract or subcontract related to the improvement, is equal to the balance in the trustee's favour of all outstanding debts, claims or damages related to the improvement or, if the contractor or subcontractor, as the case may

be, becomes insolvent, all outstanding debts, claims or damages whether or not related to the improvement.

19. The Lenders also have a security interest over the Legislative Holdback in the hands of Project Co and the Contractor has provided an irrevocable direction that it be paid to the Lenders.

20. Zurich has asserted an entitlement to the Legislative Holdback without any legislative or other basis for doing so, contrary to the clear priority of the Lenders to those funds in the hands of Project Co.

21. Each of these technical issues raised by Zurich are preventing the parties from proceeding to complete the Project in a timely manner for the benefit of all stakeholders (including the Hospital staff, physicians and patients). Issuance of the Substantive Issues Order would resolve these issues and allow this arrangement to be finalized.

Administrative Agent and Receiver Entitled to Costs

22. The bad faith actions of Zurich have caused the Administrative Agent and the Receiver to incur significant costs in bringing this motion. The Administrative Agent and the Receiver are entitled to their costs on a full indemnity basis.

23. The Administrative Agent relies upon the following:

- (a) Section 11 and 12 of the *Construction Act* (Ontario);
- (b) Section 243 of the *Bankruptcy and Insolvency Act* (Canada) and the inherent and equitable jurisdiction of this Court;
- (c) Section 97 of the *Courts of Justice Act* (Ontario);

- (d) Rules 1.04, 2.03, 3.02, 37 and 57 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and
- (e) Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- 1. Affidavit of Eden Orbach, to be sworn; and
- 2. Such further and other materials as counsel may advise and this Court may permit.

April 24, 2019

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Lawyers for the applicant, Bank of Montreal,
in its capacity as Administrative Agent under
the Credit Agreement

TO: THE SERVICE LIST

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

**NOTICE OF MOTION
(Bond Compliance and
Determination of Issues)**

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Tab 2

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

**AFFIDAVIT OF EDEN ORBACH
(Sworn on May 6, 2019)**

I, Eden Orbach, 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 (the “**Construction Contractor**” or “**Bondfield**”) and Zurich Insurance Company Ltd. (“**Zurich**”) 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 (the “**Lenders**”), as lenders, and the Administrative Agent, as administrative agent, made as of August 28, 2014, as amended (the “**Credit Agreement**”).
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 previously swore an affidavit on December 5, 2018 (the “**December 5 Affidavit**”) in support of an application by the Administrative Agent to appoint Alvarez & Marsal Inc. as receiver, without security, of all of the assets, undertakings and properties of Project Co acquired for, or used in relation to a business carried on by Project Co (the “**Receiver**”). A copy of my December 5 Affidavit, without exhibits, is attached hereto at **Exhibit “A”**. Capitalized terms used herein and not otherwise defined have the meaning ascribed to them in my December 5 Affidavit or the Notice of Motion served by the Administrative Agent on this motion.

4. On December 6, 2018, the Honourable Mr. Justice Hainey issued an order appointing the Receiver (the “**Appointment Order**”). A copy of the Appointment Order is attached hereto at **Exhibit “B”**.

5. This affidavit is sworn in support of a motion by the Administrative Agent for certain relief with respect to Zurich, including, among other things, an order directing Zurich to comply with the Performance Bond by promptly selecting and carrying out one of the four options listed in the Performance Bond, and declarations with respect to certain substantive issues with respect to Zurich’s obligations and entitlements under Performance Bond No. 6342957 (the “**Performance Bond**”). A copy of the Performance Bond is attached hereto as **Exhibit “C”**.

I: Background

6. In my December 5 Affidavit, I described the background with respect to the Cambridge Memorial Hospital Capital Redevelopment Project (the “**Project**”), the Credit Agreement and other agreements entered into with respect to the Project, the Contractor Bonds issued by Zurich, the various defaults that have been committed by the Construction Contractor, and the attempts by the Administrative Agent and Cambridge Memorial Hospital (the “**Hospital**”) to resolve matters with Zurich prior to the issuance of the Appointment Order. In this affidavit, I provide only a brief synopsis of the background for the purposes of this motion.

7. Copies of the various relevant agreements for the purposes of this motion, which are described in my December 5 Affidavit, have been attached hereto as follows:

- (a) A copy of the Credit Agreement is attached hereto as **Exhibit “D”**;

- (b) A copy of the Project Agreement is attached hereto as **Exhibit “E”**;
- (c) A copy of the Construction Contract is attached hereto as **Exhibit “F”**;
- (d) A copy of the Contractor Direct Agreement is attached hereto as **Exhibit “G”**;
- (e) A copy of the Lender’s Direct Agreement is attached hereto as **Exhibit “H”**;
- (f) A copy of the Borrower General Security Agreement is attached hereto as **Exhibit “I”**; and
- (g) A copy of the Performance Guarantee of the Construction Guarantor is attached hereto as **Exhibit “J”**.

A. The Project

8. The Credit Agreement provides for debt financing to Project Co for the redevelopment, construction and completion of the Hospital. The Project, a P3 Project awarded by Infrastructure Ontario (“**IO**”), involves the construction of a brand new, 254,000 square foot patient care wing and extensive renovations to the existing Wing “B” of the Hospital. It was initially slated for completion in the Spring of 2019 for a fixed price of approximately \$187 million.

9. There have been delays and cost overruns in the Construction Work due to various and continuing defaults committed by the Construction Contractor. The Project is currently more than two years behind schedule.

B. The Performance Bond

10. Zurich issued the Performance Bond in relation to the Project in the amount of \$87,377,250. The Performance Bond provides that whenever the Contractor, as principal, is declared to be in default under the Construction Contract, Zurich is to “...promptly select and carry out one of the four following options” to rectify the default. The specific language of the Performance Bond relating to the obligations of Zurich is as follows:

Whenever the Principal shall be, and declared by the Obligor to be in default in respect of its obligations to the Obligor under the Construction Contract (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:

1. remedy any default, or;
2. complete the Construction Contract in accordance with its terms and conditions, or;
3. obtain a bid or bids for submission to the Obligee for completing the Construction Contract in accordance with its terms and conditions and upon determination by the Obligee and the Surety of the lowest responsible bidder, acceptable to CMH acting reasonably, arrange for a contract between such bidder and the Obligee or between such bidder and such other party as an Additional Named Obligee shall be entitled to direct, and the Surety shall 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 Construction Contract, less the Balance of the Construction Contract Price and to pay all expenses incurred by the Obligee as a result of the Principal's default relating directly to the performance of the Construction Work under the Construction Contract, but not exceeding the Bond Amount. The Balance of the Construction Contract Price is the total amount of the Guaranteed Price payable to the Principal under the Construction Contract, less the amount properly paid by the Obligee to the Principal under the Construction Contract; or
4. pay the Obligee the lesser of (1) the Bond Amount or (2) the Obligee's proposed cost to complete the Construction Contract in accordance with its terms and conditions less the Balance of the Construction Contract Price.

B. Zurich Raises Technical Issues and Refuses to Recognize the Administrative Agent's Performance Bond Demand

11. The Administrative Agent, with the support of the Hospital, sought to resolve matters consensually with Zurich so the existing defaults could be addressed and funding continued so that the Project could be completed. Notwithstanding these efforts, Zurich began to assert numerous “technical” impediments to a resolution. On October 22, 2018, the Lenders sent correspondence to Zurich that documented the position of the Lenders on certain of these issues and noted “[w]e are awaiting a resolution of the above issues to make a claim under the

Performance Bond, and are considering options if a consensual resolution cannot be reached.” A copy of this correspondence is attached hereto and marked as **Exhibit “K”**.

12. Then-counsel to Zurich replied by email on October 29, 2018. A copy of this e-mail is attached hereto and marked as **Exhibit “L”**.

13. While a consensual resolution of the issues was not reached, in an effort to move matters forward, the Administrative Agent made a demand on the Performance Bond on November 16, 2018. A copy of the demand made by the Administrative Agent is attached hereto and marked as **Exhibit “M”**.

14. However, Zurich refused to recognize the demand on the Performance Bond by the Administrative Agent, asserting additional “technical” allegations, including that the Administrative Agent must first assert “step-in” rights under the Lender’s Direct Agreement before it could make a demand on the Performance Bond. A copy of correspondence from Zurich asserting this position is attached hereto and marked as **Exhibit “N”**.

15. Contrary to Zurich’s position, the terms of the Multiple Obligee Rider to the Performance Bond provide that the Administrative Agent is “...entitled to enforce the obligations of the Principal and Zurich under the Bond and this Multiple Obligee Rider”:

The Bond shall be and is hereby amended to add Cambridge Memorial Hospital (“**CMH**”) and Bank of Montreal, in their respective capacities as assignees of the Construction Contract, as Additional Named Obligees, which Additional Named Obligees (which hereinafter may from time to time be referred to simply as “**Obligee(s)**”) shall, subject to the terms of the Bond and this Multiple Obligee Rider, be entitled to enforce the obligations of the Principal and the Surety under the Bond and this Multiple Obligee Rider.

16. Notwithstanding this express language in the Performance Bond, Zurich refused to recognize that the Administrative Agent had made a demand on the Performance Bond and failed to comply with its obligation to promptly select and carry out one of the four options listed in the Performance Bond. This became a gating issue that appeared to be preventing the parties from moving forward to a resolution.

II: Performance Bond Demand by Receiver

17. In order to address the gating issue, the Administrative Agent brought an application for the appointment of a receiver and obtained the Appointment Order on December 6, 2018.

18. The Appointment Order clearly contemplated, and indeed required, that the Receiver would have the authority to make a demand under the Performance Bond on behalf of Project Co. The Appointment Order provides, at paragraph 27:

27. THIS COURT ORDERS that the Receiver shall make a demand under the Performance Bond for and on behalf of the Debtor as soon as reasonably practical and shall be empowered and authorized to execute, issue and endorse any agreements or documentation for and on behalf of the Debtor as the Receiver considers necessary or advisable to facilitate making such demand. The Receiver shall not take or consent to any actions that would compromise recovery under the Contractor Bonds without written consent of the Applicant.

19. While the Lenders had originally sought a form of receivership order largely in line with the Ontario model receivership order, at the request of Zurich, the Appointment Order contains more limited powers of the Receiver. Zurich did not oppose the Appointment Order, including the language regarding the demand that would be made by the Receiver on the Performance Bond.

20. On December 7, 2018, the day following its appointment, the Receiver sent a letter to the Construction Contractor in which it notified the Construction Contractor of numerous events of default under the Construction Contract including, without limitation, failure to remove numerous encumbrances against title to the Site (as defined in the Construction Contract), which constituted a Contractor Event of Default under the Performance Bond. A copy of this letter is attached hereto as **Exhibit “O”**.

21. On the same date, the Receiver sent a letter to Zurich in which the Receiver noted that the Construction Contractor is, and has been declared by Project Co to be, in default in respect of its obligations to Project Co under the Construction Contract, and that Project Co had duly performed all of its obligations thereunder. The Receiver demanded that Zurich promptly select and carry out one of the four options listed in the Performance Bond (the “**Performance Bond Demand**”). A copy of the Performance Bond Demand is attached hereto as **Exhibit “P”**.

22. Zurich has not disputed the validity of the Performance Bond Demand. Nevertheless, nearly five months later, Zurich has failed in its obligation to promptly select and carry out an option to remedy the defaults in accordance with the express terms of the Performance Bond.

III: Zurich Delay and Continued Failure to Comply with Performance Bond

A. Administrative Agent Promptly Provides Comments on Draft Documents

23. Prior to the appointment of the Receiver, Zurich took the position that it required the Lenders to enter a Completion Contract with the replacement contractor and a Mitigation Funding Agreement with Zurich. On November 21, 2018, Zurich's counsel provided drafts of these documents to the Administrative Agent's counsel.

24. While not conceding that such documentation (contemplated nowhere in the Performance Bond) was required, the Administrative Agent's counsel promptly responded with its comments on these draft documents on November 23, 2018. As outlined below, after receiving these comments, Zurich did not provide revised drafts of these documents for over two months, despite repeated requests from the Administrative Agent and other stakeholders.

B. Zurich Refuses to Meet with Administrative Agent and Hospital

25. On December 7, 2018, in anticipation of the Performance Bond Demand being sent by the Receiver, the Administrative Agent's counsel sent a letter to Zurich's counsel proposing a meeting between counsel on December 10, 2018 and a meeting including clients on December 13, 2018. The Administrative Agent's counsel stated that "we are looking forward to beginning productive discussions as soon as possible to bring this matter to a resolution that will see construction resume at Cambridge Memorial Hospital." A copy of this letter is attached as **Exhibit "Q"**.

26. On December 7, 2018, Zurich's counsel sent an e-mail to the Administrative Agent's counsel indicating that Zurich had instructed them to advise that the meetings proposed by the Administrative Agent were "premature" and they would not be attending.

27. On December 10, 2018, the Administrative Agent's counsel sent a letter to Zurich's counsel noting that the Lenders were deeply disappointed in Zurich's continuing refusal to move matters forward and were concerned that Zurich was not acting in good faith, stating:

At this stage, two calls have been made upon the Performance Bond. Zurich failed to respond promptly to the first demand on the Performance Bond by the Lenders. There is now no debate but that a proper demand has been made on the Performance Bond by Project Co. We expect a "prompt" response to that demand as required by the Performance Bond.

If such a prompt response is not received, the Lenders will take appropriate steps in response, which may include seeking directions from the Court, seeking a remedy for Zurich's bad faith, and proceeding to confirm EllisDon as the replacement contractor and holding Zurich responsible for all costs and damages relating thereto.

The Lenders remain committed to completing the Project and would prefer a cooperative approach consistent with the cooperation the Lenders showed Zurich in agreeing to a reduction of the powers of the Receiver at Zurich's request.

A copy of this letter is attached as **Exhibit "R"**.

C. Zurich Fails to Confirm Which Option it is Selecting

28. On December 11, 2018, counsel to Zurich sent a letter to the Receiver acknowledging receipt of the Performance Bond Demand and requesting that the Administrative Agent advise (i) that the Credit Facility remains in place and is available to Project Co, and (ii) the amount remaining under the Credit Facility. Counsel to Zurich indicated that it was reviewing the matter with its client and would "respond more fully shortly." A copy of this letter is attached as **Exhibit "S"**.

29. The Administrative Agent responded promptly to this request. On December 12, 2018, the Administrative Agent's counsel sent a letter to Zurich's counsel confirming (i) that the Credit Facility remains in place and, provided that a path forward is agreed with Zurich and the events of default under the Credit Agreement are remedied or addressed through agreement, the Lenders were willing to make funding available to Project Co pursuant to the Credit Facility, and (ii) the remaining availability under the Credit Agreement.

30. The Administrative Agent's counsel further requested that Zurich provide formal written confirmation that it had selected option #3 under the Performance Bond and would be engaging

EllisDon Construction Services Inc. as the replacement construction contractor. A copy of this letter is attached as **Exhibit “T”**.

31. To date, Zurich has not confirmed which option it has selected under the Performance Bond.

E. Zurich Delays for Over Two Months in Providing Draft Documents

32. I am advised by Heather Meredith of McCarthy Tetrault LLP, counsel to the Administrative Agent, and I believe, that counsel to the Administrative Agent and counsel to Zurich met on December 14, 2018 and subsequently exchanged comments, including in relation to a Zurich “issues list”.

33. I am also advised by Ms. Meredith and verily believe that notwithstanding such high-level discussions, Zurich still had not delivered revisions to the November 23, 2018 draft documents by mid-January, 2019 despite numerous follow-ups and counsel to Zurich advising on several occasions that revised drafts would be provided.

34. Ultimately, a chambers appearance was scheduled for Monday, January 28, 2019. It was not until late on Friday, January 25, 2019, that Zurich provided the draft documentation.

F. Further Discussions and New Issues: Zurich Still Does Not Select Option Under the Performance Bond

35. At the January 28, 2019 chambers appointment, a further chambers appointment was set for February 11, 2019.

36. I am advised by Ms. Meredith that by email dated January 29, 2019 and at a further meeting among counsel to the Administrative Agent, Zurich, CMH and IO, which occurred on January 30, 2019, Zurich raised a new issue alleging that there was a “gap” in funding caused by amounts allegedly not being received by Bondfield from Project Co.

37. Notwithstanding the new issue, counsel to the Administrative Agent promptly reviewed and revised the January 25, 2019 draft documentation from Zurich and provided counsel to the Hospital and IO with a revised draft on February 8, 2019 for their review and comment. Also on

February 8, 2019, the parties agreed to reschedule the February 11, 2019 chambers appointment to February 27, 2019 on consent.

38. I am advised by Ms. Meredith that shortly thereafter she advised counsel to Zurich that the Administrative Agent had investigated the alleged “gap” and believed no gap existed. She asked for a meeting to be arranged with Zurich’s accounting people to discuss and resolve this issue and followed up on February 25, 2019.

39. On February 26, 2019, after receiving feedback from counsel to CMH and IO, counsel to the Administrative Agent sent a further revised draft of the draft mitigation agreement to counsel to Zurich.

40. I am advised by Ms. Meredith and verily believe that on February 28, 2019, counsel to the Administrative Agent and counsel to Zurich met to discuss some of the outstanding issues with the draft documentation. Counsel to the Administrative Agent undertook to provide a revised draft of the documentation to reflect the discussions and counsel to Zurich agreed to provide some additional language for the agreement.

41. On March 5, 2019, counsel to Zurich sent a letter to counsel to the Administrative Agent in which they asserted that the amounts spent by Zurich “as if the call on the Bond is in force” exceeded \$18.1 million. A copy the letter from counsel to Zurich is attached hereto as **Exhibit “U”**.

42. On March 7, 2019, counsel to the Administrative Agent sent a further revised draft of the documentation to counsel to Zurich.

43. On March 8, 2019, counsel to the Administrative Agent, after not receiving any response on the issue of the alleged “gap” in funding, wrote to provide information from the Administrative Agent’s review of the numbers. Counsel to Zurich responded that they would need to have the information reviewed and commented upon by the appropriate persons. A copy of this e-mail exchange is attached hereto at **Exhibit “V”**.

44. On March 19, 2019, counsel to the Administrative Agent sent a letter to counsel to Zurich responding to their March 5 letter. Counsel to the Administrative Agent noted that Zurich had

still not agreed to fulfill its obligations under the Performance Bond, as it was required to do expeditiously after a call on the Performance Bond. Counsel to the Administrative Agent further noted that it was the Lenders' understanding that there remained less than \$1.2 million of work to be performed under the Construction Contract to achieve Interim Completion, and thus were extremely "surprised" that Zurich was alleging that it had expended \$18.1 million but had yet to achieve Interim Completion. A copy of this letter from counsel to the Administrative Agent is attached hereto at **Exhibit "W"**.

G. Zurich Delays for Another Month and a Half in Providing Revised Drafts

45. On March 20, 2019, counsel to the Administrative Agent sent an e-mail to counsel to Zurich, CMH and IO noting that a meeting had been scheduled by IO for March 27, 2019, and that the meeting would only be productive if comments were received beforehand on the draft documentation that had been circulated by counsel to the Administrative Agent on March 7, 2019. A copy of this e-mail from counsel to the Administrative Agent is attached hereto at **Exhibit "X"**.

46. While CMH and IO provided some comments in advance of the meeting, Zurich did not.

47. The meeting scheduled by IO occurred on March 27, 2019 with representatives from the Administrative Agent (including myself, attending by telephone), Zurich, CMH, IO and Bondfield present. A follow-up meeting was scheduled for April 15, 2019 prior to which time the Administrative Agent expected to receive certain numbers from CMH/IO and comments on the draft documents from Zurich.

48. On March 27, 2019, following the without prejudice meeting, counsel to Zurich sent a letter to counsel to the Administrative Agent raising, again, various technical disputes including (i) whether the obligations of Zurich under the Performance Bond were limited to sticks and bricks and (ii) the quantum of the Balance of the Construction Contract Price that Zurich was entitled to receive. Counsel to Zurich indicated that they were still preparing a set of comments with Zurich. A copy the letter from counsel to Zurich is attached hereto as **Exhibit "Y"**.

49. The comments promised by Zurich would not be received for yet another month.

50. On April 4, 2019, counsel to the Administrative Agent sent a letter to counsel to Zurich responding to the technical disputes raised in their March 27 letter. Counsel to the Administrative Agent noted that Zurich was attempting to alter the substantive rights of the parties, including by seeking to have the Lenders agree to fund amounts that they never committed to Fund. Counsel to the Administrative Agent further noted that nearly a month had passed since Zurich had been provided with revised drafts of the documentation in a manner that sought to address the various issues between the parties. A copy of this letter from counsel to the Administrative Agent is attached hereto at **Exhibit “Z”**.

51. On April 11, 2019, shortly before the scheduled meeting among all parties on April 15, 2019, counsel to the Administrative Agent wrote to all parties noting, among other things, that still no comments had been received from Zurich. In a further effort to move matters forward, counsel to the Administrative Agent also took the extraordinary step of providing comments on their own draft of the agreement, which were meant to reflect comments that had been discussed on another P3 project involving Bondfield and Zurich. Counsel for the Administrative Agent stated:

It has been over two weeks since the last meeting, and the Lenders have not yet received comments from Zurich on the draft Mitigation Funding Agreement circulated on March 7, 2019, nor have they received the figure for “Estimated CMH Losses” that we understand CMH and IO were preparing. In an effort to move the discussions forward, we have taken the initiative to revise the draft Mitigation Funding Agreement to reflect comments and discussions on a separate project, and attach a copy of that draft along with a blackline to our prior March 7, 2019 draft. Please note that this continues to remain entirely subject to ongoing review and comment by the Lenders, and will also still require review by the Receiver.

We remain available to meet as planned on Monday, however given that the Lenders have not received any information or documentation from the other parties since the last meeting, proceeding with the meeting on Monday would not appear to be useful and, instead, we propose the parties review the attached draft and provide comments and the requested information as soon as possible so that this matter can move forward.

A copy of this e-mail from counsel to the Administrative Agent is attached hereto at **Exhibit “AA”**.

52. Ultimately, Zurich still had not provided any comments on the draft documentation and the April 15, 2019 meeting was cancelled.

H. Zurich Only Provides Revised Drafts After This Motion is Commenced

53. In light of the persistent delays by Zurich and its refusal to acknowledge its obligations and select and carry out an option under the Performance Bond, the Administrative Agent served its Notice of Motion on April 24, 2019. A copy of the e-mail serving this Notice of Motion is attached hereto as **Exhibit “BB”**.

54. On April 26, 2019, more than a month and a half after revised drafts were provided by counsel to the Administrative Agent and only after this motion had been commenced, counsel to Zurich provided a revised draft agreement. A copy of this letter from counsel to Zurich is attached hereto at **Exhibit “CC”**.

55. On May 6, 2019, counsel to the Administrative Agent responded to Zurich’s counsel with comments on the Mitigation Funding Agreement as revised by Zurich, and noted:

Zurich’s continued insistence on payments and documentation that are not contemplated in the Performance Bond when it has not selected an option under the Performance Bond and has not fulfilled its obligations thereunder have led to continued delays and failures to meet interim completion and is causing prejudice to the Project and the Lenders.

We remain hopeful that Zurich will be willing to live up to its obligations under the Performance Bond and the Agent is committed to finding a constructive solution. If Zurich has indeed spent the amounts set out in the April 26, 2019 letter in support of the Project, that is a helpful start in furtherance of Zurich’s obligations under the Performance Bond. However, it is not appropriate to threaten to discontinue funding or that Zurich will take the position it is discharged from obligations under the Performance Bond. Such actions appear designed to force the parties to accede to Zurich’s unreasonable requirements and/or to set up an argument that the Project was delayed when in fact it was Zurich’s own unreasonable requirements that caused the delay. This is not a productive basis on which to negotiate. In all of the circumstances, we ask that Zurich reconsider its position in the latest Mitigation Funding agreement...

A copy of this letter from counsel to the Administrative Agent is attached hereto at **Exhibit “DD”**.

I. Correspondence With Bondfield: Project Co Not in Default

56. Also on April 26, 2019, an allegedly without prejudice letter was sent from Bondfield to the Receiver (the “**April 26 Bondfield Letter**”) alleging a payment default under the Construction Contract.

57. On May 1, 2019, the Receiver sent a letter to Construction Contractor, responding to the allegedly without prejudice April 26 Bondfield Letter. The Receiver noted, among other things, that all rights and remedies against Project Co or affecting the Property (as defined in the Appointment Order) were stayed by virtue of the Appointment Order. A copy of this letter from the Receiver is attached hereto at **Exhibit “EE”**.

58. On May 1, 2019, counsel to the Administrative Agent also sent a letter to the Construction Contractor in response to the April 26 Bondfield Letter. Counsel to the Administrative Agent noted, among other things, that non-payment by Project Co was not a Project Co Event of Default under the Construction Contract since both the Interim Completion Date and Substantial Completion Date were delayed and there is neither funding available to Project Co under the Lending Agreements due to such delay nor compensation available from CMH. A copy of this letter from counsel to the Administrative Agent is attached hereto at **Exhibit “FF”**.

59. Counsel to the Administrative Agent also provided a copy of their May 1, 2019 letter to Zurich’s counsel in their letter of May 6, 2019, noting:

Notwithstanding the removal of construction liens against the property, there continue to be multiple defaults that have not been waived or cured. While the Agent has been meeting with you regularly and working diligently to develop a solution that will see the remaining defaults cured or waived, until that occurs, the Credit Agreement continues to be in default and funding is not currently available to Project Co in such circumstances. Please see the attached letter to Bondfield dated May 1, 2019 clarifying that non-payment by Project Co in such circumstances does not constitute a default under the Construction Contract given the express terms thereof and the defaults by Bondfield.

IV: The Relief Sought Should be Granted

60. The original Scheduled Interim Completion Date for the Project was November 30, 2016. The original Scheduled Substantial Completion Date for the Project was March 31, 2019. The Project is years behind schedule, having yet to reach even the Scheduled Interim Completion Date, to the detriment of the Hospital's stakeholders (including the Hospital staff, physicians and patients).

61. Zurich has acted in bad faith in failing to carry out its obligations under the Performance Bond. Specifically, among other things:

- (a) Zurich refused to recognize the demand on the Performance Bond made by the Administrative Agent on November 21, 2018, notwithstanding that the Administrative Agent clearly had the ability under the express language of the Performance Bond to make that demand, necessitating the appointment of the Receiver;
- (b) After the appointment of the Receiver, the Administrative Agent sought to arrange meetings so that any outstanding issues could be resolved and Construction Work could resume on the Project, only to be told by Zurich that such meetings were "premature";
- (c) Zurich has still not officially recognized the Performance Bond Demand notwithstanding the indisputable defaults by the Construction Contractor and demand made by the Receiver, a court officer, in accordance with the Appointment Order;
- (d) Zurich has continued to impose conditions to fulfilling its obligations under the Performance Bond that are not requirements under the Performance Bond;
- (e) Zurich has refused to provide formal written confirmation as to which option it is selecting under the Performance Bond, despite requests to do so from the Administrative Agent, which has limited the ability of stakeholders to move forward;

- (f) Zurich has persistently delayed in providing draft documentation that Zurich itself has claimed is required. Specifically:
- (i) counsel to the Administrative Agent provided comments on the relevant documents on November 23, 2018 – two days after receipt. It was not until January 25, 2019 – the last business day before a scheduled court appearance, more than two months after comments were provided and three weeks after Zurich’s counsel indicated that they would be provided within the week – that Zurich provided revised drafts of the relevant documents;
 - (ii) On March 7, 2019, counsel to the Administrative Agent provided a revised draft of the relevant documents to Zurich’s counsel. The draft was revised in a manner to seek to address the various issues between the parties. It was not until April 26, 2019 – after the Administrative Agent had served this motion – that Zurich provided revised drafts of the relevant documents.

62. It is appropriate and necessary to issue an order directing Zurich to promptly select and carry out one of the four options listed in the Performance Bond and to grant the other relief requested by the Administrative Agent in this motion.

63. Additionally, the various technical issues raised by Zurich are preventing the parties from proceeding to complete the Project in a timely manner. The Administrative Agent is seeking to resolve these issues on this motion to allow arrangements for completion of the Project to be finalized.

64. The issuance of this relief will provide clarity to the various stakeholders associated with the Project, focus negotiations on the path forward and encourage Zurich to cease impeding those negotiations and instead facilitate the immediate resumption of the Construction Work and the completion of the Project for the benefit of all stakeholders (including the Hospital staff, physicians and patients).

SWORN BEFORE ME at the City of)
Toronto, in the Province of Ontario, this 6th)
day of May, 2019.)

A COMMISSIONER FOR OATHS
in and for the Province of Ontario

LSaC No 6771SA.

Eden Orbach

Tab A

This is **Exhibit "A"** referred to in the
affidavit of **EDEN ORBACH**
sworn before me this
6th day of May, 2019

A handwritten signature in blue ink, consisting of stylized, overlapping loops and strokes, positioned above a horizontal line.

A Commissioner for taking affidavits

Court File No.

**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 EDEN ORBACH
(Sworn on December 5, 2018)**

I, Eden Orbach, 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**”) and Bondfield Construction Company Limited (the “**Contractor**”) 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 (the “**Lenders**”), as lenders, and the Administrative Agent, as administrative agent, made as of August 28, 2014, as amended (the “**Credit Agreement**”).

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. Capitalized terms used herein and not otherwise defined have the meaning ascribed to them in either the Credit Agreement or the Project Agreement (as defined herein).

Summary of Relief Sought

3. This Affidavit is sworn in support of an application by the Administrative Agent pursuant to section 243 of the *Bankruptcy and Insolvency Act* (Canada) and section 101 of the *Courts of Justice Act* (Ontario) to:

- (a) appoint Alvarez & Marsal Canada Inc. (the “**Proposed Receiver**”) as the court-appointed receiver and manager of all of the assets, properties and undertaking of Project Co; and
- (b) obtain related relief as set out in the proposed draft Order (the “**Proposed Order**”), which I understand is largely in the form of the Ontario Model Receivership Order.

Background

4. The Respondent, Project Co, is a subsidiary of the Contractor. It is a special purpose entity and, to my knowledge, it has no assets other than the relevant contracts relating to the Project, which are described further below.

5. The Credit Agreement provides for debt financing to Project Co for the redevelopment, construction and completion of the Cambridge Memorial Hospital (the “**Hospital**”), commonly referred to as the “Cambridge Memorial Hospital Capital Redevelopment Project” (the “**Project**”). The Project is structured as a P3 (Public – Private Partnership) development and was awarded to Project Co in 2014 through Infrastructure Ontario (“**IO**”) for a guaranteed price of \$187,102,400. The Project involves the construction of a brand new, 254,000 square foot patient care wing and extensive renovations to the existing Wing “B” of the Hospital and was initially slated for completion in the Spring of 2019.

6. There have been delays and cost overruns in the Construction Work due to various and continuing defaults committed by the Contractor. I understand from Pelican Woodcliff (the Lenders’ Technical Advisors) that, at present, completion of the 254,000 square foot patient facility (which had to be finished prior to the renovation of Wing “B”) is two-years beyond schedule and that this has caused a corresponding deferral of the renovation work associated with

Wing "B". As described below, there are also a number of construction liens still registered on the Project site. It is my understanding that the Project is effectively stalled, with no or only very limited Construction Work presently occurring.

7. Project Co currently owes the Lenders \$122,214,177.80, plus accrued interest and all other costs, charges and expenses, which continue to accrue (collectively, the "**Senior Secured Indebtedness**") for advances made to Project Co under the Credit Facility pursuant to the Credit Agreement.

8. Zurich Insurance Company Ltd. (the "**Surety**") issued three bonds in respect of the Project as required by the Credit Facility: the Performance Bond in the amount of \$87,377,250, the Labour and Materials Bond in the amount of \$87,377,250 and the Demand Bond in the amount of \$8,737,725 (collectively the "**Contractor Bonds**"). The payment and performance assurances that were given through the Contractor Bonds in respect of the Construction Work by the Surety were material to the Lenders in advancing the Credit Facility. The Credit Agreement required the delivery of the Contractor Bonds since the other security provided to the Lenders is: (a) security over Project Co (a special purpose entity with no significant assets other than the relevant contracts); and (b) a limited guarantee of Project Co's obligations by the Contractor where the sole recourse is against the Contractor's equity interests in Project Co. and related payments (in addition to the security in the Contractor's interest in the legislative holdback, described below).

9. Notwithstanding the various Events of Default by the Contractor, Project Co, as a subsidiary of the Contractor, has not taken any independent steps to note the Contractor in default, to seek to compel performance by the Contractor or to make demands under the Contractor Bonds. This situation, in which the Construction Work is effectively stalled with no recourse being pursued by Project Co, is untenable and is creating prejudice for the Lenders and delaying construction of the Hospital.

10. The Administrative Agent, with the support of the Hospital, has sought to resolve matters consensually with the Surety so Construction Work can re-start and the Project can be completed. The Administrative Agent has also, as an additional named obligee, made demand on each of the Performance Bond and the Demand Bond. Unfortunately, the Surety has raised a

number of technical disputes, including asserting that in order for the Administrative Agent to make a demand on the Performance Bond it must first assert "step-in" rights under the Lender's Direct Agreement. The Lenders do have the option of asserting "step-in" rights under the Lender's Direct Agreement but disagree that they are obligated to exercise "step-in" rights, which may expose the Lenders to greater liability. It is essential that this issue be addressed given that it appears to be a gating issue with the Surety that is preventing the resumption of construction at the Hospital.

11. Time is of the essence since, as described further below, December 11, 2018 marks the expiry of a 120-day period following the delivery of a notice by Cambridge Memorial Hospital ("CMH"), alleging various defaults (the "**Project Co Default Notice**") by Project Co under the Project Agreement. The Project Co Default Notice triggered a 120-day period following which CMH becomes entitled to terminate the Project Agreement. This places the Lenders in an untenable position as the termination of the Project Agreement by CMH would cause severe and irreparable harm to Project Co and greatly increase the risk of the Lenders not recovering the Senior Secured Indebtedness.

12. More generally, it is critical to address the gating issue with Zurich and to provide a path forward for construction to resume at the Hospital to allow the Project to be completed for the community of Cambridge.

13. The Lenders propose this Receivership, with the support of the Hospital and IO, so that the proposed Receiver, on behalf of Project Co, can (a) make a call under the Performance Bond to obviate the gating issue alleged by the Surety; and (b) exercise other rights of Project Co and enter into arrangements on behalf of Project Co to ensure that construction resumes at the Hospital. In that regard, the Lenders have proposed to the Surety that various issues in dispute among them be deferred to a later time so that construction can restart in the interim. The Lenders have also advised that they are prepared to make further advances to Project Co once the defaults are cured and necessary agreements are put in place.

14. The Lenders are hopeful that these steps will permit the parties to break through the technical issues and move forward to allow for construction to resume promptly. Without the appointment of a court receiver by the December 11, 2018 deadline, there is a risk of significant

prejudice to Project Co and the Lenders and no clear path forward to resume Construction Work at the Hospital.

15. Conversely, appointment of the Proposed Receiver will stay termination of the Project Agreement, set the stage for the re-commencement of the Construction Work as quickly and efficiently as possible, preserve the rights of parties to have disputes resolved through either the receivership or litigation process and enhance the likelihood of the Lenders recovering the Senior Secured Indebtedness. As a result, in all of the circumstances, I believe the appointment of the Proposed Receiver is appropriate, advances the interests of Project Co, the Lenders and the Hospital and is unlikely to prejudice any party.

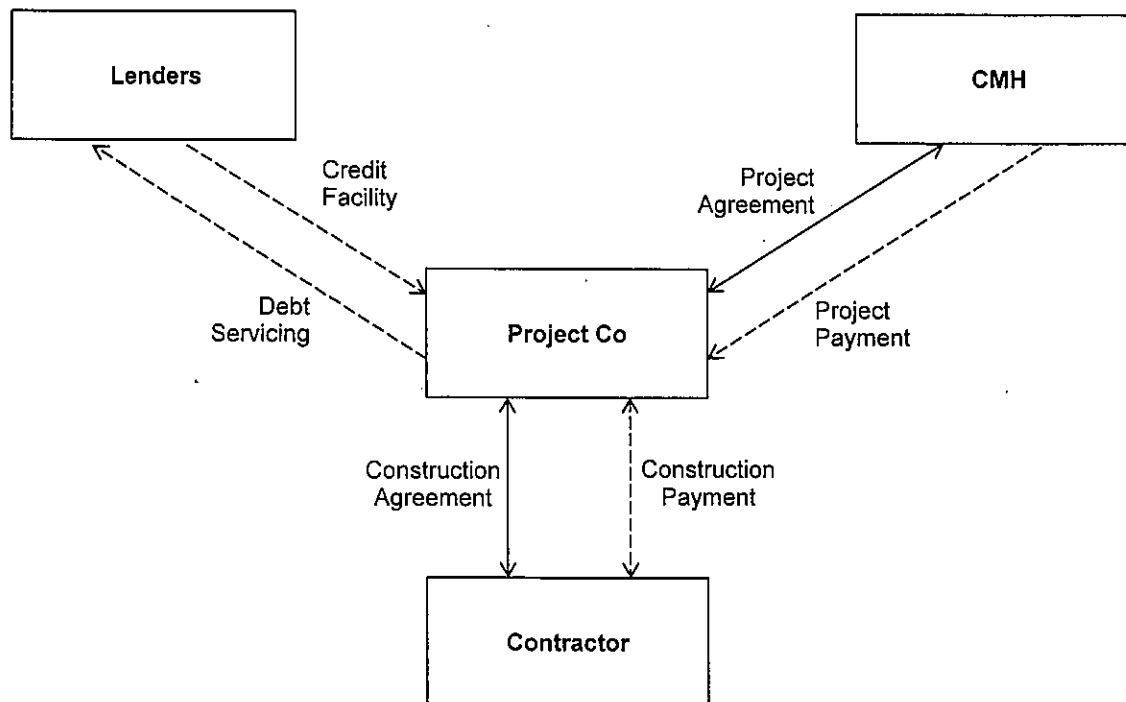
Project Structure

16. Project Co is a special purpose entity that is wholly-owned by the Contractor.

17. The Contractor is a full service and highly experienced construction company that has operated in the Province of Ontario for over forty years. It has been widely reported that the Contractor is financially distressed and has struggled to complete various construction projects; various news stories to this effect are attached as **Exhibits "A" to "D"**, respectively.

18. The Credit Facilities were provided by the Lenders to Project Co as part of the P3 arrangements in respect of the Project. A copy of the Credit Agreement is attached hereto and marked as **Exhibit "E"**.

19. The chart below indicates the primary arrangements between CMH, Project Co and the Contractor in respect of the construction of the Project.



20. The construction of the Project was to be undertaken and completed by the Contractor. As part of being awarded the Construction Work and pursuant to the Credit Facilities, Project Co and the Contractor (which are related) entered into the Construction Contract. A copy of the Construction Contract is attached hereto and marked as **Exhibit "F"**. The Contractor has committed numerous and continuing defaults on the Construction Contract.

21. In addition to the Construction Contract and Credit Agreement, the parties entered into a series of additional agreements pertaining to the Construction Work and the Project including:

- (a) the Project Agreement between Project Co and CMH, a copy of which is attached hereto and marked as **Exhibit "G"**;
- (b) the Contractor Direct Agreement between the Contractor, the Administrative Agent and Project Co, a copy of which is attached hereto and marked as **Exhibit "H"**; and
- (c) the Lender's Direct Agreement between the Administrative Agent, Project Co and CMH, a copy of which is attached hereto and marked as **Exhibit "I"**.

22. Pursuant to the general structure of the Project, funds borrowed by Project Co pursuant to the Credit Facility are used to pay progress payments to the Contractor, which in turn is the entity that hires and pays sub-contractors and is responsible for other costs relating to construction. Payments from CMH to Project Co pursuant to the Project Agreement become payable after "interim completion" and after "substantial completion". To date, interim completion has not been reached and, accordingly, no such payments have been made by CMH. CMH also retains the 10% legislative holdback to be paid out to Project Co in accordance with the terms of the Project Agreement and the *Construction Act* (Ontario) (the "**Construction Act**").

The Credit Agreement and the Security

23. Subject to the terms of the Credit Agreement, the Lenders established and made available to Project Co the Credit Facility. The Credit Facility is a committed, partially revolving construction credit facility in the amount of the Total Commitment (which is up to the aggregate amount of \$124,591,254, as such amount may be reduced or cancelled in accordance with the terms of the Credit Agreement).

24. In general, the Project is designed such that the Total Commitment is to be advanced to Project Co immediately prior to interim completion, at which point the interim completion payment is received by Project Co from CMH and paid to the Lenders. After that point, amounts advanced under the Credit Facility may increase again and then are paid down after the substantial completion payment is received by Project Co from CMH. The Construction Act holdback funds become payable by CMH to Project Co within 45 days after substantial completion in accordance with the Project Agreement and the Construction Act.

25. As security for all obligations owing from Project Co to the Lenders, the Lenders (by and through the Administrative Agent) hold the following security from Project Co and the Contractor:

- (a) the Borrower General Security Agreement, which is a pledge by Project Co of all of its present and after acquired property (both real and personal) to the Administrative Agent as security for the payment and performance of the

obligations owed by Project Co to the Lenders. A copy of the Borrower General Security Agreement is attached hereto and marked as **Exhibit "J"**;

- (b) the Guarantee of Construction Guarantor, which is a limited recourse guarantee and pledge by the Contractor. Pursuant to the Guarantee of Construction Guarantor, the Contractor guaranteed the obligations of Project Co under the Credit Agreement and pledged all of its equity interests in Project Co in support of the guaranteed obligations. The recourse of the Lenders under this guarantee is limited to enforcement of the Contractor's pledge of its equity interests in Project Co. A copy of the Guarantee of Construction Guarantor is attached hereto and marked as **Exhibit "K"**.

(collectively, the "**Lender Security**").

26. As further testified to herein, various Events of Default have occurred under the Credit Agreement. The Borrower General Security Agreement (at Article 6.1 thereof) expressly provides that the Administrative Agent may appoint a receiver upon the occurrence of an Event of Default under the Credit Agreement.

27. The Lenders registered the security interest granted by Project Co under Lender Security in the Ontario Personal Property Registry. Attached hereto and marked as **Exhibit "L"** is a copy of the Ontario Personal Property Registry search reports, dated December 2, 2018, in respect of Project Co.

The Surety

(i) The Contractor Bonds

28. The Surety has issued the Contractor Bonds in relation to the Project. The contractual arrangements between the Lenders, Project Co and the Contractor, as described above, result in the Surety being a debtor to (and not a creditor of) Project Co. It is necessary for Project Co to assert rights against the Surety in order for it to recover on claims owed to it and maximize the value of its estate; these rights are most practically asserted by the Proposed Receiver. The Contractor Bonds issued by the Surety consist of the following:

- (a) Performance Bond 6342957 in the amount of \$87,377,250, a copy of which is attached hereto, together with relevant riders, and marked as **Exhibit "M"**;
- (b) Labour and Materials Bond 6342957 (which was issued simultaneously with the Performance Bond) in the amount of \$87,377,250, a copy of which is attached hereto and marked as **Exhibit "N"**; and
- (c) Demand Bond 6342958 in the amount of \$8,737,725, a copy of which is attached hereto, together with relevant riders, and marked as **Exhibit "O"**.

29. Project Co is the obligee under the Performance Bond. Each of the Administrative Agent and CMH are additional named obligees under a Multiple Obligor Rider to the Performance Bond and are independently entitled to enforce the obligations of the Surety under the Performance Bond. The Performance Bond provides that whenever the Contractor, as principal, is declared to be in default under the Construction Contract, the Surety is to "...promptly select and carry out one of the four following options" to rectify the default. The specific language of the Performance Bond relating to the obligations of the Surety is as follows:

Whenever the Principal shall be, and declared by the Obligor to be in default in respect of its obligations to the Obligor under the Construction Contract (a "**Contractor Event of Default**"), the Obligor having performed the Obligor's obligations under the Construction Contract, the Surety shall promptly select and carry out one of the four following options:

- 1. remedy any default, or;
- 2. complete the Construction Contract in accordance with its terms and conditions, or;
- 3. obtain a bid or bids for submission to the Obligor for completing the Construction Contract in accordance with its terms and conditions and upon determination by the Obligor and the Surety of the lowest responsible bidder, acceptable to CMH acting reasonably, arrange for a contract between such bidder and the Obligor or between such bidder and such other party as an Additional Named Obligor shall be entitled to direct, and the Surety shall 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 Construction Contract,

less the Balance of the Construction Contract Price and to pay all expenses incurred by the Obligee as a result of the Principal's default relating directly to the performance of the Construction Work under the Construction Contract, but not exceeding the Bond Amount. The Balance of the Construction Contract Price is the total amount of the Guaranteed Price payable to the Principal under the Construction Contract, less the amount properly paid by the Obligee to the Principal under the Construction Contract; or

4. pay the Obligee the lesser of (1) the Bond Amount or (2) the Obligee's proposed cost to complete the Construction Contract in accordance with its terms and conditions less the Balance of the Construction Contract Price.

30. The Demand Bond is similar to the Performance Bond in that Project Co is the obligee and the Administrative Agent is an Additional Named Obligee pursuant to the Dual Obligee Rider and is independently entitled to enforce the obligations of Project Co under the Demand Bond. The Demand Bond provides that, upon the occurrence of a Liquidated Damages Default, the Surety will make an Advance Payment to the obligee (being the Administrative Agent). The specific language of the Demand Bond relating to the obligations of the Surety is as follows:

Advance Payment: The Surety and Principal agree that the Surety will make an Advance Payment(s) to the Obligee no later than 5 business days after Surety's receipt of a demand from any of the Obligees for the Advance Payment (the "Advance Payment Demand"), provided that the Obligee's Advance Payment Demand is received by the Surety at its Office (as defined below) by hand or courier before the expiry of this Bond in accordance with its terms, and shall include:

- (a) The Obligee's written declaration of the occurrence of a Liquidated Damages Default; and
- (b) The Obligee's certification, executed by two authorized signing officers of the Obligee, by reason of the occurrence of a Liquidated Damages Default, that a Liquidated Damages Default has occurred in the amount of the Advance Payment Demand.

(ii) *Demand on the Performance Bond and the Surety's "Step-In" Position*

31. The Administrative Agent made demand on the Performance Bond on November 16, 2018. A copy of the demand made by the Administrative Agent is attached hereto and marked as **Exhibit "P"**. To date, the Surety has not complied with the demand made by the Administrative Agent on the Performance Bond.

32. The Surety has asserted the position that in order to assert rights on the Performance Bond the Administrative Agent is required to “step-in” to the position of Project Co. A copy of correspondence from the Surety asserting this position is attached hereto and marked as **Exhibit “Q”**.

33. The Administrative Agent disagrees with this position, based on the express language of the Performance Bond. The Multiple Obligee Rider to the Performance Bond confirms that the terms of the Performance Bond do not require the Administrative Agent, who has been added as an obligee to the Performance Bond, to take this step. The terms of the Multiple Obligee Rider to the Performance Bond provided that the Administrative Agent is “...entitled to enforce the obligations of the Principal and the Surety under the Bond and this Multiple Obligee Rider”:

The Bond shall be and is hereby amended to add Cambridge Memorial Hospital (“CMH”) and Bank of Montreal, in their respective capacities as assignees of the Construction Contract, as Additional Named Obligees, which Additional Named Obligees (which hereinafter may from time to time be referred to simply as “**Obligee(s)**”) shall, subject to the terms of the Bond and this Multiple Obligee Rider, be entitled to enforce the obligations of the Principal and the Surety under the Bond and this Multiple Obligee Rider.

34. While the Administrative Agent disputes the Surety’s interpretation of the Performance Bond, the appointment of the Proposed Receiver is designed to address this issue in an immediate fashion by requiring the Proposed Receiver to assert a claim on behalf of Project Co as obligee on the Performance Bond.

(iii) Discussions and Additional Issues Raised by the Surety

35. The Administrative Agent, the Hospital, IO and the Surety had been in various discussions relating to a forthcoming claim on the Performance Bond prior to the Performance Bond demands being issued on November 16, 2018.

36. On October 10, 2018, the Lenders sent correspondence to the Surety, IO and CMH that identified various “critical path” items required by the Lenders to move forward toward the resumption of the Construction Work. A copy of this correspondence is attached hereto and marked as **Exhibit “R”**.

37. In the course of these discussions, additional issues have been raised by the Surety including as follows:

- (a) Scope of Performance Bond Obligations: The Surety has asserted that its obligations under the Performance Bond are limited to the completion of the Project ("sticks and bricks") and do not extend to other obligations of the Contractor (such as damages for delay). The Administrative Agent disputes this position based on the language of the Performance Bond and applicable case law; and,
- (b) Claim for Holdback: The Surety has taken the position that the party calling on the Performance Bond must sign an agreement with it to commit to paying the "Balance of the Construction Contract Price" and says that phrase includes the legislative holdback (which is expected to total approximately \$17 million and is payable by CMH to Project Co, subject to the provisions of the Construction Act). However, not only does Project Co have the right to withhold from payments to the Contractor in certain circumstances but also legislative holdback amounts paid to Project Co are subject to the Lender Security and have been assigned to the Lenders by the Contractor by way of an irrevocable direction and delivery of a security interest in the Contractor's interest in that holdback. The Surety proposes to disregard that such amounts may not be "payable" to the Contractor and the Lenders' priority right to such funds. Instead, the Surety claims the Lenders must assign the Construction Act holdback in its entirety to the Surety, and therefore diminish their current collateral position, prior to the Surety performing its obligations under the Performance Bond.

38. The Surety also took the position that the party calling upon the Performance Bond was required to execute a completion contract with the replacement contractor and a mitigation funding agreement with the Surety. The mitigation funding contract proposed by the Surety contained a fundamental change for the Lenders as it included an assignment of the Construction Act holdback to the Surety by the Lenders, as described above. On October 22, 2018, the Lenders sent correspondence to the Surety that documented the position of the Lenders on the

above-noted issues and, in particular, the Surety's proposed definition of the "Balance of the Construction Price" in the draft mitigation funding contract. A copy of this correspondence is attached hereto and marked as **Exhibit "S"**.

39. Ultimately, it is the intention of the Administrative Agent to appoint the Proposed Receiver to facilitate the immediate resumption of the Construction Work and the completion of the Project for the benefit of all stakeholders (including the Hospital staff, physicians and patients) and then resolve any remaining issues with the Surety through negotiation or litigation at a later time.

(iv) Demand Bonds

40. The Administrative Agent has also made demands on the Demand Bond on August 3, 2018, on September 14, 2018 and on October 2, 2018. Copies of these demands made by the Administrative Agent are attached hereto and marked as **Exhibit "T"** to **Exhibit "V"**, respectively. The total amount demanded by the Administrative Agent on the Demand Bond is in excess of \$1.3 million.

41. To date, the Surety has paid all amounts claimed under the Demand Bond.

(v) Liens

42. Attached hereto and marked as **Exhibit "W"** is a copy of the title search for the lands upon which the Hospital is situated, dated December 3, 2018. Despite the existence of the Labour and Materials Payment Bond pursuant to which lien claimants are entitled to advance claims, there remain 7 construction liens registered as against the lands as at December 3, 2018.

CMH Demand and Termination Right

43. Pursuant to Article 26.3(a)(i) of the Project Agreement, CMH has the right, subject to the provisions of the Lender's Direct Agreement, to terminate the Project Agreement due to default by Project Co:

- (a) Upon the occurrence of a Project Co Event of Default under this Project Agreement and subject to the Lender's Direct Agreement, and provided CMH has given notice to Project Co of the occurrence of a Project Co

Event of Default, CMH may do any or all of the following as it in its Sole Discretion shall determine:

- (i) terminate this Project Agreement in its entirety by written notice having immediate effect, such notice to be given to Project Co, and to any person specified in the Lender's Direct Agreement to receive such notice;

44. On August 13, 2018, CMH wrote to the Administrative Agent to provide a copy of the Project Co Default Notice that it had sent to Project Co dated August 10, 2018. A copy of the August 13, 2018 letter with attached Project Co Default Notice is attached hereto and marked as **Exhibit "X"**. The delivery of the Project Co Default Notice is subject to the Lender's Direct Agreement and, in particular, Article 6.2(c) thereof, which restricts CMH from terminating the Project Agreement until the expiry of the 120-day notice period provided for by the Lender's Direct Agreement. The application to appoint the Proposed Receiver pursuant to the terms of the Proposed Order has true urgency in light of this deadline and the previous unsuccessful efforts to come to terms with the Surety.

Lender Demand

45. On November 16, 2018, the Administrative Agent wrote to Project Co to demand repayment of the Senior Secured Indebtedness and issued a Notice of Intention to Enforce Security pursuant to the BIA (the "**Project Co Demand**"). Attached hereto and marked as **Exhibit "Y"** to this my Affidavit is a copy of the Project Co Demand.

46. The Administrative Agent also wrote to the Contractor to demand payment pursuant to the Guarantee (the "**Contractor Demand**"). Attached hereto and marked as **Exhibit "Z"** to this my Affidavit is a copy of the Contractor Demand.

47. The Project Co Demand specifies the various Events of Default committed by Project Co under the Credit Agreement. The Events of Default committed by Project Co under the Credit Facility are not in dispute and include both payment and Project-related defaults. As a result of the Events of Default and the Project Co Demand, the entirety of the Senior Secured Indebtedness has become immediately due and payable and the Lender has suspended the ability of Project Co to make borrowings on the Credit Facility.

Project Status and Path Forward

48. EllisDon Construction Services Inc. ("Ellis Don"), a world renowned construction contractor with significant building and development experience, is prepared to serve as the replacement contractor once final terms and conditions are confirmed. The Surety has been engaged in discussions with EllisDon, and the Lenders have separately attempted to ensure that EllisDon has all information required to move forward quickly. The Lenders have been working with EllisDon in a collaborative fashion with the goal of having the Construction Work resumed as quickly as possible so the Project can move towards completion.

Conclusion

49. The Proposed Receiver is a licensed trustee in bankruptcy.

50. It is just, convenient, appropriate and necessary for the Proposed Receiver to be appointed over the assets, properties and undertakings of Project Co for the following reasons:

- (a) the appointment of the Proposed Receiver and the funding to be provided by the Lenders will facilitate the timely completion of the Project. This is the most important reason for the appointment of the Proposed Receiver and represents a significant benefit for Project Co, for other stakeholder groups and for the Hospital and its patients and staff;
- (b) the Proposed Order will preserve the *status quo* and the rights of all parties involved in the Project and allow for Project Co's rights on the Contractor Bonds to be asserted and enforced to address the gating issue raised by the Surety;
- (c) the stay of proceedings provided for in the Proposed Order will prevent the drastic consequences that could occur by way of a termination of the Project Agreement;
- (d) Project Co is a subsidiary of the Contractor, an entity that has been reported to be in financial difficulty. The appointment of the Proposed Receiver will serve to address any existing or future governance issues in respect of Project Co;

- (e) Disputes as between creditors can be resolved through the litigation process (if ultimately necessary) and without causing continued delay to the completion of the Project; and
- (f) the Lender Security provides that the Lenders are entitled to appoint a receiver and manager upon the occurrence of an Event of Default. The appointment of the Proposed Receiver is a contractual right and is the most viable method for recovery of the Senior Secured Indebtedness.

51. I swear this affidavit in support of an application to appoint the Proposed Receiver pursuant to the provisions of the Proposed Order.

SWORN BEFORE ME at the City of)
 Toronto, in the Province of Ontario, this 5th)
 day of December, 2018.)
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)
)



 A COMMISSIONER FOR OATHS
 in and for the Province of Ontario



 Eden Orbach

Tab B

This is **Exhibit "B"** referred to in the
affidavit of **EDEN ORBACH**
sworn before me this
6th day of May, 2019

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke, positioned above a horizontal line.

A Commissioner for taking affidavits

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.

)

THURSDAY, THE 6th

JUSTICE HAINEY

)

DAY OF DECEMBER, 2018

)



IN THE MATTER OF THE RECEIVERSHIP OF
2423402 ONTARIO INC.

BANK OF MONTREAL

Applicant

- and -

2423402 ONTARIO INC.

Respondent

ORDER
(Appointing Receiver)

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing Alvarez & Marsal Canada Inc. ("**A&M**") as receiver (in such capacity, the "**Receiver**") without security, of all of the assets, undertakings and properties of 2423402 Ontario Inc. (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Eden Orbach sworn December 5, 2018 and the Exhibits thereto (collectively, the "**Affidavit**") and on hearing the submissions of counsel for each of the Applicant, A&M, Cambridge Memorial Hospital ("**CMH**"), Infrastructure Ontario ("**IO**"), Zurich Insurance Company Ltd. (the "**Surety**"), and the Debtor, and on reading the consent of A&M to act as the Receiver,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, A&M is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "**Property**") for the sole purpose of carrying out the terms of this Order and without taking possession or control of such Property.

RECEIVER'S POWERS

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property without taking possession or control of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized, but not obligated, to do any of the following where the Receiver considers it necessary or desirable:

- (a) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (b) with the consent of the Applicant in consultation with CMH and IO, to enter into any agreements for and on behalf of the Debtor or cease to perform, repudiate or disclaim any contracts of the Debtor; and
- (c) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, (iii) Bondfield Construction Company Limited ("**Bondfield**"), and (iv) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, and shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure. The Receiver is authorized and empowered to access and make, retain and take away copies of the Records of the Debtor located at the offices of Bondfield and Bondfield shall cooperate and shall provide reasonable assistance to the Receiver with respect to such Records and information contained in such Records with respect to the Property, including the Project (as defined in the Affidavit).

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or

destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

7. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

8. THIS COURT ORDERS that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court. Nothing in this Order shall limit or restrict the rights of the Applicant to take action against Bondfield or to enforce any security granted by Bondfield in favour of the Applicant.

NO EXERCISE OF RIGHTS OR REMEDIES

9. THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, (iv) prevent the registration of a claim for lien; or (v) prevent Cambridge Memorial Hospital from asserting set-off rights against the Debtor arising under the Project Agreement, if any.

NO INTERFERENCE WITH THE RECEIVER

10. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

11. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Debtor.

EMPLOYEES

12. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor and not of the Receiver. The Receiver shall not be liable for any employee-related responsibilities or liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA.

LIMITATION ON ENVIRONMENTAL LIABILITIES

13. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in

pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

14. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, and it shall have no obligations or liability (i) under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*, the *Construction Act* (Ontario) or any other applicable legislation, or (ii) in respect of any of the Debtor's obligations or Property, including, without limitation, the Construction Agreement attached as Exhibit "F" to the Affidavit or the Project Agreement attached as Exhibit "G" to the Affidavit. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation. Unless further ordered by the Court, the Receiver will not be and shall not be deemed to be, in possession and control of any Property, including, without limitation, for the purposes of the BIA, the *Wage Earner Protection Program Act*, the *Construction Act* (Ontario) or any other applicable legislation.

RECEIVER'S ACCOUNTS

15. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to the benefit of and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

16. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

17. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its

fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

18. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to: (a) with the consent of the Applicant to 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 \$200,000 (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 (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.

19. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

20. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the **"Receiver's Certificates"**) for any amount borrowed by it pursuant to this Order.

21. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

22. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL 'https://www.alvarezandmarsal.com/CMH'.

23. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, electronic or facsimile transmission to the Debtor's creditors or other interested parties and their advisors at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

GENERAL

24. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

25. THIS COURT ORDERS that nothing in this Order shall:

- (a) prevent the Receiver from acting as a trustee in bankruptcy of the Debtor;

- (b) constitute or be deemed to constitute an exercise of "step-in rights" by the Applicant under Section 7 of the Lender's Direct Agreement (as such term is defined in the Affidavit); or
- (c) prevent the Applicant from appointing the Receiver as its Appointed Representative (as such term is defined in the Lender's Direct Agreement) or taking steps pursuant to the Lender's Direct Agreement.

26. THIS COURT ORDERS that nothing in this Order shall affect the Debtor's ability to perform its obligations under the Construction Contract or alter, amend or otherwise affect the liability of the Surety to any Person pursuant to Performance Bond No. 6342957 (the "**Performance Bond**"), Labour and Materials Payment Bond No. 6342957 or Demand Bond No. 6342958 (collectively, the "**Contractor Bonds**") issued by the Surety.

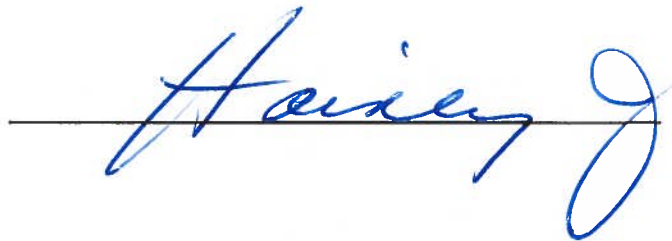
27. THIS COURT ORDERS that the Receiver shall make a demand under the Performance Bond for and on behalf of the Debtor as soon as reasonably practical and shall be empowered and authorized to execute, issue and endorse any agreements or documentation for and on behalf of the Debtor as the Receiver considers necessary or advisable to facilitate making such demand. The Receiver shall not take or consent to any actions that would compromise recovery under the Contractor Bonds without written consent of the Applicant.

28. 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.

29. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

30. THIS COURT ORDERS that the Applicant shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid from the Debtor's estate with such priority and at such time as this Court may determine.

31. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

DEC 06 2018

PER / PAR: 

SCHEDULE "A"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that ALVAREZ & MARSAL CANADA INC., the receiver (in such capacity and not in its personal or corporate capacity, the "**Receiver**") of the assets, undertakings and properties 2423402 ONTARIO INC. acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 6th day of December, 2018 (the "**Order**") made in an action having Court file number ____-CL-_____, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [**daily**][**monthly not in advance on the _____ day of each month**] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the _____ day of _____, 20__.

ALVAREZ & MARSAL CANADA INC., solely in
its capacity as Receiver of the Property, and not
in its personal or corporate capacity

Per: _____

Name:

Title:

IN THE MATTER OF THE RECEIVERSHIP OF 2423402 ONTARIO INC.

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

BANK OF MONTREAL and 2423402 ONTARIO INC.
Applicant Respondent

	<p>Ontario</p> <p>SUPERIOR COURT OF JUSTICE COMMERCIAL LIST</p> <p>Proceedings commenced in Toronto</p>
	<p>ORDER (Appointing Receiver)</p>
	<p>McCarthy Tétrault LLP Suite 5300, TD Bank Tower Toronto Dominion Centre 66 Wellington Street West Toronto, ON M5K 1E6</p> <p>Heather L. Meredith LSUC#48354R Tel: 416-601-8342 Fax: 416- 868-0673 Email: hmeredith@mccarthy.ca</p> <p>Geoff R. Hall LSUC#347010 Tel: 416-601-7856 Fax: 416-868-0673 Email: ghall@mccarthy.ca</p> <p>Trevor Courtis LSUC#67715A Tel: 416-601-7643 Fax: 416-868-0673 Email: tcourtis@mccarthy.ca Lawyers for the applicant, Bank of Montreal</p>

Tab C

This is **Exhibit "C"** referred to in the
affidavit of **EDEN ORBACH**
sworn before me this
6th day of May, 2019

A handwritten signature in blue ink, consisting of stylized, overlapping loops and strokes, positioned above a horizontal line.

A Commissioner for taking affidavits

PERFORMANCE BOND

THIS BOND IS SUBJECT TO THE TERMS AND CONDITIONS OF THE MULTIPLE OBLIGEE RIDER ATTACHED HERETO

No. 6342957

Bond Amount \$87,377,250.00

Bondfield Construction Company Limited, as Principal, hereinafter called the Principal, and Zurich Insurance Company Ltd., as Surety, duly authorized to transact the business of suretyship in Canada, hereinafter called the Surety, are held and firmly bound unto 2423402 Ontario Inc. as Obligee, hereinafter called the Obligee, in the amount of **EIGHTY SEVEN MILLION, THREE HUNDRED AND SEVENTY SEVEN THOUSAND, TWO HUNDRED AND FIFTY AND-----00/100 (\$87,377,250.00)** of 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 entitled Construction Contract with Obligee dated August 28, 2014 for the Cambridge Memorial Hospital Capital Redevelopment Project (such contract as so amended, and as the same may hereinafter be further amended, whether by way of change, alteration, addition or other modification, and including all of its terms and provisions without limitation, is hereinafter called the Construction Contract and by reference made part hereof). Capitalized terms used in this Bond without definition shall have their respective meanings attributed thereto in the Construction Contract.

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, 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 in respect of its obligations to the Obligee under the Construction Contract (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:

1. remedy any default, or;
2. complete the Construction Contract in accordance with its terms and conditions, or;
3. obtain a bid or bids for submission to the Obligee for completing the Construction Contract in accordance with its terms and conditions and upon determination by the Obligee and the Surety of the lowest responsible bidder, acceptable to CMH acting reasonably, arrange for a contract between such bidder and the Obligee or between such bidder and such other party as an Additional Named Obligee shall be entitled to direct, and the Surety shall 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 Construction Contract, less the Balance of the Construction Contract Price and to pay all expenses incurred by the Obligee as a result of the Principal's default relating directly to the performance of the

Construction Work under the Construction Contract, but not exceeding the Bond Amount. The Balance of the Construction Contract Price is the total amount of the Guaranteed Price payable to the Principal under the Construction Contract, less the amount properly paid by the Obligee to the Principal under the Construction Contract; or

4. pay the Obligee the lesser of (1) the Bond Amount or (2) the Obligee's proposed cost to complete the Construction Contract in accordance with its terms and conditions less the Balance of the Construction Contract Price.

The Surety shall not be discharged or released from liability hereunder and such liability shall not be in any way affected by any changes, alterations, additions or variations, taking or receiving of security between the Principal and the Obligee, or extension of time, or other modification of the Construction Contract, by the exercise by the Obligee of any of the rights or powers reserved to it under the Construction Contract or by its forbearance to exercise any such rights or powers, including (but without restricting the generality of the foregoing) any changes in the extent or nature of the Work under the Construction Contract or by any dealing, transaction, forbearance or forgiveness which may take place between the Principal and the Obligee.

The Surety agrees that for the purposes of determining its liability under this Bond, findings or decisions against the Principal under the terms of the Construction Contract, that are binding on the Principal and the Obligee shall also bind the Surety.

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 Substantial Completion Date, or (2) the date on which the Principal is declared in default by the Obligee and such notice of default is provided to CMH and Bank of Montreal.

The Surety shall, in no event, be liable for a greater sum than the Bond Amount. Further, and notwithstanding anything else in this Bond, the Surety's liability hereunder for any default under Section 26.1(a)(x) of the Project Agreement shall be limited to any default by the Principal resulting in the non-performance or non-observance by the Principal of any of its other obligations under the Construction Contract.

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, successors or assigns of the Obligee.

This Bond shall in all respects be interpreted in accordance with the laws of the province of Ontario and the laws of Canada applicable in the province of Ontario.

This Bond may be executed in counterparts and by means of facsimile signature or other electronic means, each of which when so executed and delivered shall be an original, and all such counterparts shall together constitute one and the same instrument.

[signature page follows]

IN WITNESS WHEREOF, the Principal and the Surety have signed and sealed this Bond dated the 28 day of August, 2014.

SIGNED, SEALED AND DELIVERED

in the presence of:

**BONDFIELD CONSTRUCTION COMPANY
LIMITED**

By

Signature

John Aquino, Vice-President + G.M.

Name of person signing

ZURICH INSURANCE COMPANY LTD.

By:

Signature

KAREN RAMSEY, ATTORNEY-IN-FACT

Name of person signing

Zurich Insurance Company Ltd

100 King Street W., Suite 5500, P.O. Box 290
Toronto, Ontario M5X 1C9



Bond Number: 6342957

Zurich Insurance Company Ltd**RE: Notice under Part XIII of the Insurance Companies Act (Canada)**

**For purposes of the Insurance Companies Act (Canada), this document was issued in the course
of Zurich Insurance Company Ltd's insurance business in Canada.**

MULTIPLE OBLIGEE RIDER TO PERFORMANCE BOND

No. 6342957

TO BE ATTACHED TO AND FORM PART OF THE PERFORMANCE BOND NO. 6342957 dated August 28, 2014 (the "Bond") concurrently with the execution of this Multiple Obligor Rider, issued by Zurich Insurance Company Ltd., as Surety (hereinafter called the "Surety"), on behalf of Bondfield Construction Company Limited, as Principal (hereinafter called the "Principal"), and in favour of 2423402 Ontario Inc., as Obligor (hereinafter called the "Obligor").

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 hereto, the undersigned hereby agree as follows:

1. The Bond shall be and is hereby amended to add Cambridge Memorial Hospital ("CMH") and Bank of Montreal, in their respective capacities as assignees of the Construction Contract, as Additional Named Obligors, which Additional Named Obligors (which hereinafter may from time to time be referred to simply as "**Obligor(s)**") shall, subject to the terms of the Bond and this Multiple Obligor Rider, be entitled to enforce the obligations of the Principal and the Surety under the Bond and this Multiple Obligor Rider.
1. Capitalized terms used in this Multiple Obligor Rider without definition shall have the respective meanings attributed to them in the Bond and the Construction Contract.
2. If there is an event of default by Contractor under the Construction Contract (a "**Construction Event of Default**") and the Bank of Montreal or CMH makes a claim under the Bond, the Bank of Montreal or CMH, as the case may be, shall make available to the Surety in accordance with the terms of the Construction Contract the Balance of the Construction Contract Price.
3. All of the terms, conditions and provisions of the Bond are hereby incorporated herein by reference as if fully set forth herein.
4. No alteration or material change in the Construction Contract or any conduct of the Principal, Obligor or Bank of Montreal, prior to the Principal being declared in default, shall prejudice the rights or interest of CMH under the Bond or this Multiple Obligor Rider provided that CMH has not caused such alteration or material change without the prior written consent of the Surety.
5. The Obligor, Principal, Surety and Bank of Montreal acknowledge and agree that they will not remedy any default, settle, waive, reduce or otherwise compromise any claims under the Bond without the prior written approval of CMH, acting reasonably, and the Surety shall provide reasonable notice to CMH prior to remedying any default, settling, waiving, reducing or otherwise compromising any claim or making any payment under the Bond, provided that the Surety shall not be precluded from tendering upon the Obligor(s) performance pursuant to one of the four numbered options in the Bond.

6. The Surety acknowledges the process in the Lender's Direct Agreement for making a claim against the Bond, including, but not limited to, the Lender's Step In Period (as defined in the Lender's Direct Agreement) rights; provided that such acknowledgement shall in no way limit or otherwise abrogate from the Surety's rights under the Bond or this Multiple Obligor Rider.
7. In the event of any ambiguity, conflict or inconsistency, the Bond and this Multiple Obligor Rider shall prevail over the Project Agreement and the other Project Documents.
8. Nothing herein shall alter or affect the aggregate liability of the Surety as described in the Bond.

[signature page follows]

IN WITNESS WHEREOF, the Principal, Surety, Obligee, CMH and Lender have signed and sealed this Multiple Obligee Rider dated the 28 day of August, 2014.

SIGNED, SEALED and DELIVERED

in the presence of:

**BONDFIELD CONSTRUCTION COMPANY
LIMITED /**

By

Signature

John Aawing, Vice-President + G.M.
Name of person signing

ZURICH INSURANCE COMPANY LTD.

By:

Signature _____

KAREN RAMSEY, ATTORNEY-IN-FACT

Name of person signing

2423402 ONTARIO INC.

By

Signature

John Aquino, President

Name of person signing

BANK OF MONTREAL, as Agent

By:

Signature

Name of person signing

2423402 ONTARIO INC.

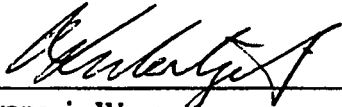
By

Signature

Name of person signing

BANK OF MONTREAL, as Agent

By:





Signature Francois Wentzel
Managing Director

Name of person signing

CAMBRIDGE MEMORIAL HOSPITAL

By


Signature
Name of person signing

Tab D

This is **Exhibit "D"** referred to in the
affidavit of **EDEN ORBACH**
sworn before me this
6th day of May, 2019

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke, positioned above a horizontal line.

A Commissioner for taking affidavits

CREDIT AGREEMENT

Made as of August 28, 2014

Between

2423402 ONTARIO INC.
as Borrower

and

**EACH OF THE FINANCIAL
INSTITUTIONS AND OTHER ENTITIES FROM
TIME TO TIME PARTIES HERETO**
as Lenders

and

**BANK OF MONTREAL, CAISSE CENTRALE DESJARDINS AND
THE TORONTO-DOMINION BANK**
as Lead Arrangers

and

BANK OF MONTREAL
as Administrative Agent

TABLE OF CONTENTS

	Page
RECITALS	1
SECTION 1 – INTERPRETATION	1
1.1 Certain Defined Terms	1
1.2 Headings and Table of Contents	23
1.3 Number and Gender	23
1.4 References	23
1.5 Statutory References	23
1.6 Entire Agreement	24
1.7 Business Day	24
1.8 Conflict	24
1.9 Currency	24
1.10 Time	24
1.11 GAAP	24
1.12 Time of Day	24
1.13 Governing Law	24
1.14 Severability	25
1.15 No Recourse	25
1.16 Schedules	25
SECTION 2 – REPRESENTATIONS AND WARRANTIES	26
2.1 Representations and Warranties	26
2.2 Deemed Repetition	34
SECTION 3 – THE CREDIT FACILITY	34
3.1 Establishment of Credit Facility	34
3.2 Obligations of the Lenders and the Administrative Agent	34
3.3 Availability of Credit Facility	35
3.4 Purpose	35
3.5 Procedures for Making of Loans	35
3.6 Determination Final	36
3.7 Reliance on Oral Instructions	36
3.8 Deposit of Proceeds of Loans	36

TABLE OF CONTENTS
(continued)

	Page
3.9 Evidence of Obligations	37
3.10 Interest Rate Swaps.....	37
SECTION 4 – INTEREST, FEES AND EXPENSES.....	38
4.1 Interest on Loans.....	38
4.2 Fees	38
4.3 Interest on Overdue Amounts	39
4.4 Interest Act.....	39
4.5 Limit on Rate of Interest.....	40
4.6 Calculation of Break Costs	40
4.7 Calculation of Swap Breakage Costs.....	41
4.8 Payment of Affected Borrowing.....	41
4.9 Change in Circumstances	41
4.10 Illegality.....	41
4.11 Indemnity	41
SECTION 5 – REDUCTION AND REPAYMENT	42
5.1 Term and Maturity.....	42
5.2 Repayment	42
5.3 Mandatory Prepayment.....	42
5.4 Voluntary Prepayment.....	43
5.5 Cancellation	43
5.6 Break Costs Upon Cancellation or Prepayment	43
5.7 Swap Breakage Costs Upon Cancellation or Prepayment.....	43
5.8 Limitation on Cancellation/Prepayment	44
SECTION 6 – PAYMENTS AND TAXES	44
6.1 Payments Generally	44
6.2 Taxes.....	44
6.3 No Set-Off	45
6.4 Directions as to Payment	45
6.5 Acknowledgement as to Payments	45
6.6 Distributions	46

TABLE OF CONTENTS
(continued)

	Page
SECTION 7 – SECURITY DOCUMENTS	49
7.1 Security Documents	49
SECTION 8 – CONDITIONS PRECEDENT	50
8.1 Conditions Precedent to the Financial Closing Date	50
8.2 Conditions Precedent to Initial Funding Date and each Funding Date	56
8.3 Waiver of a Condition Precedent.....	58
SECTION 9 – COVENANTS	58
9.1 Affirmative Covenants of the Borrower	58
9.2 Negative Covenants of the Borrower	69
9.3 Accounting, Financial Statements and Other Information	72
SECTION 10 – DEFAULT AND ENFORCEMENT	75
10.1 Events of Default	75
10.2 Rights upon Default	80
10.3 Rights upon Event of Default	80
10.4 Waiver of Default	81
10.5 Potential Delay or Force Majeure Termination Event.....	81
SECTION 11 – REMEDIES	81
11.1 Remedies Cumulative	81
11.2 Exercise of Remedies	82
11.3 Remedies Not Limited	82
11.4 Sharing of Proceeds Among the Lenders	82
11.5 Set-Off, etc.....	82
11.6 Administrative Agent or Lender May Perform Covenants.....	83
11.7 Decision to Enforce Security Documents.....	83
SECTION 12 – THE ADMINISTRATIVE AGENT AND THE LENDERS	83
12.1 CBA Schedule	83
12.2 Action by Administrative Agent.....	83
12.3 Arrangements for Repayment.....	84
12.4 Lenders Bound by Decision to Exercise Remedies	84
12.5 Deemed Repayment and Funding.....	84

TABLE OF CONTENTS
(continued)

	Page
12.6 Responsibility of Administrative Agent	84
12.7 Administrative Agent Co-operation with Lenders' Consultant.....	84
12.8 Acknowledgement of Lenders	85
12.9 Successor Administrative Agent.....	85
12.10 Replacement of Administrative Agent	85
12.11 Notices between the Lenders and the Administrative Agent.....	85
12.12 Reliance by Administrative Agent.....	85
12.13 Reimbursement of Administrative Agent's Expenses and Indemnity.....	85
12.14 Borrower's Right to Rely on Administrative Agent.....	85
12.15 Administrative Agent's Duty to Deliver Documents	85
12.16 No Partnership	86
12.17 Adjustments Among Lenders	86
12.18 Administrative Agent May Deal With Collateral	86
12.19 Administrative Agent May Debit Accounts	87
12.20 Anti-Money Laundering	87
SECTION 13 – ASSIGNS AND PARTICIPANTS	88
13.1 Assignment and Participation	88
SECTION 14 – MISCELLANEOUS	89
14.1 Amendments, Waivers, etc.	89
14.2 No Deemed Subordination	91
14.3 Further Assurances	91
14.4 Judgment Currency	91
14.5 Notice.....	92
14.6 Reimbursement of Expenses.....	92
14.7 Submission to Jurisdiction.....	93
14.8 Counterparts.....	93
14.9 Confidentiality	93
Schedule A – CBA Model Loan Provisions	1
Schedule 1.1(35) – Lenders' Branches of Account	1
Schedule 1.1(55) – Commitments	1

TABLE OF CONTENTS
(continued)

	Page
Schedule 1.1(58) – Form of Compliance Certificate	1
Schedule 1.1(97) – Financial Model.....	1
Schedule 1.1(149) – Material Subcontracts	1
Schedule 2.1(25) – Corporate Organization Chart	1
Schedule 3.2(1) – Draw Schedule	1
Schedule 3.5(1) – Form of Funding Request.....	1
Schedule 5.4 – Notice of Repayment.....	1
Schedule 5.5 – Notice of Cancellation.....	1
Schedule 8.2(7)(b) – Form of Statutory Declaration	1
Schedule 8.2(7)(c) – Form of Lenders’ Consultant Certificate	1
Schedule 9.1(19) – Financial Model Updates.....	1
Schedule 9.1(22) – Additional Insurance	1

CREDIT AGREEMENT

This Agreement is made as of August 28, 2014 between

2423402 ONTARIO INC., a corporation incorporated under the laws
of the Province of Ontario
as Borrower

and

**EACH OF THE FINANCIAL INSTITUTIONS AND OTHER
ENTITIES FROM TIME TO TIME PARTIES HERETO**
as Lenders

and

BANK OF MONTREAL
as Administrative Agent

RECITALS

- A. The Borrower has requested that the Lenders make the Credit Facility available.
- B. Each Lender is prepared to make its Commitment available to the Borrower, subject to the terms and conditions of this Agreement.

FOR VALUE RECEIVED, the parties agree as follows:

SECTION 1 – INTERPRETATION

1.1 Certain Defined Terms

The terms defined below shall have the indicated meanings unless the context expressly or by necessary implication requires otherwise:

- (1) **Acceptable Credit Support** means an unconditional, irrevocable standby letter of credit (not secured by any assets of the Borrower) from any one of the following banks: National Bank of Canada or any other bank listed under Schedule I to the *Bank Act* (Canada) provided that such bank also has a credit rating of at least A+ from S&P or the equivalent rating from Moody's or such other form of security as may be acceptable to the Lenders; provided that, in the event of a ratings downgrade at any time of the issuing bank which results in such bank ceasing to have a credit rating of at least A+ from S&P or the equivalent rating from Moody's, such letter of credit shall be replaced, within 20 Business Days, with a letter of credit issued by a bank listed under Schedule I to the *Bank Act* (Canada) that meets the foregoing minimum credit rating requirement or, if no such bank then meets the minimum credit rating requirements, by such other bank or financial institution that meets such minimum credit rating requirement; provided further that the letter of credit may be

drawn down if not replaced within 20 Business Days and the proceeds thereof deposited into a cash collateral account established and maintained by the Administrative Agent, such cash collateral to be released to the appropriate party upon delivery of a replacement letter of credit issued by a bank or financial institution which meets the foregoing requirements of this definition.

- (2) **Account Bank** means BMO and any replacement bank pursuant to the provisions of the Blocked Account Agreement.
- (3) **Additional Insurance** means the insurance coverages which the Borrower is required to maintain or cause to be maintained pursuant to Sections 9.1(21) and 9.1(22) of this Agreement in excess of the Project Insurance.
- (4) **Additional CMH Payments** has the meaning given to it in the Project Agreement.
- (5) **Administrative Agent** means BMO, when acting as administrative agent and any successor administrative agent appointed under Section 7.7 of the CBA Schedule.
- (6) **Affected Borrowing** has the meaning given to it in Section 4.8.
- (7) **Affected Lender** has the meaning given to it in Section 4.1(4).
- (8) **Affiliate** has the meaning given to it in Section 1 of the CBA Schedule.
- (9) **Agency Fee** has the meaning given to it in Section 4.2(4).
- (10) **Agency Fee Payment Date** has the meaning given to it in Section 4.2(4).
- (11) **Agent's Funding Account** means the following non interest bearing account maintained by the Administrative Agent, to which payments and transfers are to be effected as follows:

<u>Bank:</u>	Bank of Montreal
<u>Swift Address:</u>	BOFMCAM2
<u>Account Number:</u>	00021447805
<u>Favour:</u>	GFS Agency Bank Services
<u>Reference:</u>	2423402 Ontario

or such other account of the Administrative Agent in Toronto, Ontario as the Administrative Agent may at any time and from time to time advise the Borrower and the Lenders in writing.

- (12) **Agent's Funding Account Balance** means, at any time, such portion of the Agent's Funding Account standing to the credit of the Borrower at such time, less any amounts funded on such date with respect to interest or Borrowing Costs payable to the Lenders.
- (13) **Agreed Currency** has the meaning given to it in Section 14.4.

- (14) **Agreement** has the meaning given to it in Section 1 of the CBA Schedule.
- (15) **Applicable Law** has the meaning given to it in Section 1 of the CBA Schedule.
- (16) **Applicable Margin** means 0.95% per annum.
- (17) **Applicable Percentage** has the meaning given to it in Section 1 of the CBA Schedule.
- (18) **Applicable Consent** means any Consent that is necessary under Applicable Law at any given time (having regard to the then given state of construction of the Project) for the Contractor to perform the Work as contemplated by the Material Project Documents, for the Borrower or the Contractor to enter into any Material Project Document or Loan Document, or for the Borrower or the Contractor to consummate any transaction contemplated thereby.
- (19) **Assignable Subcontract Agreement** means an Assignable Subcontract Agreement between a Subcontractor, the Contractor, the Borrower and CMH in substantially the same form set forth in Schedule 20 of the Project Agreement.
- (20) **Assignable Subcontract Agreement for Construction Contract** means the Assignable Subcontract Agreement for Construction Contract between the Contractor, the Borrower and CMH in substantially the same form set forth in Schedule 23 to the Project Agreement.
- (21) **Assignment and Assumption** has the meaning given to it in Section 1 of the CBA Schedule.
- (22) **Assignment of Accounts** means the Assignment of Accounts dated as of the Financial Closing Date between the Borrower and the Administrative Agent, granting to the Administrative Agent on behalf of the Lenders a first ranking assignment by way of security over all of the Borrower's right, title and interest in all Project Accounts.
- (23) **Associate** has the meaning given to it in the *Business Corporations Act* (Ontario).
- (24) **Available Commitment** means, as of any date during the Term, the Total Commitment less the aggregate of all Loans previously made or deemed to have been made to the Borrower under this Agreement, but including the amount of any Loans repaid pursuant to Section 5.2(a).
- (25) **Base Progress Payments** has the meaning given to it in the Project Agreement.
- (26) **Blocked Account Agreement** means the agreement between the Borrower, the Administrative Agent and the Account Bank with respect to the operation of the Borrower Proceeds Account.
- (27) **BMO** means Bank of Montreal, including its successors and permitted assigns.
- (28) **Borrower** means 2423402 Ontario Inc., a corporation incorporated under the laws of the Province of Ontario, and shall include its successors and permitted assigns.
- (29) **Borrower General Security Agreement** means the General Security Agreement dated as of the Financial Closing Date between the Borrower and the Administrative Agent, granting to the

Administrative Agent on behalf of the Lenders a first ranking security interest in all of the personal property, assets and undertaking of the Borrower, including the Project Accounts, the Contractor Support Agreement and the Material Project Documents.

(30) ***Borrower Proceeds Account*** means the following account maintained by the Borrower with the Account Bank, to which payments and transfers are to be effected as follows:

<u>Bank:</u>	Bank of Montreal
<u>Swift Address:</u>	BOFMCAM2
<u>Transit Number:</u>	0002
<u>Account Number:</u>	1918777
<u>Beneficiary:</u>	2423402 Ontario Inc.

(31) ***Borrower's Knowledge*** means with respect to the subject matter of any representation, warranty, covenant, agreement or obligation relating to the Borrower or the Contractor contained in any Loan Document, the knowledge of any Responsible Officer of the Borrower after reasonable inquiry.

(32) ***Borrowing Costs*** means all interest expenses, Break Costs, amounts payable by the Borrower under the Interest Rate Swaps and other fees or costs of any nature or type payable by the Borrower under this Agreement in connection with the Credit Facility or the Interest Rate Swaps, all calculated without duplication and crediting all amounts payable to the Borrower under the Interest Rate Swaps.

(33) ***Branch of Account*** or ***Lending Office*** means, with respect to each Lender, the branch of the Lender at the address set out opposite the Lender's name on Schedule 1.1(33) or other branch as the Lender may advise the Borrower and the Administrative Agent in writing.

(34) ***Break Costs*** means the amount (if any) by which:

- (a) the amount which the relevant Lender would have received by way of interest under this Agreement on the principal amount of the Loan prepaid to it for the period from the date of such prepayment to the last day of the then current Interest Period in respect thereof, had such principal amount been received on the last day of the Interest Period;

exceeds

- (b) the amount which that Lender would be able to obtain by placing an amount equal to the principal amount prepaid to it on deposit with a bank listed under Schedule I to the *Bank Act* (Canada) chosen by such Lender for a period starting on the Business Day following receipt or recovery and ending on the last day of the then current Interest Period.

(35) **Business Day** means a day on which chartered banks are open for over-the-counter business in Toronto and Montreal and excludes Saturday, Sunday and any other day which is a statutory holiday in Toronto or Montreal.

(36) **Canadian Benefit Plans** means all material employee benefit plans or arrangements maintained or contributed to by the Borrower that are not Canadian Pension Plans, including all profit sharing, savings, supplemental retirement, retiring allowance, severance, pension, deferred compensation, welfare, bonus, incentive compensation, phantom stock, legal services, supplementary unemployment benefit plans or arrangements and all life, health, dental and disability plans and arrangements in which the employees or former employees of the Borrower participate or are eligible to participate but excluding all stock option or stock purchase plans.

(37) **Canadian Dollars** and the symbols “\$” and “Cdn\$” each means lawful money of Canada.

(38) **Canadian Pension Plans** means all plans or arrangements that are considered to be pension plans for the purposes of any applicable pension benefits standards statute or regulation in Canada established, maintained or contributed to by the Borrower for its employees or former employees.

(39) **Capital Lease** means, with respect to a Person, any lease or other arrangement for the use of property or assets that would be required to be accounted for as a capital lease on a balance sheet of that Person in accordance with GAAP. The amount of any Capital Lease at any date shall be the amount of the obligation in respect thereof required to be included on the balance sheet of the Person.

(40) **CBA Schedule** means the model credit agreement provisions attached hereto as Schedule A, which have been revised under the direction of the Canadian Bankers’ Association Secondary Loan Market Specialist Group from provisions prepared by The Loan Syndications and Trading Association, Inc., and which form part of this Agreement and shall be deemed for such purpose to be a part hereof as if fully set forth herein, as modified as set forth below and therein and as further amended, modified, supplemented or restated from time to time by the parties to this Agreement.

(41) **CDOR Rate** means, on any day, the annual rate of interest which is the arithmetic average of the “BA 1 month” rates applicable to Canadian Dollar Bankers’ Acceptances identified as such on the Reuters Screen CDOR Page at approximately 10:00 a.m. on such day (as adjusted by the Administrative Agent after 10:00 a.m. to reflect any error in any posted rate or in the posted average annual rate). If the rate does not appear on the Reuters Screen CDOR Page as contemplated above, then the CDOR Rate on any day shall be calculated as the arithmetic average of the discount rates applicable to one month Canadian Dollar Bankers’ Acceptances of, and as quoted by, the Lenders as of 10:00 a.m. on the day, or if the day is not a Business Day, then on the immediately preceding Business Day.

(42) **Certified Cost to Complete** has the meaning given to it in the Project Agreement.

(43) **Change Directive** has the meaning given to it in the Project Agreement.

(44) **Change in Control** has the meaning given to it in the Project Agreement.

(45) **Change in Law** has the meaning given to it in Section 1 of the CBA Schedule.

- (46) **Change Order** has the meaning given to it in the Project Agreement.
- (47) **CMH** means Cambridge Memorial Hospital.
- (48) **CMH Funding Letter** means the letter from MoHLTC to CMH dated August 14, 2014 evidencing the commitment of MoHLTC to fund a portion of CMH's financial obligations under the Material Project Documents.
- (49) **CMH Holdback** has the meaning given to it in the Project Agreement.
- (50) **CMH Trust Account** means the bank account maintained by the CMH Trust Account Trustee to receive and disburse the payments made by MoHLTC to CMH pursuant to the CMH Funding Letter in accordance with the terms and conditions set forth in the Material Project Documents.
- (51) **CMH Trust Account Trustee** means BNY Trust Company of Canada, as trustee under the Trust Account Acknowledgement Agreement, and its successors and permitted assigns.
- (52) **Collateral** means the undertaking, property and assets covered by the Security Documents and any other property, real or personal, tangible or intangible, now existing or hereafter acquired by the Borrower in connection with the Work or the Project, that may at any time be or become subject to a Lien in favour of the Administrative Agent on behalf of the Lenders, or in favour of the Lenders, in each case to secure any or all of the Obligations.
- (53) **Commitment** means, with respect to any Lender, the principal amount set out opposite the Lender's name in Schedule 1.1(53), as such amount may be reduced or cancelled in accordance with this Agreement.
- (54) **Compensable Financing Costs** means the amount of any compensation payable under the Project Agreement as an increase to the Guaranteed Price (as defined in the Project Agreement) due to increased Borrowing Costs.
- (55) **Compensation Payment** has the meaning given to it in the Project Agreement.
- (56) **Compliance Certificate** means a compliance certificate substantially in the form attached as Schedule 1.1(56) signed by a Responsible Officer of the Borrower.
- (57) **Condemnation** means in respect of the Site or the Facility any taking, condemnation, confiscation, expropriation, deprivation, seizure, restraint, detention, appropriation of, or requisition of use or title to, the Site or the Facility or any part thereof, including a taking, confiscation, expropriation, seizure, or appropriation of, or requisition or sale of the use or title to, any access or occupancy rights in respect of the Site or the Facility or any part thereof, wholly or partially (temporarily or permanently), by or on account of any threatened or actual eminent domain proceeding or other taking of action by any Person having the power of eminent domain or by or on account of an eviction by paramount title or any transfer made in lieu of any such proceeding or action. A "Condemnation" shall be deemed to have occurred on the earliest of the dates that use, occupancy or title vests in the condemning authority.

(58) **Consents** means permissions, authorizations, registrations, consents, approvals, certificates, certificates of authorization, permits, licences, statutory agreements, waivers, exceptions, variances, orders, judgments, written interpretations, decrees, exemptions, publications, filings, notices to and declarations of or with, or required by, any Governmental Authority under Applicable Law and consents and agreements from any third parties (including any planning permission and consents or approvals and any Environmental Permits). For greater certainty, “**Consents**” shall also include the terms and conditions as may be attached to any Consent.

(59) **Construction Budget** means in respect of the Work a construction budget setting forth all costs associated with the completion of the Work, including all hard costs and soft costs relating to the completion of the Work and all other Transaction Expenses, which shall be in form and substance satisfactory to the Lenders’ Consultant and the Administrative Agent, as revised from time to time by the Borrower with the approval of the Lenders’ Consultant and the Administrative Agent.

(60) **Construction Contract** means the guaranteed price contract dated as of the Financial Closing Date and entered into between the Borrower and the Contractor for the carrying out of the Work and assigned by the Borrower to CMH pursuant to the Assignable Subcontract Agreement for Construction Contract.

(61) **Construction Costs** means all costs of any nature or type whatsoever (other than Borrowing Costs) as provided for in the Financial Model and Construction Budget incurred or to be incurred by the Contractor in relation to the Work up to the Substantial Completion Date plus all costs of any kind relating to the Work that will be incurred up to the date of Final Completion but excluding costs of Change Orders or Change Directives that increase the Guaranteed Price (as defined in the Project Agreement).

(62) **Construction Period** means the period commencing on the Financial Closing Date and ending on the earlier of the Substantial Completion Payment Date and the Longstop Date.

(63) **Construction Schedule** has the meaning given to it in the Project Agreement.

(64) **Construction Subcontract** means each agreement entered into between the Contractor and a Subcontractor, or any replacement of such Subcontractor, to perform a portion of the Work under the Construction Contract.

(65) **Consultant** has the meaning given to it in the Project Agreement.

(66) **Contractor** means Bondfield Construction Company Limited, a corporation incorporated under the laws of the Province of Ontario, and shall include its successors and permitted assigns.

(67) **Contractor Assignment of Material Documents** means the Assignment of Material Documents dated as of the Financial Closing Date made by the Contractor in favour of the Administrative Agent, granting to the Administrative Agent on behalf of the Lenders a first ranking assignment by way of security over all of the Contractor’s right, title and interest in all Material Project Documents to which the Contractor is, or will become, party.

(68) **Contractor Bonds** means, collectively, the Contractor Performance Bond, the Contractor Labour and Material Payment Bond and the Contractor Demand Bond.

- (69) **Contractor Demand Bond** has the meaning given to it in Section 8.1(2)(c).
- (70) **Contractor Direct Agreement** means the Contractor Direct Agreement dated as of the Financial Closing Date between the Contractor, the Borrower and the Administrative Agent.
- (71) **Contractor Labour and Material Payment Bond** has the meaning given to it in Section 8.1(2)(b).
- (72) **Contractor Performance Bond** has the meaning given to it in Section 8.1(2)(a).
- (73) **Contractor Support Agreement** means the Contractor Support Agreement dated as of the Financial Closing Date between the Contractor and the Borrower.
- (74) **Cost of the Work** has the meaning given to it in the Project Agreement.
- (75) **Cost Overrun** means, with regard to any particular phase of the Work or component of the Work, the amount by which (a) Construction Costs in respect of such phase or component, exceed (b) amounts allocated thereto in the Construction Budget or the Financial Model.
- (76) **Cost to Complete Deficiency** means, in respect of any Funding Date, the amount, if any, certified by the Lenders' Consultant, by which:
- (a) the aggregate, without duplication, of:
 - (i) the Estimated Cost to Complete calculated as of such date, and
 - (ii) the CMH Holdback imposed or claimed by CMH under the Project Agreement up to and including such date (other than in respect of Additional CMH Payments), less amounts in respect of which CMH has withdrawn funds from the CMH Trust Account in accordance with the terms of the Trust Account Acknowledgement Agreement to reimburse itself for construction costs relating to the Work,
 - (b) exceeds the aggregate, without duplication, of:
 - (i) the Available Commitment as of such date,
 - (ii) the Agent's Funding Account Balance as of such date;
 - (iii) any credit balance in the Borrower Proceeds Account as of such date; and
 - (iv) cash or liquid security provided by the Borrower or the Contractor up to and including such date in respect of the CMH Holdback, which have not been refunded or returned to the Borrower or the Contractor, as the case may be, in accordance with Section 6.5(2).
- (77) **Credit Facility** has the meaning given to it in Section 3.1.

(78) **DBRS** means Dominion Bond Rating Service Limited, and includes any successor to its rating business.

(79) **Debt** means, in respect of any Person (without duplication):

- (a) all debts and liabilities of the Person for borrowed money;
- (b) all Financial Assistance granted by the Person;
- (c) any obligation, contingent or other, which is required to be classified in accordance with GAAP upon the Person's balance sheet as a liability;
- (d) any obligation secured by any Lien existing on property owned or acquired by the Person subject to the Lien whether or not the obligation secured thereby shall have been assumed (but if not assumed, the amount of such Debt for the purposes of any calculation under this Agreement shall not exceed the fair market value of such property);
- (e) any obligation for the payment of rent or hire of real or personal property of any kind whatsoever (including immovable, movable or mixed, tangible or intangible and including the outstanding amount of any Capital Lease by which the Person is bound as lessee);
- (f) any liabilities, contingent, unmatured or other, under indemnities or other agreements of the Person given in respect of any bankers' acceptance, letter of credit or letter of guarantee; and
- (g) the outstanding amount of any operating lease under which the Person has furnished a residual value guarantee and in respect of which the Person is liable as lessee and the present value of future rental payments under all synthetic leases;

but **Debt** does not include deferred taxes or obligations to trade creditors incurred in the ordinary course of business.

(80) **Default** has the meaning given to it in Section 1 of the CBA Schedule.

(81) **Direct Agreements** means the Lenders' Direct Agreement and the Contractor Direct Agreement and **Direct Agreement** means either one of them.

(82) **Distribution** means any payment, loan, contribution or other transfer of funds or property to the beneficial holder of any security issued by the Borrower (where security has the meaning assigned in the *Securities Act* (Ontario)), or to any Associate or Affiliate of that holder, either directly or indirectly, and includes management, consulting or servicing fees, bonuses, dividends, distributions of capital, repayment of any loans or the redemption, retraction or purchase of any of those securities; provided that payments to Contractor under the Construction Contract and Transaction Expenses payable on the Financial Closing Date, in each case in amounts consistent with the Financial Model, shall not be "**Distributions**" for the purposes of this Agreement or the other Loan Documents.

(83) ***Environmental Activity*** means any activity, event or circumstance in respect of Hazardous Materials, including its storage, use, holding, collection, purchase, accumulation, assessment, generation, manufacture, construction, processing, treatment, stabilization, disposition, handling or transportation or its Release into the natural environment including movement through or in the air, soil, subsoil, surface water or groundwater.

(84) ***Environmental Claim*** means any and all administrative, regulatory, judicial or other actions, suits, demands, decrees, claims, Liens, judgments, warning notices, directions, notices of non-compliance or violation, investigations, proceedings, removal or remedial actions or orders, whether actual or contingent, relating to any Environmental Laws, any Release of, or exposure to, Hazardous Materials or any Environmental Permit issued under any such Environmental Laws (including any liability for damages, fines, penalties or indemnities) (hereafter in this definition "**Claims**"), including (a) any and all Claims by Governmental Authorities for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any applicable Environmental Law, and (b) any and all Claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from Hazardous Materials or arising from alleged injury or threat of injury to health, safety or the environment.

(85) ***Environmental Laws*** means Applicable Laws relating to the environment, occupational health and safety, health protection matters, or any Environmental Activity in respect of the Work and Project Lands, including but not limited to, all such requirements relating to: (a) the protection, preservation or remediation of the environment (including all components of the earth, air, all layers of the atmosphere, property, soils, water, ground water, organic and inorganic matters, living species and organisms or any combination of any of the above or the general environment); (b) generation, handling, treatment, storage, disposal or transportation of Hazardous Materials; (c) consumer, occupational or public safety and health; and (d) Hazardous Materials.

(86) ***Environmental Permits*** means any certificate, certificate of authorization, registration, notice, decree, filing, approval, consent, waiver, exemption, variance, franchise, order, permit, authorization, right or license of or from a Governmental Authority, as required pursuant to any Environmental Laws.

(87) ***Estimated Cost to Complete*** means the amount equal to the aggregate, without duplication, of:

- (a) all Construction Costs, net of the Legislative Holdback, to reach Substantial Completion (as determined by the Lenders' Consultant, acting reasonably),
- (b) all Borrowing Costs, other than Compensable Financing Costs, to be incurred prior to the date which is ten (10) Business Days after the then-scheduled Substantial Completion Date (as determined by the Administrative Agent, acting reasonably);
- (c) any Increased Financing Costs associated with any Forecasted Delay; and
- (d) any costs associated with any Change in the Scope of the Work (as defined in the Project Agreement) to the extent not adequately compensated for by Change Orders or Change Directives issued under the Project Agreement (as determined by the Lenders' Consultant, acting reasonably);

provided that, in calculating the “**Estimated Cost to Complete**” the Lenders’ Consultant shall not take into account any Construction Costs or costs associated with any Change in the Scope of the Work that are, at the time of calculation, subject to a dispute resolution under the Project Agreement (which dispute has not been finally resolved in accordance with the applicable dispute resolution terms) or any Borrowing Costs associated therewith.

- (88) **Event of Default** means any of the events or circumstances specified in Section 10.1.
- (89) **Excluded Taxes** has the meaning given to it in Section 1 of the CBA Schedule.
- (90) **Facility** has the meaning given to it in the Project Agreement.
- (91) **Fees** means all the fees payable from time to time under this Agreement or any other Loan Documents, including without limitation, all Standby Fees, the Upfront Fee and the Agency Fee.
- (92) **Final Completion** has the meaning given to it in the Project Agreement.
- (93) **Financial Assistance** means, with respect to any Person and without duplication, any loan to or Investment in or other form of direct or indirect financial support of any other Person or any obligation (contingent or other) intended to enable another Person to incur or pay any Debt or to comply with agreements relating thereto or otherwise to assure or protect creditors of the other Person against loss in respect of Debt of the other Person and includes any guarantee of the Debt of the other Person and any absolute or contingent obligation:
 - (a) to advance or supply funds for the payment or purchase of any Debt of any other Person;
 - (b) to purchase, sell or lease (as lessee or lessor) any property, assets, goods, services, materials or supplies primarily for the purpose of enabling any Person to make payment of Debt or to assure the holder thereof against loss in respect of any Debt;
 - (c) to indemnify or hold harmless any creditor of any other Person from or against any losses, liabilities or damages in respect of any Debt;
 - (d) to make a payment to another for goods, property or services regardless of the non-delivery or non-furnishing thereof; or
 - (e) to make an Investment in or to maintain the capital, working capital, solvency or general financial condition of another Person.

The amount of any Financial Assistance is the amount of any loan or Investment or direct or indirect financial support, without duplication, made or given, or all Debt of the obligor to which the Financial Assistance relates, unless the Financial Assistance is limited to a determinable amount, in which case the amount of the Financial Assistance is the determinable amount.

- (94) **Financial Closing Date** means August 28, 2014 or such other date upon which this Agreement has been executed and delivered to each of the parties hereto.

- (95) **Financial Model** means the financial model in respect of the Work attached as Schedule 1.1(95) to this Agreement, as amended, supplemented or replaced from time to time in accordance with this Agreement and the Material Project Documents.
- (96) **Fiscal Year** means, with respect to any Person, the fiscal year of such Person for the purposes of financial reporting.
- (97) **Fixed Payment** has the meaning given to it in Section 3.10(1)(b).
- (98) **Forecasted Delay** means any delay in achieving Substantial Completion which is forecast by the Lenders' Consultant (taking into account any remedial plans that may have been provided by the Borrower) to be of a duration of (i) greater than forty-five (45) days, if such forecast is made during the period from the Financial Closing Date to the end of the tenth (10th) month of the Construction Period, or (ii) any amount of time, if such forecast is made after the beginning of the eleventh (11th) month of the Construction Period; provided that "**Forecasted Delay**" shall not include any delay in respect of which compensation for increased Cost of the Financing (as defined in the Project Agreement) is payable under the Project Agreement on a basis whereby such increased Cost of the Financing is payable on a monthly basis to pay current interest, unless CMH disputes such availability or fails to pay compensation on a monthly basis to pay current interest.
- (99) **Foreign Lender** has the meaning given to it in Section 1 of the CBA Schedule.
- (100) **Funding** means any amount released by the Administrative Agent from the Agent's Funding Account to the Borrower Proceeds Account in accordance with this Agreement.
- (101) **Funding Date** means any Interest Payment Date, or the earliest date thereafter, upon which all of the conditions precedent to the release of Funding have been satisfied or waived by the Administrative Agent and the Administrative Agent releases Funding to the Borrower, provided that there may not be more than one Funding Date in any calendar month.
- (102) **Funding Period** means (i) the period commencing on the initial Funding Date and ending on (but excluding) the next Funding Date and (ii) each subsequent period commencing on the subsequent Funding Date and ending on (but excluding) the next Funding Date.
- (103) **Funding Request** has the meaning given to it in Section 3.5(1).
- (104) **GAAP** means generally accepted accounting principles in effect in Canada at the time any calculation or determination is made or required to be made in accordance with generally accepted accounting principles, applied in a consistent manner from period to period, including the accounting recommendations published in the Handbook of the Canadian Institute of Chartered Accountants (and/or, if applicable, IFRS).
- (105) **Governmental Authority** has the meaning given to it in Section 1 of the CBA Schedule.
- (106) **Guarantee of Construction Guarantor** has the meaning given to it in the Project Agreement.

(107) **Hazardous Materials** means any substance, matter, pollutant or contaminant, as defined or regulated under any Environmental Laws, the Release of which in the environment could cause harm or damage to or impairment of the environment or any risk to human health or safety or property.

(108) **HST** means the Harmonized Sales Tax as imposed under the provisions of the *Excise Tax Act* (Canada).

(109) **IFRS** means International Financial Reporting Standards adopted by the Canadian Accounting Standards Board or the Financial Accounting Standards Board, as the context may require.

(110) **Implementing Agreements** has the meaning given to it in the Project Agreement.

(111) **Increased Financing Costs** means, in respect of any Forecasted Delay, the aggregate of the amount, calculated on a per diem basis, equal to (A) the number of days of the Forecasted Delay, divided by (B) 365, multiplied by (C) the sum of the CDOR Rate then in effect plus the Applicable Margin, multiplied by (D) the Total Commitment (as it may have been reduced in accordance with the Loan Documents).

(112) **Indemnified Taxes** has the meaning given to it in Section 1 of the CBA Schedule.

(113) **Insurance** means, collectively, the Project Insurance and the Additional Insurance.

(114) **Insurance Requirements** means all terms and conditions of any Insurance and all requirements of the issuer of any such Insurance.

(115) **Insurance Trust Account** means the bank account maintained by the Insurance Trustee to receive and disburse the proceeds of the Project Insurance, the Contractor Performance Bond and the Contractor Labour and Material Payment Bond on the terms and conditions set forth in the Insurance and Bonding Trust Agreement.

(116) **Insurance and Bonding Trust Agreement** has the meaning given to it in the Project Agreement.

(117) **Insurance Trustee** means the trustee appointed or to be appointed under the Insurance and Bonding Trust Agreement, and shall include any successors and permitted assigns.

(118) **Intellectual Property** means patent rights (including patent applications, disclosures, and registrations), registered or unregistered trade marks, utility models, copyrights (including applicable applications and registrations), *sui generis* rights of extraction relating to databases, designs (including applicable applications and registrations), trade secrets, moral rights, know-how and any other similar rights or intangible assets recognized under any law(s) or international convention(s) in any country or jurisdiction in the world where such rights accrue and/or may be secured which relate to or form part of the Work.

(119) **Interest Payment Date** means (i) at all times up to and including the Maturity Date, the last day of each calendar month, and (ii) each other date on which a Loan becomes due and payable in accordance with the terms of this Agreement.

(120) **Interest Period** means, as applicable, (i) the period from and including the Financial Closing Date to but excluding the next Interest Payment Date thereafter, (ii) the period from and including the immediately preceding Interest Payment Date to but excluding the next Interest Payment Date thereafter and (iii) the period from and including the last Interest Payment Date prior to the Maturity Date to but excluding the Maturity Date.

(121) **Interest Rate Swap Documents** means, with respect to each Lender, the ISDA Master Agreement (2002) (together with the Schedule thereto) entered into between such Lender and the Borrower and each Transaction, including each related Confirmation, entered into (and as defined) thereunder, in each case, as amended, modified, supplemented, restated or replaced from time to time in accordance with their terms and the terms hereof.

(122) **Interest Rate Swaps** means the interest rate swap transactions between the Borrower and the Lenders pursuant to the Interest Rate Swap Documents and **Interest Rate Swap** means any one of them.

(123) **Interim Completion Payment** has the meaning given to it in the Project Agreement.

(124) **Interim Completion Payment Date** has the meaning given to it in the Project Agreement.

(125) **Investment** means, for any Person, the acquisition (whether for cash, property, services, securities or otherwise) of shares, bonds, notes, debentures, partnership or other ownership interests or other securities of any other Person or any agreement to make that acquisition.

(126) **Irrevocable Direction** means the Irrevocable Direction dated as of the Financial Closing Date given by the Borrower to CMH, directing CMH to pay to the Administrative Agent on behalf of the Lenders, or as the Administrative Agent shall direct, the Legislative Holdback and, after a Default has occurred, all Additional CMH Payments and all other amounts payable by CMH to the Borrower or the Contractor pursuant to the Material Project Documents.

(127) **ITA** means the *Income Tax Act* (Canada), as amended, and any successor thereto, and any regulations promulgated thereunder.

(128) **Judgment Currency** has the meaning given to it in Section 14.4.

(129) **Legislative Holdback** has the meaning given to it in the Project Agreement.

(130) **Lead Arranger** means each Lender, in its capacity as mandated lead arranger of the Credit Facility.

(131) **Lender Longstop Date** means the date which is 90 days before the Longstop Date.

(132) **Lenders** means all of the banks named on the signature pages of this Agreement, whether in their respective capacities as Lead Arrangers, providers of the Commitments under the Credit Facility or as providers of the Interest Rate Swaps and their permitted successors and assigns, and "**Lender**" means any one of them.

(133) ***Lenders' Consultant*** means Pelican Woodcliff Inc. with respect to all construction matters relating to the Work or any other qualified consultant appointed by the Lenders for the purpose of advising the Lenders on the technical proposal of the Borrower and the Contractor relating to the Work and includes any replacement advisors appointed by the Lenders from time to time in respect of the foregoing.

(134) ***Lenders' Consultant's Certificate*** has the meaning given to it in Section 8.2(7)(c).

(135) ***Lenders' Direct Agreement*** means the Lenders' Direct Agreement dated as of the Financial Closing Date between CMH, the Administrative Agent and the Borrower.

(136) ***Lenders' Insurance Advisor*** means Aon Corporation or any other qualified consultant appointed by the Lenders for the purpose of advising the Lenders on insurance matters relating to the Work and includes any replacement advisors appointed by the Lenders from time to time in respect of the foregoing.

(137) ***Lien*** means any mortgage, charge, lien, hypothec or encumbrance, whether fixed or floating on, or any security interest in, any property, whether real, personal or mixed, tangible or intangible, any pledge or hypothecation of any property, any conditional sale agreement, other title retention agreement or equipment trust Capital Lease or other arrangement of any kind intended to create or grant security.

(138) ***Limited Recourse Guarantee and Pledge Agreements*** means the limited recourse guarantee and pledge agreement from the Contractor dated as of the Financial Closing Date in favour of the Administrative Agent for the benefit of the Lenders guaranteeing the obligations of the Borrower under this Agreement and pledging its shares in the Borrower as security for such guarantee.

(139) ***Liquidated Damages*** means any amounts payable by the Contractor to the Borrower pursuant to the Contractor Support Agreement whether on account of delay or otherwise, and whether or not such amounts constitute liquidated damages at law.

(140) ***Loan*** has the meaning given to it in Section 1 of the CBA Schedule.

(141) ***Loan Documents*** means, collectively:

- (a) this Agreement;
- (b) the Interest Rate Swap Documents;
- (c) the Lenders' Direct Agreement;
- (d) the Insurance and Bonding Trust Agreement;
- (e) the Trust Account Acknowledgement Agreement;
- (f) the Blocked Account Agreement;
- (g) the Security Documents; and

- (h) all guarantees, certificates, instruments, agreements and other documents delivered, or to be delivered, to any Lender or to the Administrative Agent, for itself or for the benefit of any of the Lenders, under this Agreement or any other Loan Document,

and, when used in relation to any Person, the term “**Loan Documents**” means the Loan Documents executed and delivered by such Person.

(142) **Longstop Date** has the meaning given to it in the Project Agreement.

(143) **Major Project Party** means each of:

- (a) the Borrower;
- (b) the Contractor; and
- (c) CMH.

(144) **Market Disruption Event** means the occurrence of an event whereby:

- (a) the CDOR Rate is not available on the Reuters Screen CDOR Page and none of the Lenders supplies a rate to the Administrative Agent to determine the CDOR Rate for the relevant Interest Period; or
- (b) the Administrative Agent has received notice from one or more Lenders whose aggregate Commitments exceed 35% of the Total Commitments that, due to one or more similar events, circumstances or conditions affecting the relevant Lenders, the cost to such Lenders of funding their participations in any Loans under the Credit Facility in the relevant interbank markets would be in excess of the CDOR Rate as determined in accordance with the definition thereof.

(145) **Material Adverse Effect** means a material adverse effect on (a) the Work, (b) where used in relation to a Major Project Party, the ability of such Major Project Party to perform and discharge its material obligations under this Agreement, any of the other Loan Documents or any of the Material Project Documents to which it is a party.

(146) **Material Project Documents** means:

- (a) the Project Agreement;
- (b) the Construction Contract;
- (c) the Contractor Support Agreement;
- (d) the Lenders’ Direct Agreement;
- (e) the Insurance and Bonding Trust Agreement;
- (f) the Trust Account Acknowledgement Agreement;

- (g) the Guarantee of Construction Guarantor;
- (h) all Material Subcontracts (including any subcontractor performance support provided thereunder);
- (i) the Assignable Subcontract for Construction Contract;
- (j) all Assignable Subcontract Agreements;
- (k) the CMH Funding Letter; and
- (l) all other Implementing Agreements.

(147) **Material Subcontract** means (i) each Construction Subcontract listed in Schedule 1.1(147) and any replacements thereof and (ii) each Construction Subcontract entered into by the Contractor after the Financial Closing Date which the Lenders' Consultant determines, acting reasonably, is material to the completion of the Work, having regard to its subject matter or the potential consequence of breach or termination of which (prior to its scheduled termination date) could reasonably be expected to have a Material Adverse Effect.

(148) **Maturity Date** means the earlier of (i) 3 Business Days immediately following the date the Borrower receives the Substantial Completion Payment, (ii) the Lender Longstop Date, and (iii) September 30, 2020.

(149) **MoHLTC** means Her Majesty the Queen in Right of Ontario as represented by the Minister of Health and Long-Term Care, and includes any agent thereof or any successors thereto or Persons exercising delegated power under the Minister's authority.

(150) **Moody's** means Moody's Investor Services, Inc. and includes any successor to its rating business.

(151) **Net Funding** means the amount equal to the Requested Funding less the amount of the Applicable Margin payable to the Lenders on the ensuing Interest Payment Date, the Fixed Payment payable to the Lenders under the Interest Rate Swaps on such Interest Payment Date, the Standby Fee payable to the Lenders on the ensuing Standby Fee Payment Date, the Agency Fee payable to the Administrative Agent on the ensuing Agency Fee Payment Date (provided that such Agency Fee Payment Date is prior to the next scheduled Funding Date) and any Cost to Complete Deficiency.

(152) **Obligations** means all loans, advances, debts, liabilities and obligations for the performance of covenants, tasks or duties or for the payment of monetary amounts (whether or not performance is then required or contingent, and whether or not those amounts are liquidated or determinable) owing by the Borrower to the Administrative Agent or any Lender under any or all of the Loan Documents and all covenants and duties regarding those amounts, of any kind or nature, present or future, whether or not evidenced by any agreement or other instrument, owing under any or all of the Loan Documents including all obligations owed by the Borrower to the Administrative Agent or any of the Lenders in respect of the Credit Facility and the Interest Rate Swaps.

(153) ***Permitted Contest*** means a contest of any claim, Tax, Lien or Applicable Law in good faith and by appropriate proceedings diligently conducted and for which adequate reserves in the opinion of the Administrative Agent have been established or provided, so long as the proceedings do not (1) involve any risk of criminal or quasi-criminal liability or material unindemnified liability on the part of the Administrative Agent or any Lender or of the loss of priority of the interest of any of the Liens on any of the Collateral pursuant to any of the Security Documents, (2) pose any risk of sale, forfeiture or loss of any interest in the Collateral or any material part thereof, (3) interfere in any material manner with the performance by the Borrower or the Contractor of its respective obligations under the Material Project Documents, or (4) pose any risk of interference with, or impairment or reduction in, the payment of any amounts under the Material Project Documents or the Loan Documents.

(154) ***Permitted Debt*** means any of the following:

- (a) Debt secured by a Permitted Lien;
- (b) Debt under or in connection with this Agreement;
- (c) any Debt contemplated under the Material Project Documents; and
- (d) any other Debt which has been approved in writing by the Lenders.

(155) ***Permitted Disposal*** means any of the following: (a) any disposal expressly permitted by the Material Project Documents and not prohibited under this Agreement; (b) any disposal by the Borrower of redundant, obsolete or surplus assets for a consideration equivalent to their fair value; (c) any disposal under a Permitted Lien or (d) any disposal by the Borrower of assets in exchange for or replaced by other assets of at least comparable value and utility in accordance with Good Industry Practice (as defined in the Project Agreement).

(156) ***Permitted Liens*** means:

- (a) Liens for Taxes that either (i) are not yet due or delinquent or (ii) are being contested pursuant to a Permitted Contest and for which the person owing such Taxes has, if required by GAAP, taken an adequate reserve in accordance with GAAP;
- (b) Liens arising by operation of law, including materialmen's, warehousemen's, mechanics', worker's, repairer's, common carriers' and other like Liens in connection with the Work arising in the ordinary course of business; provided that such Liens (i) secure only amounts that are not yet due and payable or, if due and payable, have not yet been registered or filed and of which none of the Borrower, Contractor or the Administrative Agent has received written notice and in respect of which no enforcement action has been taken, or (ii) are being contested pursuant to a Permitted Contest and have been bonded for not less than the full amount in dispute (or as to which other security arrangements satisfactory to the Lenders have been made), which bonding (or arrangements) shall comply with Applicable Laws, and shall have effectively stayed any execution or enforcement of such Liens;

- (c) any security interest in respect of deposits of money or property by way of security for the performance of any statutory obligations arising in the ordinary course of business;
- (d) any right of title retention in connection with the acquisition of assets in the ordinary course of business and in compliance with the terms hereof;
- (e) with respect to CMH's interest in the Project Lands, any Lien arising from time to time that the Contractor is not required to satisfy and remove under the Construction Contract;
- (f) the Liens created by the Security Documents and any other security provided to the Administrative Agent or a Lender as security for the Obligations;
- (g) any assignment granted by the Borrower to CMH in the Borrower's interest in, to and under the Assignable Subcontract Agreements, provided such Lien is subordinate to the Lenders' Lien therein;
- (h) any Liens against the assets and undertaking of the Contractor arising in the normal course of the Contractor's business;
- (i) the Liens created in favour of CMH in the Construction Contract pursuant to the Assignable Subcontract Agreement for Construction Contract, provided such Liens remain subject to the Liens granted in favour of the Administrative Agent pursuant to the Security Documents; and
- (j) Liens to which the Required Lenders have given their consent.

(157) **Person** has the meaning given to it in Section 1 of the CBA Schedule.

(158) **Planning and Design Documents** means all documents provided by CMH or the Consultant to the Contractor which are in the possession of the Contractor or the Borrower relating to the planning and design of the Work.

(159) **Project** has the meaning given to it in the Project Agreement.

(160) **Project Accounts** means the Borrower Proceeds Account, the Insurance Trust Account and the CMH Trust Account.

(161) **Project Agreement** means the Project Agreement dated as of August 28, 2014, between CMH and the Borrower with respect to the Work, as such agreement may be amended from time to time.

(162) **Project Insurance** means the insurance coverages which the Borrower or the Contractor is required to maintain or caused to be maintained pursuant to the Project Agreement.

(163) **Project Lands** means the Site and Facility.

(164) **Project Lands Licences** means (a) the licence granted to the Borrower and the Contractor pursuant to Section 9.1 of the Project Agreement, and (b) the licence granted to the Administrative Agent and Lenders pursuant to Section 3.3 of the Lenders' Direct Agreement.

(165) **Release** means disposing, depositing, discharging, injecting, spilling, leaking, dumping, pumping, pouring, emitting, escaping, emptying, seeping, flowing, leaching, placing and any similar method of release, into or upon any land or water or air, or otherwise entering into or migrating into the environment and "**Released**" shall have a corresponding meaning.

(166) **Remedial Plan** has the meaning given to it in Section 9.1(12).

(167) **Requested Funding** means the amount of the Loans requested by the Borrower in a Funding Request to be made available on the related Funding Date and, in each case, will include amounts sufficient to pay amounts due to the Lenders hereunder and under the Interest Rate Swaps (after crediting to the Borrower amounts due to the Borrower under the Interest Rate Swaps) on any scheduled Interest Payment Date during the Funding Period commencing on such Funding Date.

(168) **Required Lenders** means any two or more Lenders whose Commitments hereunder, in the aggregate, represent 66 $\frac{2}{3}$ % or more of the aggregate Commitments of all Lenders; provided however that if at any time there are only two (2) Lenders under this Agreement, **Required Lenders** shall mean all such Lenders, and if at any time there is only one (1) Lender under this Agreement, **Required Lenders** shall mean such Lender.

(169) **Responsible Officer** means, with respect to any Person, the Chairman or Vice Chairman of the Board of Directors, the Chairman or Vice Chairman of the Executive Committee of the Board of Directors, the President, any Vice-President, the Secretary, the Treasurer or any Assistant Treasurer of such Person or any individual specifically authorized by resolution, and when used in relation to the Borrower means a Responsible Officer of the Borrower.

(170) **Responsible Officer's Certificate** means a certificate signed by one Responsible Officer.

(171) **Reuters Screen CDOR Page** means the display designated as page CDOR on the Reuters Monitor Money Rates Service or other page as may, from time to time, replace that page on that service for the purpose of displaying bid quotations for bankers' acceptances accepted by leading Canadian banks.

(172) **RFP** has the meaning given to it in the Project Agreement.

(173) **S&P** means Standard and Poor's Rating Group, a division of McGraw Hill, and includes any successor to its rating business.

(174) **Scheduled Interim Completion Date** has the meaning given to it in the Project Agreement.

(175) **Schedules** means the schedules attached to and forming part of this Agreement, as particularized in Section 1.16.

(176) **Security Documents** has the meaning given to it in Section 7.1.

- (177) **Site** has the meaning given to it in the Project Agreement.
- (178) **Standby Fee** has the meaning given to it in Section 4.2(2).
- (179) **Standby Fee Payment Date** has the meaning given to it in Section 4.2(2).
- (180) **Step-Out Amount** has the meaning given to it in the Lenders' Direct Agreement.
- (181) **Subcontractor** has the meaning given to it in the Project Agreement.
- (182) **Subsidiary** of a Person means (a) any corporation of which the Person and/or any one of its Affiliates holds, directly or beneficially, other than by way of security only, securities to which are attached more than 50% of the votes that may be cast to elect directors of such corporation, (b) any corporation of which the Person and/or any one of its Affiliates has, through operation of law or otherwise, the ability to elect or cause the election of a majority of the directors of such corporation and (c) any partnership, limited or unlimited liability company, trust, joint venture or other incorporated or unincorporated entity in which such Person and/or one or more Subsidiaries of such Person shall have, directly or indirectly, more than 50% of the votes that may be cast to elect the governing body of such entity.
- (183) **Substantial Completion** has the meaning given to it in the Project Agreement.
- (184) **Substantial Completion Date** has the meaning given to it in the Project Agreement.
- (185) **Substantial Completion Payment Date** has the meaning given to it in the Project Agreement.
- (186) **Swap Adjustment Costs** means, for any date, any amounts that would be payable to a Lender in connection with any Interest Rate Swaps pursuant to Section 6(e)(ii)(2)(A) of the applicable ISDA Master Agreement as if all such Interest Rate Swaps were being terminated as of that date.
- (187) **Swap Breakage Costs** means, as applicable, Swap Adjustment Costs or Swap Termination Costs.
- (188) **Swap Termination Costs** means all amounts, whether constituting fees, costs, expenses or other amounts (howsoever arising) due and payable to a Lender on the early termination of any Interest Rate Swap in whole or in part whether by reason of any Termination Event or otherwise by reason of a default under the Interest Rate Swap Documents in accordance with (and as defined under) the applicable Interest Rate Swap Documents.
- (189) **Taxes** has the meaning given to it in Section 1 of the CBA Schedule.
- (190) **Term** means the period commencing on the Financial Closing Date and ending on the Maturity Date.
- (191) **Total Commitment** means up to an aggregate of \$[●] as such amount may be reduced or cancelled in accordance with this Agreement.

(192) ***Transaction Expenses*** means all costs and expenses incurred in connection with the consummation of the transactions contemplated by this Agreement and the preparation, negotiation, syndication, execution and delivery of the Loan Documents and the Material Project Documents, including:

- (a) the payment of Insurance premiums;
- (b) all costs and fees in connection with searches obtained for the Financial Closing Date or any Funding Date and the preparation, registering, filing and recording of appropriate instruments evidencing the interests granted pursuant to the Security Documents, and evidencing any supplements or amendments thereto;
- (c) the Insurance Trustee's fees and reasonable costs and expenses in connection with the negotiation, preparation, closing, execution and delivery of the Insurance and Bonding Trust Agreement and the transactions contemplated thereby;
- (d) the CMH Trust Account Trustee's fees and reasonable costs and expenses in connection with the negotiation, preparation, closing, execution and delivery of the CMH Trust Agreement and the transactions contemplated thereby;
- (e) the reasonable fees and out-of-pocket expenses of each of the Lenders' Consultant and the Lenders' Insurance Advisor in connection with the negotiation, preparation, closing, execution and delivery of the Loan Documents, the Material Project Documents and related documentation and in connection with the transactions occurring on each Funding Date;
- (f) the reasonable fees, out-of-pocket expenses and disbursements of counsel to the Administrative Agent, the Lenders, the Borrower and the Contractor for their services rendered in connection with the negotiation, preparation, closing, execution and delivery of the Loan Documents, the Material Project Documents and related documentation;
- (g) the reasonable fees, out-of-pocket expenses and disbursements of counsel to the Administrative Agent, the Lenders, the Borrower and the Contractor for their services rendered in connection with the transactions occurring on each Funding Date;
- (h) the cost of reproducing and printing the Loan Documents and the Material Project Documents;
- (i) the reasonable out-of-pocket expenses, disbursements and costs of the Administrative Agent, the Lenders, the Borrower and the Contractor (including reasonable legal fees and out-of-pocket expenses) paid or incurred in connection with the negotiation, preparation and closing of the transactions contemplated by the Material Project Documents and the Loan Documents (including the transactions occurring on each Funding Date);

- (j) the reasonable out-of-pocket expenses, disbursements and costs of the Administrative Agent, the Lenders, the Borrower and the Contractor (including reasonable legal fees and out-of-pocket expenses) paid or incurred in connection with (i) any supplements, amendments, modifications or alterations of or to any of the Loan Documents or the Material Project Documents (whether or not such supplements, amendments, modifications or alterations are finalized), and (ii) the giving or withholding of waivers and consents under any Loan Document or any Material Project Document;
- (k) all out-of-pocket expenses, disbursements and costs of the Administrative Agent and the Lenders (including reasonable legal fees and out-of-pocket expenses) incurred as a result of or in connection with a Default or Event of Default or the enforcement or preservation of any of the rights and remedies of the Administrative Agent or the Lenders in respect of the Loan Documents or the Material Project Documents; and
- (l) any other expenditure which is not inconsistent with the Financial Model;

provided that, prior to the occurrence and continuation of a Default or Event of Default, the Borrower shall only be responsible for the reasonable fees, out-of-pocket expenses and disbursements of one set of counsel for the Administrative Agent and the Lenders, collectively.

(193) ***Trust Account Acknowledgement Agreement*** means the trust account acknowledgement agreement dated as of the Financial Closing Date between the CMH Trust Account Trustee, CMH, the Borrower and the Administrative Agent on behalf of the Lenders, regarding the operation of the CMH Trust Account and the distribution of payments therefrom.

(194) ***Upfront Fee*** has the meaning given to it in Section 4.2(1).

(195) ***Work*** has the meaning given to it in the Project Agreement.

(196) ***written*** or ***in writing*** includes printing, typewriting, or any electronic means of communication capable of being legibly reproduced at the point of reception.

1.2 Headings and Table of Contents

See Section 2(1) of the CBA Schedule.

1.3 Number and Gender

See Section 2(1) of the CBA Schedule.

1.4 References

See Section 2(1) of the CBA Schedule.

1.5 Statutory References

See Section 2(1) of the CBA Schedule.

1.6 Entire Agreement

See Section 13(a) of the CBA Schedule.

1.7 Business Day

If under this Agreement any calculation is to be made, or any other action is to be taken, on or as of a day which is not a Business Day, that calculation is to be made, and that other action is to be taken, as applicable, on or as of the next day that is a Business Day. Any payments which may be due and payable on a day which is not a Business Day shall be paid in accordance with the provisions of Section 6.1 and, for greater certainty, where an Interest Payment Date is adjusted in accordance with Section 6.1 the corresponding Funding Date shall be adjusted accordingly.

1.8 Conflict

If there is a conflict between any provision of this Agreement and any provision of another document contemplated by or delivered under or in connection with this Agreement, the relevant provision of this Agreement is to prevail. If there is a conflict or inconsistency between the terms of the CBA Schedule and the other terms of this Agreement, the other terms of this Agreement shall govern to the extent necessary to resolve the conflict or inconsistency.

1.9 Currency

Unless otherwise specified, all amounts are stated in Canadian dollars.

1.10 Time

Time shall be of the essence in all provisions of this Agreement.

1.11 GAAP

Unless otherwise expressly provided, all accounting terms used in this Agreement shall be interpreted and all financial information shall be prepared in accordance with GAAP, consistently applied.

1.12 Time of Day

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

1.13 Governing Law

This Agreement and each of the Loan Documents are governed by, and are to be construed and interpreted in accordance with, the laws of the Province of Ontario and the laws of Canada applicable in the Province of Ontario, but without prejudice to or limitation of any other rights or remedies available under the laws of any jurisdiction where property or assets of the Borrower may be found.

1.14 Severability

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

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

1.15 No Recourse

All covenants, stipulations, promises, agreements and obligations of the Borrower contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Borrower and not of any Person (including any shareholder, director, officer or employee of the Borrower) in its or his or her individual or personal capacity or the Contractor or any shareholder, director, officer or employee of the Contractor, and, provided further that no recourse shall be had against the Contractor (or any shareholder, director, officer or employee of the Sponsor) for the payment of the principal or interest on or any other amount owing in respect of the Credit Facility or any part thereof or for any claim based on this Agreement or the other Loan Documents, except as expressly provided by and pursuant to the Security Documents.

1.16 Schedules

The following Schedules are attached to and form part of this Agreement; without limiting the generality of the foregoing, the Borrower is bound by, and agrees to comply with and fulfill, the covenants and other obligations contained in the CBA Schedule to be complied with and fulfilled by it:

<u>Schedule</u>		<u>Description</u>
A	-	CBA Schedule
1.1(33)	-	Lenders' Branches of Account
1.1(53)	-	Commitments
1.1(56)	-	Form of Compliance Certificate
1.1(95)	-	Financial Model
1.1(147)	-	Material Subcontracts
2.1(25)	-	Corporate Organization Chart
3.5(1)	-	Form of Funding Request
5.4	-	Notice of Repayment
5.5	-	Notice of Cancellation of Credit Facility
8.2(7)(b)	-	Form of Statutory Declaration

- 8.2(7)(c) - Form of Lenders' Consultant Certificate
- 9.1(19) - Financial Model Updates
- 9.1(22) - Additional Insurance

SECTION 2 – REPRESENTATIONS AND WARRANTIES

2.1 Representations and Warranties

The Borrower makes the following representations and warranties to the Administrative Agent and each Lender, all of which shall survive the execution and delivery of this Agreement:

(1) ***Existence, Power and Qualification – Borrower.*** The Borrower (a) is a corporation duly incorporated, organized and validly existing under the laws of the Province of Ontario, (b) is up to date in all filings required under those laws, (c) has the requisite corporate power and authority to own, operate and lease its properties and assets and to conduct the businesses in which it is presently engaged, and (d) is duly qualified under the laws of each jurisdiction where its ownership, lease or operation of properties or assets or the conduct of its business requires qualification, except where the failure to do so would not reasonably be expected to cause a Material Adverse Effect. No resolutions have been passed by the Contractor, which is the sole shareholder of the Borrower, limiting or restricting the scope of business that the Borrower may carry on or prohibiting or limiting the authority of the Borrower to enter into arrangements as contemplated under this Agreement, no steps or proceedings have been taken, or are contemplated to be taken, with respect to the dissolution, liquidation or termination of the Borrower. The Borrower has all requisite power and authority to own the assets of the Borrower, to conduct the business of the Borrower as presently carried on by it, and to execute, deliver and perform the obligations of the Borrower under this Agreement.

(2) ***Existence, Power and Qualification – Contractor.*** To the Borrower's Knowledge, the Contractor (a) is a corporation duly incorporated, organized and validly existing under the laws of the Province of Ontario, (b) is up to date in all filings required under those laws, (c) has the requisite corporate power and authority to own, operate and lease its properties and assets and to conduct the businesses in which it is presently engaged, and (d) is duly qualified under the laws of each jurisdiction where its ownership, lease or operation of properties or assets or the conduct of its business requires qualification, except where the failure to do so would not reasonably be expected to cause a Material Adverse Effect. To the Borrower's Knowledge, no resolutions have been passed by the shareholders of the Contractor, limiting or restricting the scope of business that the Contractor may carry on or prohibiting or limiting the authority of the Contractor to enter into arrangements as contemplated under this Agreement, no steps or proceedings have been taken, or are contemplated to be taken, with respect to the dissolution, liquidation or termination of the Contractor. To the Borrower's Knowledge, the Contractor has all requisite power and authority to own the assets of the Contractor, to conduct the business of the Contractor as presently carried on by it, and to execute, deliver and perform the obligations of the Contractor under this Agreement.

(3) ***Power and Authority.*** The execution, delivery and performance by the Borrower and, to the Borrower's Knowledge, the Contractor, of this Agreement, the Security Documents, the other Loan

Documents and the Material Project Documents to which each of them is a party (a) are within the powers of the Borrower and the Contractor, (b) have been duly authorized by all necessary corporate or shareholder action with respect to each of the Borrower and the Contractor, (c) do not conflict with, result in a breach or violation of, or constitute a default under (i) the constating documents or any shareholders' agreement of the Borrower or the Contractor, respectively, (ii) any Applicable Law or (iii) any other document to which the Borrower or the Contractor is a party or by which the Borrower or the Contractor is bound, (d) do not conflict with or result in the breach or termination of, constitute a default under, or accelerate any performance required by any Material Project Document, and (e) do not and will not result in the creation of any Lien, except as set out in the Security Documents, upon any of the assets or properties of the Borrower under any agreement or other document.

(4) ***Authorization, Execution, Delivery and Binding Effect.*** Each of this Agreement, the Security Documents, the other Loan Documents and the Material Project Documents executed by the Borrower and, to the Borrower's Knowledge, by the Contractor, has been duly authorized, executed and delivered and constitutes a legal, valid and binding obligation of the Borrower and the Contractor, respectively, enforceable in accordance with its terms, subject to (a) applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting creditors' rights generally, (b) the fact that specific performance and injunctive relief may only be given at the discretion of the courts, and (c) the equitable or statutory powers of the courts to stay proceedings before them and to stay the execution of judgments. The Loan Documents and the Material Project Documents represent all of the agreements and documents material and necessary to carry out the Work and to fully perform all obligations of the Borrower under the Project Agreement.

(5) ***Consents.*** (a) The Borrower has obtained all Consents which are necessary for the conduct of its business as presently conducted, each of which is in full force and effect and is a good, valid and subsisting Consent which has not been surrendered, forfeited or become void or voidable, except where such action would not reasonably be expected to cause a Material Adverse Effect, (b) there is no default under any such Consent, nor are there any proceedings in progress, or, to the Borrower's Knowledge, pending or threatened, which default or proceedings may result in the revocation, suspension or material adverse modification of any such Consent, and (c) no further Consent is necessary in order to ensure the legality, validity, binding effect and enforceability of this Agreement, the Security Documents, or any other Loan Document or the execution, delivery or performance of the Obligations.

(6) ***No Other Business.*** The Borrower is a single purpose entity created solely for the purpose of entering into the Material Project Documents and the Loan Documents to which it is a party and undertaking the Work. The Borrower has not engaged in any business or activities, either alone or in partnership or joint venture, other than those contemplated by the Material Project Documents and the Loan Documents. The Borrower has no Subsidiaries.

(7) ***Shareholder.*** The Contractor is the sole shareholder of the Borrower. All shares of the Borrower owned by the Contractor are fully issued to the Contractor and subject to no assessment. There are no outstanding rights to purchase interests in the Borrower or agreements pursuant to which the Borrower may be required to issue, sell, repurchase or redeem any interest in its capital. No Person has an agreement or option or any other right or privilege (whether by law, pre-emptive

or contractual) capable of becoming an agreement or option for the purchase, subscription, allotment or issuance of any interest in the capital of the Borrower.

(8) **Financial Statements.** Each of the Borrower's and, to the Borrower's Knowledge, the Contractor's most recent financial statements, copies of which have been furnished to the Administrative Agent, were prepared in accordance with GAAP applied on a basis consistent with preceding periods, except as stated therein or in the notes, and those financial statements fairly represent the Borrower's and, to the Borrower's Knowledge, the Contractor's financial condition as at their date.

(9) **Material Adverse Change.** Since the date of the financial statements referred to in Sections 8.1(1)(dd) and 8.1(1)(ee), except as otherwise disclosed to the Administrative Agent in writing, there have been no changes in the respective financial conditions of the Borrower or, to the Borrower's Knowledge, the Contractor or the results of their respective operations that could reasonably be expected to have a Material Adverse Effect with respect to the Borrower or, to the Borrower's Knowledge, the Contractor.

(10) **Financial Model and Budgets.** Each of the Financial Model and the Construction Budget has been prepared by or on behalf of the Borrower or the Contractor or under the direction of the Borrower or the Contractor and each of the Financial Model, the Construction Budget and each other estimate, budget, forecast and projection provided by or on behalf of the Borrower or the Contractor has been prepared with due care and skill, is based on all information known at the time which could reasonably be relevant to the preparation thereof, is subject only to assumptions that are reasonable in the circumstances, and, where applicable, has been prepared in accordance with the Project Agreement and in accordance and compliance with Section 9.1(19) and Schedule 9.1(19) hereof.

(11) **Contingent Liabilities and Debt.** Neither the Borrower nor, to the Borrower's Knowledge, the Contractor has any contingent liabilities which are not disclosed in the most recent financial statements furnished to the Administrative Agent or otherwise disclosed to the Administrative Agent in writing which could reasonably be expected to have a Material Adverse Effect, nor has the Borrower or, to the Borrower's Knowledge, the Contractor incurred any Debt which could reasonably be expected to have a Material Adverse Effect which is not disclosed in those financial statements or otherwise disclosed to the Administrative Agent in writing.

(12) **Solvency.** No event described in Section 10.1(7) or (to the Borrower's Knowledge) Section 10.1(8) in respect of the Borrower has occurred and is continuing. To the Borrower's Knowledge, no event described in Sections 10.1(7) or 10.1(8) in respect of the Contractor has occurred and is continuing.

(13) **Debt.** The Borrower has no Debt other than Permitted Debt. To the Borrower's Knowledge, the Contractor has no Debt except as disclosed in the most recent annual audited financial statements of the Contractor provided to the Administrative Agent.

(14) **Title to Assets and Liens.** The Borrower is the legal and beneficial owner of, or validly leases, all of its real and personal properties and assets free and clear of any Liens, other than Permitted Liens. To the Borrower's Knowledge, the Contractor is the legal and beneficial owner of,

or validly leases, all of its real and personal properties and assets free and clear of any Liens, other than Permitted Liens.

(15) ***Real Property Leases.*** The Borrower is not party to any oral or written agreement with any lessor, tenant or sub-tenant with respect to any lease or licence respecting real property other than pursuant to the Lenders' Direct Agreement.

(16) ***Creation of Liens.*** The Security Documents create, and with respect to all subsequently acquired personal property will create, valid and enforceable first ranking Liens upon the Collateral on the terms set out therein, subject only to the terms of this Agreement and to Permitted Liens, and the Security Documents have been registered or recorded in all places where registration or recording is necessary to perfect and protect the charges and security interests created therein.

(17) ***Location of Assets, Places of Business.*** All of the Borrower's tangible and intangible property and assets and places of business are located in Ontario. The Borrower's registered and chief executive office is in Concord, Ontario.

(18) ***No Default or Event of Default.*** There exists no Default or Event of Default.

(19) ***Compliance.*** The Borrower, and to the Borrower's Knowledge, the Contractor is in compliance in all material respects with the Material Project Documents to which it is a party and the Borrower, and to the Borrower's Knowledge, the Contractor is in compliance in all material respects with all Applicable Laws.

(20) ***Litigation.*** No litigation, investigation or proceeding of or before any Governmental Authority, arbitrator, court or administrative agency is in progress or, to the Borrower's Knowledge, pending or threatened against the Borrower or against its properties, assets or revenues, including the Collateral or the Project which, if determined adversely, could reasonably be expected to have a Material Adverse Effect, and, to the Borrower's Knowledge, no litigation, investigation or proceeding of or before any Governmental Authority, arbitrator, court or administrative agency is in progress or is pending or threatened against the Contractor which has a material likelihood of success and, if determined adversely, could reasonably be expected to have a Material Adverse Effect.

(21) ***Tax Returns.*** The Borrower and, to the Borrower's Knowledge, the Contractor has filed or caused to be filed all tax returns which are required to have been filed by it, and has paid all Taxes shown to be due and payable on those returns or on any assessments made against it and all other Taxes, fees or other charges imposed on it by any Governmental Authority, other than (i) those subject to a Permitted Contest; and (ii) those where failure to pay would not reasonably be expected to have a Material Adverse Effect. No Liens for Taxes payable by the Borrower have been filed and, to the Borrower's Knowledge, no claims are being asserted with respect to any Taxes payable by the Borrower other than those subject to a Permitted Contest.

(22) ***Canadian Benefit and Pension Plans.*** The Borrower does not maintain any Canadian Pension Plans or Canadian Benefit Plans.

(23) ***Labour Matters.*** The Borrower does not employ any employees. There are no strikes or other labour disputes against the Contractor that are pending which could reasonably be expected to

have a Material Adverse Effect. The Borrower has no obligations under any consulting or management agreement.

(24) **Insurance.** The Insurance has been obtained in compliance with Sections 9.1(20) and 9.1(22), all premiums and other sums of money currently due and payable for that purpose have been paid, each of the Borrower and, to the Borrower's Knowledge, the Contractor, as the case may be, is in compliance in all material respects with all Insurance Requirements in respect thereof, and neither the Borrower nor, to the Borrower's Knowledge, the Contractor has received any notice of cancellation in respect of the Insurance.

(25) **Corporate Organization.** The corporate organization chart set out in Schedule 2.1(25) is a complete and accurate representation of the ownership of the Borrower as at the Financial Closing Date.

(26) **Construction Liens.** The Borrower is not aware of any construction Lien or analogous Lien with respect to work or services to be performed or materials supplied in connection with the Work, which Lien has not been fully satisfied and released, and, if registered, duly discharged or vacated, except for Permitted Liens.

(27) **Consents to Security.** Except for those Material Project Documents in respect of which a consent has been obtained, all Material Project Documents may be, without consent but in accordance with the applicable Direct Agreement, assigned to the Administrative Agent under the Security Documents and may be, subject to and in accordance with the terms thereof and the applicable Direct Agreement, further assigned by the Administrative Agent.

(28) **Material Project Documents.**

- (i) True and complete copies of all Material Project Documents have been delivered to the Administrative Agent, and neither the Borrower nor, to the Borrower's Knowledge, the Contractor, is party to any other material agreements relating to the Work, other than the Material Project Documents, the Loan Documents and any agreements related to insurance and bonding that are necessarily incidental thereto;
- (ii) Each of the Material Project Documents is in full force and effect, enforceable in accordance with the provisions thereof and for the entire stated term thereof subject to (a) applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting creditors' rights generally, (b) the fact that specific performance and injunctive relief may only be given at the discretion of the courts, and (c) the equitable or statutory powers of the courts to stay proceedings before them and to stay the execution of judgments;
- (iii) There are no uncured breaches or defaults by either Borrower, or, to the Borrower's Knowledge, the Contractor, under any Material Project Document;

- (iv) To the Borrower's Knowledge, there are no uncured breaches or defaults by CMH under any Material Project Documents in respect of which any cure periods that apply under the relevant Material Project Documents have expired;
- (v) The Project Lands Licences and the other rights granted pursuant to the Material Project Documents:
 - (1) comprise all of the property interests necessary or appropriate to secure any right material to the construction, installation and completion of the Work in accordance with all Applicable Law and the Material Project Documents;
 - (2) are sufficient to enable the Work to be completed on the Project Lands as contemplated in the Material Project Documents; and
 - (3) provide adequate ingress and egress for any reasonable purpose in connection with the Work under the Material Project Documents; and
- (vi) To the Borrower's Knowledge, CMH has the rights of possession, rights of access to and rights to carry out the Work through or by the Borrower and the Contractor on the Project Lands, and the right and power to grant such rights to the Borrower and the Contractor as contemplated in the Material Project Documents.

(29) ***Project Compliance.*** The Work is being carried out in compliance in all material respects with the Material Project Documents and all Applicable Laws and Consents (including all Environmental Laws), and the Borrower and, to the Borrower's Knowledge, the Contractor (i) have provided or caused to be provided to the Administrative Agent and the Lenders' Consultant full details of all environmental due diligence, if any, carried out by it or on its behalf with respect to the Work and (ii) have obtained all Consents as and when required by the Borrower or the Contractor under the Material Project Documents with respect to the Work and the continuing construction thereof and, to the extent obtained, all such Consents are in full force and effect and the Borrower and, to the Borrower's Knowledge, the Contractor are in compliance in all material respects thereunder.

(30) ***Environmental Matters.***

- (a) **Reports.** The Borrower and, to the Borrower's Knowledge, the Contractor have provided or made available to the Administrative Agent and the Lenders' Consultant all environmental due diligence materials made available by CMH to the Borrower or the Contractor in connection with the Work.
- (b) **No Prior Violations.** (i) Borrower is not in violation of any Environmental Laws which violation could reasonably be expected to result in a Material Adverse Effect; (ii) neither Borrower nor, to the Borrower's Knowledge, the Contractor or any other Person has used, Released, discharged, generated, manufactured, produced or stored in, on, at, under, or about the Project Lands, or transported thereto or therefrom, any

Hazardous Materials to the extent that any such activities would reasonably be expected to have a Material Adverse Effect; and (iii) there is or has been no condition, circumstance, action, activity or event that, to the actual knowledge of Borrower (after due enquiry), could reasonably be expected to form the basis of any material violation of, or potentially give rise to any material liability to the Administrative Agent, the Lenders or Borrower under, any Environmental Laws, or subject the Administrative Agent, the Lenders or Borrower to any Environmental Claims.

- (c) **No Current Claims.** There are no existing Environmental Claims relating, directly or indirectly, to the Borrower or, to the Borrower's Knowledge, the Project Lands which would reasonably be expected to have a Material Adverse Effect.
- (d) **No Current Investigations.** To the Borrower's Knowledge, there is no proceeding, investigation or inquiry by any Governmental Authority or any non-governmental third party with respect to the presence or Release of Hazardous Materials in, on, under, from or to the Project Lands, and no notice of such proceeding, investigation or inquiry has been received by the Borrower or Contractor.
- (e) **Compliance.** The Borrower's and, to the Borrower's Knowledge, the Contractor's business, processes and undertakings in respect of the Work are in compliance with all Environmental Laws, except where non-compliance with such Environmental Laws would not reasonably be expected to have a Material Adverse Effect, and neither the Borrower nor, to the Borrower's Knowledge, the Contractor has knowledge of any facts which could give rise to a proceeding, investigation or inquiry by any Governmental Authority or any non-governmental third party with respect to the presence or Release of Hazardous Materials in, on, under, from or to the Project Lands, or to a notice of non-compliance by it with any Environmental Laws in respect of the Work, except, in each case, for any such non-compliance which has been rectified or which could not reasonably be expected to have a Material Adverse Effect.
- (f) **Hazardous Materials.** To the Borrower's Knowledge, the Contractor has complied or is complying with all of its obligations under the Construction Contract in respect of Hazardous Materials, including its obligations thereunder with respect to compliance with Environmental Laws, except where non-compliance with such Environmental Laws would not reasonably be expected to have a Material Adverse Effect.

(31) **Intellectual Property.** Each of the Borrower and, to the Borrower's Knowledge, the Contractor, as applicable, has available to it, or will have available to it prior to the date on which such property is required for the Work, all Intellectual Property necessary for the implementation of the Work as contemplated by, and the performance of their respective obligations under, the Material Project Documents, other than such Intellectual Property which the failure to have available would not have a Material Adverse Effect. To the Borrower's Knowledge, neither the Borrower nor the Contractor is infringing in any material respect on the rights of any person with respect to any Intellectual Property and neither the Borrower nor the Contractor knows of any fact which is likely

to result in the successful assertion against the Borrower or the Contractor of a claim for such an infringement.

(32) ***Provision of Information.*** All information provided by the Borrower and, to the Borrower's Knowledge, by the Contractor to the Administrative Agent, the Lenders or the Lenders' Consultant in connection with the completion of the Work and the provision by the Lenders' Consultant of the certificates and reports to be provided by it under the Loan Documents, including for greater certainty information regarding any event, circumstance or omission which would reasonably be expected to result in a delay in the achievement of Substantial Completion, was true and correct in all material respects when provided, and did not omit any information known to the Borrower or the Contractor regarding the completion of the Work required to make any such information provided by the Borrower or the Contractor to the Administrative Agent, the Lenders or the Lenders' Consultant not materially misleading.

(33) ***Compliance with Other Documents.*** Neither the Borrower nor, to the best of the Borrower's Knowledge, the Contractor is in default in the performance or observance of any of the obligations, covenants or conditions contained in any document, instrument, agreement, franchise, licence, judgment, decree or deed (other than the Material Project Documents) to which it is party where such default has a Material Adverse Effect.

(34) ***Residency.*** Neither the Borrower nor the Contractor is a non-resident of Canada for the purposes of the ITA.

(35) ***Registration for HST.*** The Borrower is duly registered for the purposes of HST under registration number 807424577RT0001.

(36) ***Work Related Matters.***

- (a) The Borrower and the Contractor have the right to enter onto the Project Lands for the purposes of performing, and to the extent required to perform, their obligations under the Material Project Documents.
- (b) Neither the Borrower nor, to the Borrower's Knowledge, the Contractor is party to any contract or agreement to sell, transfer or encumber any interest in the Material Project Documents, other than pursuant to the Material Project Documents and the Loan Documents.
- (c) To the Borrower's Knowledge and except as otherwise disclosed in writing to the Administrative Agent, no notices, complaints or orders of violation or non-compliance or liability have been issued or threatened by any Person with respect to the Work, except for any such notices, complaints or orders which have been complied with or, if not complied with, which do not have a Material Adverse Effect.
- (d) To the Borrower's Knowledge and except as otherwise disclosed in writing to and waived in writing by the Administrative Agent, there are no outstanding directives, work orders or notices of deficiency capable of resulting in work orders issued by any Governmental Authority with respect to the Work, except for any such

directives, work orders or notices of deficiency which do not have a Material Adverse Effect or which the Contractor is complying with.

(37) **Full Disclosure.** No statement furnished by the Borrower or on its behalf to the Administrative Agent in connection with this Agreement contains any untrue statement of a material fact or omits a material fact necessary to make those statements not misleading, and all those statements, taken as a whole, do not contain any untrue statement of a material fact or omit a material fact necessary to make the statements not misleading. All expressions of expectation, intention, belief and opinion contained therein were honestly made on reasonable grounds after reasonable inquiry by a Responsible Officer of the Borrower and, to the Borrower's Knowledge, any other Person who furnished the statements. There is no fact or circumstance known to the Borrower which the Borrower has not disclosed to the Administrative Agent in writing which has or could reasonably be expected to have a Material Adverse Effect.

(38) **Prohibited Acts.** Neither the Borrower nor, to the Borrower's Knowledge, the Contractor or any Subcontractor has committed a Prohibited Act (as defined in the Project Agreement).

2.2 Deemed Repetition

The representations and warranties made in Section 2.1 shall (a) continue in effect until payment and performance of all the Obligations, and (b) be deemed to be repeated on each Funding Date, *mutatis mutandis*, as if made on that date except where any representation or warranty relates to a specified date in which case that representation or warranty shall be made as of the date to which it relates.

SECTION 3 – THE CREDIT FACILITY

3.1 Establishment of Credit Facility

Subject to the terms and conditions of this Agreement, the Lenders hereby establish in favour of the Borrower a committed partially revolving construction credit facility (the “**Credit Facility**”) in the amount of the Total Commitment. Each Lender severally agrees to make its Commitment available to the Borrower by way of Loans bearing interest calculated by reference to the CDOR Rate, subject to the terms and conditions of this Agreement.

3.2 Obligations of the Lenders and the Administrative Agent

(1) **Applicable Percentage.** Subject to the provisions of this Agreement and the satisfaction or waiver by each Lender of the conditions precedent set out in Section 8.2, each Lender agrees to make available its Applicable Percentage of each Loan to the Borrower on the terms set out in this Agreement.

No Lender shall be responsible for a Commitment of any other Lender. The failure of a Lender to make available a Loan in accordance with its obligations under this Agreement shall not release any other Lender from its obligations. Notwithstanding anything to the contrary in this Agreement, no Lender shall be obligated to make Loans available to the Borrower in excess of its Commitment.

(2) **Separate Obligation.** The obligation of each Lender to make its Commitment available to the Borrower is a separate obligation between each Lender and the Borrower, and that obligation is not the several or joint and several obligation of any other Lender.

3.3 Availability of Credit Facility

Subject to Section 8, the Borrower may only borrow Loans up to the amount of the Total Commitment.

3.4 Purpose

The proceeds of the Loans received by the Borrower under this Agreement shall be used by the Borrower only for (a) the making of Base Progress Payments to the Contractor, (b) the payment of HST, Fees and Transaction Expenses and (c) the payment of Borrowing Costs payable on or prior to the Maturity Date in accordance with the Financial Model. For greater certainty, proceeds of the Loans shall not be used by the Borrower to fund payment of amounts payable by the Borrower in respect of the Legislative Holdback or Additional CMH Payments.

3.5 Procedures for Making of Loans

(1) **Funding Requests.** Prior to 10:00 a.m. at least five (5) Business Days prior to each Funding Date, the Borrower shall deliver to the Administrative Agent and the Lenders' Consultant an irrevocable written notice substantially in the form of Schedule 3.5(1) (a "**Funding Request**") together with all required exhibits and other attachments thereto. A Funding Request may not exceed the lesser of:

- (a) the aggregate amount set forth in Schedule 3.2(1) opposite such date, together with any amount set forth in Schedule 3.2(1) in respect of a prior date which remains undrawn as at the date of the Funding Request; and
- (b) the aggregate of (i) the amount certified by the Lenders' Consultant, plus (ii) the amounts on account of Borrowing Costs and Fees as they become due, and (iii) other project costs not captured under (i) and (ii) as set forth in the Financial Model.

(2) **Calculation of Net Funding.** The Administrative Agent shall as soon as practicable prior to the Funding Date calculate the Net Funding (taking into account the amounts specified in the definition of "Net Funding" and the remediation of any Cost to Complete Deficiency as set forth in the Lenders' Consultant's Certificate attached to the Funding Request).

(3) **Notification of Lenders.** The Administrative Agent shall as soon as practicable prior to the Funding Date advise each Lender of (a) the amount of the Loans to be advanced on such Funding Date and each Lender's participation in such Loans and (b) the amount of the Net Funding to be released to the Borrower Proceeds Account on such Funding Date.

(4) **Loans on Funding Dates.** Subject to the terms and conditions of this Agreement, including the satisfaction or waiver pursuant to Section 8.3 of all of the conditions precedent to the making of Loans on each Funding Date as set forth in Section 8.2, at or before 1:00 p.m. on each Funding Date, each Lender shall make the Loans requested by the Borrower available for deposit by way of wire

transfer in immediately available funds to the Agent's Funding Account in the amount of its Applicable Percentage of the Loans to be made on such Funding Date.

(5) ***Release of Funds.*** At or before 3:00 p.m. on each Funding Date, provided that the conditions precedent to the making of Loans on each Funding Date as set forth in Section 8.2 have been satisfied or waived pursuant to Section 8.3, the Administrative Agent shall, to the extent that each Lender has sent to the Administrative Agent its Applicable Percentage of the Loans to be made on such Funding Date in accordance with Section 3.5(4), release the Net Funding from the Agent's Funding Account to the Borrower Proceeds Account.

(6) ***Balance at End of Term.*** If, on the Maturity Date, there remains any Agent's Funding Account Balance, such balance shall be distributed in accordance with the provisions of Section 6.6(5).

(7) ***Payment of Interest, Swap Payments and Fees.*** During the period from the Financial Closing Date to and including the Maturity Date, the funds remaining in the Agent's Funding Account after the release of the Net Funding in accordance with Section 3.5(5) above shall be applied to pay on each Interest Payment Date, Standby Fee Payment Date or Agency Fee Payment Date, as the case may be, amounts due to the Administrative Agent and the Lenders in respect of Borrowing Costs. During the period from the Financial Closing Date to and including the Maturity Date, if funds are not available in the Agent's Funding Account Balance to pay on each Interest Payment Date, Standby Fee Payment Date or Agency Fee Payment Date, as the case may be, any interest, Standby Fee or Agency Fee due on such date, the Borrower shall pay an amount equal to the applicable interest, Standby Fees or Agency Fee due on such date to the Agent's Funding Account or shall ensure that such amount is available in the Borrower Proceeds Account and authorizes the Administrative Agent to debit such accounts and distribute such payment to the Lenders in accordance with their respective Applicable Percentages, as applicable, and shall be entitled to retain the Agency Fee for its own account.

3.6 Determination Final

With respect to all matters referred to in this Section 3 and the calculation of interest and fees referred to in Section 4, the determination by the Administrative Agent shall be final, conclusive and binding on the Borrower and the Lenders, absent manifest error.

3.7 Reliance on Oral Instructions

See Section 7.4 of the CBA Schedule.

3.8 Deposit of Proceeds of Loans

The Administrative Agent shall credit to the Agent's Funding Account on the applicable Funding Date, in accordance with Section 3.5(4), the proceeds of each Loan made available by the Lenders on such Funding Date.

3.9 Evidence of Obligations

The Administrative Agent shall open and maintain accounts and records evidencing the Obligations of the Borrower to each Lender. The Administrative Agent shall record in those accounts by appropriate entries all amounts on account of those Obligations and all payments on account thereof. Those accounts and records will constitute, in the absence of manifest error, *prima facie* evidence of those Obligations from time to time, the date each Loan was made and the amounts that the Borrower has paid from time to time on account of those Obligations.

3.10 Interest Rate Swaps

- (1) The Borrower shall enter into, and maintain at all times, the Interest Rate Swaps with the Lenders with an aggregate notional principal amount equal to 100% of the aggregate principal amount of the Credit Facility. The Interest Rate Swap Documents shall provide for:
 - (a) a schedule of notional principal amounts designed to match the scheduled principal advances and repayments of the Credit Facility; and
 - (b) the Borrower, on each date corresponding to an Interest Payment Date, to pay a fixed rate as set out in the applicable Interest Rate Swap Document to the applicable Lender (a “**Fixed Payment**”) and receive from the applicable Lender a floating rate equal to the CDOR Rate in respect of the amount of notional principal amounts set out in the Interest Rate Swap Document.
- (2) The Borrower shall ensure that payment dates in respect of each of the Interest Rate Swaps shall coincide with Interest Payment Dates hereunder.
- (3) The Borrower may not enter into an Interest Rate Swap with a Person other than a Lender. A Lender who has entered into an Interest Rate Swap with the Borrower may not transfer any of its rights or interests under the applicable Interest Rate Swap Documents to a Person other than another Lender and, for clarity, upon any assignment by a Lender of its interest in the Credit Facility and the Loan Documents to any assignee, a proportionate interest in any Interest Rate Swap to which such Lender is party must also be assigned to such assignee.
- (4) Each Interest Rate Swap will be subject to a swap credit spread of 0.15% per annum.
- (5) Each Interest Rate Swap shall mature on the Maturity Date, as such date may be changed by agreement of the parties to the Interest Rate Swap Documents in respect of such Interest Rate Swaps.
- (6) Upon the request of the Administrative Agent, the Borrower shall provide details regarding the notional amounts and terms of its outstanding Interest Rate Swaps and the outstanding amount of the liabilities incurred in connection therewith.

SECTION 4 – INTEREST, FEES AND EXPENSES

4.1 Interest on Loans

- (1) **Rate.** Interest on Loans shall be paid on each Interest Payment Date in accordance with Section 3.5(7) at a rate per annum equal to the sum of (a) the CDOR Rate as determined on the first Business Day of the Interest Period ending on such Interest Payment Date plus (b) the Applicable Margin.
- (2) **No Notice.** The CDOR Rate will change from time to time at the beginning of each Interest Rate Period pursuant to Section 4.1(1) without the necessity of any notice to the Borrower.
- (3) **Calculation.** Interest on Loans shall be payable monthly in arrears on every Interest Payment Date and on the Maturity Date in respect of the Interest Period ending on such Interest Payment Date or Maturity Date, as the case may be, and shall be calculated for each day of such Interest Period based on the CDOR Rate in effect for such Interest Period, as determined in accordance with Section 4.1(1), and the principal amount of the Loans remaining unpaid on such day, on the basis of the actual number of days elapsed in a year of 365 days.
- (4) **Market Disruption Event.** If a Market Disruption Event occurs in relation to a Loan for any Interest Period, then the Interest Rate on the share of such Loan for such Interest Period held by any Lender affected by such Market Disruption Event (an “**Affected Lender**”) shall be the rate of interest per annum which is the sum of:
 - (a) the Applicable Margin; and
 - (b) the rate notified to the Administrative Agent by such Affected Lender as soon as practicable and, in any event, before interest is due to be paid in respect of that Interest Period, to be that rate which expresses as a percentage rate per annum the cost to such Affected Lender of funding its participation in such Loan from whatever source it may reasonably select.

If a Market Disruption Event occurs and the Administrative Agent or the Borrower so requires, the Administrative Agent and the Borrower shall enter into negotiations (for a period of not more than 30 days) with a view to agreeing as to a substitute basis for determining the rate of interest applicable in respect of each Affected Lender. Any alternative basis agreed pursuant to this Section shall, with the prior consent of all the Lenders, be binding on all parties, it being recognized that such alternative basis applies only to the Affected Lenders affected by the relevant Market Disruption Event.

4.2 Fees

- (1) **Upfront Fee.** On the later of the Financial Closing Date and the initial Funding Date, the Borrower shall pay to the Agent, for the account of each Lender, a non-refundable upfront fee in Canadian Dollars (the “**Upfront Fee**”) in an amount equal to 0.95% of such Lender’s Commitment.
- (2) **Standby Fee.** On each Interest Payment Date during the term of this Credit Facility (from the Financial Closing Date to the Maturity Date) and on the Maturity Date or on the termination of

the Total Commitment (each a “**Standby Fee Payment Date**”), the Borrower shall pay in arrears to the Agent, for the account of the Lenders, a non-refundable standby fee in Canadian Dollars (the “**Standby Fee**”) based on the amount of the unutilized and uncanceled portion of the Total Commitment at a rate per annum equal to 0.3325%. The Standby Fee shall be paid by the Borrower on each Standby Fee Payment Date in accordance with Section 3.5(7).

(3) **Calculation.** The Standby Fee shall be payable for the period from and including the Financial Closing Date or the last Standby Fee Payment Date, as the case may be, to but excluding the next Standby Fee Payment Date or the Maturity Date, as applicable, and shall be calculated on a daily basis on the unutilized and uncanceled portion of the Total Commitment in effect from time to time on the basis of the actual number of days elapsed and a year of 365 days or 366 days, as applicable.

(4) **Agency Fee.** On the Financial Closing Date and on each anniversary date of the Financial Closing Date during the term of this Credit Facility (from the Financial Closing Date to the Maturity Date) (each, an “**Agency Fee Payment Date**”), the Borrower shall pay to the Administrative Agent a non-refundable fee in Canadian Dollars (the “**Agency Fee**”) in an amount equal to \$30,000 per annum; provided that the Agency Fee payable on the final Agency Fee Payment Date hereunder for the period from the immediately prior Agency Fee Payment Date to the final Agency Fee Payment Date, if such period is less than 365 days, will be pro rated to account for the actual number of days elapsed during such period by multiplying the amount of the annual Agency Fee provided for herein by a fraction having as its numerator the actual number of days elapsed in such period and a denominator of 365. The Agency Fee shall be paid by the Borrower to the Administrative Agent, for its own account, on the Financial Closing Date and on each Agency Fee Payment Date in accordance with Section 3.5(7).

4.3 Interest on Overdue Amounts

The Borrower shall pay to the Administrative Agent on behalf of the Lenders interest on overdue amounts both before and after demand, default and judgment at a rate per annum equal to the aggregate of the CDOR Rate (or the alternative interest rate payable under Section 4.1(4), if applicable), the Applicable Margin, and 2.5% per annum; in each case calculated on a daily basis on the actual number of days elapsed in a 365 day year, computed from the date the amount becomes due for so long as the amount remains overdue. Such interest shall be payable upon demand made by the Administrative Agent and shall be compounded on each Interest Payment Date.

4.4 Interest Act

For the purposes of the *Interest Act* (Canada) and disclosure under such act, whenever interest to be paid under this Agreement is to be calculated on the basis of a year of 365 days or any other period of time that is less than a calendar year, the yearly rate of interest to which the rate determined pursuant to such calculation is equivalent is the rate so determined multiplied by the actual number of days in the calendar year in which the same is to be ascertained and divided by either 365 or such other period of time, as the case may be.

4.5 Limit on Rate of Interest

(1) **Adjustment.** If any provision of this Agreement or any of the other Loan Documents would obligate the Borrower to make any payment of interest or other amount payable to any Lender in an amount or calculated at a rate which would be prohibited by law or would result in a receipt by that Lender of interest at a criminal rate (as construed under the *Criminal Code* (Canada)), then notwithstanding that provision, that amount or rate shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by law or result in a receipt by that Lender of interest at a criminal rate, the adjustment to be effected, to the extent necessary, as follows:

- (a) *first*, by reducing the amount or rate of interest required to be paid to the affected Lender under this Section 4; and
- (b) *thereafter*, by reducing any fees, commissions, premiums and other amounts required to be paid to the affected Lender which would constitute interest for purposes of Section 347 of the *Criminal Code* (Canada).

(2) **Reimbursement.** Notwithstanding Section 4.5(1), and after giving effect to all adjustments contemplated thereby, if any Lender shall have received an amount in excess of the maximum permitted by the *Criminal Code* (Canada), then the Borrower shall be entitled, by notice in writing to the affected Lender, to obtain reimbursement from that Lender in an amount equal to the excess, and pending reimbursement, the amount of the excess shall be deemed to be an amount payable by that Lender to the Borrower.

(3) **Actuarial Principles.** Any amount or rate of interest referred to in this Section 4.5 shall be determined in accordance with generally accepted actuarial practices and principles as an effective annual rate of interest over the term that any Loan remains outstanding on the assumption that any charges, fees or expenses that fall within the meaning of *interest* (as defined in the *Criminal Code* (Canada)) shall, if they relate to a specific period of time, be pro-rated over that period of time and otherwise be pro-rated over the period from the Financial Closing Date to the Maturity Date and, in the event of a dispute, a certificate of a Fellow of the Canadian Institute of Actuaries appointed by the Administrative Agent shall be conclusive for the purposes of that determination.

4.6 Calculation of Break Costs

(1) If there are any Break Costs in respect of the Credit Facility owing by the Borrower, the Borrower shall deposit the amount of such Break Costs forthwith to the Agent's Funding Account and, upon receipt of such funds into the Agent's Funding Account, the Administrative Agent shall pay such Break Costs to the Person to whom it is owing.

(2) The calculation as to the amount of any Break Costs shall be prepared by the Lender providing the applicable portion of the Credit Facility, in good faith in accordance with the standard market practices and shall be final, conclusive and binding, absent demonstrable error. Each Lender shall provide its calculation to the Administrative Agent which shall use such calculations to determine the aggregate Break Costs payable by the Borrower.

4.7 Calculation of Swap Breakage Costs

- (1) If there are any Swap Breakage Costs in respect of an Interest Rate Swap Document, the Borrower shall deposit the amount of such Swap Breakage Costs forthwith to the Agent's Funding Account and, upon receipt of such funds into the Agent's Funding Account, the Administrative Agent shall pay such Swap Breakage Costs to the Person to whom the amount is owing.
- (2) The calculation as to the amount of any Swap Breakage Costs shall be prepared by the applicable Lender in good faith and in accordance with the applicable Interest Rate Swap Documents.

4.8 Payment of Affected Borrowing

Notwithstanding any other term or condition of this Agreement, if a Lender gives the certificate referred to in Section 3.1(c) of the CBA Schedule with respect to any Loan (an "**Affected Borrowing**"), the Borrower may, at its option, upon 15 Business Days' notice to that Lender (which notice shall be irrevocable), repay to the Lender in full the Affected Borrowing outstanding together with accrued and unpaid interest on the principal amount so repaid up to the date of repayment, together with such additional compensation as may be applicable to the date of payment.

4.9 Change in Circumstances

- (1) **Reduction in Rate of Return.** See Section 3.1 of the CBA Schedule.
- (2) **Taxes, Reserves, Capital Adequacy, etc.** See Section 3.1 of the CBA Schedule.
- (3) **Payment of Additional Compensation.** See Section 3.1 of the CBA Schedule.
- (4) **Commercially Reasonable.** See Section 3.3(a) of the CBA Schedule.

4.10 Illegality

See Section 3.4 of the CBA Schedule.

4.11 Indemnity

- (1) **General.** See Section 9(b) of the CBA Schedule.
- (2) **Certificate.** See Section 9(e) of the CBA Schedule.
- (3) **Survival.** It is the intention of the Borrower, the Administrative Agent and each Lender that all provisions in this Agreement entitling them to indemnification (including Sections 3.2(c) and 9(b) of the CBA Schedule) shall supersede any other provisions in this Agreement which in any way limit the liability of the Borrower and that the Borrower shall be liable for any obligations arising under those provisions even if the amount of the liability incurred exceeds the amount of the other Obligations. The obligations of the Borrower under those provisions are absolute and unconditional and shall not be affected by any act, omission or circumstance whatsoever, whether or not occasioned by the fault of the Administrative Agent or a Lender, except in respect of gross

negligence or wilful misconduct by it. The obligations of the Borrower under those provisions shall survive the repayment of the other Obligations and the termination of the Credit Facility.

SECTION 5 – REDUCTION AND REPAYMENT

5.1 Term and Maturity

The term of the Credit Facility shall commence on the Financial Closing Date and end on the Maturity Date.

5.2 Repayment

Provided that the Loans and other amounts outstanding under the Credit Facility are not prepaid in accordance with Section 5.3 or Section 5.4 or earlier accelerated in accordance with Section 10, all amounts outstanding under the Credit Facility, including principal, all accrued and unpaid interest and any unpaid Fees, shall be paid by the Borrower as follows:

- (a) *first*, an amount equal to the amount of the Interim Completion Payment on the Interim Completion Payment Date (and such amount so repaid may be partially re-borrowed during the Term in accordance with Section 3.5);
- (b) *second*, an amount equal to the Substantial Completion Payment on the Substantial Completion Payment Date; and
- (c) *third*, the balance of the amount outstanding under the Credit Facility, including principal, all accrued and unpaid interest and Fees, to be paid on the Maturity Date.

Upon repayment of the Credit Facility in accordance with Section 5.2(a), the Borrower shall be deemed to have cancelled a portion of the Credit Facility in an amount equal to the difference between (i) the Total Commitment, and (ii) the amount shown in the Financial Model on the Interim Completion Payment Date as the total principal amount that will be outstanding under the Credit Facility on the then-scheduled Substantial Completion Date, in accordance with Section 5.5, and the Commitments and Total Commitment will be reduced accordingly.

5.3 Mandatory Prepayment

- (1) The Borrower shall be required to prepay the entire Loan upon receipt by Borrower of any Compensation Payment. In addition, the Borrower shall, upon receipt of any of the following amounts, prepay the Loans in an amount equal to the aggregate of such amounts received in respect of:
 - (a) proceeds of Insurance (other than proceeds in respect of delayed start-up, business interruption insurance and soft costs or proceeds of liability insurance which are paid to reimburse the Borrower for amounts paid to third party claimants), subject to any express provisions of the Material Project Documents, including the Insurance and Bonding Trust Agreement, which provide otherwise for the application of proceeds of Insurance;

- (b) proceeds received in respect of any total Condemnation or partial Condemnation of the Project, subject to any express provisions of the Material Project Documents which provide otherwise for the application of such amounts; and
- (c) proceeds from any asset sales by the Borrower (unless the Borrower uses the proceeds of such asset sale for the purposes of asset performance or substitution, within 30 days of such asset sale).

5.4 Voluntary Prepayment

Subject to Sections 5.6, 5.7 and 5.8 and provided no Default or Event of Default would result, in the case of a Market Disruption Event prior to the Maturity Date, the Borrower may permanently repay, without premium or penalty, in whole or in part, the Loans provided that all accrued interest with respect to the amount to be repaid shall have been paid. The Borrower shall give to the Administrative Agent not less than three (3) Business Days prior written notice substantially in the form attached hereto as Schedule 5.4 indicating its desire to make any permanent repayment as a result of a Market Disruption Event and the amount of the permanent repayment. Each such repayment shall be in the minimum aggregate amount of \$500,000 or whole multiples of \$100,000 in excess thereof and shall be applied rateably in accordance with each Lender's Applicable Percentage. The Total Commitment shall be permanently reduced by the amount of such prepayment and may not be re-instated. The Borrower may not otherwise prepay, in whole or in part, the Loan, without the prior written consent of the Lenders.

5.5 Cancellation

Subject to Sections 5.2, 5.6, 5.7 and 5.8, the Borrower may at any time cancel undrawn amounts of the Credit Facility without premium or penalty, in minimum amounts of \$500,000 and in multiples of \$100,000 subject to giving the Administrative Agent not less than one (1) Business Day prior written notice; provided such notice is received by the Administrative Agent no later than 10:00 am and is substantially in the form attached as Schedule 5.5. Cancellations shall be applied rateably to the Commitments of the Lenders in accordance with each Lender's Applicable Percentage. Amounts cancelled will not be reinstated and the Commitments and Total Commitment will be reduced accordingly.

5.6 Break Costs Upon Cancellation or Prepayment

Upon any prepayment or cancellation of the Credit Facility pursuant to Sections 5.3, 5.4 or 5.5, the Borrower shall pay the Break Costs, if any, resulting from such prepayment or cancellation.

5.7 Swap Breakage Costs Upon Cancellation or Prepayment

Upon any prepayment or cancellation of the Credit Facility pursuant to Sections 5.3, 5.4 or 5.5, the Borrower shall terminate or amend the Interest Rate Swaps, rateably in accordance with each Lender's Applicable Percentage, so that the aggregate notional principal amount of the Interest Rate Swaps equals the remaining principal amount of the Loans and/or the Commitment and shall pay the Swap Breakage Costs, if any, relating to any termination or amendment of the Interest Rate Swaps resulting from such prepayment or cancellation.

5.8 Limitation on Cancellation/Prepayment

Any prepayment or cancellation of the Credit Facility pursuant to Sections 5.4 or 5.5 shall be subject to the Lenders' satisfaction, upon consultation with the Lenders' Consultant, that the Available Commitment plus any cash collateral contributed to the Agent's Funding Account and any marketable securities pledged by the Borrower to the Administrative Agent after such prepayment or cancellation will be sufficient to ensure:

- (a) that Substantial Completion will be achieved on or before the then-scheduled Substantial Completion Date;
- (b) that no Cost to Complete Deficiency will exist as a result of such prepayment or cancellation; and
- (c) all Construction Costs, Borrowing Costs and Transaction Expenses will be paid as they fall due.

SECTION 6 – PAYMENTS AND TAXES

6.1 Payments Generally

All amounts owing in respect of the Credit Facility or the Interest Rate Swaps, whether on account of principal, interest or fees or otherwise, shall be paid in Canadian Dollars. Each payment under this Agreement shall be made for value on the day the payment is due, provided that if such day is not a Business Day, the payment shall be due on the Business Day next following such day, unless the Business Day next following such day is in the next following month, in which event the payment shall be made on the immediately preceding Business Day. All interest and other fees shall continue to accrue until payment has been made by the Borrower in accordance with Section 3.5(7). Each payment shall be made, and each payment made hereunder shall be credited for same day value if received at the Agent's Funding Account at or before 1:00 p.m. on the day the payment is due. Receipt by the Administrative Agent from the Borrower of funds under this Agreement, as principal, interest, Fees or otherwise, shall be deemed to be receipt of those funds by the Lenders.

6.2 Taxes

- (1) **Payments.** See Section 3.2 of the CBA Schedule.
- (2) **Indemnity.** See Section 3.2 of the CBA Schedule.
- (3) **Evidence of Payment.** See Section 3.2 of the CBA Schedule.
- (4) **Excluded Taxes.** See Section 1 of the CBA Schedule for the definition.
- (5) **Survival.** The Borrower's obligations under Section 3.2 of the CBA Schedule shall survive the termination of this Agreement and the payment of all amounts payable under or with respect to this Agreement.

- (6) ***Tax Credit.*** See Section 3.2 of the CBA Schedule.

6.3 No Set-Off

All payments to be made by the Borrower shall be made without set-off or counterclaim and without any deduction of any kind.

6.4 Directions as to Payment

(1) The Borrower has, under the Lenders' Direct Agreement, irrevocably authorized and directed CMH to make the Substantial Completion Payment, the Interim Completion Payment, the CMH Holdback, any Compensation Payment, the Certified Cost to Complete and any Step-Out Amount which becomes payable to the Borrower in accordance with the Project Agreement to the Administrative Agent (or as the Administrative Agent may otherwise direct). CMH has acknowledged such authorization and direction and has agreed that it will make the Substantial Completion Payment, the Interim Completion Payment, the CMH Holdback, any Compensation Payment, the Certified Cost to Complete and any Step-Out Amount which becomes payable to the Borrower in accordance with the Project Agreement to the Administrative Agent (or as the Administrative Agent may otherwise direct).

(2) The Borrower has, pursuant to the Irrevocable Direction, directed CMH to pay to the Administrative Agent on behalf of the Lenders, or as the Administrative Agent shall direct the Legislative Holdback and, after a Default has occurred, all Additional CMH Payments and all other amounts payable by CMH to the Borrower or the Contractor pursuant to the Material Project Documents.

(3) Upon the full and final payment by or on behalf of the Borrower of all amounts owing under this Agreement and the other Loan Documents, the Administrative Agent shall provide an irrevocable direction to CMH to pay all amounts payable to the Administrative Agent in accordance with the Irrevocable Direction to the Borrower or as the Borrower may direct.

6.5 Acknowledgement as to Payments

(1) ***Deposits to Agent's Funding Account.*** The Borrower agrees that, so long as any Obligations are outstanding, it shall immediately deposit to the Agent's Funding Account any payments or proceeds it receives on account of the following, which shall, subject to Section 6.5(2), be distributed in accordance with the provisions of Section 6.6(2):

- (a) any payments from CMH (including the Interim Completion Payment, the Substantial Completion Payment, the Legislative Holdback or any Compensation Payment (including any monies received pursuant to the Trust Account Acknowledgement Agreement)) other than Additional CMH Payments (excluding any Cost of the Financing (as defined in the Project Agreement) included in such payment) payable to the Contractor in respect of the Work;
- (b) any and all amounts, including Liquidated Damages payable by the Contractor under the Contractor Support Agreement;

- (c) all amounts payable by the Lenders to the Borrower under the Interest Rate Swap Documents;
- (d) any cash or liquid security provided by the Borrower or the Contractor in respect of the CMH Holdback or Increased Financing Costs associated with any Forecasted Delay;
- (e) any proceeds paid to the Borrower resulting from any claims by the Administrative Agent against (i) the Contractor Performance Bond or the Contractor Labour and Material Payment Bond to the extent that such proceeds are claimed by the Administrative Agent and are based upon the failure of the Contractor to pay Liquidated Damages in accordance with the Contractor Support Agreement, or (ii) the Contractor Demand Bond;
- (f) any payments made by the Contractor to the Borrower in respect of the liability of the Contractor under the Construction Contract; and
- (g) any interest paid to the Borrower in respect of amounts on deposit in the Agent's Funding Account,

which payments or proceeds shall be credited to the Agent's Funding Account Balance and shall be applied by the Administrative Agent in accordance with the terms of this Agreement. Until so deposited, all of the amounts described in this Section 6.5(1) shall be held by the Borrower in trust for the parties entitled to receive a distribution of such funds in accordance with this Agreement.

(2) ***Return of Surplus Cash or Liquid Security.*** Provided no Event of Default has occurred and is then continuing, any surplus cash or liquid security provided by the Borrower or the Contractor in respect of the CMH Holdback or Increased Financing Costs associated with any Forecasted Delay shall be returned to the Borrower or the Contractor, as the case may be, upon the remediation of any shortfall or delay in respect of which such cash or liquid security was provided.

6.6 Distributions

(1) ***Distributions from Borrower Proceeds Account.*** At all times other than where an Event of Default has occurred and is continuing, all credit balances in the Borrower Proceeds Account from time to time shall be available to the Borrower in accordance with the provisions of this Agreement for the purposes of making the following payments:

- (a) *first*, the Base Progress Payments owing to the Contractor;
- (b) *second*, any Transaction Expenses owing; and
- (c) *third*, to the Agent's Funding Account, any outstanding Borrowing Costs.

At all times where an Event of Default has occurred and is continuing, all credit balances in the Borrower Proceeds Account from time to time shall be applied by the Administrative Agent acting upon the instructions of the Lenders.

(2) ***Interim Completion Payment, Substantial Completion Payment, Legislative Holdback or Compensation Payments.*** All amounts payable to the Borrower by CMH on account of the Interim Completion Payment, the Substantial Completion Payment, the Legislative Holdback or any Compensation Payment (including any monies received pursuant to the Trust Account Acknowledgement Agreement) shall be paid directly to the Agent's Funding Account and shall be distributed by the Administrative Agent as follows:

- (a) *first*, in payment to the Administrative Agent and each Lender of any Fees or Transaction Expenses owing to the Administrative Agent or such Lender under the Loan Documents;
- (b) *second*, in payment of any Break Costs and Swap Breakage Costs then due and payable by the Borrower;
- (c) *third*, in payment of any interest (including any interest on overdue principal or interest) then due and payable by the Borrower on or in respect of the Credit Facility, rateably in accordance with each Lender's Applicable Percentage;
- (d) *fourth*, in payment of the principal of the Loans then due and payable, if any, rateably in accordance with each Lender's Applicable Percentage; and
- (e) *fifth*, in payment of any other amounts due and owing to the Lenders under the Loan Documents, rateably in accordance with each Lender's Applicable Percentage.

After indefeasible payment in full to the Lenders of all amounts due and owing hereunder and under the other Loan Document (which amounts cannot be redrawn in accordance with the terms of this Agreement), any monies received or realized by the Administrative Agent shall be distributed by the Administrative Agent to the Borrower or as the Borrower may direct or as otherwise directed by any Governmental Authority.

(3) ***Payments under the Contractor Support Agreement.*** All amounts payable by the Contractor under the Contractor Support Agreement shall be paid directly to the Agent's Funding Account and shall be distributed by the Administrative Agent as follows:

- (a) *first*, in payment to the Administrative Agent and each Lender of any Fees or Transaction Expenses owing to the Administrative Agent or such Lender under the Loan Documents;
- (b) *second*, in payment of any Break Costs and Swap Breakage Costs then due and payable by the Borrower;
- (c) *third*, in payment of any interest (including any interest on overdue principal or interest) then due and payable by the Borrower on or in respect of the Credit Facility, rateably in accordance with each Lender's Applicable Percentage;
- (d) *fourth*, in payment of the principal of the Loans then due and payable, if any, rateably in accordance with each Lender's Applicable Percentage; and

- (e) *fifth*, in payment of any other amounts due and owing to the Lenders under the Loan Documents, rateably in accordance with each Lender's Applicable Percentage.

(4) ***Payments of Proceeds of Disposition on Event of Default.*** The Administrative Agent acknowledges and agrees that all proceeds received by it on the enforcement of the Security Documents including without limitation any proceeds of the Contractor Bonds and any judgment against the Borrower or the Contractor collected under the Material Project Documents or the Loan Documents after the exercise of any rights arising under Section 10.2, shall be held in trust for the Administrative Agent and the Lenders and shall be forthwith deposited into the Agent's Funding Account for distribution by the Administrative Agent as follows:

- (a) *first*, in payment of the reasonable costs and expenses of the Administrative Agent of any realization against the Borrower, the Contractor or its or their property and assets, including the out-of-pocket expenses of the Administrative Agent and the reasonable fees and out-of-pocket expenses of counsel, consultants and other advisors employed in connection therewith and in payment of all costs and expenses incurred by the Administrative Agent in connection with the administration and enforcement of this Agreement, the Security Documents or the other Loan Documents, to the extent that those costs and expenses shall not have been reimbursed to the Administrative Agent;
- (b) *second*, in payment to the Administrative Agent and each Lender of any Fees or Transaction Expenses owing to the Administrative Agent or such Lender under the Loan Documents;
- (c) *third*, in payment of any Break Costs and Swap Breakage Costs then due and payable by the Borrower rateably in accordance with each Lender's Applicable Percentage to whom such Break Costs and Swap Breakage Costs are due and payable;
- (d) *fourth*, in payment of the principal of the Loans then due and payable, if any, and any interest (including any interest on overdue principal or interest) then due and payable by the Borrower on or in respect of the Credit Facility, rateably in accordance with each Lender's Applicable Percentage to whom such principal or interest is due and payable; and
- (e) *fifth*, in payment of any other amounts due and owing to the Lenders under the Loan Documents, rateably in accordance with each Lender's Applicable Percentage.

After indefeasible payment in full to the Lenders of all amounts due and owing hereunder and under the other Loan Documents (which amounts cannot be redrawn in accordance with the terms of this Agreement), any monies received or realized by the Administrative Agent shall be distributed by the Administrative Agent to the Borrower or as the Borrower may direct or as otherwise directed by any Governmental Authority.

(5) ***Other Payments.***

- (a) Any payment received by the Administrative Agent for which no provision as to the application thereof is made in the Loan Documents or elsewhere in this

Section (including, without limitation, any proceeds received by the Administrative Agent resulting from any claims by the Administrative Agent against the Contractor Demand Bond) shall be distributed by the Administrative Agent:

- (i) *first*, in payment of all amounts then due and payable to the Administrative Agent under the Loan Documents; and
 - (ii) *second*, in payment of any amounts then due and owing to the Lenders, rateably in accordance with the amounts due to each Lender under the Loan Documents.
- (b) Any payment received by the Borrower or the Administrative Agent for which provision as to the application thereof is made in a Loan Document but not elsewhere in this Section shall be distributed by the recipient to the Person and for the purpose for which such payment was made in accordance with the terms of such Loan Document.
 - (c) After indefeasible payment in full to the Lenders of all amounts due and owing hereunder and under the other Loan Documents (which amounts cannot be redrawn in accordance with the terms of this Agreement), any monies received or realized by the Administrative Agent shall be distributed by the Administrative Agent to the Borrower or as the Borrower may direct or as otherwise directed by any Governmental Authority.

SECTION 7 – SECURITY DOCUMENTS

7.1 Security Documents

The Borrower shall cause the following documents to be duly authorized, executed and delivered to the Administrative Agent on behalf of the Lenders to secure the Obligations, those documents to be in form and substance satisfactory to the Administrative Agent and the Lenders (collectively, the “**Security Documents**”):

- (a) the Borrower General Security Agreement;
- (b) the Assignment of Accounts;
- (c) the Limited Recourse Guarantee and Pledge Agreement together with the certificates evidencing such shares and duly executed stock powers in respect thereof;
- (d) the Lenders’ Direct Agreement;
- (e) the Contractor Direct Agreement;
- (f) the Contractor Support Agreement;
- (g) the Irrevocable Direction;

- (h) the Blocked Account Agreement;
- (i) the Assignable Subcontract Agreement for Construction Contract;
- (j) an Assignable Subcontract Agreement in respect of each Material Subcontract;
- (k) the Contractor Assignment of Material Documents;
- (l) the Contractor Bonds;
- (m) all necessary acknowledgements, agreements and consents from the counterparties to each contract assigned by the Borrower or Contractor as collateral security to the Administrative Agent; and
- (n) any Loan Documents creating Liens on the assets of the Borrower in favour of the Administrative Agent on behalf of itself and the Lenders, and all other instruments, agreements and documents which have been or may hereafter from time to time be executed in connection therewith.

SECTION 8 – CONDITIONS PRECEDENT

8.1 Conditions Precedent to the Financial Closing Date

The effectiveness and coming into force of this Credit Agreement on the Financial Closing Date is subject to and conditional upon the satisfaction of the following conditions:

- (1) ***Delivery of Documents.*** The Lenders shall have received copies or originals, as specified by the Administrative Agent, in form and substance satisfactory to the Lenders, of the following:
- (a) this Agreement, duly executed by each party hereto;
 - (b) the Security Documents, duly executed by each party thereto;
 - (c) copies of all of the documents listed in Schedule 3 to the Project Agreement, in form and substance satisfactory to the Lenders;
 - (d) each other Loan Document delivered on the Financial Closing Date, duly executed by each party thereto;
 - (e) a certified copy of the Construction Contract, duly executed by each party thereto;
 - (f) a certified copy of the Project Agreement, duly executed by each party thereto;
 - (g) a certified copy of the Contractor Support Agreement, duly executed by each party thereto;
 - (h) a certified copy of the Guarantee of Construction Guarantor, duly executed by each party thereto;

- (i) the Lenders' Direct Agreement, duly executed by each party thereto;
- (j) the Insurance and Bonding Trust Agreement, duly executed by each party thereto;
- (k) the Trust Account Acknowledgement Agreement, duly executed by each party thereto;
- (l) a certified copy of each Material Subcontract that has been entered into as of the Financial Closing Date, duly executed by each party thereto;
- (m) a certified copy of the Assignable Subcontract Agreement for Construction Contract that has been entered into as of the Financial Closing Date, duly executed by each party thereto;
- (n) a certified copy of the Assignable Subcontract Agreement in respect of each Material Subcontract that has been entered into as of the Financial Closing Date, duly executed by each party thereto;
- (o) a copy of the CMH Funding Letter, duly executed by MoHLTC;
- (p) the Lenders shall be satisfied that CMH is able to fund its local share of the Construction Costs;
- (q) all necessary acknowledgements, agreements and consents from the other parties to each contract assigned by the Borrower under the Security Documents;
- (r) any required waivers or confirmations reasonably required by counsel to the Administrative Agent and the Lenders to confirm the priorities and ranking of the security provided for in the Security Documents in favour of the Lenders;
- (s) evidence satisfactory to the Lenders that the following accounts have been opened:
 - (i) the Borrower Proceeds Account;
 - (ii) the Agent's Funding Account;
 - (iii) the Insurance Trust Account; and
 - (iv) the CMH Trust Account;
- (t) the Blocked Account Agreement, duly executed by each party thereto;
- (u) the Construction Budget;
- (v) the Construction Schedule;
- (w) the Planning and Design Documents or forms thereof which are available on the date of the Financial Closing Date;

- (x) the Lenders shall have received and approved the terms of the engagement of the Lenders' Consultant and the Lenders' Insurance Advisor;
- (y) no less than 2 Business Days prior to the Financial Closing Date, the Lenders' Consultant's report addressed to the Lenders and stating, among other things, that:
 - (i) the Lenders' Consultant has reviewed the Planning and Design Documents, the Construction Schedule, the Construction Budget, the Construction Contract and each Material Subcontract provided to the Lenders pursuant to the provisions of this Agreement and that such documents are in form and substance satisfactory to the Lenders' Consultant and that completion of the Work in accordance with the foregoing will comply with all Consents required in respect of the completion of the Work;
 - (ii) all necessary Consents, including any building permits, construction permits and permissions, required to commence construction of the Work, any Environmental Permits required as of the Financial Closing Date and any Consents required to be obtained by the Borrower or the Contractor from CMH or any other Governmental Authority, have been obtained, and that such Consents and Environmental Permits continue to be in force;
 - (iii) the Total Commitment is sufficient to achieve completion of the Project in accordance with the Planning and Design Documents and to pay all Construction Costs, subject to any Change Orders agreed to between CMH and the Contractor; and
 - (iv) Substantial Completion is capable of being achieved on or prior to the date specified for Substantial Completion under the Construction Contract for the amount set forth in the Construction Budget;
- (z) the Lenders shall be satisfied with environmental due diligence in respect of the Project, including that there are no outstanding and unremedied Environmental Claims, prosecutions, convictions, administrative orders, directions or other notices from any Governmental Authority with respect to Environmental Claims, which could reasonably be expected to have a Material Adverse Effect;
- (aa) a report or certificate of the Lenders' Insurance Advisor addressed to the Administrative Agent and the Lenders in respect of the Insurance under which the Administrative Agent is named as additionally insured and loss payee in accordance with the terms of this Agreement;
- (bb) an updated Financial Model and evidence that the Financial Model is the same financial model that has been provided to CMH, save for any differences required by or arising from compliance with the terms of this Agreement and any changes thereto and to the Construction Budget following the date of the Contractor's response to the RFP are in form and substance satisfactory to the Lenders, acting reasonably;

- (cc) each of the following certificates, resolutions and documents addressed to the Administrative Agent and the Lenders:
- (i) a Responsible Officer's Certificate of the Contractor, in form and substance satisfactory to the Administrative Agent and the Lenders, certifying, without limitation, (i) true copies of the constating documents of the Contractor, (ii) true copies of all corporate authorizations and approvals relating to the entering into, execution, delivery and performance of the Contractor under the Loan Documents and the Material Project Documents to which it is a party, (iii) the incumbency of the persons listed therein who are authorized to execute and deliver on behalf of the Contractor the Loan Documents and the Material Project Documents to which it is a party, and (iv) that to the best of their knowledge, no action or proceeding has been instituted or threatened, nor has any governmental action been instituted or threatened before any court, tribunal or Governmental Authority, nor has any order, judgment or decree been issued or proposed to be issued by any court, tribunal or Governmental Authority: (a) to set aside, restrain, enjoin or prevent the full performance of any of the Loan Documents or any Material Project Document or any of the transactions contemplated thereby, or (b) that questions the validity of the Loan Documents or the Material Project Documents; and
 - (ii) a Responsible Officer's Certificate of the Borrower, in form and substance satisfactory to the Administrative Agent and the Lenders, certifying, without limitation, (i) true copies of the constating documents of the Borrower, (ii) true copies of all corporate authorizations and approvals relating to the entering into, execution, delivery and performance of the Borrower under the Loan Documents and the Material Project Documents to which it is a party, (iii) the incumbency of the persons listed therein who are authorized to execute and deliver on behalf of the Borrower the Loan Documents and the Material Project Documents to which it is a party, (iv) that to the best of their knowledge, no action or proceeding has been instituted or threatened, nor has any governmental action been instituted or threatened before any court, tribunal or Governmental Authority, nor has any order, judgment or decree been issued or proposed to be issued by any court, tribunal or Governmental Authority: (a) to set aside, restrain, enjoin or prevent the full performance of any of the Loan Documents or any Material Project Document or any of the transactions contemplated thereby, or (b) that questions the validity of the Loan Documents or the Material Project Documents;
- (dd) the most recent annual audited financial statements of the Contractor, consisting of a balance sheet, statements of income and of surplus, and a statement of changes in financial position, all prepared in accordance with GAAP applied on a basis consistent with that of the preceding year (except as otherwise noted) and the most recent quarterly unaudited financial statements of the Contractor, consisting of an unaudited balance sheet and an unaudited statement of income, all prepared in accordance with GAAP applied on a consistent basis (except as otherwise noted) and

to be completed on a “percentage-of-completion” method consistent with the Contractor’s audited financial statements;

- (ee) the most recent *pro forma* unaudited financial statements of the Borrower for the period from the date of its formation to the Financial Closing Date, consisting of a balance sheet, and statements of income and of surplus, all prepared in accordance with GAAP (except as otherwise noted);
- (ff) opinions of counsel to the Borrower and the Contractor, addressed to the Administrative Agent, the Lenders and their counsel, acceptable to the Administrative Agent and the Lenders, with respect to, *inter alia*, existence, capacity, due authorization, execution, delivery and enforceability of each of the Loan Documents and the Material Project Documents and the creation of valid security interests and perfection of the Liens under the Security Documents;
- (gg) an opinion of counsel to CMH, addressed to the Administrative Agent, the Lenders and their counsel, in the form attached as Appendix D to Schedule 3 to the Project Agreement;
- (hh) a compliance certificate or certificate of status dated the Financial Closing Date for each of the following entities:
 - (i) the Borrower; and
 - (ii) the Contractor; and
- (ii) such other customary documents as the Administrative Agent may reasonably request on behalf of the Lenders.

(2) ***Contractor Bonds.***

- (a) The Borrower shall deliver or cause to be delivered on or before the Financial Closing Date a performance bond (the “**Contractor Performance Bond**”) in the form required under the Project Agreement, to be held by the Insurance Trustee in accordance with the provisions of the Insurance and Bonding Trust Agreement. The Contractor Performance Bond shall (i) provide that the Administrative Agent on behalf of the Lenders will be an obligee under the Contractor Performance Bond, and (ii) be in an initial amount of not less than \$87,377,250.
- (b) The Borrower shall deliver or cause to be delivered on or before the Financial Closing Date a labour and material payment bond (the “**Contractor Labour and Material Payment Bond**”) in the form required under the Project Agreement, to be held by the Insurance Trustee in accordance with the provisions of the Insurance and Bonding Trust Agreement, securing the payment by the Contractor of all of the labour and materials to be supplied by the Contractor directly and not subcontracted to arm’s length third parties. The Contractor Labour and Material Payment Bond shall (i) provide that the Administrative Agent on behalf of the Lenders will be an

obligee under the Contractor Labour and Material Payment Bond and (ii) be in an initial aggregate amount of not less than \$87,377,250.

- (c) The Borrower shall deliver or cause to be delivered on or before the Financial Closing Date a demand bond (the “**Contractor Demand Bond**”) in form and substance satisfactory to the Administrative Agent and the Lenders, to be held by the Administrative Agent in accordance with the provisions of the Contractor Support Agreement until all Obligations are satisfied in full, securing the obligations of the Contractor under the Construction Contract, the Contractor Direct Agreement and the Contractor Support Agreement. The Contractor Demand Bond shall (i) provide that the Administrative Agent on behalf of the Lenders will be an obligee under the Contractor Demand Bond, (ii) be in an initial aggregate amount of not less than \$8,737,725, and (iii) contain a rider with respect to a credit downgrade of Zurich Insurance Company Ltd. and the Administrative Agent’s right to make demand upon the Contractor Demand Bond. Upon the satisfaction in full of all Obligations, the Administrative Agent shall return the Contractor Demand Bond to the Borrower.

(3) **Evidence of Certain Events.** The Administrative Agent shall have received evidence of each of the following, in form and substance satisfactory to the Administrative Agent:

- (a) a report from the Lenders’ Insurance Advisor addressed to the Lenders confirming that the Insurance policies required under this Agreement as of the Financial Closing Date with respect to the Work are in full force and effect, together with evidence showing compliance with the requirements of this Agreement with respect to each such policy, including, without limitation, certificates of insurance in form and substance satisfactory to the Lenders;
- (b) that all material Consents required in connection with the Project or the entering into or performance of the Material Project Documents and the Loan Documents have been obtained;
- (c) that all registrations, recordings, and filings of or with respect to the Security Documents which in the opinion of counsel to the Lenders are necessary to provide the Lenders with a first ranking security interest in the assets charged thereby, subject only to the interest of CMH provided for under the Material Project Documents and Permitted Liens in respect of which the Administrative Agent has received written notice and details to the Administrative Agent’s satisfaction, acting reasonably, and to render effective the security intended to be created thereby have been completed with respect to the Province of Ontario and any other applicable jurisdiction; and
- (d) that all environmental reports produced on behalf of or available to the Borrower or the Contractor have been provided to the Lenders and the Lenders’ Consultant.

(4) **No Adverse Change.** The Lenders shall be satisfied that (i) no event or change has occurred on or prior to the Financial Closing Date which could materially adversely affect the Work, and (ii) no event or change has occurred on or prior to the Financial Closing Date which has a Material Adverse Effect.

- (5) ***Searches.*** The Lenders shall have received satisfactory Lien (with respect to the Borrower only), insolvency and judgment searches against the Borrower and the Contractor in such jurisdictions and offices as reasonably determined by the Lenders.
- (6) ***Representations and Warranties.*** All representations and warranties of the Borrower and the Contractor in the Loan Documents and the Material Project Documents shall be true and correct.
- (7) ***No Default.*** No Default or Event of Default shall have occurred and be continuing on the Financial Closing Date.
- (8) ***Fees and Transaction Expenses.*** All fees and expenses (to the extent agreed or, if not agreed, to the extent reasonable) payable to the Administrative Agent and the Lenders (including all reasonable fees and expenses of the Lenders' advisors) shall have been paid or will be paid in full from the proceeds of the Loan advanced on the initial Funding Date or that other satisfactory arrangements have been made for the payment thereof.
- (9) ***Commitments.*** Satisfactory commitments shall have been obtained from the Lenders in an aggregate amount that will be sufficient to fund the debt component of the Project.
- (10) ***Client Identification Procedures and Money Laundering and Anti-Terrorism Legislation.*** The Administrative Agent and each of the Lenders shall have received from the Borrower sufficient information and required documents to complete client identification procedures and comply with money laundering and anti-terrorism legislation (including without limitation, if necessary, identification of directors and major shareholders of the Borrower in compliance with applicable money laundering rules and know your client requirements of the Lenders).

8.2 Conditions Precedent to Initial Funding Date and each Funding Date

The obligation of each Lender to make its Applicable Percentage of Loans available under this Agreement on each Funding Date is subject to and conditional upon each of the following terms and conditions being satisfied on or prior to such Funding Date:

- (1) ***No Event of Default.*** No Default or Event of Default shall have occurred and be continuing.
- (2) ***No Lender Notice of Default.*** The Lenders shall not have issued any notice under Sections 10.2 or 10.3(1) in respect of Defaults or Events of Default.
- (3) ***No Projected Default.*** No Event of Default or Default will result from the making of the Loans requested on the Funding Date.
- (4) ***Material Project Documents.*** Each Material Project Document shall be in full force and effect and the Administrative Agent shall have received certified copies of each thereof (including any amendments thereto) to the extent not previously provided to the Administrative Agent.
- (5) ***No Contest.*** CMH shall not be contesting the legality, validity, binding nature or enforceability of the Material Project Documents, or any provision thereof, and CMH shall not have denied that it has any further liabilities or obligations thereunder.

- (6) **Contractor Demand Bond.** The Contractor has provided the Contractor Demand Bond and the Contractor Demand Bond is in full force and effect.
- (7) **Additional Documents for Funding Date.** The Administrative Agent shall have received not less than five (5) Business Days before the relevant Funding Date (unless otherwise indicated), in form and substance satisfactory to the Administrative Agent, the following:
- (a) a duly executed and properly completed Funding Request together with all required exhibits and other attachments thereto;
 - (b) a statutory declaration of Contractor in the form of Schedule 8.2(7)(b) in respect of the Funding Date;
 - (c) a certificate of the Lenders' Consultant in the form of Schedule 8.2(7)(c) (the "**Lenders' Consultant's Certificate**") in respect of the Funding Date, provided that a Lenders' Consultant's Certificate shall not be required in respect of the initial Funding Date; and
 - (d) such other documents as the Administrative Agent may have reasonably requested on behalf of the Lenders.
- (8) **Liquidated Damages.** If applicable, the Contractor shall have paid all amounts then due and owing under the Contractor Support Agreement on account of Liquidated Damages then due and owing.
- (9) **Loan Availability Limit.** After making the Loans on such Funding Date, the aggregate amount of the outstanding Loans shall not exceed the Total Commitment.
- (10) **Net Funding Limit.** After the release by the Administrative Agent of the Net Funding to the Borrower Proceeds Account in accordance with Section 3.5(5), the aggregate amount of such Net Funding plus all other Net Fundings previously released to the Borrower Proceeds Account shall not exceed the Total Commitment as at such Funding Date.
- (11) **Representations and Warranties.** The representations and warranties of the Borrower shall be true and correct in all material respects, provided that if any representation and warranty is given in respect of a particular date or period and relates only to such date or period, then such representation and warranty shall continue to be given as at such date or for such period.
- (12) **Fees and Transaction Expenses.** All previously invoiced Fees and Transaction Expenses payable to the Administrative Agent, the Lenders, the Lenders' Consultant, the Lenders' Insurance Advisor and the Lenders' legal counsel shall have been paid in full or arrangements shall have been made in the Funding Request issued in connection with such Funding Date for the payment of such amounts.
- (13) **Searches.** The Lenders shall have received a title search of the Project Lands dated the Funding Date which confirms that there exist upon the Project Lands no Liens other than Permitted Liens.

- (14) ***Sufficient Funding and Completion.*** The Administrative Agent shall be satisfied that:
- (a) the Borrower has sufficient funds available to it pursuant to the Credit Facility, on deposit in the Borrower Proceeds Account and in its Agent's Funding Account Balance to complete the Work in accordance with the Construction Budget and to pay all Borrowing Costs or, if a Cost to Complete Deficiency exists, as certified by the Lenders' Consultant's Certificate, the Administrative Agent shall be satisfied with the Borrower's remediation plan in respect thereof; and
 - (b) Substantial Completion is capable of being achieved on or prior to the date specified for Substantial Completion in the Construction Contract, for the amount set forth in the Construction Budget.
- (15) ***Financial Closing Date.*** All conditions set out in Section 8.1 shall have been satisfied or waived in accordance with the terms hereof, and the Financial Closing Date shall have occurred.
- (16) ***Insurance Premiums.*** The Administrative Agent shall have received confirmation that all premiums payable in respect of all Insurance have been paid by the Borrower or the Contractor.

8.3 Waiver of a Condition Precedent

The conditions stated in Sections 8.1 and 8.2 are inserted for the sole benefit of the Administrative Agent and Lenders and may be waived by the Administrative Agent with the consent of all the Lenders in the case of Section 8.1 and the Required Lenders in the case of Section 8.2, in whole or in part, with or without terms or conditions, in respect of all or any portion of the Loans, without affecting the right of the Lenders to assert terms and conditions in whole or in part in respect of any other Loan.

SECTION 9 – COVENANTS

9.1 Affirmative Covenants of the Borrower

While any amount owing under this Agreement or any of the other Loan Documents remains unpaid, or the Administrative Agent or the Lenders have any obligations under this Agreement or any of the other Loan Documents, the Borrower covenants with the Administrative Agent and each Lender as follows:

- (1) ***Payment.*** The Borrower shall duly and punctually pay or cause to be paid all sums of money due and payable by it under this Agreement and the other Loan Documents on the dates, at the places and in the currency and the manner set forth herein and therein.
- (2) ***Use of Proceeds.*** The Borrower shall use all proceeds of Loans solely for the purposes set out in Section 3.4.
- (3) ***Existence.*** The Borrower shall do or cause to be done all things necessary to remain a single-purpose entity. The Borrower shall and shall ensure that each of the other Major Project Parties shall do or cause to be done all things necessary or desirable to keep in full force and effect

its respective existence and all Consents necessary to own its respective properties and assets and perform its respective obligations under the Transaction Documents.

(4) ***Compliance with Laws.*** The Borrower shall comply, and shall cause the Contractor to comply at all times with the requirements of Applicable Law, including all Environmental Laws, with respect to the Borrower, the Contractor, the Work or the Collateral, except where such compliance is the responsibility of CMH under the Material Project Documents, and, in any event, where the failure to do so could reasonably be expected to give rise to or result in a Material Adverse Effect or a risk of criminal or quasi-criminal liability being imposed upon the Borrower, the Contractor, the Administrative Agent or any Lender.

(5) ***Consents.*** The Borrower shall obtain, and shall cause the Contractor to obtain (to the extent not in existence on the Financial Closing Date) as and when required, maintain in good standing and comply in all material respects with, all Consents required for it and them (i) to perform their obligations under the Material Project Documents and to complete the Work, other than Consents which CMH is responsible for obtaining and/or maintaining under the Material Project Documents, and (ii) except where the failure to do so would not result in a Material Adverse Effect, to carry on their respective businesses.

(6) ***Litigation.*** Promptly upon becoming aware thereof, the Borrower shall, and shall cause the Contractor to (a) give notice to the Administrative Agent of any litigation, proceeding or dispute, threatened or commenced against the Borrower, the Contractor, CMH or any other Person in connection with the Work, the Material Project Documents or the Loan Documents, (b) advise the Administrative Agent of the extent to which any adverse determination is covered by insurance, (c) provide all reasonable information requested by the Administrative Agent concerning the status of such litigation, proceeding or dispute, and (d) unless CMH has carriage of such litigation, proceeding or dispute under the Material Project Documents, take all necessary action to defend any material litigation in relation to the Work or any of their respective properties or assets, which has a reasonable likelihood of being successful, and, if adversely determined, could reasonably be expected to have a Material Adverse Effect.

(7) ***Pay Claims and Taxes.*** The Borrower shall promptly pay and discharge when due all Taxes charged to or payable by it and all obligations which may result in Liens (other than Permitted Liens) on its properties or assets unless the relevant Tax or obligation is subject to a Permitted Contest or where the failure to do so would not reasonably be likely to have a Material Adverse Effect. The Borrower shall notify the Administrative Agent of each contest promptly upon forming the intention to contest the relevant payment, Tax or obligation.

(8) ***Performance of Covenants and Work.*** The Borrower shall, and shall cause the Contractor to perform all of their respective covenants and obligations under the Material Project Documents and the Loan Documents to which either of them is party in all material respects and to perform the Work in accordance with Applicable Law and the Material Project Documents.

(9) ***Maintenance of Security.*** The Borrower shall maintain the existence and priority of the Liens created under the Security Documents for the benefit of the Administrative Agent and the Lenders.

- (10) ***Environmental Matters.*** The Borrower shall, and shall cause the Contractor to:
- (a) maintain proper procedures to monitor its compliance with Environmental Laws;
 - (b) comply with all of its obligations in respect of Hazardous Materials under the Project Agreement, including its obligations thereunder with respect to compliance with Environmental Laws;
 - (c) diligently cure or have dismissed to the reasonable satisfaction of the Lenders any actions and proceedings described in Section 9.1(14)(c) for which the Borrower or the Contractor are responsible under Applicable Law or under any Material Project Document; and
 - (d) provide such information and certificates which the Administrative Agent may reasonably request from time to time to evidence compliance with this Section 9.1(10).
- (11) ***Construction Lien Legislation.*** The Borrower shall, and shall cause the Contractor to comply with the *Construction Lien Act* (Ontario) (including any requirement to maintain holdbacks) and pay or cause to be paid when due all claims and demands of contractors, subcontractors, labourers, suppliers of material, builders, workmen and others engaged in the performance of the Work which, if unpaid, might result in the creation of a construction Lien or analogous Lien against the Work or any part thereof or on the revenue, income or profits arising therefrom, and if registered, such Lien or claim shall be duly discharged or vacated, unless, with the exception of any Liens or claims which are required to be discharged or vacated under the Material Project Documents, in any of the preceding circumstances there is a Permitted Contest and adequate security has been posted.
- (12) ***Remedial Plan.*** In the event that the Lenders' Consultant certifies at any time that:
- (a) Substantial Completion will not occur on or before the then-Scheduled Substantial Completion Date; or
 - (b) the Interim Completion Payment will not be received by the Scheduled Interim Completion Date and a Cost to Complete Deficiency exists,
- and that a remedial plan is required, the Borrower shall deliver to the Administrative Agent, within 30 days of such certification by the Lenders' Consultant, a remedial plan showing that Substantial Completion shall occur prior to the Lender Longstop Date and otherwise in form and substance satisfactory to the Lenders' Consultant and the Lenders (a "**Remedial Plan**").
- (13) ***Remedial Action Under Project Agreement.*** The Borrower shall consult with the Administrative Agent and the Lenders' Consultant when preparing any remedial plan of action required under the Project Agreement.

(14) ***Notices and Information.*** The Borrower shall, and shall cause the Contractor to provide, immediately upon obtaining knowledge or receipt thereof, notice to the Administrative Agent of, and, where applicable, a copy of any notices received in respect of:

- (a) the occurrence of any Default or Event of Default, setting forth its details and the action taken or to be taken to remedy it;
- (b) the occurrence of any termination, any material default or any event of default under any Material Project Document;
- (c) any material notices under the Material Project Documents, including, without limitation, (i) notices of default or events of default under the Material Project Documents, (ii) notice of any Change Orders or Change Directives that have a value in excess of \$100,000, (iii) notices of any material design issue in respect of any design contingency, (iv) notices of matters to be referred to dispute resolution under the Material Project Documents, (v) notice of any decision of any project mediator, adjudicator, arbitrator or court regarding any material dispute under the Material Project Documents, (vi) orders regarding the suspension of the Work, (vii) notices of the Minor Deficiencies List and the CMH Holdback, (viii) notices regarding the exercise by CMH of any right of set-off or deduction under the Material Project Documents, (ix) notice of any claim by CMH under any indemnities in the Material Project Documents, (x) any environmental notices from any Governmental Authority or any pending or threatened action, claim or proceeding involving any violation of Environmental Laws with respect to the Project, (xi) notice of any casualty with respect to the Work in excess of \$1,000,000, condemnation, delay of the Project or Force Majeure, (xii) notices of the Interim Completion Payment, Substantial Completion and Final Completion, received by the Borrower or the Contractor from CMH or any other Person (other than the Administrative Agent) party to any of the Material Project Documents, (xiii) notice of the occurrence of any Delay Event, Compensation Event or event of Force Majeure (each as defined in the Project Agreement), and (xiv) other notices received by the Borrower or the Contractor from CMH in respect of the Project;
- (d) any notice, demand or order, other than a notice relating to a Permitted Lien, alleging a violation by the Borrower, the Contractor or any Subcontractor of Applicable Law in connection with the performance of the Work;
- (e) the occurrence of an event or circumstance which could reasonably be expected to have a Material Adverse Effect;
- (f) any previously undisclosed material action, suit, litigation or other proceeding which has been commenced or threatened against any Major Project Party or the Work which would have a reasonable likelihood of succeeding if pursued and, if adversely determined, could reasonably be expected to have a Material Adverse Effect;
- (g) any proposal to suspend or abandon the Work;

- (h) any notices of default that could reasonably be expected to result in termination of a Material Subcontract received from any Subcontractor under such Material Subcontract;
 - (i) the occurrence of any event described in either of Sections 10.1(7) or 10.1(8) in respect of the Borrower or the Contractor;
 - (j) any material change to the anticipated aggregate Construction Costs, Borrowing Costs and Transaction Expenses;
 - (k) any failure by the Borrower or the Contractor to keep or maintain any required Consent relating to the Work; and
 - (l) the commencement of any proceeding for the expropriation of any property or assets of the Borrower or the Contractor with respect to the Work.
- (15) ***Notice of Change Orders and Change Directives.*** The Borrower shall provide, immediately upon obtaining knowledge or receipt thereof, notice of any Change Order (as defined in the Construction Contract), Change Directive (as defined in the Construction Contract) or any other variation of the Construction Contract that alters the Cost of the Work under the Construction Contract to Zurich Insurance Company Ltd. and any other surety of the Contractor Bonds, with a copy thereof to the Administrative Agent.
- (16) ***Consultation Regarding Change Orders and Change Directives.*** The Borrower shall, and shall cause the Contractor to consult with the Lenders' Consultant regarding any Change Orders or Change Directives which would reasonably be expected to cost in excess of \$1,000,000 individually or, when aggregated with all previous Change Orders or Change Directives, \$2,500,000 in the aggregate, when determining the appropriate time and cost adjustments resulting from the implementation of such Change Order or Change Directive. The Administrative Agent agrees to consult with the Borrower and the Lenders' Consultant in calculating any Break Costs and Swap Breakage Costs resulting from the implementation of such Change Order or Change Directive. The Borrower shall not agree to or undertake, or permit the Contractor to agree to or undertake any material Change Orders or Change Directives without seeking the Administrative Agent's consent (acting on the instructions of the Required Lenders) where such consent is required in accordance with section 4.1(c) of the Lenders' Direct Agreement. The Administrative Agent shall provide its consent to a Change Order or Change Directive with respect to which its consent is required if (a) the Lenders' Consultant has certified that any extension of time or compensation for additional costs or expenses provided for in such Change Order or Change Directive is sufficient and (b) CMH has confirmed to the Administrative Agent in writing (and such confirmation is satisfactory to the Administrative Agent acting reasonably), that it has made adequate provision with respect to the funding of such Change Order or Change Directive. The Borrower shall provide a copy of any Change Directive to the Lenders' Consultant and the Administrative Agent promptly after receipt or delivery thereof. If a Change Directive would have required the consent of the Administrative Agent if it were a Change Order, the Administrative Agent may participate in any dispute resolution procedure related to such Change Directive and the Borrower may not settle the amount to be received for such Change Directive without the Consent of the Administrative Agent (acting on the instructions of the Required Lenders).

(17) ***Initiation of Dispute Resolution.*** The Borrower shall, and shall cause the Contractor to initiate dispute resolution procedures under the Project Agreement regarding any matter specified by the Required Lenders, acting reasonably, and shall, or shall cause the Contractor to contest such matter pursuant to such dispute resolution procedures at its own expense. The Borrower shall, and shall cause the Contractor, as the case may be, to keep the Administrative Agent fully apprised of the status of such proceedings and shall provide the Administrative Agent with all information with respect to such proceedings as the Administrative Agent shall reasonably request. If so required by the Required Lenders, acting reasonably, the Borrower shall, or shall cause the Contractor to appeal any decision or award resulting from one level of the dispute resolution procedures under the Project Agreement to the next level until a final determination of the matter is made by an arbitrator or a court, as the case may be.

(18) ***Enforcement of Rights.*** The Borrower shall, and shall cause the Contractor to, enforce all of its rights against each other party to the Material Project Documents where the failure to do so could reasonably be expected to have a Material Adverse Effect. The failure to enforce rights to payment will be deemed to have a Material Adverse Effect.

(19) ***Updates to Financial Model.*** The Borrower shall deliver or cause to be delivered to the Administrative Agent and the Lenders' Consultant an updated Financial Model, in the same form as the form available at the Financial Closing Date or in such other form as may be agreed by the Administrative Agent acting reasonably, which shall be prepared in accordance with Schedule 9.1(19), (i) as soon as available and, in any event, no later than sixty (60) days before the close of each Fiscal Year, unless the Borrower has certified in the most recent Compliance Certificate delivered to the Administrative Agent that no changes have been made to the most recent Financial Model delivered to the Administrative Agent, (ii) no later than the tenth (10th) Business Day after the date upon which the Borrower notifies the Administrative Agent or the Administrative Agent notifies the Borrower that in its (or the Lenders' view) if a new Financial Model were prepared, it would differ from the current Financial Model, and (iii) contemporaneously with the requirement to deliver, and the determination of, an amended Financial Model under the Project Agreement or the Construction Contract.

(20) ***Collaborate with Lender's Consultant.*** The Borrower shall collaborate with the Lenders' Consultant in reviewing the progress of the Work and shall provide to the Administrative Agent and the Lenders' Consultant copies of all notices from CMH and all copies received from CMH or the Consultant or evaluations of the Work and the timing thereof.

(21) ***Project Insurance and General Insurance Requirements.***

- (a) The Borrower shall maintain, or shall cause the Contractor to maintain, at its sole cost and expense, at a minimum, the Project Insurance and comply in all material respects with all Insurance Requirements with respect thereto.
- (b) The Borrower shall provide to the Administrative Agent a broker's binder as soon as reasonably practicable and in any event no later than 30 days following Financial Close.

- (c) The Borrower shall provide, or shall cause the Contractor to provide, to the Administrative Agent copies of every policy of Insurance or such other evidence of Insurance as may be reasonably required (including any policies replacing any of the policies required under Section 9.1(22)) within ten (10) days of such Insurance becoming effective, together with evidence of payment of the premiums thereunder. If the Borrower or the Contractor defaults in insuring or continuing to maintain the Insurance, the Administrative Agent may insure against any risk in respect of which such default has occurred and recover any premiums from the Borrower as part of the Obligations. On the Financial Closing Date and at least thirty (30) days prior to expiry of the policies, the Borrower shall deliver or cause to be delivered to the Administrative Agent satisfactory evidence from the Borrowers' insurance agent confirming that the insurance premiums then due and payable with respect to the policies of Insurance then in place have been paid, that such policies are in force, and that, with respect to the Additional Insurance, such policies meet the insurance requirements set forth in Section 9.1(22). The Borrower shall also furnish or cause to be furnished a certificate of insurance evidencing that all the Insurance coverages have been renewed and continue to be in full force and effect for such period as shall be then stipulated, and (i) specifying the insurers with whom the Insurance is carried and (ii) containing such other certifications and undertakings as are customarily provided to lenders, as reasonably requested by the Administrative Agent. Further, upon the annual expiry of each policy of Insurance, the Administrative Agent shall have the right, but not the obligation, to appoint the Lenders' Insurance Advisor to confirm the efficacy and sufficiency of the Insurance (and the evidence thereof) provided by the Borrower, the Contractor or their insurance brokers or insurers as complying with the insurance requirements under the Material Project Documents and this Agreement. The supply to the Administrative Agent of any draft insurance policy or certificate of insurance or other evidence of compliance with this Section 9.1(21) shall not imply acceptance by the Administrative Agent for the Lenders that the extent of insurance coverage is sufficient and its terms are satisfactory.
- (d) Any direct or indirect damage insurance policies included in the Project Insurance shall:
- (i) name the Borrower, CMH and the Contractor as a named insured and include as additional insureds all those required to be insureds under the Material Project Documents;
 - (ii) name the Administrative Agent and the Lenders as mortgagee and loss payee and include a standard mortgage clause as approved by the Insurance Bureau of Canada;
 - (iii) provide that no cancellation or adverse material change therein, for any reason whatsoever, shall take effect unless the insurer concerned has given the Administrative Agent not less than sixty (60) days' prior written notice of such proposed action, except in connection with cancellation for non-payment of premium in which case the insurer shall be required to give

- not less than fifteen (15) days prior written notice as per the statutory conditions;
- (iv) contain a waiver of the insurer's rights of subrogation against the Administrative Agent and the Lenders;
 - (v) contain a breach of conditions clause;
 - (vi) otherwise be in such form as the Administrative Agent shall require, acting reasonably.
- (e) Any third party liability insurance policies (excepting professional liability and automobile liability) shall:
- (i) name each of the Borrower and the Contractor as a named insured;
 - (ii) name the Administrative Agent, the Lenders and CMH as additional insureds;
 - (iii) provide that no cancellation or adverse material change therein, for any reason whatsoever, shall take effect unless the insurer concerned has given the Administrative Agent not less than sixty (60) days' prior written notice of such proposed action, except in connection with cancellation for non-payment of premium where the insurer shall be required to give not less than fifteen (15) days' prior written notice to the Administrative Agent;
 - (iv) contain a waiver of the insurer's rights of subrogation against the Administrative Agent and all Lenders;
 - (v) contain a cross liability and a severability of interests clause;
 - (vi) provide that the Administrative Agent and the Lenders shall have no responsibility for premiums; and
 - (vii) otherwise be in such form as the Administrative Agent shall require, acting reasonably.
- (f) All Insurance required under this Section 9.1(21) will be (i) placed with insurance companies having a minimum AM Best rating of not less than A VIII and licensed to do business in the Province of Ontario, and (ii) subject to deductibles as are customary for projects of a similar kind and size and, in any event, as acceptable to the Lenders, upon consultation with the Lenders' Insurance Advisor.
- (g) Neither failure to comply nor full compliance with the insurance provisions of this Agreement shall relieve the Borrower of its liabilities and obligations under this Agreement.

- (h) The Borrower shall, upon obtaining knowledge thereof, provide, or cause to be provided, prompt notice in writing to the Administrative Agent of any event which could give rise to a claim under any policy of Insurance in excess of \$1,000,000.
- (i) The Borrower shall deliver to the Administrative Agent notice of (i) any cancellation, change or reduction in any policy of Insurance, (ii) any policy of Insurance becoming void or voidable, or (iii) any other circumstance or correspondence relating to any policy of Insurance which may have a Material Adverse Effect, and upon receipt of any such notice the Administrative Agent shall have the right, but not the obligation, to appoint the Lenders' Insurance Advisor to advise the Administrative Agent.
- (j) All insurance proceeds payable under the Project Insurance shall be paid and distributed in accordance with the Insurance and Bonding Trust Agreement.

(22) ***Additional Insurance.***

- (a) The Borrower shall maintain, or shall cause the Contractor or applicable Subcontractor to maintain, at its sole cost and expense, with effect from the Financial Closing Date until all Obligations of the Borrower have been satisfied in full and the termination of this Agreement, at a minimum, the Additional Insurance that is described in Schedule 9.1(22) and comply in all material respects with all Insurance Requirements with respect thereto.
- (b) All Additional Insurance set forth in Schedule 9.1(22) will be (i) placed with insurance companies having a minimum AM Best rating of A VIII and licensed to do business in the Province of Ontario, and (ii) subject to deductibles as are customary for projects of a similar kind and size and, in any event, as acceptable to the Lenders, upon consultation with the Lenders' Insurance Advisor.
- (c) Any third party liability insurance policies referred to in Schedule 9.1(22), shall:
 - (i) name each of the Borrower and the Contractor as a named insured;
 - (ii) name the Administrative Agent, the Lenders and CMH as additional insureds;
 - (iii) provide that no cancellation or adverse material change therein, for any reason whatsoever, shall take effect unless the insurer concerned has given the Administrative Agent not less than sixty (60) days' prior written notice of such proposed action, except in connection with cancellation for non-payment of premium where the insurer shall be required to give not less than fifteen (15) days' prior written notice to the Administrative Agent;
 - (iv) contain a waiver of the insurer's rights of subrogation against the Administrative Agent and all Lenders;
 - (v) contain a cross liability and a severability of interests clause;

- (vi) provide that the Administrative Agent and the Lenders shall have no responsibility for premiums; and
 - (vii) otherwise be in such form as the Administrative Agent shall require, acting reasonably.
- (23) **Material Project Documents.** The Borrower shall promptly, and in any event not more than five (5) Business Days after the receipt or delivery thereof, provide to the Administrative Agent from time to time during the Term, true and complete copies of all Material Project Documents entered into after the Financial Closing Date by the Borrower or the Contractor relating to the Work, together with any and all amendments to such documents.
- (24) **Borrower Proceeds Account.** The Borrower shall establish and at all times maintain the Borrower Proceeds Account in accordance with the terms of the Blocked Account Agreement and this Agreement. In the event that the Blocked Account Agreement is terminated, the Borrower shall cause a new account to be opened at a replacement bank acceptable to the Lenders and direct the Administrative Agent to transfer all amounts on deposit in the Borrower Proceeds Account into such new account, provided that any such account shall be subject to a blocked account agreement between the Administrative Agent, the Borrower and the replacement bank on terms and conditions satisfactory to the Administrative Agent, the Borrower and the Lenders, acting reasonably.
- (25) **Subcontractors.** The Borrower shall and shall cause the Contractor to pay all Subcontractors on time according to the terms and conditions set out in the Project Agreement.
- (26) **CMH Holdbacks.** The Borrower shall cause the Contractor to pay to the Borrower: (i) all amounts retained by CMH as part of the CMH Holdback, and (ii) all delay damages and increased interest costs not covered by the Interim Completion Payment and the Substantial Completion Payment or by the amount of the increased Cost of the Financing for the Project as a result of any delays in the performance of the Work for which CMH is not responsible.
- (27) **Lien Holdbacks.** Provided that there are no construction Liens or trust claims by Subcontractors or the Contractor outstanding at the time of the payment of the Legislative Holdback by CMH, the Borrower shall cause the Contractor to instruct the Borrower to pay any portion of the Legislative Holdback to the Administrative Agent in respect of any outstanding indebtedness under this Agreement and the other Loan Documents.
- (28) **Additional CMH Payments.** The Borrower shall cause the Contractor to pay to the Borrower any portion of the Additional CMH Payments relating to the increased Cost of the Financing for the Project received by the Contractor.
- (29) **Performance Security.**
- (a) The Borrower shall comply, and shall cause the Contractor to comply, with the terms of the Contractor Bonds.
 - (b) The Borrower shall ensure, and shall cause the Contractor to ensure, that the Contractor Bonds remain in full force and effect.

- (c) If any Subcontractor party to a Material Subcontract posts a bond or similar security in favour of the Borrower or the Contractor in connection with the Work, then the Borrower shall, and shall cause the Contractor to ensure that such bond names the Administrative Agent for the benefit of the Lenders as an obligee under such bond and the Borrower shall, and shall cause the Contractor to promptly notify the Administrative Agent of the amount and terms of such bond or similar security.

(30) ***Implementation of Work; Assignments.***

- (a) The Borrower shall, and shall cause the Contractor to ensure that the Work is implemented and carried out in accordance with the Project Agreement, the Construction Contract and the Construction Budget to the extent that the failure to do so could reasonably be expected to have a Material Adverse Effect.
- (b) Where the Borrower or the Contractor has consent rights with respect thereto and the right to withhold such consent, the Borrower shall not, and shall not permit the Contractor to consent to or permit any assignment, novation or other transfer of any Material Project Document to which the Borrower or the Contractor, respectively, are parties.

(31) ***Assignable Subcontract Agreements.*** The Borrower (a) shall, and shall cause the Contractor to ensure that each Subcontractor which enters into a Material Subcontract shall also enter into an Assignable Subcontract Agreement in respect thereof, (b) shall use commercially reasonable efforts to cause Construction Subcontracts with the Subcontractors listed in Schedule 1.1(147) to be entered into and Assignable Subcontract Agreements to be delivered to the Administrative Agent in respect thereof as soon as possible, and in any event no later than 90 days after the Financial Closing Date.

(32) ***Defend Title.*** The Borrower will defend the title of its property and assets against the claims and demands of all Persons other than the Administrative Agent, the Lenders and holders of Permitted Liens.

(33) ***Monthly Meeting Attendance.*** The Borrower shall cause the Contractor to provide to the Lenders' Consultant reasonable advance notice of the meetings to be attended by the Contractor in respect of the Work and shall cause the Contractor to invite the Lenders' Consultant to attend such meetings. If the Lenders' Consultant is unable for any reason to attend any such meeting, the Borrower shall cause the Contractor, upon the request of the Lenders' Consultant, to provide a complete set of any minutes of such meeting to the Lenders' Consultant.

(34) ***Know Your Client Information.*** The Borrower shall provide to the Administrative Agent and to each Lender all information required to complete their respective know-your-client requirements pursuant to applicable anti-money laundering and anti-terrorism financing legislation.

(35) ***Further Assurances.*** The Borrower shall, and shall cause the Contractor to, at its cost and expense, (a) cause to be promptly and duly taken, executed, acknowledged and delivered all such further acts, documents and assurances as the Administrative Agent or any Lender reasonably may request from time to time in order to carry out the intent and purposes of this Agreement, the Loan Documents and the Material Project Documents; and (b) cause all financing statements, security agreements and other documents to be recorded or filed at such places and times in such manner, and

will take all such other actions or cause such actions to be taken, as may be necessary, or as may be reasonably requested by the Administrative Agent or any Lender, in order to establish, preserve, protect and perfect the Liens granted in favour of the Administrative Agent for the benefit of the Lenders under the Security Documents.

9.2 Negative Covenants of the Borrower

While any amount owing under this Agreement or any of the other Loan Documents remains unpaid, or the Administrative Agent or the Lenders have any obligations under this Agreement or any of the other Loan Documents, the Borrower covenants with the Administrative Agent and each Lender that it shall not without the prior consent of the Required Lenders:

- (1) ***Restriction on Use of Credit Facility.*** Use or permit to be used any of the Credit Facility for any purpose other than the purposes specified in this Agreement.
- (2) ***Debt.*** Create, incur, assume, suffer or permit to exist any Debt except for Permitted Debt.
- (3) ***Business.*** Undertake or engage in any business other than the undertaking of the Project in accordance with the Material Project Documents or to form, hold or acquire any interest in any other company, partnership, trust, joint venture or other association (whether incorporated or unincorporated).
- (4) ***No Liens.*** Permit the creation of or allow to exist any Liens against the Borrower's interest in the Collateral, the Work, any Material Project Document, any other property or assets of the Borrower or any income or profit therefrom or any proceeds thereof, other than Permitted Liens, and shall ensure that the Contractor does not permit the creation of or allow to exist any Liens against the Contractor's interest in the Work or any Material Project Document other than Permitted Liens.
- (5) ***Negative Pledge Agreements.*** Assume, create, incur or permit to exist any contract, agreement or understanding (other than this Agreement and the Security Documents) which in any way prohibits or restricts the granting, conveying, creation or imposition of any Lien on any of the property of the Borrower, or which requires the consent of or notice to other Persons in connection therewith except under the Material Project Documents in accordance with their terms.
- (6) ***Distributions.*** Make any Distributions.
- (7) ***No Transfer of Assets.*** Except for Permitted Disposals, sell, transfer, lease or dispose of any property or assets relating of the Borrower or of the Contractor's interest in the Project Documents (whether in a single transaction or a series of transactions and whether voluntary or involuntary) without the prior written consent of the Lenders, acting reasonably.
- (8) ***No Change in Control.*** Permit a Change in Control of the Borrower, without the prior written consent of the Lenders.
- (9) ***No Investment.*** Make or own, or permit to exist, directly or indirectly, any investment in, or make, hold or accrue any loans or advances of money to or indebtedness of any other Person through the direct or indirect holding of securities or otherwise.

(10) **Fundamental Change.** (a) Undertake or engage directly or indirectly in any business activity other than the undertaking of the Work in accordance with the Material Project Documents; (b) change the Borrower's Fiscal Year end from December 31 to another fiscal year end; (c) materially amend the Borrower's articles of incorporation or other constating documents; or (d) create or acquire any Subsidiaries.

(11) **No Transfer of Loan Documents.** Assign or transfer all or any part of its rights or obligations under the Loan Documents or Material Project Documents to which it is a party (except pursuant to the Assignable Subcontract Agreement for Construction Contract and the Security Documents), nor permit the Contractor to assign or transfer all or any part of its rights or obligations under the Loan Documents and Material Project Documents to which it is a party (except pursuant to the Assignable Subcontract Agreement for Construction Contract and the Security Documents).

(12) **Change of Name or Address.** Change, or permit the Contractor to change its corporate name, its jurisdiction of formation, its registered office, its chief executive office or its principal place of business within Ontario without giving the Administrative Agent at least thirty (30) days prior written notice.

(13) **Investments and Financial Assistance.** Make any Investments or grant any Financial Assistance.

(14) **Expenditures.** Make, or permit the Contractor to make any expenditures (other than in respect of or in relation to any Cost Overruns which are funded by the Contractor and in connection with Change Orders as permitted pursuant to the Lenders' Direct Agreement) relating to the Work which are materially inconsistent with the Financial Model or the Construction Budget.

(15) **Pension and Benefit Plans.** Create or maintain any Canadian Pension Plans or Canadian Benefit Plans.

(16) **Modifications of Material Project Documents.** Without the prior written consent of the Lenders, acting reasonably, and subject to Section 9.1(15), (a) terminate, repudiate, vary, alter, amend, supplement, surrender, revise or modify any Material Project Document other than as permitted pursuant to the Lenders' Direct Agreement, (b) waive any default or breach under any Material Project Document, (c) take any other action in connection with any Material Project Document that could reasonably be expected to have a Material Adverse Effect or (d) permit the Contractor to do or consent to any of the foregoing; provided that the Borrower or the Contractor may waive any default or breach under a Material Subcontract provided such waiver could not reasonably be expected to have a Material Adverse Effect.

(17) **No Contracts.** (i) Enter into any material contracts or agreements, other than (a) the Loan Documents, the Material Project Documents or documents incidental or ancillary thereto without the prior written consent of the Lenders, acting reasonably, or (b) the management and/or consulting agreements relating to the management of the Borrower and/or the Project, an executed copy of which has been provided to the Administrative Agent on or prior to the Financial Closing Date or (ii) permit the Contractor to enter into any material contracts or agreements related to the Project, other than the Loan Documents and Material Project Documents to which the Contractor is party or

any documents incidental or ancillary thereto without the prior written consent of the Lenders, acting reasonably.

(18) **Transactions with Contractor.** The Borrower shall not enter into any transactions with the Contractor (or any Affiliate thereof) other than the transactions contemplated by this Agreement, the Loan Documents, the Material Project Documents or documents incidental or ancillary thereto unless such transactions contain terms no less favourable to the Borrower than those that would be included in an arms' length transaction entered into by a prudent person with a non-affiliated third party.

(19) **Settlement of Claims.** After the occurrence and during the continuance of a Default or Event of Default, agree or permit the Contractor to agree to any settlement in respect of liquidated damages, warranty claims or other claims relating to the Work without the prior written consent of the Lenders, acting reasonably, unless such claims are to be funded by proceeds of Insurance, CMH or the Contractor.

(20) **No Amalgamation.** Amalgamate or consolidate with or into any other person or enter into an arrangement or plan of arrangement with any other person.

(21) **No Accounts.** Have any bank accounts or have any interest in any bank accounts other than the Project Accounts.

(22) **Insurance.** Do anything, or permit anything to be done (including by the Contractor), which would result in any policy of Insurance required under the Project Agreement or hereunder lapsing or otherwise being rendered void, voidable or ineffective, vary or permit to be varied in any material respect, or cancel or permit to be cancelled any such policy of Insurance or take any action that would reduce the amount of coverage under any such policy of Insurance.

(23) **Insolvency Proceedings.** Commence, or permit the Contractor to commence, any action, proceeding or other course of action described in Section 10.1(7) without giving the Administrative Agent and Lenders at least thirty (30) days prior written notice.

(24) **No Swaps.** Other than the Interest Rate Swaps, engage in any transaction involving interest rate, currency, commodity, equity, credit or other swaps, options, futures, caps, collars, floors swaptions, puts calls or any similar contracts or derivative transactions for speculative purposes or in any other case without the prior written consent of the Lenders, acting reasonably.

(25) **No Repudiation of Security.** Take any action to repudiate its obligations under this Agreement and the Security Documents, as the case may be, nor shall it assert in any manner that it has no obligations, under any or all of this Agreement and the Security Documents, as the case may be.

(26) **Material Project Documents.** Do or permit any act or omission that constitutes or which would result in an event of default under the Material Project Documents which could reasonably be expected to have a Material Adverse Effect.

(27) ***Lenders' Consultant Services Agreement.*** Amend or waive any material provision of, or terminate, the services agreement with the Lenders' Consultant without the prior written consent of the Lenders.

9.3 Accounting, Financial Statements and Other Information

While any amount owing under this Agreement or any of the other Loan Documents remains unpaid, or the Administrative Agent or the Lenders have any obligations under this Agreement or any of the other Loan Documents, the Borrower covenants with each Lender and the Administrative Agent as follows:

(1) ***General.*** The Borrower shall, and shall cause the Contractor to, keep, or cause to be kept, proper and adequate records and books of account in which true and complete entries are made in accordance with GAAP. The Borrower shall, and shall cause the Contractor to (i) provide all information reasonably requested by the Administrative Agent or the Lenders' Consultant in relation to the assets, liabilities, financial condition, business, operation or prospects of the Borrower, the Contractor or the Work promptly following request therefor and (ii) provide the Administrative Agent and the Lenders' Consultant with reasonable rights of inspection of and access to the Work and to such books, records, premises and other information that any of the foregoing may from time to time reasonably require in connection with the Loan Documents or the Material Project Documents in order to ensure that each such party is able to carry out all of its duties and obligations thereunder or in connection therewith.

(2) ***Quarterly Reports.*** The Borrower shall provide, or shall cause to be provided to the Administrative Agent, copies of the following reports on a quarterly basis, promptly upon availability, and in any event within forty-five (45) days of the end of each of the first three fiscal quarters in each Fiscal Year of the Persons listed below:

- (a) the unaudited unconsolidated financial statements of the Borrower, including an unaudited balance sheet and an unaudited statement of income for each such fiscal quarter, all prepared in accordance with GAAP on a consistent basis (except as otherwise noted);
- (b) the unaudited unconsolidated financial statements of the Contractor, including an unaudited balance sheet and an unaudited statement of income for each such fiscal quarter, all prepared in accordance with GAAP on a consistent basis (except as otherwise noted); and
- (c) a Compliance Certificate.

(3) ***Annual Reports.*** The Borrower shall provide, or shall cause to be provided to the Administrative Agent, copies of the following reports, promptly upon availability, and in any event within one-hundred and twenty (120) days of the end of the Fiscal Year of the Persons listed below:

- (a) (i) the annual audited, unconsolidated financial statements of the Borrower consisting of a balance sheet, statements of income and of surplus, and a statement of changes in financial position, all prepared in accordance with GAAP applied on a basis consistent with that of the preceding year (except as otherwise noted) and subject to a

review engagement and (ii) a certificate of the auditors for the Borrower setting forth that they have examined such statements and have conducted a general review of accounting procedures and such tests of accounting records and other supporting evidence as they consider necessary and confirming that in their opinion such statements present fairly the financial position of the Borrower and the results of the Borrower's operations for the fiscal year reported on and have been prepared in accordance with GAAP applied on a basis consistent with that of the preceding year (except as otherwise noted);

- (b) (i) the annual audited, unconsolidated financial statements of the Contractor consisting of a balance sheet, statements of income and of surplus, and a statement of changes in financial position, all prepared in accordance with GAAP applied on a basis consistent with that of the preceding year (except as otherwise noted) and (ii) a certificate of the auditors for the Contractor setting forth that they have examined such statements and have conducted a general review of accounting procedures and such tests of accounting records and other supporting evidence as they consider necessary and confirming that in their opinion such statements present fairly the financial position of the Contractor and the results of the Contractor's operations for the fiscal year reported on and have been prepared in accordance with GAAP applied on a basis consistent with that of the preceding year (except as otherwise noted).

(4) ***Other Information.*** The Borrower shall, and shall cause the Contractor to, provide the Administrative Agent with:

- (a) upon reasonable request from time to time therefor, such other reports and information regarding the financial condition, business, property and operations of the Borrower or the Contractor or regarding the Work;
- (b) written notice of any litigation pending or, to the Borrower's knowledge, threatened against Borrower or Contractor involving claims against Borrower, Contractor or the Project in excess of \$250,000 (provided that in case of the Contractor such Claims relate to the Project) in the aggregate or involving any material, injunctive, declaratory or other equitable relief;
- (c) written notice of any dispute or disputes which may exist between Borrower, Contractor and CMH or any Governmental Authority in relation to the Project and which involve (i) claims against Borrower or Contractor which in the aggregate exceed \$250,000; (ii) injunctive or declaratory relief; or (iii) failure to obtain when needed, revocation, material modification, suspension or the like of any Applicable Consent or imposition of additional material conditions with respect thereto;
- (d) promptly and, in any event within ten (10) Business Days after written request by the Administrative Agent, copies of any regular and periodic forms and reports (including material change reports) filed by the Borrower with any securities commission, regulatory authority or exchange or other Governmental Authority having jurisdiction over the issuance and sale of, and other matters relating to, the securities of the Borrower, to the extent applicable;

- (e) promptly following the occurrence thereof, a certificate from Borrower, in form and substance satisfactory to Administrative Agent and the Lenders' Consultant, that Substantial Completion has been achieved;
- (f) promptly following the occurrence thereof, a certificate from the Borrower, in form and substance satisfactory to Administrative Agent and the Lenders' Consultant, that Final Completion has been achieved; and
- (g) promptly following the occurrence thereof, a certificate of the Consultant confirming that Substantial Completion has been achieved.

(5) **Notices under Material Project Documents.** If Borrower is provided with a notice of default by the Borrower with respect to any of the Material Project Documents (each a "**Default Notice**"), Borrower shall provide as soon as reasonably possible thereafter, a copy of such Default Notice to Administrative Agent with a description of the applicable default or circumstance giving rise thereto, and a report indicating the status of such default or circumstance and the steps taken and to be taken (as applicable) to cure such default or circumstance. If such default or circumstance is not cured within five (5) Business Days after the receipt by Borrower of the Default Notice, Borrower will so advise Administrative Agent and thereafter will keep the Lenders' Consultant and Administrative Agent promptly informed with respect to the steps the Borrower is taking to cure such default.

(6) **Project Reports.** The Borrower shall deliver, and shall cause the Contractor to deliver, to the Administrative Agent and the Lenders' Consultant:

- (a) promptly copies of any Change Orders and Change Directives (as defined in the Project Agreement) issued under the Construction Contract and copies of any certificates, notices, reports or other documents issued by the Consultant and/or the Commissioning Agent (as defined in the Project Agreement) under or in connection with the Project Agreement; and
- (b) a construction report on or before the twentieth (20th) day of each month for the prior month until Final Completion has occurred, which report shall include (i) Construction Costs incurred in such prior month by major expense category; (ii) a description of any Cost Overruns detailing variances from the Construction Budget or Financial Model; (iii) the estimated dates of Substantial Completion and Final Completion; (iv) a calculation demonstrating that there is no Cost to Complete Deficiency; and (v) a description of material disputes with contractors, materialmen, suppliers or others and any related claims against Borrower.

(7) Each of the statements required by this Section 9.3 shall set forth in comparative form the corresponding figures for the corresponding period of the preceding fiscal period (if any), all in reasonable detail.

SECTION 10 – DEFAULT AND ENFORCEMENT

10.1 Events of Default

The occurrence of one or more of the following events or circumstances constitutes an Event of Default under this Agreement:

- (1) ***Non-payment of Principal, Interest or Fees.*** The Borrower or the Contractor fails to make when due, whether by acceleration or otherwise, any payment of principal, interest or Fees required to be made by the Borrower under this Agreement or any other Loan Document, unless such non-payment is due to a technical or clerical error and in any event such payment is made not later than two (2) Business Days after such payment became due and payable.
- (2) ***Non-payment of Fees or Other Amounts.*** The Borrower or the Contractor fails to make when due, whether by acceleration or otherwise, any payment of fees, costs or any other payment under this Agreement or any other Loan Document (other than payments contemplated in Section 10.1(1)) and such failure is not remedied within five (5) Business Days from the date on which the Borrower receives written notice of such failure from the Administrative Agent.
- (3) ***Breach of Covenants, etc.*** The Borrower fails to perform or observe:
 - (a) any term, condition, covenant or undertaking contained in Sections 6.5(1), 9.1(2), 9.1(3), 9.1(9), 9.1(11), 9.1(18), 9.1(30)(b) or Section 9.2, excluding 9.2(12);
 - (b) its covenants and undertakings contained in Sections 9.2(12), 9.3(2) or 9.3(3) and such failure is not remedied within seven (7) Business Days from the date on which the Borrower received written notice of such failure from the Administrative Agent; or
 - (c) any other term, condition, covenant or undertaking contained in this Agreement which is not otherwise specifically addressed in this Section 10.1 and that failure, if capable of being remedied, is not remedied within thirty (30) days from the date such failure came to the Borrower's Knowledge or the Borrower received written notice of such failure; provided that in the case of any such default which can be cured by due diligence but which cannot be cured within such thirty (30) day period, if the Borrower is at such time diligently pursuing the remediation of such default, the time to cure shall be extended for such further period as may be necessary to remedy the default with all due diligence, which further period shall not exceed thirty (30) days after the expiry of the initial 30 day cure period.
- (4) ***Representations and Warranties.*** Any representation, warranty or statement which is made by the Borrower or the Construction Contractor in any Loan Document or Material Project Document or which is contained in any certificate, written statement or written notice provided under or in connection with any Loan Document or which is deemed to have been made is untrue or incorrect when made or deemed to have been made and such inaccuracy of representation, warranty or statement, if capable of being remedied (in the reasonable opinion of the Agent), is not remedied (in the reasonable opinion of the Agent) within thirty (30) days of the earlier of (i) notice of the

relevant misrepresentation having been given to the Borrower by the Lenders; and (ii) the Borrower or the Contractor becoming aware of such inaccuracy.

(5) ***Cross-Default to Loan Documents and Contractor Support Agreement.*** The occurrence of an event of default under or material breach of any Loan Document that has not been cured, waived or otherwise remedied prior to the time at which the non-defaulting party is entitled to enforce its right to exercise any remedy in respect of such event of default or material breach under such Loan Document and any default by the Contractor of its obligation to pay Liquidated Damages or any other amount when due under the Contractor Support Agreement.

(6) ***Cross-Default to Material Project Documents.*** The occurrence of an event of default under or material breach of any Material Project Document to which the Borrower or the Contractor is a party (other than a Material Project Document which is also a Loan Document) by the Borrower or the Contractor that has not been cured, waived or otherwise remedied prior to the time at which the non-defaulting party is entitled to enforce its right to exercise any remedy in respect of such event of default or material breach under such Material Project Document.

(7) ***Voluntary Proceedings.*** The Borrower or the Contractor:

- (a) institutes proceedings for substantive relief in any bankruptcy, insolvency, debt restructuring, reorganization, readjustment of debt, dissolution, liquidation, winding-up or other similar proceedings (including proceedings under the *Bankruptcy and Insolvency Act* (Canada), the *Winding-up and Restructuring Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada), the incorporating statute of the relevant corporation or other similar legislation), including proceedings for the appointment of a trustee, interim receiver, receiver, receiver and manager, administrative receiver, custodian, liquidator, provisional liquidator, administrator, sequestrator or other like official with respect to the relevant corporation or all or any material part of its property or assets;
- (b) makes an assignment for the benefit of creditors;
- (c) is unable or admits in writing its inability to pay its debts as they become due or otherwise acknowledges its insolvency or commits any other act of bankruptcy or is taken to be insolvent under any applicable legislation;
- (d) voluntarily suspends the conduct of its business or operations;
- (e) or acquiesces to, or takes any action in furtherance of, any of the foregoing.

(8) ***Involuntary Proceedings.*** If any third party in respect of the Borrower or the Contractor:

- (a) makes any application under the *Companies' Creditors Arrangement Act* (Canada) or similar legislation;
- (b) files a proposal or notice of intention to file a proposal under the *Bankruptcy and Insolvency Act* (Canada) or similar legislation;

- (c) institutes a winding-up proceeding under *the Winding-up and Restructuring Act* (Canada), any relevant incorporating statute or any similar legislation;
- (d) presents a petition in bankruptcy under the *Bankruptcy and Insolvency Act* (Canada) or any similar legislation;
- (e) files, institutes or commences any other petition, proceeding or case under any other bankruptcy, insolvency, debt restructuring, reorganization, incorporation, readjustment of debt, dissolution, liquidation, winding-up or similar law now or hereafter in effect, seeking bankruptcy, liquidation, reorganization, dissolution, winding-up, composition or readjustment of debt of any of them, the appointment of a trustee, interim receiver, receiver, receiver and manager, administrative receiver, custodian, liquidator, provisional liquidator, administrator, sequestrator or other like official for any of them, or any material part of any of their respective assets or any similar relief; or
- (f) takes possession of, forecloses, seizes, retains, sells or otherwise disposes of, or otherwise proceeds to enforce security over, all or a substantial part of the assets of the Borrower or the Contractor or gives notice of its intention to do any of the foregoing,

and if the application, filing, proceeding, petition or case is not contested by *bona fide* action on the part of the applicable party and is not dismissed, stayed or withdrawn within thirty (30) days of commencement thereof.

(9) ***Failure to Maintain Existence.*** (a) The Borrower or the Contractor dissolves, liquidates, winds up or otherwise ceases to maintain its existence, (b) the Borrower sells, transfers or disposes of any of its property, assets or undertaking, other than as expressly permitted herein, or (c) the Contractor sells, transfers or disposes of any of its interest in the Borrower, the Project or the Material Project Documents, other than as expressly permitted in the Material Project Documents.

(10) ***Judgment.*** A judgment in excess of \$200,000 is levied or enforced against the Borrower or a judgment in excess of \$5,000,000 is levied or enforced against the Contractor, unless the judgment is being actively and diligently appealed and is satisfied, vacated, discharged or execution thereof stayed pending appeal or a settlement of the judgment has been negotiated on terms acceptable to the Administrative Agent within thirty (30) days of the rendering of the judgment, or if any stay is lifted or a default occurs in any settlement.

(11) ***Remedial Plan.*** The Borrower fails to provide or comply with any Remedial Plan required under this Agreement.

(12) ***Execution.*** Any writ, distress, execution, attachment, seizure, garnishment, sequestration, extent or any similar process is issued, levied or enforced against the Borrower, the Contractor or any of their properties or assets and such action is not stayed, withdrawn or satisfied five (5) Business Days of the date such process is issued, levied or enforced (such five (5) Business Days to be available only if such process is being diligently contested in good faith and such process does not disrupt performance of the Work or the completion of the Project).

(13) ***Environmental Claims.*** (a) The Borrower has become liable for Environmental Claims in excess of \$100,000 or (b) the Contractor has become liable for Environmental Claims and such liability could reasonably be expected to have a Material Adverse Effect, unless, in either case, such Environmental Claims are being actively and diligently contested and appealed or a settlement of such Environmental Claims has been negotiated on terms acceptable to the Administrative Agent.

(14) ***Invalidity and Contest – Loan Documents.*** This Agreement or any of the other Loan Documents, or any material provision hereof or thereof, shall at any time after execution and delivery hereof or thereof, for any reason, (a) cease to be a legal, valid and binding obligation of the Borrower or the Contractor, as the case may be, or cease to be enforceable against the Borrower or the Contractor, as the case may be, in accordance with its terms, (b) be declared to be null and void by a court, or the legality, validity, binding nature or enforceability of this Agreement or any other Loan Document, or any provision hereof or thereof, shall be contested by the Borrower, CMH or the Contractor, or the Borrower, CMH or the Contractor shall deny that it has any further liabilities or obligations hereunder or thereunder.

(15) ***Termination, Invalidity or Contest – Material Project Documents.*** Any of the Material Project Documents, or any material provision thereof, shall at any time after execution and delivery hereof or thereof, for any reason, (a) terminate, (b) cease to be a legal, valid and binding obligation of the parties thereto, (c) be declared to be null and void by a court, or the legality, validity, binding nature or enforceability of such Material Project Documents, or any provision thereof, shall be contested by the Borrower, CMH or the Contractor, or the Borrower, CMH or the Contractor shall deny that it has any further liabilities or obligations thereunder.

(16) ***Failure to Discharge Liens.*** Either the Borrower or the Contractor fails within fifteen (15) days of becoming aware of the same, to discharge any Lien on its interest in the Work or any Material Project Document which is not a Permitted Lien unless there is a Permitted Contest and adequate security has been posted.

(17) ***Voluntary Liens.*** Either the Borrower or the Contractor voluntarily grants, creates or incurs any Lien on its interest in the Work, any Material Project Document or any other Collateral other than Permitted Liens.

(18) ***Change in Control - Borrower.*** The Contractor ceases to own, beneficially and legally, all of the issued and outstanding shares of the Borrower.

(19) ***Change in Control - Contractor.*** If there is a Change in Control of the Contractor, without the prior written consent of the Lenders.

(20) ***Material Adverse Effect.*** At any time there occurs any event or circumstance which could reasonably be expected to have a Material Adverse Effect, as determined by the Required Lenders, acting reasonably.

(21) ***Destruction or Total Loss.*** All or substantially all of the Project, the Work or both are destroyed or are damaged resulting in a total loss of the Work, unless such destruction or damage is covered under an insurance policy in respect of which insurance proceeds are applied in accordance with the Insurance and Bonding Trust Agreement and the Project Agreement, including, where appropriate, the reinstatement, restoration or replacement of the Facility or any other assets,

materials or goods necessary or desirable for the carrying out of the Work or other project operations.

(22) ***Suspension or Abandonment of the Work.*** The Work, or any material part thereof, is suspended, abandoned, cancelled or terminated other than in accordance with the terms of the Material Project Documents.

(23) ***Insurance.*** The Borrower shall fail to maintain, or cause to be maintained, the Insurance required under Sections 9.1(20) and 9.1(22) of this Agreement.

(24) ***Contractor Bonds.*** The Borrower shall fail to maintain, or cause to be maintained, the Contractor Bonds or fail to cause the issuance of a replacement Contractor Bond not less than 30 days prior to the expiry of any expiring Contractor Bond.

(25) ***Failure to Meet Scheduled Substantial Completion Date.*** Substantial Completion is not achieved by the then-scheduled Substantial Completion Date, unless Liquidated Damages are being paid by the Contractor to the Borrower pursuant to the Contractor Support Agreement and the Lenders' Consultant has delivered confirmation, in form and substance satisfactory to the Administrative Agent and the Lenders, that Substantial Completion shall be completed prior to the Lender Longstop Date, provided that there shall be no Event of Default under this Section 10.1(25) if an event that delays the completion of the Work has occurred and CMH has granted an extension to the then-scheduled Substantial Completion Date or the Longstop Date for a period of time not less than the duration the relevant delay and CMH or the Contractor has agreed to pay compensation for any increased Cost of the Financing (as defined in the Project Agreement) on a basis whereby such increased Cost of the Financing is payable on a monthly basis to pay current interest under the Credit Facility.

(26) ***Failure to achieve Substantial Completion by the Lender Longstop Date.*** Substantial Completion is not achieved by the Lender Longstop Date.

(27) ***Consents.*** Any Consent required to enable the Borrower to conduct its business or to perform its obligations under any Loan Document is not obtained or is withdrawn or ceases to be in full force and effect and that required Consent cannot be acquired or reinstated within thirty (30) days of the date on which the Borrower knew or ought to have known the Consent was required or withdrawn.

(28) ***Failure to Obtain or Maintain Consents.*** The Borrower or the Contractor shall fail to obtain, renew, maintain or comply with any Consent required by it to be obtained, renewed, maintained or complied with in connection with the Work or the entering into of the Material Project Documents.

(29) ***Insufficient Funding.*** If at any time the Administrative Agent receives a Lenders' Consultant's Certificate which discloses a Cost to Complete Deficiency, and the Borrower or the Contractor has not, within ten (10) Business Days of the Borrower or the Contractor becoming aware of the same (or such longer period of time determined by the Administrative Agent, acting reasonably) (a) deposited cash to the Agent's Funding Account for credit to the Agent's Funding Account Balance, pledged marketable securities to the Administrative Agent in the aggregate equal to such Cost to Complete Deficiency, (b) provided a plan to remediate such Cost to Complete

Deficiency which is satisfactory to the Administrative Agent, acting reasonably, in consultation with the Lenders' Consultant, or (c) provided Acceptable Credit Support in an amount equal or in excess of such Cost to Complete Deficiency.

(30) **Expropriation.** If all or a material part of the property of the Borrower is compulsorily acquired by any Government Authority or the Borrower sells or divests itself of all or a material part of its property because it is required to do so by a binding order from a Government Authority, and such compulsory acquisition, sale or divestiture has a Material Adverse Effect.

(31) **Security.** Any of the Security Documents, once executed and delivered, shall in any material respect fail to provide the Administrative Agent and the Lenders the Liens, security interest, rights, titles, interest, remedies, powers or privileges intended to be created thereby or shall cease to be in full force and effect.

(32) **CMH Notice of Default.** The service by CMH of a Project Co Default Notice (as defined in the Lenders' Direct Agreement) as provided for in section 6.1 of the Lenders' Direct Agreement.

10.2 Rights upon Default

Upon the occurrence of a Default, the Administrative Agent may, and shall upon the instructions of the Required Lenders, on notice to the Borrower, declare that the ability of the Borrower to make any further borrowing under the Credit Facility shall be suspended pending the remedying of the Default.

10.3 Rights upon Event of Default

(1) Upon the occurrence of an Event of Default pursuant to Sections 10.1(7) or 10.1(8), the Administrative Agent shall without notice to the Borrower, and upon the occurrence of any other Event of Default and for so long as the other Event of Default shall continue, upon notice to the Borrower, the Administrative Agent may, and shall upon the instructions of the Required Lenders, do any or all of the following:

- (a) declare that the Total Commitment has expired and that the Lenders' obligations to make Loans have terminated;
- (b) declare the entire principal amount of all Loans outstanding, all unpaid accrued interest and all fees and other amounts required to be paid by the Borrower hereunder (including Break Costs and any Swap Breakage Costs) to be immediately due and payable without the necessity of presentment for payment, notice of non-payment and of protest (all of which are hereby expressly waived) and proceed to exercise any and all rights and remedies hereunder and under any other Loan Document or otherwise permitted by law;
- (c) transfer any balances in the Borrower Proceeds Account to the Agent's Funding Account;
- (d) apply any Agent's Funding Account Balance in satisfaction of any amount outstanding hereunder or under any of the other Loan Documents;

- (e) exercise any rights the Borrower may have under or in connection with the Contractor Bonds and any documents delivered in connection with the Contractor Bonds in each case in accordance with their terms, to the extent that the Borrower would be entitled to exercise such rights under the Contractor Bonds;
- (f) exercise any or all of the rights and powers and pursue any and all of the remedies available to the Administrative Agent or the Lenders hereunder and (subject to the terms thereof) under the other Loan Documents and the Material Project Documents, including, without limitation, the Direct Agreements, and shall have any and all rights and remedies available under Applicable Law.

From and after the issuance of any declaration referred to in this Section 10.3, no Lender shall be required to honour any cheque or other instrument presented to it by the Borrower regardless of the date of issue or presentation. Immediately upon receipt of a declaration under Section 10.3(1)(b), the Borrower shall pay to the Administrative Agent on behalf of the Lenders all amounts outstanding hereunder or under any of the other Loan Documents, including any Break Costs and Swap Breakage Costs.

10.4 Waiver of Default

No express or implied waiver by the Administrative Agent and the Lenders or any of them of any Default or Event of Default shall in any way be or be construed to be a waiver of any future or subsequent Default or Event of Default. To the extent permitted by Applicable Law, the Borrower hereby waives any rights now or thereafter conferred by statute or otherwise which may limit or modify any of the Administrative Agent's or the Lenders' rights or remedies under any Loan Document. The Borrower acknowledges and agrees that the exercise by the Administrative Agent or any Lender of any rights or remedies under any Loan Document without having declared an acceleration shall not in any way alter, affect or prejudice the right of the Administrative Agent and the Lenders to make a declaration pursuant to Section 10.3 at any time and, without limiting the foregoing, shall not be construed as or deemed to constitute a waiver of any rights under Section 10.3.

10.5 Potential Delay or Force Majeure Termination Event

If the Borrower shall be entitled to terminate the Project Agreement pursuant to Section 28.2(b) of the Project Agreement, the Administrative Agent shall have the right to require the Borrower to exercise or fail to exercise its rights or waiver of rights, as the case may be, pursuant to Section 28.2(b) of the Project Agreement (including the right to terminate the Project Agreement).

SECTION 11 – REMEDIES

11.1 Remedies Cumulative

For greater certainty, the rights and remedies of the Administrative Agent and the Lenders under this Agreement, the other Loan Documents and the Material Project Documents are cumulative and are in addition to and not in substitution for any rights or remedies provided by law or by equity.

11.2 Exercise of Remedies

Any single or partial exercise by the Administrative Agent or any Lender of any right or remedy upon the occurrence of a Default or Event of Default shall not be deemed to be a waiver of, or to alter, affect or prejudice any other right or remedy to which the Administrative Agent or the Lender may be lawfully entitled as a result of the Default or Event of Default, and any waiver by the Administrative Agent or any Lender of the strict observance of, performance of or compliance with any term, covenant, condition or agreement herein contained, and any indulgence granted thereby, either expressly or by conduct, shall be effective only in the specific instance and for the purpose for which it is given and shall be deemed not to be a waiver of any subsequent Default or Event of Default. No failure to exercise, and no delay in exercising, on the part of the Administrative Agent or any Lender, any right, remedy, power or privilege hereunder shall operate as a waiver thereof.

11.3 Remedies Not Limited

The Administrative Agent on behalf of itself and the Lenders may, to the extent permitted by Applicable Law, bring suit at law, in equity or otherwise, for any available relief or purpose including: (a) the specific performance of any covenant or agreement contained in this Agreement or in any other Loan Document; (b) an injunction against a violation of any of the terms of this Agreement or any other Loan Document; (c) in aid of the exercise of any power granted by this Agreement or any other Loan Document or by law; or (d) the recovery of any judgment for any and all amounts due in respect of the Obligations.

11.4 Sharing of Proceeds Among the Lenders

The Lenders agree among themselves that, except as otherwise contemplated by the provisions of this Agreement, all sums received by the Lenders for application against amounts owing by the Borrower under this Agreement (whether received by voluntary payment, by the exercise of any right of set-off, or by counterclaim, cross-action or as proceeds of realization of any security), after payment to the Administrative Agent of its fees and disbursements, shall be shared by each Lender as nearly as possible in accordance with each Lender's Applicable Percentage.

11.5 Set-Off, etc.

Upon the occurrence of an Event of Default, the Administrative Agent, each Lender and each of their respective branches and offices are hereby authorized by the Borrower from time to time, without notice to: (a) set off and apply any and all amounts owing by the Administrative Agent or any Lender or any of its branches or offices to the Borrower (whether payable in Canadian Dollars or any other currency – and any amounts so owing in any other currency may be converted into one or more currencies in which the Obligations are denominated at such rate or rates as the party may be able to obtain, acting reasonably – whether matured or unmatured, and in the case of deposits, whether general or special, time or demand and however evidenced) against and on account of the Obligations (whether or not any declaration under Section 10.3 has been made and whether or not those Obligations are unmatured or contingent); (b) hold any amounts owing by the Administrative Agent or any Lender as collateral to secure payment of the Obligations owing to it to the extent that those amounts may be required to satisfy any contingent or unmatured Obligations owing to it; and

(c) return as unpaid for insufficient funds any and all cheques and other items drawn against any deposits so held as the Administrative Agent or any Lender in its sole discretion may elect.

11.6 Administrative Agent or Lender May Perform Covenants

If the Borrower fails to perform any of its obligations under any covenant contained in this Agreement or any other Loan Document, the Administrative Agent or any Lender may (but has no obligation to), upon notice to the Borrower after the expiry of any cure period applicable to the remediation of such failure to perform by the Borrower, perform any covenant capable of being performed by it and, if the covenant requires the payment or expenditure of money, it may make a Loan to fund that requirement, which Loan shall be repaid by the Borrower on demand. That Loan shall bear interest at a rate calculated and paid in accordance with Section 4.

11.7 Decision to Enforce Security Documents

Upon the Security Documents becoming enforceable in accordance with their terms, the Administrative Agent shall promptly so notify each of the Lenders. Any Lender may thereafter provide the Administrative Agent with a written request to enforce the Security Documents. Forthwith after the receipt of such a request, the Administrative Agent shall seek the instruction of the Required Lenders as to whether the Security Documents should be enforced and the manner in which the Security Documents should be enforced. In seeking such instructions, the Administrative Agent shall submit a specific proposal to the Lenders. The Administrative Agent shall promptly notify the Lenders of all instructions and approvals of the Required Lenders.

SECTION 12 – THE ADMINISTRATIVE AGENT AND THE LENDERS

12.1 CBA Schedule

See Section 7 of the CBA Schedule.

12.2 Action by Administrative Agent

Without limiting the generality of Section 7.9 of the CBA Schedule, the Administrative Agent shall have the right, subject to the provisions of this Agreement, and without restricting the generality of this Agreement, to take such actions as the Administrative Agent deems necessary or refrain from taking those actions, or to give agreements, consents, approvals, or instructions to the Borrower on behalf of the Lenders in respect of all matters referred to in or contemplated by this Agreement. Each Lender agrees that any action taken by the Administrative Agent or the Required Lenders (or, where required by the express terms of this Agreement, a greater proportion of the Lenders) in accordance with the provisions of this Agreement or of the other Loan Documents, and the exercise by the Administrative Agent or the Required Lenders (or, where so required, such greater proportion) of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all of the Lenders. Without limiting the generality of the foregoing, the Administrative Agent shall have the sole and exclusive right and authority to (a) act as the disbursing and collecting agent for the Lenders with respect to all payments and collections arising in connection herewith and with the Security Documents; (b) execute and deliver each Loan Document and accept delivery of each such agreement delivered

by the Borrower; (c) act as collateral agent for the Lenders for purposes of the perfection of all security interests and Liens created by such agreements and all other purposes stated therein; (d) manage, supervise and otherwise deal with the Collateral; (e) take such action as is necessary or desirable to maintain the perfection and priority of the security interests and Liens created or purported to be created by the Security Documents; and (f) except as may be otherwise specifically restricted by the terms hereof or of any other Loan Document, exercise all remedies given to the Administrative Agent and the Lenders with respect to the Collateral under the Loan Documents relating thereto, Applicable Law or otherwise.

12.3 Arrangements for Repayment

All payments made by or on behalf of the Borrower and received by the Administrative Agent, whether before or after the exercise of any rights arising under Section 10.3, shall be paid to each Lender in accordance with its entitlement under this Agreement. Payment by the Administrative Agent shall be made promptly following receipt and, in any event, the Administrative Agent shall use its reasonable efforts to pay to each Lender at the applicable Lender's Branch of Account the applicable amount on the same Business Day as the amount is received by the Administrative Agent.

12.4 Lenders Bound by Decision to Exercise Remedies

Each Lender agrees to be bound by a decision of the Required Lenders to exercise the rights and remedies provided in this Agreement. Each Lender shall, subject to Applicable Law, do all acts and things as may be necessary or reasonable to enable the Administrative Agent to act pursuant to any such decision.

12.5 Deemed Repayment and Funding

- (1) *Assumption re Payments.* See Section 6(b) of the CBA Schedule.
- (2) *Assumption re Advances.* See Section 6(a) of the CBA Schedule.

12.6 Responsibility of Administrative Agent

The Administrative Agent assumes no responsibility for the financial condition of the Borrower or the repayment of any of the Loans or other amounts outstanding under this Agreement or any of the other Loan Documents. The Administrative Agent shall not have any duty to the Lenders to investigate whether a Default or an Event of Default has occurred. The Administrative Agent shall, as regards the Lenders, be entitled to assume that no Default or Event of Default has occurred and is continuing unless the Administrative Agent has actual knowledge or has been notified by the Borrower of such fact or has been notified by a Lender that such Lender considers that a Default or Event of Default has occurred and is continuing, such notification to specify in detail the nature thereof.

12.7 Administrative Agent Co-operation with Lenders' Consultant

The Administrative Agent shall co-operate with the Lenders' Consultant and the Borrower in connection with the certifications set forth in the Funding Request and the Lenders' Consultant's

Certificate and shall furnish to the Borrower and the Lenders' Consultant the information regarding the Accounts, Borrowing Costs, Break Costs, Swap Breakage Costs and Increased Financing Costs which is necessary to complete the calculations relating to such certifications.

12.8 Acknowledgement of Lenders

- (1) *Independent Appraisal of Borrower.* See Section 7.8 of the CBA Schedule.
- (2) *No Fiduciary Obligations.* See Section 7.3(1)(a) of the CBA Schedule.

12.9 Successor Administrative Agent

See Section 7.7 of the CBA Schedule.

12.10 Replacement of Administrative Agent

See Section 7.7 of the CBA Schedule.

12.11 Notices between the Lenders and the Administrative Agent

All notices by a Lender to the Administrative Agent shall be to the Administrative Agent at the address or telecopier number set out on the execution pages hereof and all notices by the Administrative Agent to any Lender shall be through such Lender's Branch of Account. All communication between the Borrower and any Lender in connection with this Agreement and the other Loan Documents shall be directed through the Administrative Agent.

12.12 Reliance by Administrative Agent

See Section 7.4 of the CBA Schedule.

12.13 Reimbursement of Administrative Agent's Expenses and Indemnity

In addition to the provisions of Sections 7.5 and 9(c) of the CBA Schedule, the expenses incurred by the Administrative Agent may, for greater certainty, include reasonable due diligence expenses, consultant's fees and expenses, and travel expenses.

12.14 Borrower's Right to Rely on Administrative Agent

Unless otherwise required hereunder, during the term of this Agreement, the Borrower shall be entitled to deal exclusively with the Administrative Agent and to rely on discussions with and instructions from the Administrative Agent in order to fulfill its obligations hereunder.

12.15 Administrative Agent's Duty to Deliver Documents

The Administrative Agent shall promptly deliver to each of the Lenders, at their respective Branches of Account, all documents, papers, materials and other information as are furnished by the Borrower to the Administrative Agent on behalf of the Lenders under this Agreement as follows:

- (a) **Notices Generally.** Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in Section 12.15(c)), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier to the addresses or telecopier numbers of the respective Branch of Account of each Lender;
- (b) **Delivery.** Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices delivered through electronic communications to the extent provided in Section 12.15(c), shall be effective as provided in Section 12.15(c); and
- (c) **Electronic Communications.** Notices and other communications to the Lenders may be delivered or furnished by electronic communication (including e-mail and internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender if such Lender has notified the Administrative Agent that it is incapable of receiving or is unwilling to accept notices by electronic communication.

The Administrative Agent shall have no other obligation to provide any Lender with any credit or other information whatsoever with respect to the Borrower and shall be under no obligation to inquire as to the performance by the Borrower of its obligations under this Agreement or any other Loan Document.

12.16 No Partnership

The obligations of each Lender under this Agreement are several. The failure of any Lender to carry out its obligations hereunder shall not relieve the other Lenders of any of their respective obligations hereunder. No Lender shall be responsible for the obligations of any other Lender hereunder. Nothing contained in this Agreement and no action taken pursuant to it shall be deemed to constitute the Lenders a partnership, association, joint venture or other similar entity.

12.17 Adjustments Among Lenders

- (1) **Adjustment After Exercise of Rights.** See Section 5 of the CBA Schedule.
- (2) **General Application.** See Section 5 of the CBA Schedule.
- (3) **Borrower Agreement.** See Section 5 of the CBA Schedule.

12.18 Administrative Agent May Deal With Collateral

Each of the Lenders hereby directs, in accordance with the terms hereof, the Administrative Agent to release any Lien held by the Administrative Agent for the benefit of the Lenders against:

- (a) all of the Collateral, upon termination of the Commitments and payment and satisfaction in full of all Loans and Obligations that the Administrative Agent has been notified in writing are then due and payable; and
- (b) any part of the Collateral sold or disposed of by the Borrower if such sale or disposition is permitted by this Agreement (or permitted pursuant to a waiver or consent of a transaction otherwise prohibited by this Agreement if such waiver or consent is consented to by the Required Lenders in accordance with the terms of this Agreement).

Each of the Lenders hereby directs the Administrative Agent to execute and deliver or file such termination and partial release statements and do such other things as are necessary to release Liens to be released pursuant to this Section 12.18 promptly upon the effectiveness of any such release.

12.19 Administrative Agent May Debit Accounts

The Borrower authorizes and directs the Administrative Agent, in the Administrative Agent's discretion, to debit automatically, by mechanical, electronic or manual means, any bank account of the Borrower maintained with BMO (for so long as BMO is the Administrative Agent) for all amounts payable by the Borrower under this Agreement or any other Loan Document, including the repayment of principal and the payment of interest, fees and all charges for the keeping of that bank account. The Administrative Agent shall notify the Borrower as to the particulars of those debits in the normal course.

12.20 Anti-Money Laundering

The Borrower hereby represents to the Administrative Agent that the Credit Facility is for its own use and is not intended to be used by or for the benefit of any third party.

The Administrative Agent shall retain the right not to act and shall not be liable for refusing to act if, due to a lack of information or for any other reason whatsoever, the Administrative Agent, in its sole judgment, determines that such act might cause it to be in non-compliance with any applicable anti-money laundering or anti-terrorist legislation, regulation or guideline. Further, should the Administrative Agent, in its sole judgment, determine at any time that its acting under this Agreement has resulted in its being in non-compliance with any applicable anti-money laundering or anti-terrorist legislation, regulation or guideline, then it shall have the right to resign on 30 days' written notice to the Borrower; provided that: (i) the Administrative Agent's written notice shall describe the circumstances of such non-compliance; and (ii) if such circumstances are rectified to the Administrative Agent's satisfaction within such 30 day period, then such resignation shall not be effective.

SECTION 13 – ASSIGNS AND PARTICIPANTS

13.1 Assignment and Participation

- (1) ***Benefit and Burden of this Agreement.*** This Agreement shall enure to the benefit of and be binding on the parties hereto, their respective successors and any permitted assignees or transferees of some or all of the parties' rights or obligations hereunder.
- (2) ***Borrower.*** The Borrower shall not assign, delegate or transfer all or any part of its rights or obligations hereunder without the prior written consent of the Lenders.
- (3) ***Assignment and Participation.***
 - (a) Subject to the terms of the Lenders' Direct Agreement, a Lender may, at any time, assign, transfer or otherwise dispose of all or a proportionate part of any of its interest in the Credit Facility and the Loan Documents, provided that, prior to the occurrence of an Event of Default, each of the Lenders agrees that it will not assign, transfer or otherwise dispose of its interest under any Loan Document where such assignment, transfer or disposal would, at the time of such transfer or assignment, result in any increased cost to the Borrower or impose any tax on the Borrower or any payments to be made by the Borrower under the Loan Documents. For greater certainty, after the occurrence and during the continuance of an Event of Default, a Lender may assign, transfer or otherwise dispose of all or a proportionate part of any of its interest in the Credit Facility and the Loan Documents without restriction.
 - (b) Each Lender acknowledges and agrees that, to the extent that it assigns its interest in the Credit Facility and the Loan Documents to a person that is not resident in Canada, such assignment shall be made on the basis that such assignee shall not, at any time other than during the continuance of an Event of Default, be entitled to a withholding tax gross up or any other indemnification from the Borrower in respect of any withholding taxes or other increased costs that may be applicable to payments by the Borrower to such assignee.
- (4) ***Deliveries.*** The Borrower and the Administrative Agent may continue to deal solely and directly with the assignor Lender in connection with any interest so assigned until:
 - (a) notice of such assignment, together with payment instructions, addresses and related information with respect to the assignee, shall have been given to the Borrower and the Administrative Agent by such Lender and its assignee; and
 - (b) such assignee shall have delivered to the Borrower and the Administrative Agent an assignment agreement in form acceptable to the Administrative Agent, together with a processing and recordation fee of \$3,500 payable to the Administrative Agent.

When the Administrative Agent has received the items listed in the preceding paragraph, the assignee shall be a party hereto and, to the extent that rights and obligations hereunder have been so assigned to it, shall have the rights and obligations of a Lender hereunder, and the assignor shall, to the extent that rights and obligations hereunder have been assigned by it, relinquish its rights and be

released from its obligations hereunder. The commitment to make available the Credit Facility hereunder allocated to an assignee shall reduce such commitment of the assignor.

(5) **Participations By Lender.** Any Lender may at any time sell to one or more financial institutions or other persons (each of such financial institutions or other persons being herein called a "Participant") participating interests in all or a portion of its rights and obligations under this Agreement and the other Loan Documents (including all or a portion of the amounts owing to it); provided, however, that:

- (a) no participation contemplated in this Section 13.1(5) shall relieve such Lender from its obligations hereunder or under any other Loan Document;
- (b) such Lender shall remain solely responsible for the performance of its obligations under the Loan Documents;
- (c) the Borrower and the Administrative Agent shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement and each of the other Loan Documents;
- (d) no Participant, unless such Participant is an Affiliate of a Lender, or is itself a Lender, shall be entitled to have any right to vote or grant or withhold consents hereunder or under any other Loan Document; and
- (e) no such transfer of a participating interest shall, directly or indirectly, result in any increased cost or liability to the Borrower unless the Borrower shall agree in writing.

(6) **Borrower Cooperation.** See Section 10(b) of the CBA Schedule.

(7) **Disclosure.** Each Lender may disclose to any prospective assignee or prospective Participant such information concerning the Borrower or any Major Project Party as it considers appropriate, acting reasonably, provided that the prospective assignee or prospective Participant shall sign a confidentiality and non-disclosure agreement in form acceptable to the Borrower and the Administrative Agent.

SECTION 14 – MISCELLANEOUS

14.1 Amendments, Waivers, etc.

(1) **Binding Effect.** Except as otherwise provided in this Section 14.1, no amendment, waiver, discharge or termination of any provision of this Agreement or any other Loan Document and no waiver of any breach of any provision of this Agreement or any other Loan Document and no consent to any departure by a party from any provision of this Agreement shall be binding:

- (a) upon the Borrower unless it is evidenced by an instrument in writing signed by the Borrower; nor
- (b) upon the Administrative Agent and the Lenders unless it is approved in writing by the Administrative Agent and all the Lenders or the Required Lenders, as applicable.

Notwithstanding the foregoing, any waiver or consent may be validly effected by execution by the Administrative Agent and all the Lenders or the Required Lenders, as applicable, of an instrument in writing without requiring the execution of that instrument by the Borrower. The Administrative Agent shall forward a copy of the written instrument to the Borrower as soon as practicable following the execution thereof. The waiver or consent will be effective only in the specific instance, for the specific purpose and for the specific length of time for which it is given.

(2) **Errors.** The Administrative Agent may correct any typographical error or other error of a clerical nature in this Agreement and the other Loan Documents and substitute the corrected text in the counterparts of this Agreement and the other Loan Documents if the corrections do not modify in any manner the meaning or the interpretation of this Agreement or any other Loan Document and if the Administrative Agent gives the Borrower not less than five (5) Business Days prior notice of any correction and the Borrower does not object in writing to such correction within a period of five (5) Business Days after receipt of such notice.

(3) **Approval of All Lenders.** Where any amendment, waiver, discharge or termination relates to the following matters, the amendment, waiver, discharge or termination requires the approval of all Lenders:

- (a) a change in the rate or amount of any principal, interest or fees or any other amount payable by the Borrower or any alteration in the currency or mode of calculation or computation thereof;
- (b) any waiver of the conditions set out in Section 8.1 of this Agreement;
- (c) any extension or reduction of the time for any payments required to be made by the Borrower;
- (d) any change in the Maturity Date;
- (e) the types of Loans available;
- (f) an increase in the Total Commitment or in any Lender's Commitment;
- (g) an extension or reduction of the notice period required in connection with any Loan;
- (h) the definition of Required Lenders;
- (i) the nature and scope of the Security Documents;
- (j) an assignment or transfer by the Borrower of any of its rights and obligations under this Agreement; or
- (k) any provision of this Section 14.1, or of Sections 3.2, 11.4 and 11.5 of this Agreement, or of Sections 3.4 and 4 of the CBA Schedule.

Any other amendment, waiver, discharge or termination requires the approval of only the Required Lenders, which approval, if obtained, shall be binding upon all the Lenders.

(4) **Approvals re Interest Rate Swap Documents.** Any change (a) to any of the financial terms or conditions of an Interest Rate Swap Document, including (without limitation) any amendment to the provisions relating to the calculation and/or payment of swap margin, the hedge profile or interest or other amounts payable under such Interest Rate Swap Document and (b) to the Security Documents or the other Loan Documents that would cause the Lenders (in their capacity as counterparties to the Interest Rate Swaps) to no longer be *pari passu* to the Lenders (in their capacity as lenders of the Credit Facility) in receipt of payments or security interests shall require the approval of the applicable Lenders (in their capacity as counterparties to the Interest Rate Swaps) to which such Interest Rate Swap Document relates.

(5) **Request for Approval.** If the approval of a Lender is required under this Section 14.1, the Administrative Agent shall advise the Lender in writing of the issue to be decided and, if the Administrative Agent determines in its sole discretion that it is appropriate to do so, request the Lender's approval of a course of action proposed by the Administrative Agent. In requesting a Lender's approval, the Administrative Agent may establish, in its discretion acting reasonably, a deadline by which the Lender shall respond to the Administrative Agent's request. If the Lender fails to respond by that deadline, that Lender's failure to respond shall be conclusive evidence of the disapproval by the Lender of the course of action proposed by the Administrative Agent. The Administrative Agent may, in its sole discretion and acting reasonably, extend the deadline set by the Administrative Agent by which the Lender shall respond to the Administrative Agent's request.

(6) **Amendment re Rights of Administrative Agent.** Any amendment or waiver of any provision of any Loan Document which relates to the rights or obligations of the Administrative Agent shall require the written agreement of the Administrative Agent thereto.

14.2 No Deemed Subordination

Notwithstanding anything to the contrary contained herein (including any provision for, reference to, or acknowledgement of, any Lien or Permitted Lien), nothing herein and no approval by the Administrative Agent or Lenders of any Lien or Permitted Lien (whether such approval is oral or in writing) shall be construed as or deemed to constitute a subordination by the Administrative Agent or the Lenders of any security interest or other right, interest or Lien in or to the Collateral or any part thereof in favour of any Lien or Permitted Lien or any holder of any Lien or Permitted Lien.

14.3 Further Assurances

The Borrower shall from time to time promptly, upon the request of the Administrative Agent, take such action, and execute and deliver such further documents as may be reasonably necessary or appropriate to give effect to the provisions and intent of this Agreement.

14.4 Judgment Currency

If for the purpose of obtaining judgment in any court it is necessary to convert any amount owing or payable to the Administrative Agent or the Lenders under this Agreement from the currency in which it is due (the "**Agreed Currency**") into a particular currency (the "**Judgment Currency**"), the rate of exchange applied in that conversion shall be that at which the Administrative Agent, in accordance with its normal procedures, could purchase the Agreed Currency with the Judgment Currency at or about noon on the Business Day immediately preceding the date on which

judgment is given. The obligation of the Borrower in respect of any amount owing or payable under this Agreement to the Administrative Agent or Lenders in the Agreed Currency shall, notwithstanding any judgment and payment in the Judgment Currency, be satisfied only to the extent that the Administrative Agent, in accordance with its normal procedures, could purchase the Agreed Currency with the amount of the Judgment Currency so paid at or about noon on the next Business Day following that payment; and if the amount of the Agreed Currency which the Administrative Agent could so purchase is less than the amount originally due in the Agreed Currency, the Borrower shall, as a separate obligation and notwithstanding the judgment or payment, indemnify the Administrative Agent and the Lenders against any loss.

14.5 Notice

(1) **Notices Generally.** Subject to Section 12.15 and except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in Section 14.5(2), all notices and other communications provided herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier to the addresses or telecopier numbers set out on the execution pages hereof.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by telecopier shall be deemed to have been given when sent (except that, if not given on a Business Day between 9:00 a.m. and 5:00 p.m., shall be deemed to have been given at 9:00 a.m. on the next Business Day for the recipient). Notices delivered through electronic communications to the extent provided in Section 14.5(2) shall be effective as provided in Section 14.5(2).

(2) **Electronic Communications.** The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (a) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "**return receipt requested**" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and (b) notices or communications posted to an internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (a) of notification that such notice or communication is available and identifying the website address therefore.

(3) **Change of Address.** Any party hereto may change its address or telecopier number for notices and other communications hereunder by notice to the other parties hereto.

14.6 Reimbursement of Expenses

See Section 9(a) of the CBA Schedule.

14.7 Submission to Jurisdiction

See Section 11(b) of the CBA Schedule

14.8 Counterparts

See Section 13(a) and 13(b) of the CBA Schedule.

14.9 Confidentiality

See Section 14 of the CBA Schedule.

[SIGNATURE PAGES AND SCHEDULES FOLLOW]

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

407 Basaltic Road
Concord, Ontario
L4K 4W8

Attention: John Aquino, President
Facsimile No.: (416) 667 – 8462

2423402 ONTARIO INC., as Borrower

By: 

Name: John Aquino
Title: President

By: _____

Name: _____
Title: _____

In the case of all matters relating to Funding,
rollovers, conversion and repayments, to:

BANK OF MONTREAL,
as Administrative Agent

Bank of Montreal
Agent Bank Services
234 Simcoe Street, 3rd Floor
Toronto, Ontario
M5T 1T4

By: 

Name:

Title:

James Di Giacomo
Managing Director
Corporate Finance Underwriting
and Syndications

Attention: Manager, Agent Bank Services
Facsimile No.: (416) 598-6218

By: _____

Name: _____

Title: _____

In the case of all reports to be
provided pursuant to Section 9.3, to:

Bank of Montreal
100 King Street West
1 First Canadian Place, 4th Floor
Toronto, Ontario
M5X 1A1

Attention: Agency Deal Specialist
Facsimile No.: (416) 359-7796

In the case of all other communications to be
provided to the Agent , to:

Bank of Montreal
Corporate Finance Division
100 King Street West
1 First Canadian Place, 11th Floor
Toronto, Ontario
M5X 1A1


Attention: Director
Facsimile: (416) 360-7168

Bank of Montreal
Corporate Finance Division
100 King Street West
1 First Canadian Place, 11th Floor
Toronto, Ontario
M5X 1A1

Attention: Director
Facsimile: (416) 360-7168

BANK OF MONTREAL, as Lender

By: 
Name: Stavel
Title: Director

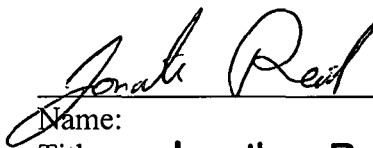
By: 
Name: A. Lalonde
Title: Associate

Caisse centrale Desjardins
25 York Street, Suite 1000
Toronto, Ontario
M5J 2V5

Attention: Rod O'Hara
Facsimile No.: (416) 861-9992

CAISSE CENTRALE DESJARDINS,
as Lender

By: 
Name: **Rod O'Hara**
Title: **Managing Director**

By: 
Name: **Jonathan Raiken**
Title: **Vice President**

The Toronto-Dominion Bank,
Commercial National Accounts
100 Wellington Street West, 26th Floor
Toronto, Ontario M5K 1A2

Attention: Michael Duhaime
Facsimile No.: 416 982-6076

THE TORONTO-DOMINION BANK,
as Lender

By: Michael J. Duhaime
Name: **Michael Duhaime**
Title: **Director**
National Accounts

By: Natalie Guida
Name: **Natalie Guida**
Title: **Manager Commercial Credit**
National Accounts

Schedule A – CBA Model Loan Provisions

The attached model credit agreement provisions, which have been revised under the direction of the Canadian Bankers' Association Secondary Loan Market Specialist Group from provisions prepared by The Loan Syndications and Trading Association, Inc. form part of this Agreement, except for the footnotes to the model credit provisions and subject to the following variations:

1. All references in this Schedule A to LIBO Rate Loans, Letters of Credit, the Issuing Bank, and Montreal, Quebec are deemed deleted.

2. Section 10(b) of this Schedule A is amended by renumbering Section 10(b)(vi) as Section 10(b)(vii) and inserting the following new provision as Section 10(b)(vi) after Section 10(b)(v):

(vi) except (i) if an Event of Default has occurred and is continuing and the Lenders have exercised their right to accelerate the Loans under the Loan Documents or (ii) any of the Loans have not been repaid by the Borrower on the Maturity Date, any assignment by a Lender of all or a portion of its Commitment and Loans must not, at the time of such assignment, increase any cost or impose any tax on the Borrower or any payments to be made by the Borrower under the Loan Documents;

3. Section 9(a) of this Schedule A is amended by deleting (ii) and (iii) thereof and replacing them with the following:

“and (ii) all out of pocket expenses incurred by the Administrative Agent or any Lender, including the reasonable fees, charges and disbursements of counsel, in connection with any amendments, modifications or waivers relating to the terms of the Loan Documents or Material Project Documents, or the enforcement or protection of its rights in connection with this Agreement and the other Loan Documents, including its rights under this Section, in connection with the Loans, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans.”

4. To the extent that there is any conflict between any provision in either the Project Agreement or this Credit Agreement and those set forth in this Schedule A, the relevant provisions of the Project Agreement or this Credit Agreement, as applicable, will prevail.

MODEL CREDIT AGREEMENT PROVISIONS

1. Definitions

"Administrative Questionnaire" means an Administrative Questionnaire in a form supplied by the Administrative Agent.

"Affiliate" means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

"Agreement" means the credit agreement of which these Provisions form part.

"Applicable Law" means (a) any domestic or foreign statute, law (including common and civil law), treaty, code, ordinance, rule, regulation, restriction or by-law (zoning or otherwise); (b) any judgement, order, writ, injunction, decision, ruling, decree or award; (c) any regulatory policy, practice, guideline or directive; or (d) any franchise, licence, qualification, authorization, consent, exemption, waiver, right, permit or other approval of any Governmental Authority, binding on or affecting the Person referred to in the context in which the term is used or binding on or affecting the property of such Person, in each case whether or not having the force of law.

"Applicable Percentage" means with respect to any Lender, the percentage of the total Commitments represented by such Lender's Commitment. If the Commitments have terminated or expired, the Applicable Percentages shall be the percentage of the total outstanding Loans and participations in respect of Letters of Credit represented by such Lender's outstanding Loans and participations in respect of Letters of Credit.

"Approved Fund" means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

"Assignment and Assumption" means an assignment and assumption entered into by a Lender and an Eligible Assignee and accepted by the Administrative Agent, in substantially the form of Exhibit A or any other form approved by the Administrative Agent.

"Change in Law" means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any Applicable Law, (b) any change in any Applicable Law or in the administration, interpretation or application thereof by any Governmental Authority or (c) the making or issuance of any Applicable Law by any Governmental Authority.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have corresponding meanings.

"Default" means any event or condition that constitutes an Event of Default or that would constitute an Event of Default except for satisfaction of any condition subsequent required to make the event or condition an Event of Default, including giving of any notice, passage of time, or both.

"Eligible Assignee" means any Person (other than a natural person, any Obligor or any Affiliate of an Obligor), in respect of which any consent that is required by Section 10(b) has been obtained.

"Excluded Taxes" means, with respect to the Administrative Agent, any Lender, the Issuing Bank or any other recipient of any payment to be made by or on account of any obligation of an

- 2 -

Obligor hereunder, (a) taxes imposed on or measured by its net income, and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located, (b) any branch profits taxes or any similar tax imposed by any jurisdiction in which the Lender is located and (c) in the case of a Foreign Lender (other than (i) an assignee pursuant to a request by the Borrower under Section 3.3(b), (ii) an assignee pursuant to an Assignment and Assumption made when an Event of Default has occurred and is continuing or (iii) any other assignee to the extent that the Borrower has expressly agreed that any withholding tax shall be an Indemnified Tax), any withholding tax that (A) is not imposed or assessed in respect of a Loan that was made on the premise that an exemption from such withholding tax would be available where the exemption is subsequently determined, or alleged by a taxing authority, not to be available and (B) is required by Applicable Law to be withheld or paid in respect of any amount payable hereunder or under any Loan Document to such Foreign Lender at the time such Foreign Lender becomes a party hereto (or designates a new lending office) or is attributable to such Foreign Lender's failure or inability (other than as a result of a Change in Law) to comply with Section 3.2(e), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts from an Obligor with respect to such withholding tax pursuant to Section 3.2(a). For greater certainty, for purposes of item (c) above, a withholding tax includes any Tax that a Foreign Lender is required to pay pursuant to Part XIII of the Income Tax Act (Canada) or any successor provision thereto.¹

"Foreign Lender" means any Lender that is not organized under the laws of the jurisdiction in which the Borrower is resident for tax purposes and that is not otherwise considered or deemed in respect of any amount payable to it hereunder or under any Loan Document to be resident for income tax or withholding tax purposes in the jurisdiction in which the Borrower is resident for tax purposes by application of the laws of that jurisdiction. For purposes of this definition Canada and each Province and Territory thereof shall be deemed to constitute a single jurisdiction and the United States of America, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

"Fund" means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business.

"Governmental Authority" means the government of Canada or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government, including any supra-national bodies such as the European Union or the European Central Bank and including a Minister of the Crown, Superintendent of Financial Institutions or other comparable authority or agency.

"Indemnified Taxes" means Taxes other than Excluded Taxes.

"Issuing Bank" means the Person named elsewhere in this Agreement² as the issuer of Letters of Credit on the basis that it is "fronting" for other Lenders and not on the basis that it is the

¹ Please note that this definition of "Excluded Taxes" will result in Foreign Lenders not being grossed up for withholding taxes that exist at the time of execution and delivery of the Credit Agreement, except in the circumstances specified. If a loan is intended to be exempt from withholding tax as a "5/25" structure or otherwise, this premise should be specified in the Credit Agreement.

² Ensure that the Credit Agreement identifies the Issuing Bank or indicates that there is none.

- 3 -

attorney of other Lenders to sign Letters of Credit on their behalf, or any successor issuer of Letters of Credit. For greater certainty, where the context requires, references to "Lenders" in these Provisions include the Issuing Bank.

"Loan" means any extension of credit by a Lender under this Agreement, including by way of bankers' acceptance or LIBO Rate Loan, except for any Letter of Credit or participation in a Letter of Credit.

"Obligors" means, collectively, the Borrower and each of the guarantors of the Borrower's obligations that are identified elsewhere in this Agreement.

"Other Taxes" means all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or under any other Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document.

"Participant" has the meaning assigned to such term in Section 10(d).

"Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"Provisions" means these model credit agreement provisions.

"Related Parties" means, with respect to any Person, such Person's Affiliates and the directors, officers, employees, agents and advisors of such Person and of such Person's Affiliates.

"Taxes" means all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

2. Terms Generally

(1) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "will" shall be construed to have the same meaning and effect as the word "shall". Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein (including this Agreement) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented, restated or otherwise modified (subject to any restrictions on such amendments, supplements, restatements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person's successors and permitted assigns, (c) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) unless otherwise expressly stated, all references in these Provisions to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, these Provisions, but all such references elsewhere in this Agreement shall be construed to refer to this Agreement apart from these Provisions, (e) any reference to any law or regulation herein shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time and (f) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

- 4 -

(2) If there is any conflict or inconsistency between these Provisions and the other terms of this Agreement, the other terms of this Agreement shall govern to the extent necessary to resolve the conflict or inconsistency.

3. Yield Protection

3.1 Increased Costs.

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender;

(ii) subject any Lender to any Tax of any kind whatsoever with respect to this Agreement, any Letter of Credit, any participation in a Letter of Credit or any Loan made by it, or change the basis of taxation of payments to such Lender in respect thereof, except for Indemnified Taxes or Other Taxes covered by Section 3.2 and the imposition, or any change in the rate, of any Excluded Tax payable by such Lender; or

(iii) impose on any Lender or any applicable interbank market any other condition, cost or expense affecting this Agreement or Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Loan (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender or the Issuing Bank of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender or the Issuing Bank hereunder (whether of principal, interest or any other amount), then upon request of such Lender the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender determines that any Change in Law affecting such Lender or any lending office of such Lender or such Lender's holding company, if any, regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or the Letters of Credit issued or participated in by such Lender, to a level below that which such Lender or its holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of its holding company with respect to capital adequacy), then from time to time the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or its holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section, including reasonable detail of the basis of calculation of the amount or amounts, and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's right to demand such compensation, except that the Borrower shall not be required to compensate a Lender pursuant to this Section for any increased costs incurred or reductions suffered more than nine months prior to the date

- 5 -

that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefore, unless the Change in Law giving rise to such increased costs or reductions is retroactive, in which case the nine-month period referred to above shall be extended to include the period of retroactive effect thereof.

3.2 Taxes.

(a) Payments Subject to Taxes. If any Obligor, the Administrative Agent, or any Lender is required by Applicable Law to deduct or pay any Indemnified Taxes (including any Other Taxes) in respect of any payment by or on account of any obligation of an Obligor hereunder or under any other Loan Document, then (i) the sum payable shall be increased by that Obligor when payable as necessary so that after making or allowing for all required deductions and payments (including deductions and payments applicable to additional sums payable under this Section) the Administrative Agent or Lender, as the case may be, receives an amount equal to the sum it would have received had no such deductions or payments been required, (ii) the Obligor shall make any such deductions required to be made by it under Applicable Law and (iii) the Obligor shall timely pay the full amount required to be deducted to the relevant Governmental Authority in accordance with Applicable Law.

(b) Payment of Other Taxes by the Borrower. Without limiting the provisions of paragraph (a) above, the Borrower shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with Applicable Law.

(c) Indemnification by the Borrower. The Borrower shall indemnify the Administrative Agent and each Lender, within 10 days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) paid by the Administrative Agent or such Lender and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(d) Evidence of Payments. As soon as practicable after any payment of Indemnified Taxes or Other Taxes by an Obligor to a Governmental Authority, the Obligor shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) Status of Lenders. Any Foreign Lender that is entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which the Borrower is resident for tax purposes, or any treaty to which such jurisdiction is a party, with respect to payments hereunder or under any other Loan Document shall, at the request of the Borrower, deliver to the Borrower (with a copy to the Administrative Agent), at the time or times prescribed by Applicable Law or reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation prescribed by Applicable Law as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, (a) any Lender, if requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to withholding or information reporting requirements, and (b) any Lender that ceases to be, or to be deemed to be, resident in Canada for purposes of Part XIII of the Income Tax Act (Canada) or any successor provision thereto shall within five days thereof notify the Borrower and the Administrative Agent in writing.

- 6 -

(f) Treatment of Certain Refunds and Tax Reductions. If the Administrative Agent or a Lender determines, in its sole discretion, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified by the Borrower or with respect to which an Obligor has paid additional amounts pursuant to this Section or that, because of the payment of such Taxes or Other Taxes, it has benefited from a reduction in Excluded Taxes otherwise payable by it, it shall pay to the Borrower or Obligor, as applicable, an amount equal to such refund or reduction (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower or Obligor under this Section with respect to the Taxes or Other Taxes giving rise to such refund or reduction), net of all out-of-pocket expenses of the Administrative Agent or such Lender, as the case may be, and without interest (other than any net after-Tax interest paid by the relevant Governmental Authority with respect to such refund). The Borrower or Obligor as applicable, upon the request of the Administrative Agent or such Lender, agrees to repay the amount paid over to the Borrower or Obligor (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender if the Administrative Agent or such Lender is required to repay such refund or reduction to such Governmental Authority. This paragraph shall not be construed to require the Administrative Agent or any Lender to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Borrower or any other Person, to arrange its affairs in any particular manner or to claim any available refund or reduction.

3.3 Mitigation Obligations: Replacement of Lenders.

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.1, or requires the Borrower to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.2, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.1 or 3.2, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders.³ If any Lender requests compensation under Section 3.1, if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.2, if any Lender's obligations are suspended pursuant to Section 3.4 or if any Lender defaults in its obligation to fund Loans hereunder, then the Borrower may, at its sole expense and effort, upon 10 days' notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10), all of its interests, rights and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

(i) the Borrower pays the Administrative Agent the assignment fee specified in Section 10(b)(vi);

(ii) the assigning Lender receives payment of an amount equal to the outstanding principal of its Loans and participations in disbursements under Letters of Credit, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any breakage costs and amounts required to be paid under this Agreement as a result of prepayment to a Lender) from the assignee (to

³ Please note that the Breakfunding section in the Credit Agreement should expressly include any amounts payable as a result of an assignment required by this Section.

- 7 -

the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(iii) in the case of any such assignment resulting from a claim for compensation under Section 3.1 or payments required to be made pursuant to Section 3.2, such assignment will result in a reduction in such compensation or payments thereafter; and

(iv) such assignment does not conflict with Applicable Law.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

3.4 Illegality.

If any Lender determines that any Applicable Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make or maintain any Loan (or to maintain its obligation to make any Loan), or to participate in, issue or maintain any Letter of Credit (or to maintain its obligation to participate in or to issue any Letter of Credit), or to determine or charge interest rates based upon any particular rate, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, any obligation of such Lender with respect to the activity that is unlawful shall be suspended until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if conversion would avoid the activity that is unlawful, convert any Loans, or take any necessary steps with respect to any Letter of Credit in order to avoid the activity that is unlawful. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted. Each Lender agrees to designate a different Lending Office if such designation will avoid the need for such notice and will not, in the good faith judgment of such Lender, otherwise be materially disadvantageous to such Lender.

3.5 Inability to Determine Rates Etc.

If the Required Lenders determine that for any reason a market for bankers' acceptances does not exist at any time or the Lenders cannot for other reasons, after reasonable efforts, readily sell bankers' acceptances or perform their other obligations under this Agreement with respect to bankers' acceptances, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, the Borrower's right to request the acceptance of bankers' acceptances shall be and remain suspended until the Required Lenders determine and the Agent notifies the Borrower and each Lender that the condition causing such determination no longer exists. If the Required Lenders determine that for any reason adequate and reasonable means do not exist for determining the LIBO Rate for any requested Interest Period with respect to a proposed LIBO Rate Loan, or that the LIBO Rate for any requested Interest Period with respect to a proposed LIBO Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, the obligation of the Lenders to make or maintain LIBO Rate Loans shall be suspended until the Administrative Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a borrowing, conversion or continuation of LIBO Rate Loans or, failing that, will be deemed to have converted such request into a request for a borrowing of Base Rate Loans in the amount specified therein.

- 8 -

4. Right of Setoff.

If an Event of Default has occurred and is continuing, each of the Lenders and each of their respective Affiliates is hereby authorized at any time and from time to time to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender or any such Affiliate to or for the credit or the account of any Obligor against any and all of the obligations of the Borrower now or hereafter existing under this Agreement or any other Loan Document to such Lender, irrespective of whether or not such Lender has made any demand under this Agreement or any other Loan Document and although such obligations of the Obligor may be contingent or unmatured or are owed to a branch or office of such Lender different from the branch or office holding such deposit or obligated on such indebtedness. The rights of each the Lenders and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff, consolidation of accounts and bankers' lien) that the Lenders or their respective Affiliates may have. Each Lender agrees to promptly notify the Borrower and the Administrative Agent after any such setoff and application, but the failure to give such notice shall not affect the validity of such setoff and application. If any Affiliate of a Lender exercises any rights under this Section 4, it shall share the benefit received in accordance with Section 5 as if the benefit had been received by the Lender of which it is an Affiliate.

5. Sharing of Payments by Lenders.

If any Lender, by exercising any right of setoff or counterclaim or otherwise, obtains any payment or other reduction that might result in such Lender receiving payment or other reduction of a proportion of the aggregate amount of its Loans and accrued interest thereon or other obligations hereunder greater than its pro rata share thereof as provided herein, then the Lender receiving such payment or other reduction shall (a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the Loans and such other obligations of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders rateably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing them, provided that

(i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest,

(ii) the provisions of this Section shall not be construed to apply to (x) any payment made by any Obligor pursuant to and in accordance with the express terms of this Agreement or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in disbursements under Letters of Credit to any assignee or participant, other than to any Obligor or any Affiliate of an Obligor (as to which the provisions of this Section shall apply); and

(iii) the provisions of this Section shall not be construed to apply to (w) any payment made while no Event of Default has occurred and is continuing in respect of obligations of the Borrower to such Lender that do not arise under or in connection with the Loan Documents, (x) any payment made in respect of an obligation that is secured by a Permitted Lien or that is otherwise entitled to priority over the Borrower's obligations under or in connection with the Loan Documents, (y) any reduction arising from an amount owing to an Obligor upon the termination of derivatives entered into between the

- 9 -

Obligor and such Lender⁴, or (z) any payment to which such Lender is entitled as a result of any form of credit protection obtained by such Lender.

The Obligors consent to the foregoing and agree, to the extent they may effectively do so under Applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against each Obligor rights of setoff and counterclaim and similar rights of Lenders with respect to such participation as fully as if such Lender were a direct creditor of each Obligor in the amount of such participation.

6. Administrative Agent's Clawback

(a) Funding by Lenders; Presumption by Administrative Agent. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any advance of funds that such Lender will not make available to the Administrative Agent such Lender's share of such advance, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with the provisions of this Agreement concerning funding by Lenders and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable advance available to the Administrative Agent, then the applicable Lender shall pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at a rate determined by the Administrative Agent in accordance with prevailing banking industry practice on interbank compensation. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Loan included in such advance. If the Lender does not do so forthwith, the Borrower shall pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon at the interest rate applicable to the advance in question. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that has failed to make such payment to the Administrative Agent.

(b) Payments by Borrower; Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of any Lender hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute the amount due to the Lenders. In such event, if the Borrower has not in fact made such payment, then each of the Lenders severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at a rate determined by the Administrative Agent in accordance with prevailing banking industry practice on interbank compensation.

7. Agency.

7.1 Appointment and Authority. Each of the Lenders and the Issuing Bank hereby irrevocably appoints the Person identified elsewhere in this Agreement as the Administrative Agent⁵ to act on its

⁴ Those preparing Credit Agreements should consider whether this exclusion of proceeds of derivatives is appropriate in the particular circumstances of the Credit Agreement. It may be appropriate to provide for sharing of, for example, any net amount available after the termination of all derivatives entered into between the Obligors and a Lender and the setoff of resulting amounts owing by the Obligors and to the Obligors if there is more than one such derivative.

⁵ Ensure that the Credit Agreement identifies the Administrative Agent for the purpose of this reference

- 10 -

behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the Issuing Bank, and no Obligor shall have rights as a third party beneficiary of any of such provisions.

7.2 Rights as a Lender. The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with any Obligor or any Affiliate thereof as if such Person were not the Administrative Agent and without any duty to account to the Lenders.

7.3 Exculpatory Provisions.

(1) The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents.⁶ Without limiting the generality of the foregoing, the Administrative Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for in the Loan Documents), but the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or Applicable Law; and

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the person serving as the Administrative Agent or any of its Affiliates in any capacity.

(2) The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as is necessary, or as the Administrative Agent believes in good faith is necessary, under the provisions of the Loan Documents) or (ii) in the absence of its own gross negligence or wilful misconduct. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing the Default is given to the Administrative Agent by the Borrower or a Lender.

(3) Except as otherwise expressly specified in this Agreement, the Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or

⁶ It is anticipated that the Credit Agreement will require the Borrower to be responsible for compliance with all requirements to maintain perfection of security.

- 11 -

conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition specified in this Agreement, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

7.4 Reliance by Administrative Agent. The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or the Issuing Bank, the Administrative Agent may presume that such condition is satisfactory to such Lender or the Issuing Bank unless the Administrative Agent shall have received notice to the contrary from such Lender or the Issuing Bank prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

7.5 Indemnification of Administrative Agent. Each Lender agrees to indemnify the Administrative Agent and hold it harmless (to the extent not reimbursed by the Borrower), rateably according to its Applicable Percentage (and not jointly or jointly and severally) from and against any and all losses, claims, damages, liabilities and related expenses, including the fees, charges and disbursements of any counsel, which may be incurred by or asserted against the Administrative Agent in any way relating to or arising out of the Loan Documents or the transactions therein contemplated. However, no Lender shall be liable for any portion of such losses, claims, damages, liabilities and related expenses resulting from the Administrative Agent's gross negligence or wilful misconduct.

7.6 Delegation of Duties. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent from among the Lenders (including the Person serving as Administrative Agent) and their respective Affiliates. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The provisions of this Article and other provisions of this Agreement for the benefit of the Administrative Agent shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

7.7 Replacement of Administrative Agent.

(1) The Administrative Agent may at any time give notice of its resignation to the Lenders, the Issuing Bank and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor, which shall be a Lender having a Commitment to a revolving credit if one or more is established in this Agreement and having an office in Toronto, Ontario or Montréal, Québec, or an Affiliate of any such Lender with an office in Toronto or Montréal. The Administrative Agent may also be removed at any time by the Required Lenders upon 30 days' notice to the Administrative Agent and the Borrower as long as the Required Lenders, in consultation with the Borrower, appoint and obtain the acceptance of a successor within such 30 days, which shall be a Lender having a Commitment to a revolving credit if one or more is established in this Agreement and having an office in Toronto or Montréal, or an Affiliate of any such Lender with an office in Toronto or Montréal.

- 12 -

(2) If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may on behalf of the Lenders, appoint a successor Administrative Agent meeting the qualifications specified in Section 7.7(1), provided that if the Administrative Agent shall notify the Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (2) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in the preceding paragraph.

(3) Upon a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the former Administrative Agent, and the former Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided in the preceding paragraph). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the termination of the service of the former Administrative Agent, the provisions of this Section 7 and of Section 9 shall continue in effect for the benefit of such former Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the former Administrative Agent was acting as Administrative Agent.

7.8 Non-Reliance on Administrative Agent and Other Lenders. Each Lender and the Issuing Bank acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and the Issuing Bank also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

7.9 Collective Action of the Lenders. Each of the Lenders hereby acknowledges that to the extent permitted by Applicable Law, any collateral security and the remedies provided under the Loan Documents to the Lenders are for the benefit of the Lenders collectively and acting together and not severally and further acknowledges that its rights hereunder and under any collateral security are to be exercised not severally, but by the Administrative Agent upon the decision of the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for in the Loan Documents). Accordingly, notwithstanding any of the provisions contained herein or in any collateral security, each of the Lenders hereby covenants and agrees that it shall not be entitled to take any action hereunder or thereunder including, without limitation, any declaration of default hereunder or thereunder but that any such action shall be taken only by the Administrative Agent with the prior written agreement of the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for in the Loan Documents). Each of the Lenders hereby further covenants and agrees that upon any such written agreement being given, it shall co-operate fully with the Administrative Agent to the extent requested by the Administrative Agent. Notwithstanding the foregoing, in the absence of instructions from the Lenders and where in the sole opinion of the Administrative Agent, acting reasonably and in good faith, the exigencies of the situation warrant such action, the Administrative Agent

- 13 -

may without notice to or consent of the Lenders take such action on behalf of the Lenders as it deems appropriate or desirable in the interest of the Lenders.

7.10 No Other Duties, etc. Anything herein to the contrary notwithstanding, none of the Bookrunners, Arrangers or holders of similar titles, if any, specified in this Agreement shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent or a Lender hereunder.

8. Notices: Effectiveness; Electronic Communication

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as-provided in paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier to the addresses or telecopier numbers specified elsewhere in this Agreement⁷ or, if to a Lender, to it at its address or telecopier number specified in the Register or, if to an Obligor other than the Borrower, in care of the Borrower.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by telecopier shall be deemed to have been given when sent (except that, if not given on a business day between 9:00 a.m. and 5:00 p.m. local time where the recipient is located, shall be deemed to have been given at 9:00 a.m. on the next business day for the recipient). Notices delivered through electronic communications to the extent provided in paragraph (b) below, shall be effective as provided in said paragraph (b).

(b) Electronic Communications. Notices and other communications to the Lenders and the Issuing Bank hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent,⁸ provided that the foregoing shall not apply to notices to any Lender of Loans to be made or Letters of Credit to be issued if such Lender has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) Change of Address. Etc. Any party hereto may change its address or telecopier number for notices and other communications hereunder by notice to the other parties hereto.

⁷ Ensure that the Credit Agreement contains the contact information referred to.

⁸ Administrative Agents may wish to prescribe procedures for electronic communications and to disseminate those procedures to Lenders.

- 14 -

9. Expenses; Indemnity; Damage Waiver⁹

(a) Costs and Expenses. The Borrower shall pay (i) all reasonable out-of-pocket expenses incurred by the Administrative Agent and its Affiliates, including the reasonable fees, charges and disbursements of counsel for the Administrative Agent, in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable out-of-pocket expenses incurred by the Issuing Bank in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all reasonable out-of-pocket expenses incurred by the Administrative Agent, any Lender or the Issuing Bank, including the reasonable fees, charges and disbursements of counsel, in connection with the enforcement or protection of its rights in connection with this Agreement and the other Loan Documents, including its rights under this Section, or in connection with the Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) Indemnification by the Borrower. The Borrower shall indemnify the Administrative Agent (and any sub-agent thereof), each Lender and the Issuing Bank, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses, including the fees, charges and disbursements of any counsel for any Indemnitee, incurred by any Indemnitee or asserted against any Indemnitee by any third party or by any Obligor arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance or non-performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation or non-consummation of the transactions contemplated hereby or thereby, (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the Issuing Bank to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or Release of Hazardous Materials on or from any property owned or operated by any Obligor, or any Environmental Liability related in any way to any Obligor, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by an Obligor and regardless of whether any Indemnitee is a party thereto, provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or wilful misconduct of such Indemnitee or (y) result from a claim brought by the Borrower or any other Obligor against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Loan Document, if the Obligor has obtained a final and nonappealable judgment in its favour on such claim as determined by a court of competent jurisdiction, nor shall it be available in respect of matters specifically addressed in Sections 3.1, 3.2 and 9(a).

(c) Reimbursement by Lenders. To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under paragraph (a) or (b) of this Section to be paid by it to the Administrative Agent (or any sub-agent thereof), the Issuing Bank or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), the Issuing Bank or such Related Party, as the case may be, such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, provided that the unreimbursed expense or indemnified loss, claim, damage, liability

⁹ A reference to this Section should be included in the Survival Section, if any, of the Credit Agreement.

- 15 -

or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent) or the Issuing Bank in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent) or Issuing Bank in connection with such capacity. The obligations of the Lenders under this paragraph (c) are subject to the other provisions of this Agreement concerning several liability of the Lenders.

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by Applicable Law, the Obligors shall not assert, and hereby waive, any claim against any Indemnitee, on any theory of liability, for indirect, consequential, punitive, aggravated or exemplary damages (as opposed to direct damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby (or any breach thereof), the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

(e) Payments. All amounts due under this Section shall be payable promptly after demand therefor. A certificate of the Administrative Agent or a Lender setting forth the amount or amounts owing to the Administrative Agent, Lender or a sub-agent or Related Party, as the case may be, as specified in this Section, including reasonable detail of the basis of calculation of the amount or amounts, and delivered to the Borrower shall be conclusive absent manifest error.

10. Successors and Assigns

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that no Obligor may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of paragraph (b) of this Section, (ii) by way of participation in accordance with the provisions of paragraph (d) of this Section, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of paragraph (f) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in paragraph (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it); provided that:

(i) except if an Event of Default has occurred and is continuing or in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Loans at the time owing to it or in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund with respect to a Lender, the aggregate amount of the Commitment being assigned (which for this purpose includes Loans outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Loan of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date) shall not be less than \$5,000,000, in the case of any assignment in respect of a revolving facility, or \$1,000,000, in the case

- 16 -

of any assignment in respect of a term facility, unless each of the Administrative Agent and, so long as no Default has occurred and is continuing, the Borrower otherwise consent to a lower amount (each such consent not to be unreasonably withheld or delayed);

(ii) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loan or the Commitment assigned, except that this clause (ii) shall not prohibit any Lender from assigning all or a portion of its rights and obligations among separate credits on a non-*pro rata* basis;

(iii) any assignment of a Commitment relating to a credit under which Letters of Credit may be issued must be approved by any Issuing Bank (such approval not to be unreasonably withheld or delayed) unless the Person that is the proposed assignee is itself already a Lender with a Commitment under that credit;

(iv) any assignment must be approved by the Administrative Agent (such approval not to be unreasonably withheld or delayed) unless:

(x) in the case of an assignment of a Commitment relating to a revolving credit, the proposed assignee is itself already a Lender with the same type of Commitment,

(y) no Event of Default has occurred and is continuing, and the assignment is of a Commitment relating to a non-revolving credit that is fully advanced, or

(z) the proposed assignee is a bank whose senior, unsecured, non-credit enhanced, long term debt is rated at least A3, A- or A low by at least two of Moody's Investor Services Inc., Standard & Poor's, a division of The McGraw-Hill Companies, Inc. and Dominion Bond Rating Service Limited, respectively;

(v) any assignment must be approved by the Borrower (such approval not to be unreasonably withheld or delayed) unless the proposed assignee is itself already a Lender with the same type of Commitment or a Default has occurred and is continuing; and

(vi) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in an amount specified elsewhere in this Agreement¹⁰ and the Eligible Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to paragraph (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement and the other Loan Documents, including any collateral security, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but

¹⁰ Ensure that the Credit Agreement specifies the amount of this fee.

- 17 -

shall continue to be entitled to the benefits of Sections 3 and 9, and shall continue to be liable for any breach of this Agreement by such Lender, with respect to facts and circumstances occurring prior to the effective date of such assignment. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (d) of this Section. Any payment by an assignee to an assigning Lender in connection with an assignment or transfer shall not be or be deemed to be a repayment by the Borrower or a new Loan to the Borrower.

(c) Register. The Administrative Agent shall maintain at one of its offices in Toronto, Ontario or Montréal, Québec a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, absent manifest error, and the Borrower, the Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural person, an Obligor or any Affiliate of an Obligor¹¹) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Administrative Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any payment by a Participant to a Lender in connection with a sale of a participation shall not be or be deemed to be a repayment by the Borrower or a new Loan to the Borrower.

Subject to paragraph (e) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Section 3 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 4 as though it were a Lender, provided such Participant agrees to be subject to Section 5 as though it were a Lender.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 3.1 and 3.2 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 3.2 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with Section 3.2(e) as though it were a Lender.

(f) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, but no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

¹¹ Consideration should be given to the percentage of Lenders required to permit the sale of a participation to an Obligor or any Affiliate or Subsidiary of an Obligor.

- 18 -

11. Governing Law: Jurisdiction: Etc.

(a) Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the Province specified elsewhere in this Agreement¹² and the laws of Canada applicable in that Province.

(b) Submission to Jurisdiction. Each Obligor irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the courts of the Province specified elsewhere in this Agreement, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or any other Loan Document, or for recognition or enforcement of any judgment, and each of the parties hereto irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or in any other Loan Document shall affect any right that the Administrative Agent or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against any Obligor or its properties in the courts of any jurisdiction.

(c) Waiver of Venue. Each Obligor irrevocably and unconditionally waives, to the fullest extent permitted by Applicable Law, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in paragraph (b) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by Applicable Law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

12. WAIVER OF JURY TRIAL

EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

13. Counterparts: Integration: Effectiveness: Electronic Execution

(a) Counterparts: Integration: Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents and any separate letter agreements with respect to fees payable to the Administrative Agent constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in the conditions precedent Section(s) of this Agreement, this Agreement shall become effective when it has been executed by the Administrative Agent and when the Administrative Agent has received counterparts hereof that, when taken together, bear the signatures of

¹² Ensure that the Credit Agreement identifies the Province referred to here and in paragraph (b) immediately below.

- 19 -

each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or by sending a scanned copy by electronic mail shall be effective as delivery of a manually executed counterpart of this Agreement.

(b) Electronic Execution of Assignments. The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any Applicable Law, including Parts 2 and 3 of the Personal Information Protection and Electronic Documents Act (Canada), the Electronic Commerce Act, 2000 (Ontario) and other similar federal or provincial laws based on the Uniform Electronic Commerce Act of the Uniform Law Conference of Canada or its Uniform Electronic Evidence Act, as the case may be.

14. Treatment of Certain Information: Confidentiality

(1) Each of the Administrative Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to it, its Affiliates and its and its Affiliates' respective partners, directors, officers, employees, agents, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority), (c) to the extent required by Applicable Laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap, derivative, credit-linked note or similar transaction relating to the Borrower and its obligations, (g) with the consent of the Borrower or (h) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to the Administrative Agent or any Lender on a non-confidential basis from a source other than an Obligor.

(2) For purposes of this Section, "Information" means all information received in connection with this Agreement from any Obligor relating to any Obligor or any of its Subsidiaries or any of their respective businesses, other than any such information that is available to the Administrative Agent or any Lender on a non-confidential basis prior to such receipt. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information. In addition, the Administrative Agent may disclose to any agency or organization that assigns standard identification numbers to loan facilities such basic information describing the facilities provided hereunder as is necessary to assign unique identifiers (and, if requested, supply a copy of this Agreement), it being understood that the Person to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to make available to the public only such Information as such person normally makes available in the course of its business of assigning identification numbers

(3) In addition, and notwithstanding anything herein to the contrary, the Administrative Agent may provide the information described on Exhibit B concerning the Borrower and the credit facilities established herein to Loan Pricing Corporation and/or other recognized trade publishers of information for general circulation in the loan market.

EXHIBIT A

ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption (the "Assignment and Assumption") is dated as of the Effective Date set forth below and is entered into by and between [*Insert name of Assignor*] (the "Assignor") and [*Insert name of Assignee*] (the "Assignee"). Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (as amended, the "Credit Agreement"), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of the Assignor's rights and obligations in its capacity as a Lender under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the respective facilities identified below (including without limitation any letters of credit, guarantees, and swingline loans included in such facilities) and (ii) to the extent permitted to be assigned under Applicable Law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, 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, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned pursuant to clauses (i) and (ii) above being referred to herein collectively as, the "Assigned Interest"). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

1. Assignor: _____
2. Assignee: _____
[and is an Affiliate/Approved Fund of [*identify Lender*]¹]
3. Borrower(s): _____
4. Administrative Agent: _____, as the administrative agent under the Credit Agreement
5. Credit Agreement: [The [*amount*] Credit Agreement dated as of _____ among [*name of Borrower(s)*], the Lenders parties thereto, [*name of Administrative Agent*], as Administrative Agent, and the other agents parties thereto]

¹ Select as applicable.

- 2 -

6. Assigned Interest:

Facility Assigned ²	Aggregate Amount of Commitment/Loans for all Lenders ³	Amount of Commitment/Loans Assigned ³	Percentage Assigned of Commitment/Loans ⁴	CUSIP Number
	\$	\$	%	
	\$	\$	%	
	\$	\$	%	

[7. Trade Date: _____]⁵

² Fill in the appropriate terminology for the types of facilities under the Credit Agreement that are being assigned under this Assignment (e.g. "Revolving Credit Commitment," "Term Loan Commitment," etc.)

³ Amount to be adjusted by the counterparties to take into account any payments or prepayments made between the Trade Date and the Effective Date.

⁴ Set forth, to at least 9 decimals, as a percentage of the Commitment/Loans of all Lenders thereunder.

⁵ To be completed if the Assignor and the Assignee intend that the minimum assignment amount is to be determined as of the Trade Date.

- 3 -

Effective Date: _____, 20____ [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR
[NAME OF ASSIGNOR]

By

:

Title: _____

ASSIGNEE
[NAME OF ASSIGNEE]

By

:

Title: _____

[Consented to and]⁶ Accepted:

[NAME OF ADMINISTRATIVE AGENT],
as
Administrative Agent

By

Title: _____

[Consented to:]⁷

[NAME OF RELEVANT PARTY]

By

Title: _____

⁶ To be added only if the consent of the Administrative Agent is required by the terms of the Credit Agreement.

⁷ To be added only if the consent of the Borrower and/or other parties (e.g. Swingline Lender, L/C Issuer) is required by the terms of the Credit Agreement.

ANNEX 1 to Assignment and Assumption

[]¹STANDARD TERMS AND CONDITIONS FOR
ASSIGNMENT AND ASSUMPTION**1. Representations and Warranties.**

1.1 **Assignor.** The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document², (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by the Borrower, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2 **Assignee.** The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it meets all requirements of an Eligible Assignee under the Credit Agreement (subject to receipt of such consents as may be required under the Credit Agreement), (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it has received a copy of the Credit Agreement, together with copies of the most recent financial statements delivered pursuant to Section ____ thereof, as applicable, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest on the basis of which it has made such analysis and decision independently and without reliance on the Administrative Agent or any other Lender, and (v) if it is a Foreign Lender³, attached to the Assignment and Assumption is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by the Assignee; and (b) agrees that (i) it will, independently and without reliance on the Administrative Agent, the Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. **Payments.** From and after the Effective Date, the Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignee whether such amounts have accrued prior to, on or after the Effective Date. The Assignor and

¹ Describe Credit Agreement at option of Administrative Agent.

² The term "Loan Document" should be conformed to the term used in the Credit Agreement.

³ The concept of "Foreign Lender" should be conformed to the section in the Credit Agreement governing withholding taxes and gross-up.

- 2 -

the Assignee shall make all appropriate adjustments in payments by the Administrative Agent for periods prior to the Effective Date or with respect to the making of this assignment directly between themselves.

3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and permitted assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy or by sending a scanned copy by electronic mail shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law governing the Credit Agreement.

LOAN MARKET DATA TEMPLATE

Recommended Data Fields – At Close

The items highlighted in bold are those that Loan Pricing Corporation (LPC) deem essential. The remaining items are those that LPC has seen become more prominent over time as transparency has increased in the U.S. Loan Market.

<u>Company Level</u>	<u>Deal Specific</u>	<u>Facility Specific</u>
Issuer Name	Currency/Amount	Currency/Amount
Location	Date	Type
SIC (Cdn)	Purpose	Purpose
Identification Number(s)	Sponsor	Tenor
Revenue	Financial Covenants	Term Out Option
		Expiration Date
	Target Company	Facility Signing Date
*Measurement of Risk	Assignment Language	Pricing
S&P Sr. Debt	Law Firms	Base Rate(s)/Spread(s)/BA/LIBOR
S&P Issuer	MAC Clause	Initial Pricing Level
Moody's Sr. Debt	Springing lien	Pricing Grid (tied to, levels)
Moody's Issuer	Cash Dominion	Grid Effective Date
Fitch Sr. Debt	Mandatory Prepays	Fees
Fitch Issuer	Restrict'd Payments (Neg Covs)	Participation Fee (tiered also)
S&P Implied		
(internal assessment)	Other Restrictions	Commitment Fee
DBRS		
Other Ratings		Annual Fee
*Industry Classification		Utilization Fee
Moody's Industry		LC Fee(s)
S&P Industry		BA Fee
Parent		Prepayment Fee
Financial Ratios		Other Fees to Market
		Security
		Secured/Unsecured
		Collateral and Seniority of Claim
		Collateral Value
		Guarantors
		Lenders Names/Titles
		Lender Commitment (\$)
		Committed/Uncommitted
		Distribution method
		Amortization Schedule
		Borrowing Base/Advance Rates
		New Money Amount
		Country of Syndication
		Facility Rating (Loss given default)
		S&P Bank Loan
		Moody's Bank Loan
		Fitch Bank Loan
		DBRS
		Other Ratings

* These items would be considered useful to capture from an analytical perspective

Schedule 1.1(33) – Lenders’ Branches of Account

Lender	Address of Branch of Account
Bank of Montreal	11 th Floor, 1 First Canadian Place Toronto, Ontario M5X 1A1
Caisse centrale Desjardins	25 York Street, Suite 1000 Toronto, Ontario M5J 2V5
The Toronto-Dominion Bank	100 Wellington Street West, 26th Floor Toronto, ON M5K 1A2

Schedule 1.1(53) – Commitments

Lender	Commitment	Applicable Percentage
Bank of Montreal	\$[●]	33 1/3%
Caisse centrale Desjardins	\$[●]	33 1/3%
The Toronto-Dominion Bank	\$[●]	33 1/3%
Total Commitment	\$[●]	100%

Schedule 1.1(56) – Form of Compliance Certificate

2423402 ONTARIO INC.

TO: BANK OF MONTREAL, in its capacity as Administrative Agent (the “Administrative Agent”)

AND TO: Each of the financial institutions and other entities from time to time parties to the Credit Agreement (as defined below) (the “Lenders”)

Reference is made to the Credit Agreement made as of August 28, 2014 (the “**Credit Agreement**”), between 2423402 Ontario Inc. (the “**Borrower**”), the Administrative Agent and the Lenders. Capitalized terms used herein but not otherwise defined shall bear the respective meanings given to them in the Credit Agreement.

I, [insert name], being the **[insert office]** of the Borrower and an authorized signatory of the Borrower, and being duly authorized by the Borrower to deliver this certificate, hereby make the following certifications and confirmations for and on behalf of the Borrower and without incurring personal liability and that the same may be relied upon by you without further inquiry:

- (a) the information contained in the financial statements delivered to you on the date hereof is prepared and presented in accordance with GAAP and in a manner consistent with the past practices of the Borrower and such financial statements are true and correct in all material respects and present fairly the results of operations and changes in the financial position of the Borrower;
- (b) the Borrower is in material compliance with its covenants set forth in Section 9 of the Credit Agreement;
- (c) each of the representations and warranties of the Borrower set forth in Section 2 of the Credit Agreement is true and correct in all respects by reference to the facts and circumstances existing on the date hereof **[other than as set forth in a schedule to this certificate]**;
- (d) no Default or Event of Default has occurred and is continuing as of the date hereof **[other than as set forth in a schedule to this certificate]**; and
- (e) no changes have been made to the most recent Financial Model delivered to the Administrative Agent.

DATED: _____, _____

Name:

Title:

Schedule 1.1(95) – Financial Model

- See attached -

Schedule 1.1(147) – Material Subcontracts

Mechanical/Electrical	J.M.R. Electric Ltd.
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Schedule 2.1(25) – Corporate Organization Chart

Major Project Party	Parent Company
2423402 Ontario Inc.	Bondfield Construction Company Limited owns 100% of the issued and outstanding shares.

Schedule 3.5(1) – Form of Funding Request

[Date]

Corporate Finance Division
First Canadian Place
100 King Street West, 11th Floor
Toronto, Ontario
M5X 1A1

Attention: Director
Facsimile No.: (416) 360-7168

- with a copy to -

Agent Bank Services
234 Simcoe Street, 3rd Floor
Toronto, Ontario
M5T 1T4

Attention: Manager, Agent Bank Services
Facsimile No.: (416) 598 – 6218

Dear Sirs/Mesdames:

Reference is made to that certain Credit Agreement made as of August 28, 2014 (as amended, restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”), between 2423402 Ontario Inc. (the “**Borrower**”), the Lenders from time to time party thereto (the “**Lenders**”) and Bank of Montreal, as administrative agent (the “**Administrative Agent**”). Capitalized terms used and not defined herein have the meanings given to them in the Credit Agreement.

Borrower hereby gives irrevocable notice, pursuant to Section 3.5(1) of the Credit Agreement, of the following Requested Funding:

- (a) Proposed Funding Date: _____
- (b) Total amount of the Requested Funding: C\$ _____
- (c) Allocation of the Requested Funding:
 - (i) Borrower Proceeds Account at:
[insert wire transfer instructions]: C\$ _____
 - (ii) [payee name, if directed payment] on
account of Fees/Transaction Expenses: C\$ _____
 - (iii) [Lender name] on
account of the Fixed Payment

payable to such Lender under
the applicable Interest Rate
Swap, together with wire transfer
instructions: **[NTD: Insert for each Lender
/Fixed Payment.]**

C\$ _____

**[Insert wire transfer
instructions]**

The Borrower is familiar with and has examined the provisions of the Credit Agreement and has made reasonable investigations of the records of the Borrower and based on the foregoing and as of the date of this Funding Request, hereby certifies, to the Administrative Agent and each of the Lenders, that:

- (a) attached is (i) the Contractor's progress draw application relating to the Construction Costs in respect of the Requested Funding, and (ii) the Contractor's invoice for other transaction costs not inconsistent with the Financial Model[, **and a statutory declaration executed by the Contractor with respect to [●]**];
- (b) attached is a title search of the Project Lands which confirms that there exist upon the Project Lands no Liens other than Permitted Liens;
- (c) the portion of the Work completed as of the date hereof has been completed in accordance with the Construction Contract, the Contract Documents (as defined in the Project Agreement) and the Construction Budget;
- (d) no Default or Event of Default has occurred and is continuing;
- (e) each Material Project Document is in full force and effect, no default by the Borrower or, to the Borrower's Knowledge, by the Contractor has occurred and is continuing under any Material Project Document which has a Material Adverse Effect, none of the Material Project Documents have been terminated (whether for convenience, for cause or otherwise) and no notice of termination has been given under any of the Material Project Documents;
- (f) all conditions to the making of Loans on each Funding Date set forth in Section 8.2 have been satisfied or will be satisfied on the proposed Funding Date set forth in paragraph (a) above;
- (g) each of the representations and warranties contained in Section 2.1 of the Credit Agreement and in the Security Documents is true and accurate in all respects as of the date hereof (other than any portion of such representations and warranties that was given in respect of a particular date or period, in which case such representation and warranty shall continue to be given as at such date or for such period);
- (h) the proceeds of the Requested Funding will be used in accordance with the Credit Agreement and the Funding Request;

- (i) all Construction Costs to which this Funding Request applies are accurate and there are no material variances between such Construction Costs and the Construction Budget;
- (j) the amount requested in respect of Construction Costs hereunder does not exceed 90% of the total certified cost of all Work to which this Funding Request relates;
- (k) except those Construction Costs in respect of subcontracted Work that has been completed by the applicable Subcontractor, all applicable lien periods have expired in respect of such subcontracted Work as certified by the Lenders' Consultant, in which case, the amount requested in respect of Construction Costs includes 100% of the total certified cost of the applicable subcontracted Work;
- (l) the total amount of Construction Costs estimated to be incurred from the date of this Funding Request up to the scheduled Substantial Completion Date are consistent with the Construction Budget; and

[either

- (m) **the Borrower has sufficient funds available to it pursuant to the Credit Facility, in the Borrower Proceeds Account and in its Agent's Funding Account Balance to complete the Work in accordance with the Construction Budget and to pay all Borrowing Costs.**

Or

- (n) **there is a Cost to Complete Deficiency in the amount of \$[●] in respect of the proposed Funding Date set forth in paragraph (a) above. Attached is a detailed plan to remediate such Cost to Complete Deficiency.]**

IN WITNESS WHEREOF, Borrower has caused this Funding Request to be executed and delivered by its duly authorized officer(s) as of the date first set forth above.

2423402 ONTARIO INC.

By: _____

Name: _____

Title: _____

Schedule 5.4 – Notice of Repayment

[Date]

Corporate Finance Division
First Canadian Place
100 King Street West, 11th Floor
Toronto, Ontario
M5X 1A1

Attention: Director
Facsimile No.: (416) 360-7168

- with a copy to -

Agent Bank Services
234 Simcoe Street, 3rd Floor
Toronto, Ontario
M5T 1T4

Attention: Manager, Agent Bank Services
Facsimile No.: (416) 598 – 6218

Dear Sirs/Mesdames:

We refer to Section 5.4 of the Credit Agreement made as of August 28, 2014, between 2423402 Ontario Inc., as Borrower, Bank of Montreal, as Administrative Agent, and the Lenders party thereto, as amended, restated, supplemented and otherwise modified from time to time (the “**Credit Agreement**”). Capitalized terms used and not defined herein have the meanings given to them in the Credit Agreement.

We hereby give you irrevocable notice that we shall repay certain of the Loans under the Credit Facility as follows (repeat for each Loan to be repaid):

1. Date of repayment _____/_____/_____ (not less than three (3) Business Days from the date of this notice).
2. Aggregate amount of repayment of \$_____ (minimum aggregate amount of Cdn\$500,000 or the outstanding balance if less, and shall be made in Cdn\$100,000 multiples, as the case may be).

Yours truly,

2423402 ONTARIO INC.

By: _____

Name:

Title:

Schedule 5.5 – Notice of Cancellation

[Date]

Corporate Finance Division
First Canadian Place
100 King Street West, 11th Floor
Toronto, Ontario
M5X 1A1

Attention: Director
Facsimile No.: (416) 360-7168

- with a copy to -

Agent Bank Services
234 Simcoe Street, 3rd Floor
Toronto, Ontario
M5T 1T4

Attention: Manager, Agent Bank Services
Facsimile No.: (416) 598 – 6218

Dear Sirs/Mesdames:

We refer to Section 5.5 of the Credit Agreement made as of August 28, 2014, between 2423402 Ontario Inc., as Borrower, Bank of Montreal, as Administrative Agent, and the Lenders party thereto, as amended, restated, supplemented and otherwise modified from time to time (the “**Credit Agreement**”). Capitalized terms used and not defined herein have the meanings given to them in the Credit Agreement.

We hereby give you notice of cancellation and reduction in the amount of Cdn\$_____ [minimum of Cdn\$500,000 and in multiples of Cdn\$100,000] of the Total Commitment effective as at _____ [insert date, which shall be no earlier than 1 Business Day after the date on which this Notice of Cancellation is received by the Administrative Agent].

Following such cancellation, the Total Commitment shall be Cdn\$_____.

Yours truly,

2423402 ONTARIO INC.

By: _____

Name: _____

Title: _____

Schedule 8.2(7)(b) – Form of Statutory Declaration

(Attach form CCDC-9A)

Statutory Declaration of Progress Payment Distribution by Contractor

Standard Construction Document

CCDC 9A - 2001

To be made by the Contractor prior to payment when required as a condition for either:

- ☐ second and subsequent progress payments; or
☐ release of holdback.

The last application for progress payment for which the Declarant has received payment is No. _____
dated the _____ day of _____,
in the year _____.

Identification of Contract

Name of Contract (Location and description of the Work as it appears in the Contract Documents)

Date of Contract:

Day

Month

Year

Name of Owner

Name of Contractor

Identification of Declarant

Name of Declarant

Position or Title (of office held with Contractor)

Declaration

I solemnly declare that, as of the date of this declaration, I am an authorized signing officer, partner or sole proprietor of the Contractor named in the Contract identified above, and as such have authority to bind the Contractor, and have personal knowledge of the fact that all accounts for labour, subcontracts, products, services, and construction machinery and equipment which have been incurred directly by the Contractor in the performance of the work as required by the Contract, and for which the Owner might in any way be held responsible, have been paid in full as required by the Contract up to and including the latest progress payment received, as identified above, except for:

- 1) holdback monies properly retained,
- 2) payments deferred by agreement, or
- 3) amounts withheld by reason of legitimate dispute which have been identified to the party or parties, from whom payment has been withheld.

I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath.

Declared before me in _____ this _____ day of _____,

City/Town and Province

in the year _____.

Signature of Declarant

(A Commissioner for Oaths, Notary Public, Justice of the Peace, etc.)

The making of a false or fraudulent declaration is a contravention of the Criminal Code of Canada, and could carry, upon conviction, penalties including fines or imprisonment.

**Apply a CCDC 9
copyright seal here.**

Use of this form without a CCDC 9 copyright seal constitutes an infringement of copyright. Use of this form with a CCDC 9 copyright seal demonstrates that it is intended by the parties to be an accurate and unamended version of CCDC 9A - 2001.



Copyright 2001

Canadian Construction Documents Committee

Schedule 8.2(7)(c) – Form of Lenders’ Consultant Certificate

Lenders’ Consultant’s Certificate

TO: **Bank of Montreal, as administrative agent for and on behalf of the Lenders (the “Administrative Agent”)**

AND TO: **2423402 ONTARIO INC. (the “Borrower”)**

RE: Requested Funding in the amount of **\$/[Insert Amount]**

Reference is made to the Credit Agreement made as of August 28, 2014 as amended, restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”), between the Borrower, each of the financial institutions and other entities from time to time parties hereto (the “**Lenders**”) and the Administrative Agent.

Reference is made to the guaranteed price contract made as of August 28, 2014 (the “**Construction Contract**”), between the Borrower and Bondfield Construction Company Limited (the “**Contractor**”) for the carrying out of the Work. All terms used with initial capital letters but not otherwise defined herein shall have the meanings ascribed thereto in the Credit Agreement.

1. We are the Lenders’ Consultant and in such capacity have reviewed the following, each as constituted as of the date hereof:

- (a) a Funding Request dated **[/Insert Date]** for the Requested Funding;
- (b) the certificate of the Consultant delivered pursuant to Section 2.1 of Appendix 1 to the Construction Contract in connection with the Requested Funding, a copy of which is attached hereto;
- (c) **[with respect to the calculation of any Forecasted Delay, any plan proposed by the Contractor to remediate such Forecasted Delay.]**
- (d) **[with respect to any Cost to Complete Deficiency, any plan proposed by the Contractor to remediate such Cost to Complete Deficiency.]**

2. We have made, or caused to be made, such examinations or investigations as are, in our belief, necessary to enable us to make the statements or give the opinions contained or expressed in this Lenders’ Consultant’s Certificate, in accordance with our responsibilities in such regard pursuant to the provisions of the Construction Contract. We have periodically visited the Project Lands and last visited the Work on **[/Insert Date]**.

3. Based upon the foregoing, we certify and confirm that:

- (a) the Work is proceeding within the Construction Budget and the incurred Construction Costs to date are **\$/[Insert Amount]**;
- (b) as of the date hereof, all Consents required in connection with the performance of the Work done to date, have been obtained;

- (c) the Requested Funding has been made in the amount of \$**[Insert Amount]**, which is equal to the sum of (i) •% of the certified Construction Costs in respect of the Work for this Funding Period and (ii) Fees and Transaction Expenses not inconsistent with the Financial Model;
- (d) the construction Work is not abandoned;
- (e) all Loans made to the Borrower to date have been spent on incurred Construction Costs (less the Legislative Holdback), Borrowing Costs and Transaction Expenses, save for Construction Costs being held by the Contractor as projected Construction Costs which will be applied to incurred Construction Costs;
- (f) true and complete copies of such bills, receipts and invoices necessary to substantiate the incurrence and, if applicable, payment of the incurred Construction Costs for which the Requested Funding is requested have been reviewed by us and we are satisfied with the same;
- (g) the sum of Fundings made on account of Construction Costs in respect of prior Funding Periods plus the Requested Funding on account of Construction Costs for this Funding Period does not exceed •% of the total Construction Costs incurred and certified to date;
- (h) Interim Completion will be achieved by the Scheduled Interim Completion Date **[or, there is a delay in achieving Interim Completion by the Scheduled Interim Completion Date of [•] days]**;
- (i) there is no Forecasted Delay **[or, there is a Forecasted Delay of [•] days]**;
- (j) Substantial Completion will be achieved by the Lender Longstop Date;
- (k) there is no anticipated delay in achieving Substantial Completion by the Scheduled Substantial Completion Date **[or there is an anticipated delay in achieving Substantial Completion by the Scheduled Substantial Completion Date of [•] days by reason of •];** and
- (l) there is no Cost to Complete Deficiency **[or (A) there is a Cost to Complete Deficiency in the amount of \$[•], and (B) the Cost to Complete Deficiency Remedial Plan is satisfactory or (C) the Cost to Complete Deficiency Remedial Plan is not satisfactory]**.

This Lenders' Consultant's Certificate is being delivered to the Administrative Agent pursuant to Section 8.2(7)(c) of the Credit Agreement and may be relied upon by the addressees hereof and their respective successors and assigns.

DATED this • day of • 20•.

•

By:

Name:

Title:

Schedule 9.1(19) – Financial Model Updates

1. Unless otherwise provided under this Agreement, each reference to the Financial Model shall mean the current Financial Model until another Financial Model becomes the current one in accordance with this Schedule 9.1(19).
2. Each new Financial Model shall be in the same form as the initial Financial Model.
3. The Administrative Agent acknowledges that the Borrower may from time to time need to amend the Financial Model (for example, in order to reflect any Change Orders or Change Directives under the Project Agreement).
4. A draft Financial Model delivered by the Borrower to the Administrative Agent shall become the current Financial Model automatically upon approval by the Administrative Agent and the Lenders (upon advice from the Lenders' Consultant) and CMH. If the Administrative Agent and the Lenders do not approve a draft Financial Model, the Borrower and the Administrative Agent (together with the Lenders' Consultant) shall diligently work to resolve such disputed aspect of the draft Financial Model.
5. The Financial Model shall be kept by the Borrower, and each of the Administrative Agent and the Borrower shall maintain its own copy of the Financial Model for day-to-day purposes.
6. The Administrative Agent shall promptly deliver a copy of each Financial Model received by the Administrative Agent pursuant to this Agreement to each of the Lenders.

Schedule 9.1(22) – Additional Insurance

None.

Tab E

This is **Exhibit "E"** referred to in the
affidavit of **EDEN ORBACH**
sworn before me this
6th day of May, 2019

A handwritten signature in blue ink, consisting of stylized, flowing letters that appear to be 'T. S. D.' or similar.

A Commissioner for taking affidavits

**PROJECT AGREEMENT
(EXECUTION VERSION)
TO BUILD AND FINANCE
THE CAMBRIDGE MEMORIAL HOSPITAL
REDEVELOPMENT PROJECT**

PROPRIETARY AND CONFIDENTIAL

TABLE OF CONTENTS

1.	DEFINITIONS AND INTERPRETATION	3
1.1	Definitions and Interpretation	3
1.2	Conflict of Terms	4
1.3	Conflict with Lender's Direct Agreement	6
1.4	Legal Requirements	6
2.	COMMERCIAL CLOSE AND FINANCIAL CLOSE	6
2.1	Effective Date	6
2.2	Standby Letter of Credit	6
2.3	Financial Close	7
2.4	Disruption in Financial Markets	7
3.	GUARANTEED PRICE AND ADJUSTMENTS	8
3.1	Guaranteed Price and Adjustments	8
3.2	Cash Allowances	9
4.	PAYMENT	10
4.1	General	10
4.2	Acknowledgement by Project Co	11
4.3	Lump Sum Payments	11
4.4	Direction of Lump Sum Payments	11
4.5	Payment of Legislative Holdback and Balance of the Guaranteed Price	12
4.6	CMH Holdback	13
4.7	Additional CMH Payments	13
4.8	Certified Cost to Complete	13
4.9	Compensation on Termination	14
4.10	Payment Due under Insurance Policies	15
4.11	[Intentionally Deleted]	15
4.12	Establishment of Trust Account and Manner of Payment	15
4.13	Set-Off	15
4.14	Effect of Payment	15
4.15	No Other Entitlement	16
4.16	Taxes	16
4.17	Changes in Scope of Taxation	16
4.18	Information and Assistance Provided by Project Co	16
4.19	Residency – <i>Income Tax Act</i> (Canada)	17
4.20	Taxes – General	17
4.21	Taxes – Indemnity	17
5.	SITE INVESTIGATION AND DOCUMENT REVIEW	19
5.1	Concealed or Unknown Conditions	19
5.2	Document Review	19

TABLE OF CONTENTS (Continued)

6.	PROJECT DOCUMENTS.....	20
6.1	Project Documents.....	20
6.2	Implementing Agreements.....	20
6.3	Changes to Lending Agreements.....	21
6.4	Compliance with Lending Agreements	22
7.	REPRESENTATIONS AND WARRANTIES.....	22
7.1	Project Co Representations and Warranties.....	22
7.2	CMH Representations and Warranties.....	26
8.	CONSULTANT AND KEY PERSONNEL.....	27
8.1	Authority of the Consultant	27
8.2	Role of the Consultant	28
8.3	Supervisors.....	31
8.4	Key Personnel	31
9.	LICENCE AND TITLE.....	32
9.1	Licence to Site.....	32
9.2	Non-Exclusive Licence of Site	33
9.3	Naming and Signage	33
9.4	No Interest in Site or Facility.....	33
9.5	Non-Disturbance Agreement	34
10.	CMH RESPONSIBILITIES	34
10.1	General.....	34
11.	PROJECT CO RESPONSIBILITIES AND CONSTRUCTION OBLIGATIONS.....	35
11.1	General Responsibilities, Standards and Contract Time.....	35
11.2	General Construction Obligations.....	36
11.3	Liability Unaffected	39
11.4	Project Co Delay	39
11.5	Permits, Licences and Approvals.....	39
11.6	Safety	40
11.7	Minimize Disturbance and Work in Existing Facility	42
11.8	Subcontractors and Suppliers.....	43
11.9	Labour and Products	45
11.10	Documents at the Site	46
11.11	Shop Drawings.....	46
11.12	Use of the Work.....	48
11.13	Cutting and Remedial Work	49
11.14	Cleanup	49
11.15	Project Co Attending Meetings.....	50
11.16	Defective Work.....	50

TABLE OF CONTENTS (Continued)

11.17	Project Co Design Contingency	50
11.18	Procedure for Addressing Design Issues	52
11.19	Construction by CMH or Other Contractors.....	55
11.20	Temporary Supports, Structures and Facilities	58
11.21	Protection of Work and Property	58
11.22	No Site Encumbrances.....	59
11.23	CMH Assigned Contracts	60
11.24	Apprenticeship Plan and Program	60
11.25	Procurement Monitoring and Implementation Plan.....	61
12.	CONSTRUCTION SCHEDULE.....	62
12.1	The Construction Schedule	62
12.2	Changes to Critical Path.....	64
12.3	Failure to Maintain Schedule	64
13.	WORK COMMITTEE AND EQUIPMENT	64
13.1	Establishment of Work Committee.....	64
13.2	Function and Role	65
13.3	Term of Work Committee.....	66
13.4	Replacement of Committee Members	66
13.5	Procedures and Practices.....	66
13.6	Equipment Subcommittee.....	67
13.7	Project Co Equipment Responsibilities	68
13.8	CMH's Equipment Responsibility.....	70
13.9	Substitutions of Equipment by Project Co.....	71
13.10	Standards for Type D Equipment	71
13.11	Training on Type D Equipment	72
13.12	Scheduling of Equipment Installation and Commissioning.....	72
13.13	Change Orders in the Event of Delay	72
14.	CONTAMINATION.....	74
14.1	Contamination.....	74
15.	ITEMS OF GEOLOGICAL, HISTORICAL OR ARCHAEOLOGICAL INTEREST OR VALUE	77
15.1	Objects Property of CMH	77
15.2	Procedure Upon Discovery of Objects	77
15.3	Compensation Event	78
16.	COMMISSIONING AND COMPLETION	78
16.1	Interim Completion.....	78
16.2	Substantial Completion.....	80
16.3	Final Completion Countdown Notice	83

TABLE OF CONTENTS (Continued)

16.4	Final Completion Certificate.....	84
17.	CMH ACCESS, INSPECTION AND MONITORING.....	85
17.1	CMH Access	85
17.2	Right to Open Up	86
17.3	No Relief from Obligations	87
17.4	Admittance of Personnel.....	87
17.5	Confirmation of Action.....	87
17.6	Notification of Personnel	87
17.7	Finality as to Admission	87
18.	RECORDS, AUDIT AND REPORTING.....	88
18.1	Accounting and Audit.....	88
18.2	Reporting.....	88
19.	CMH'S REMEDIAL RIGHTS.....	90
19.1	Exercise of Remedial Rights.....	90
19.2	Emergency	91
19.3	Rectification.....	91
19.4	Costs and Expenses.....	92
19.5	Reimbursement Events	92
19.6	Reimbursement if Improper Exercise of Rights	93
20.	CHANGES.....	93
20.1	Change Procedure	93
21.	CHANGES IN LAW	93
21.1	Performance after Change in Law	93
21.2	Relevant Change in Law.....	93
22.	DELAY EVENTS.....	95
22.1	Definition	95
22.2	Consequences of a Delay Event.....	97
22.3	Mitigation.....	99
23.	COMPENSATION EVENTS.....	100
23.1	Definition	100
23.2	Consequences of a Compensation Event	100
23.3	Mitigation.....	101
23.4	Insured Exposure	101
24.	relief events.....	101
24.1	Definition	101
24.2	Consequences of a Relief Event	102

TABLE OF CONTENTS (Continued)

24.3	Mitigation and Process.....	103
24.4	Insured Exposure	104
25.	FORCE MAJEURE	104
25.1	Definition	104
25.2	Consequences of Force Majeure	104
25.3	Mitigation and Process.....	105
25.4	Insured Exposure	106
25.5	Modifications	106
26.	PROJECT CO DEFAULT	106
26.1	Project Co Events of Default	106
26.2	Notification of Occurrence	110
26.3	Remedies.....	110
26.4	CMH's Costs.....	111
26.5	No Other Rights to Terminate.....	111
27.	CMH DEFAULT	112
27.1	CMH Events of Default	112
27.2	Remedies.....	113
27.3	Project Co's Costs.....	113
27.4	No Other Rights to Terminate.....	113
28.	NON-DEFAULT SUSPENSION AND TERMINATION.....	114
28.1	Suspension	114
28.2	Termination for Relief Event.....	114
28.3	Termination for Delay or Force Majeure.....	114
28.4	Termination for Convenience	115
29.	EFFECT OF TERMINATION	115
29.1	Termination.....	115
29.2	Continued Effect – No Waiver	116
29.3	Continuing Performance	116
29.4	Effect of Notice of Termination.....	116
29.5	Ownership of Information.....	117
29.6	Provision in Subcontracts	118
29.7	Survival.....	118
30.	COMPENSATION ON TERMINATION.....	118
30.1	Compensation on Termination.....	118
31.	TAXES.....	118
31.1	Project Co to Pay Taxes.....	118
31.2	Changes in Rates.....	118

TABLE OF CONTENTS
(Continued)

31.3	Mark Up	119
31.4	Exemptions	119
31.5	Records	119
32.	INSURANCE AND PERFORMANCE SECURITY	119
32.1	General Requirements	119
32.2	No Relief from Liabilities and Obligations	119
33.	INDEMNITIES	120
33.1	Project Co Indemnities to CMH	120
33.2	CMH Indemnities to Project Co	122
33.3	Conduct of Claims	124
33.4	Mitigation – Indemnity Claims	126
34.	WAIVER OF CLAIMS	127
34.1	Waiver of Claims by Project Co	127
35.	LIMITS ON LIABILITY	127
35.1	Indirect Losses	127
35.2	Maximum Liability	128
36.	WARRANTY	129
36.1	Project Co Warranty	129
36.2	Corrections	130
36.3	Make Good Any Damage	130
36.4	Performance of Replacement Work	131
36.5	Opening, Tests, Inspections	131
36.6	Remedies Not Exclusive	132
36.7	Occupation by CMH	132
36.8	No Limitation	132
37.	INTELLECTUAL PROPERTY	132
37.1	Ownership of Specifications and Models	132
37.2	Patent Fees	132
37.3	Copyright Notice	133
38.	COMMUNICATIONS PROTOCOL AND CONFIDENTIALITY	133
38.1	Communications Protocol	133
38.2	Disclosure	134
38.3	Redaction	134
38.4	Disclosure to Government	135
38.5	Freedom of Information	135
38.6	Use and Disclosure of Confidential Information	135
38.7	Exceptions	136

TABLE OF CONTENTS (Continued)

38.8	Survival of Confidentiality	137
38.9	Protection of Personal Information.....	137
38.10	Protection of Patient Information.....	138
38.11	Survival.....	138
39.	ASSIGNMENT, SUBCONTRACTING AND CHANGES IN CONTROL.....	138
39.1	Project Co Assignment	138
39.2	CMH Assignment	139
39.3	Subcontractors.....	140
39.4	Changes in Ownership	140
40.	DISPUTE RESOLUTION PROCEDURE	141
40.1	Dispute Resolution.....	141
41.	PROHIBITED ACTS.....	141
41.1	Definition	141
41.2	Warranty	142
41.3	Remedies.....	143
41.4	Permitted Payments	144
41.5	Notification	144
41.6	Replacement of Project Co Party.....	144
42.	NOTICES.....	144
42.1	Notices to Parties	144
42.2	Notice to Consultant	146
42.3	Facsimile	146
42.4	Change of Address.....	146
42.5	Deemed Receipt of Notices	146
42.6	Service on CMH	147
43.	GENERAL	147
43.1	Amendments	147
43.2	Waiver.....	147
43.3	Relationship Between the Parties.....	148
43.4	General Duty to Mitigate	149
43.5	Actual Knowledge	149
43.6	Entire Agreement.....	149
43.7	No Reliance.....	149
43.8	Severability	150
43.9	Enurement	150
43.10	Governing Law and Jurisdiction.....	150
43.11	Cumulative Remedies	150
43.12	Further Assurance	150

TABLE OF CONTENTS (Continued)

43.13	Costs.....	151
43.14	Language of Agreement.....	151
43.15	Proof of Authority.....	151
43.16	Counterparts.....	151
43.17	Time is of the Essence	151
SCHEDULE 1	DEFINITIONS AND INTERPRETATION	
SCHEDULE 2	LIST OF CONSULTANTS, DRAWINGS AND SPECIFICATIONS	
SCHEDULE 3	COMPLETION DOCUMENTS	
SCHEDULE 4	PROJECT CO INFORMATION	
SCHEDULE 5	FORM OF LENDER'S DIRECT AGREEMENT	
SCHEDULE 6	[INTENTIONALLY DELETED]	
SCHEDULE 7	KEY PERSONNEL	
SCHEDULE 8	FINANCIAL MODEL AND FINANCIAL INFORMATION	
SCHEDULE 9	COMMISSIONING PROGRAM	
SCHEDULE 10	[INTENTIONALLY DELETED]	
SCHEDULE 11	CHANGE PROCEDURE	
SCHEDULE 12	COMPENSATION ON TERMINATION	
SCHEDULE 13	INSURANCE AND PERFORMANCE SECURITY	
SCHEDULE 14	DISPUTE RESOLUTION PROCEDURE	
SCHEDULE 15	PROCUREMENT MONITORING AND IMPLEMENTATION PLAN	
SCHEDULE 16	RISK ASSESSMENT GUIDELINES	
SCHEDULE 17	FORM OF INSURANCE AND BONDING TRUST AGREEMENT	
SCHEDULE 18	PAYMENTS AND HOLDBACKS	
SCHEDULE 19	LIST OF PROJECT CO PARTIES	
SCHEDULE 20	FORM OF ASSIGNABLE SUBCONTRACT AGREEMENT	
SCHEDULE 21	COMMUNICATIONS PROTOCOL	
SCHEDULE 22	FORM OF PERFORMANCE GUARANTEE OF CONSTRUCTION GUARANTOR	
SCHEDULE 23	FORM OF ASSIGNABLE SUBCONTRACT AGREEMENT FOR CONSTRUCTION CONTRACT	
SCHEDULE 24	FORM OF TRUST ACCOUNT ACKNOWLEDGMENT AGREEMENT	
SCHEDULE 25	LEGAL DESCRIPTION OF THE LANDS	
SCHEDULE 26	[INTENTIONALLY DELETED]	
SCHEDULE 27	STANDBY LETTER OF CREDIT	
SCHEDULE 28	REFINANCING	

THIS AGREEMENT is made as of the 28th day of August, 2014

BETWEEN:

CAMBRIDGE MEMORIAL HOSPITAL, a non-share capital corporation incorporated under the laws of Ontario

("CMH")

AND:

2423402 ONTARIO INC., a corporation incorporated under the laws of the Province of Ontario

("Project Co")

WHEREAS:

A. CMH, with the assistance of Ontario Infrastructure and Lands Corporation ("IO"), wishes to procure the finance and construction of the Facility.

B. CMH and Project Co wish to enter into this Project Agreement which sets out the terms and conditions upon which Project Co shall perform the Work.

C. The overriding priorities of CMH in entering into and implementing this Project Agreement are the health and safety of the patients of the Facility and the Existing Facility and their healthcare needs, and the provision of first-rate healthcare services and Project Co recognizes and understands that the health and safety of the patients and staff of the Facility and the Existing Facility are, at all times, paramount.

D. The Project will proceed as an alternative financing and procurement project and complies with the principles set out in MEDEI's Building a Better Tomorrow: An Infrastructure Planning, Financing and Procurement Framework for Ontario's Public Sector (the "IPFP Framework").

E. The IPFP Framework establishes 5 fundamental principles which guide the financing and procurement of public infrastructure projects in Ontario:

1. The public interest is paramount.
2. Value for the investment of public money must be demonstrable.
3. Appropriate public control/ownership must be maintained.

4. Accountability must be maintained.
5. All processes must be fair, transparent and efficient.
- F. The IPFP Framework states that, consistent with the principle of appropriate public ownership/control, public ownership of assets will be preserved in the public sector.
- G. MOHLTC is responsible for the development, coordination, maintenance and funding of health services, including a balanced and integrated system of hospitals, nursing homes, laboratories, ambulances, other health facilities and providers to meet the health needs of the people of Ontario.
- H. There are a number of statutes which govern the operation and administration of hospitals in Ontario. Under the *Public Hospitals Act* (Ontario), certain actions of hospitals can only be undertaken with the approval of the Minister of Health and Long-Term Care. Subsection 4(3) of the *Public Hospitals Act* (Ontario) states that no additional building or facilities shall be added to a hospital until the plans therefore have been approved by the Minister. Under subsection 4(2) of the *Public Hospitals Act* (Ontario), no institution, building or other premises or place shall be operated or used for the purposes of a hospital unless the Minister has approved the operation and or use of the premises or place for that purpose.
- I. The Minister of Health and Long-Term Care has powers to protect the public interest regarding matters relevant to the quality of the management and administration of a hospital, the proper management of the health care system in general, the availability of financial resources for the management and delivery of health care services, the accessibility of services in the community where the hospital is located and the quality of care and treatment of patients.
- J. Project Co recognizes and understands that CMH is a public hospital under the *Public Hospitals Act* (Ontario) and is, therefore, subject to a highly regulated legal and operational environment.
- K. With a view to ensuring that both Parties are able to properly and effectively discharge their respective duties, functions and responsibilities under Applicable Law, it is the intent that CMH and Project Co work collaboratively, responsibly and cooperatively throughout the Project Term.

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 as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions and Interpretation

- (a) This Project Agreement shall be interpreted in accordance with Schedule 1 – Definitions and Interpretation.
- (b) This Project Agreement is comprised of this executed agreement and the following documents, all of which are hereby incorporated by reference into and form part of this Project Agreement:

<u>Schedule No.</u>	<u>Description</u>
Schedule 1	Definitions and Interpretation
Schedule 2	List of Consultants, Drawings and Specifications
Schedule 3	Completion Documents
Schedule 4	Project Co Information
Schedule 5	Form of Lender's Direct Agreement
Schedule 6	[INTENTIONALLY DELETED]
Schedule 7	Key Personnel
Schedule 8	Financial Model and Financial Information
Schedule 9	Commissioning Program
Schedule 10	[INTENTIONALLY DELETED]
Schedule 11	Change Procedure
Schedule 12	Compensation on Termination
Schedule 13	Insurance and Performance Security
Schedule 14	Dispute Resolution Procedure
Schedule 15	Procurement Monitoring and Implementation Plan
Schedule 16	Risk Assessment Guidelines
Schedule 17	Form of Insurance and Bonding Trust Agreement
Schedule 18	Payments and Holdbacks
Schedule 19	List of Project Co Parties
Schedule 20	Form of Assignable Subcontract Agreement
Schedule 21	Communications Protocol
Schedule 22	Form of Performance Guarantee of Construction Guarantor
Schedule 23	Form of Assignable Subcontract Agreement for Construction Contract
Schedule 24	Form of Trust Account Acknowledgment Agreement
Schedule 25	Legal Description of the Lands
Schedule 26	[INTENTIONALLY DELETED]
Schedule 27	Standby Letter of Credit
Schedule 28	Refinancing

- (c) The intent of the Contract Documents is to include the labour, Products and services necessary for the performance of the Work by Project Co in accordance with these documents.
- (d) The documents comprising the Contract Documents are complementary and what is called for by any one of them shall be interpreted as if called for by all, except in the event of conflict, in which case Section 1.2 shall apply.
- (e) Unless it is specifically provided that a consent, approval or satisfaction is in the Sole Discretion of CMH, no consent, approval or satisfaction of CMH or the Consultant shall be unreasonably withheld or delayed. If it is specifically provided that a consent, approval or satisfaction may be given or withheld in the Sole Discretion of CMH, it may be given or withheld in the sole, absolute and unfettered discretion of CMH, which may be arbitrarily exercised without any requirement to provide reasons or explanations, whatsoever ("**Sole Discretion**").
- (f) Unless it is specifically provided that a consent, approval or satisfaction is in the Sole Discretion of Project Co, no consent, approval or satisfaction of Project Co shall be unreasonably withheld or delayed.
- (g) Neither the organization of the Specifications into divisions, sections and parts, nor the arrangement of Drawings shall control Project Co in dividing the Work among the Project Co Parties or in establishing the extent of the Work to be performed by a trade.

1.2 Conflict of Terms

- (a) In the event of ambiguities, conflicts or inconsistencies between or among any of the provisions of this Project Agreement and the other Contract Documents, the provisions shall govern in the following order of precedence with each taking precedence over those listed subsequently, unless otherwise expressly provided therein or herein:
 - (i) the provisions of amendments in writing to this Project Agreement signed by the Parties and Change Orders shall govern and take precedence only over those specific provisions of this Project Agreement and the other Contract Documents expressly amended thereby;
 - (ii) any provision establishing a higher standard of safety, reliability, durability, performance or service shall take precedence over a provision establishing a lower standard of safety, reliability, durability, performance or service;
 - (iii) the body of this Project Agreement;

- (iv) the Schedules to this Project Agreement;
 - (v) the Addenda;
 - (vi) Divisions 0 and 1 of the Specifications;
 - (vii) Divisions 2 through 16 of the Specifications;
 - (viii) material and finishing schedules;
 - (ix) Drawings;
 - (x) drawings of larger scale shall govern over those of smaller scale of the same date;
 - (xi) dimensions shown on drawings shall govern over dimensions scaled from drawings;
 - (xii) later dated documents shall govern over earlier documents of the same type;
 - (xiii) if an item is shown on one document, it shall be deemed to be part of the Work; and
 - (xiv) written descriptions and words shall govern over graphic depictions.
- (b) If the ambiguity, conflict or inconsistency is between a provision of general application and a provision that applies only to a specific part of the Work, the provision that applies to the specific part of the Work shall govern for that specific part of the Work.
- (c) If any ambiguity, conflict or inconsistency is not readily resolved by the foregoing provisions of this Section 1.2, then Project Co or CMH, upon discovery of same, shall immediately give notice to the Consultant. The Consultant shall, within 10 Business Days after such notice, make a determination of which provision governs and give notice of such determination, in writing, to Project Co.
- (d) CMH and Project Co shall comply with the determination of the Consultant pursuant to this Section 1.2 unless CMH or Project Co disputes the decision of the Consultant, in which event such dispute may be referred for resolution in accordance with Schedule 14 – Dispute Resolution Procedure.

1.3 Conflict with Lender's Direct Agreement

- (a) In the event of ambiguities, conflicts or inconsistencies between or among this Project Agreement and the Lender's Direct Agreement, the Lender's Direct Agreement shall prevail. Notwithstanding the forgoing, if there is any right or remedy in favour of CMH set out in the Lender's Direct Agreement or any part thereof which is not set out or provided for in this Project Agreement, such additional right or remedy shall not constitute an ambiguity, conflict or inconsistency. No review by CMH of the Lending Agreements shall constitute an acceptance of or acquiescence to any of the Lending Agreements or any term or condition thereof by CMH, and this Project Agreement and the Lender's Direct Agreement shall not be subject to any of the terms and conditions of the Lending Agreements.

1.4 Legal Requirements

- (a) Whenever standards of Applicable Law differ, the most stringent standards shall govern.

2. COMMERCIAL CLOSE AND FINANCIAL CLOSE

2.1 Effective Date

- (a) The provisions of Sections 1.1, 1.2, 1.4, 2.1, 2.2, 2.3, 2.4, 3.1, 7.1, 7.2, 9.4, 10.1(b), 38, 39, 40, 41, 42, 43, Schedule 1, Schedule 8, Schedule 14, Schedule 21, Schedule 22 and Schedule 27 of this Project Agreement will come into effect on the date of this Project Agreement ("**Commercial Close**"). All other provisions and schedules will come into effect only on Financial Close.

2.2 Standby Letter of Credit

- (a) On the date of this Project Agreement, Project Co shall deliver, or cause to be delivered, to CMH an irrevocable standby letter of credit (the "**Standby Letter of Credit**") in the amount of \$5,000,000 substantially in the form of Schedule 27 – Standby Letter of Credit.
- (b) Unless the Standby Letter of Credit is drawn by CMH in accordance with the provisions of this Project Agreement, CMH shall release and deliver the Standby Letter of Credit to Project Co on Financial Close.
- (c) Project Co shall ensure that the Standby Letter of Credit (and any replacement therefor) is renewed prior to its expiry date if, as at such date, Financial Close will not, or may reasonably be expected not to, have occurred.

2.3 Financial Close

- (a) Prior to Financial Close, Project Co shall deliver drafts of all documents referred to in Section 1 of Schedule 3 - Completion Documents to CMH in order to give CMH a reasonable opportunity to review such documents.
- (b) On or before the Financial Close Target Date:
 - (i) Project Co shall deliver to CMH the documents referred to in Section 1 of Schedule 3 - Completion Documents; and
 - (ii) CMH shall deliver to Project Co the documents referred to in Section 2 of Schedule 3 - Completion Documents.
- (c) If Project Co fails to deliver to CMH any of the documents referred to in Section 1 of Schedule 3 - Completion Documents by the Financial Close Target Date (other than as a direct result of a breach by CMH of its obligations under Section 2.3(b)(ii)) and CMH does not waive such requirement, CMH will be entitled to draw on the Standby Letter of Credit and to retain the lesser of (A) the full amount of the Standby Letter of Credit, and (B) the difference between the Guaranteed Price and the price that CMH is able to obtain from another contractor for the Work, together with all costs reasonably incurred by CMH to enter into binding agreements with such other contractor, and to retain the proceeds thereof as liquidated damages, and may terminate this Project Agreement in its entirety by written notice having immediate effect. The Parties agree that such liquidated damages are not a penalty but represent a genuine and reasonable pre-estimate of the damages that CMH will suffer as a result of the happening of the specified event. Such payment shall constitute full and final settlement of any and all damages that may be claimed by CMH as a result of Project Co not achieving Financial Close. The Parties agree that such liquidated damages shall be payable whether or not CMH incurs or mitigates its damages, and that CMH shall not have any obligation to mitigate any such damages.
- (d) If CMH fails to deliver to Project Co any of the documents referred to in Section 2 of Schedule 3 - Completion Documents by the Financial Close Target Date (other than as a direct result of a breach by Project Co of its obligations under Section 2.3(b)(i)) and Project Co does not waive such requirement, Project Co will be entitled to the return of the Standby Letter of Credit and to terminate this Project Agreement in its entirety by written notice having immediate effect.

2.4 Disruption in Financial Markets

- (a) If Financial Close cannot be achieved by the Financial Close Target Date by reason solely of a Severe Market Disruption, subject to Project Co's obligation to

renew the Standby Letter of Credit pursuant to Section 2.2, the Financial Close Target Date will be extended until the date falling 10 Business Days (or such other period as the Parties agree, acting reasonably) after the date on which such Severe Market Disruption ceases.

- (b) If a Severe Market Disruption exists, then, at any time before such Severe Market Disruption ceases and prior to Financial Close, CMH may in its Sole Discretion either:
 - (i) terminate this Project Agreement in its entirety by written notice having immediate effect; or
 - (ii) direct Project Co to assign to CMH and CMH will assume:
 - (A) this Project Agreement and the Project Co Permits, Licences and Approvals; and
 - (B) those contracts between Project Co and any Project Co Party which CMH elects to be assigned.
- (c) If CMH exercises its rights pursuant to Section 2.4(b), and, provided Project Co has, if directed, delivered the assignments provided for in Sections 2.4(b)(ii)(A) and 2.4(b)(ii)(B), Project Co will be entitled to the return of its Standby Letter of Credit. CMH's obligation to return the Standby Letter of Credit shall be contingent on the receipt of a waiver, in form and substance satisfactory to CMH, of any obligation or liability of CMH, IO, the Government of Ontario and any other Government Entity to Project Co and any Project Co Parties in connection with this Project Agreement and the Request for Proposals.

3. GUARANTEED PRICE AND ADJUSTMENTS

3.1 Guaranteed Price and Adjustments

- (a) Project Co represents and warrants that the Guaranteed Price, exclusive of HST, is \$[●], and is equal to the sum of the Cost of the Work and the Cost of the Financing. The Cost of the Work and the Cost of the Financing are as set out in the Financial Model.
- (b) Project Co represents and warrants that the Project Debt Interest Cost is based upon the Interest Reference Rate. The Project Debt Interest Cost will be adjusted once on, or within the 2 Business Days immediately prior to, Financial Close on the basis of the actual increase or decrease in the Project Debt Interest Cost resulting directly from any change upward or downward in the Interest Reference Rate as compared to the Interest Reference Rate as at the Submission Date.

- (c) The Parties:
 - (i) acknowledge that the Project Debt Interest Cost is a component of the Cost of the Financing and that the Project Debt Interest Cost is subject to adjustment under Section 3.1(b) as at the date set out in Section 3.1(b);
 - (ii) acknowledge that the Cost of the Work is subject to adjustment, where provided for, under any future post-award Addenda issued to Project Co; and
 - (iii) acknowledge and agree that subject to adjustments made in accordance with the provisions of this Project Agreement, the final Guaranteed Price shall be determined on the basis of such final adjusted Cost of the Financing and the final adjusted Cost of the Work as of the date of Financial Close.
- (d) Subject to the provisions of Section 3.1(c), the Parties agree that the Guaranteed Price will not be subject to adjustment despite changes in the Work, unless such changes in the Work constitute a Change in the Scope of the Work. The Parties further agree that the Guaranteed Price will only be adjusted where the Contract Documents specifically and expressly refer to an adjustment to the Guaranteed Price, and no claim for an adjustment to the Guaranteed Price on any legal or equitable basis outside of the specific and express rights to an adjustment of the Guaranteed Price set out in the Contract Documents will be allowed. In order to be effective, any permitted adjustment to the Guaranteed Price must be provided for in a Change Order under Schedule 11 – Change Procedure.

3.2 Cash Allowances

- (a) The Guaranteed Price includes cash allowances as set out in the Specifications which shall be expended as CMH directs through the Consultant by a Cash Allowance Disbursement Authorization.
- (b) Unless otherwise indicated, cash allowances cover the net cost to Project Co of services, Products, construction machinery and equipment, freight, unloading, handling, storage, installation, and other authorized expenses incurred in performing the Work stipulated under the cash allowances but do not include any HST payable by CMH to Project Co.
- (c) Purchases from cash allowances must be authorized by written instructions issued by the Consultant as directed by CMH and the form and methods of accounting for costs shall be agreed to by CMH, the Consultant and Project Co before proceeding with the purchase. Cash allowance review will be part of the regular site meeting.

- (d) The parties acknowledge that the following provisions apply to cash allowances included in the Guaranteed Price:
 - (i) Project Co Fee and not the cash allowances include Project Co's overhead and profit in connection with all cash allowances. Where costs under all cash allowances exceed, in the aggregate, the total amount of all cash allowances, Project Co shall be compensated for overhead and profit on the excess, as provided for in Schedule 11 - Change Procedure;
 - (ii) subject to Section 3.2(d)(v), the Guaranteed Price shall be adjusted by Change Order to provide for any aggregate excess or deficit in all cash allowances;
 - (iii) progress payments on account of Work authorized under cash allowances shall be included in the Consultant's monthly certificates for payment;
 - (iv) modifications to the Construction Schedule shall be prepared by Project Co and reviewed by the Consultant to show when items called for under cash allowances must be authorized and/or ordered so that the progress and completion of the Work are not delayed;
 - (v) any surpluses in a cash allowance may, at the election of CMH, be used to fund other cash allowances or to fund Changes in the Scope of the Work elsewhere in this Project Agreement, as may be authorized under a Change Order or a Change Directive in accordance with Schedule 11 - Change Procedure, as the case may be, but without the imposition of overhead and profit; and
 - (vi) any surplus in the aggregate cash allowances remaining after the application of Section 3.2(d)(v), shall be credited to CMH.

4. PAYMENT

4.1 General

- (a) Subject to the provisions of the Contract Documents, Section 3.1(d), the provisions of Schedule 18 – Payments and Holdbacks, and in accordance with and subject to Applicable Law respecting holdbacks, CMH shall make the payments set out in this Article 4.
- (a) For the purposes of this Project Agreement, payments made by electronic transfer shall be deemed to have been made on the day and at the time the electronic transfer is initiated, as confirmed by the initiating bank by a confirmation setting out the transfer number and the other details of the transfer.

4.2 Acknowledgement by Project Co

- (a) Project Co acknowledges and agrees with CMH that, subject to the provisions of Section 8.3 of the Lender's Direct Agreement, CMH is not responsible for the payment of any Base Progress Payments or any Legislative Holdbacks in respect thereof. In the event CMH makes any Base Progress Payments, CMH shall set-off such Base Progress Payments against amounts otherwise payable by CMH hereunder, including the Interim Completion Payment, the Substantial Completion Payment, payments with respect to Certified Cost to Complete or otherwise.

4.3 Lump Sum Payments

- (a) Subject to Sections 4.4(a) and 4.10, CMH covenants and agrees to pay to Project Co the Interim Completion Payment on the Interim Completion Payment Date.
- (b) Subject to Sections 4.4(b) and 4.10, CMH covenants and agrees to pay to Project Co the Substantial Completion Payment on the Substantial Completion Payment Date.

4.4 Direction of Lump Sum Payments

- (a) Project Co hereby irrevocably directs CMH to make the Interim Completion Payment to Agent or as Agent may direct, as security for the Financing. CMH shall pay the Interim Completion Payment, as directed by Project Co and shall not accept any redirection without the consent of Agent. Agent, CMH and Project Co acknowledge that any monies contributed by MOHLTC towards the Interim Completion Payment, together with any monies payable by CMH on account of the Interim Completion Payment from its own resources, shall be deposited directly into the Trust Account. CMH acknowledges that Project Co's interest in the Trust Account has been assigned to Agent as part of the security under the Lending Agreements, and agrees that any monies payable to Project Co hereunder that are funded by monies deposited in the Trust Account shall be paid directly to Agent or as Agent may direct out of the Trust Account in accordance with the provisions of the Trust Account Acknowledgment Agreement. CMH will pay the amounts that Project Co is entitled to hereunder once the conditions for payment set out in this Project Agreement, if any, have been satisfied. Project Co acknowledges and agrees that payment by CMH of the Interim Completion Payment to Agent in accordance with this Section 4.4(a) constitutes payment by CMH to Project Co in satisfaction of CMH's obligation to pay the Interim Completion Payment to Project Co under this Project Agreement and in satisfaction of any trust obligation of CMH with respect to such payments under Section 7 of the *Construction Lien Act* (Ontario) pursuant to Section 10 of the *Construction Lien Act* (Ontario).

- (b) Project Co hereby irrevocably directs CMH to make the Substantial Completion Payment to Agent or as Agent may direct, as security for the Financing. CMH shall pay the Substantial Completion Payment as directed by Project Co and shall not accept any redirection without the consent of Agent. Agent, CMH and Project Co acknowledge that any monies contributed by MOHLTC towards the Substantial Completion Payment, together with any monies payable by CMH on account of the Substantial Completion Payment from its own resources, shall be deposited directly into the Trust Account. CMH acknowledges that Project Co's interest in the Trust Account has been assigned to Agent as part of the security under the Lending Agreements, and agrees that any monies payable to Project Co hereunder that are funded by monies deposited in the Trust Account shall be paid directly to Agent or as Agent may direct out of the Trust Account in accordance with the provisions of the Trust Account Acknowledgment Agreement. CMH will pay the amounts that Project Co is entitled to hereunder once the conditions for payment set out in this Project Agreement, if any, have been satisfied. Project Co acknowledges and agrees that payment by CMH of the Substantial Completion Payment to Agent in accordance with this Section 4.4(b) constitutes payment by CMH to Project Co in satisfaction of CMH's obligation to pay the Substantial Completion Payment to Project Co under this Project Agreement and in satisfaction of any trust obligation of CMH with respect to such payments under Section 7 of the *Construction Lien Act* (Ontario) pursuant to Section 10 of the *Construction Lien Act* (Ontario).

4.5 Payment of Legislative Holdback and Balance of the Guaranteed Price

- (a) Subject to Section 4.9, CMH covenants and agrees with Project Co to pay to Project Co the Legislative Holdback on the Legislative Holdback Payment Date and to pay to Project Co the unpaid balance of the Guaranteed Price on the date provided in Section 6.4 of Schedule 18 – Payments and Holdbacks, or as otherwise directed by Project Co and shall not accept any redirection without the consent of the person to whom payment is directed. CMH agrees to pay the Legislative Holdback and the balance of the Guaranteed Price as Project Co may direct in accordance with any such direction. Project Co acknowledges and agrees that payment by CMH of the Legislative Holdback and the balance of the Guaranteed Price in accordance with this Section 4.5(a) as Project Co may direct, constitutes payment by CMH to Project Co in satisfaction of CMH's obligation to pay the Legislative Holdback and the balance of the Guaranteed Price to Project Co under this Project Agreement and in satisfaction of any trust obligation of CMH with respect to such payments under Section 7 of the *Construction Lien Act* (Ontario) pursuant to Section 10 of the *Construction Lien Act* (Ontario).

4.6 CMH Holdback

- (a) The CMH Holdback may be reduced from time to time as a result of such actions by Project Co, as confirmed by the Consultant, in accordance with the terms and conditions of this Project Agreement. To the extent the CMH Holdback is reduced from time to time, Project Co hereby irrevocably directs CMH to pay the amount of any CMH Holdback reduction to the Agent or as the Agent may direct, as security for the Financing. CMH agrees to pay the CMH Holdback reductions as directed by Project Co and shall not accept any redirection without the consent of the Agent. Any portion of an CMH Holdback funded by monies deposited to the Trust Account shall be paid directly to Agent or as Agent may direct from the Trust Account in accordance with the provisions of the Trust Account Acknowledgment Agreement. Project Co acknowledges and agrees that payment by CMH of the CMH Holdback reductions in accordance with this Section 4.6(a) as Project Co may direct constitutes payment by CMH to Project Co in satisfaction of CMH's obligation to pay the CMH Holdback reductions to Project Co under this Project Agreement and in satisfaction of any trust obligation of CMH with respect to such payments under Section 7 of the *Construction Lien Act* (Ontario) pursuant to Section 10 of the *Construction Lien Act* (Ontario).

4.7 Additional CMH Payments

- (a) Unless otherwise provided in the relevant Change Order or Change Directive or in this Project Agreement, CMH will pay all Additional CMH Payments to Project Co on a progress payment basis in the manner and at the times contemplated by Schedule 18 – Payments and Holdbacks, or as otherwise directed by Project Co and shall not accept any redirection without the consent of the person to whom payment is directed. CMH agrees to pay the Additional CMH Payments as Project Co may direct in accordance with any such direction. Project Co acknowledges and agrees that payment by CMH of the Additional CMH Payments in accordance with this Section 4.7(a) as Project Co may direct, constitutes payment by CMH to Project Co in satisfaction of CMH's obligation to pay the Additional CMH Payments to Project Co under this Project Agreement and in satisfaction of any trust obligation of CMH with respect to such payments under Section 7 of the *Construction Lien Act* (Ontario) pursuant to Section 10 of the *Construction Lien Act* (Ontario).

4.8 Certified Cost to Complete

- (a) After CMH has paid the Substantial Completion Payment, it shall thereafter continue to be responsible for payment to Project Co of the Certified Cost to Complete as at the Substantial Completion Payment Date on a progress payment basis in the manner and at the times contemplated in this Project Agreement. Project Co hereby irrevocably directs CMH to make any payment of the Certified

Cost to Complete to Agent, or as Agent may direct, as security for the Financing. CMH shall pay the Certified Cost to Complete as directed by Agent and shall not accept any redirection without the consent of Agent. CMH agrees to pay the Certified Cost to Complete as directed by Project Co. Any portion of a payment of the Certified Cost to Complete funded by monies deposited to the Trust Account shall be paid directly to Agent or as Agent may direct from the Trust Account in accordance with the provisions of the Trust Account Acknowledgment Agreement. Project Co acknowledges and agrees that payment by CMH of the Certified Cost to Complete in accordance with this Section 4.8(a) as Project Co may direct constitutes payment by CMH to Project Co in satisfaction of CMH's obligation to pay the Certified Cost to Complete under this Project Agreement and in satisfaction of any trust obligation of CMH with respect to such payments under Section 7 of the *Construction Lien Act* (Ontario) pursuant to Section 10 of the *Construction Lien Act* (Ontario).

4.9 Compensation on Termination

- (a) If this Project Agreement is terminated pursuant to Sections 26.3(a)(i), 27.2(a)(ii), 28.3(a), 28.3(b) or 28.4(a), then:
 - (i) CMH shall pay the Compensation Payment to Project Co, calculated and payable in accordance with Schedule 12 – Compensation on Termination; and
 - (ii) the provisions of Sections 4.3 through 4.7, inclusive, shall no longer apply.
- (b) Project Co hereby irrevocably directs CMH to make any Compensation Payment to Agent, or as Agent may direct, as security for the Financing. CMH shall pay the Compensation Payment as directed by Agent and shall not accept any redirection without the consent of Agent. Any portion of a Compensation Payment funded by monies deposited to the Trust Account shall be paid directly to Agent or as Agent may direct from the Trust Account in accordance with the provisions of the Trust Account Acknowledgment Agreement. CMH will pay the Compensation Payment in accordance with the provisions of Schedule 12 – Compensation on Termination. Project Co acknowledges and agrees that payment by CMH of the Compensation Payment to Agent in accordance with this Section 4.9 constitutes payment by CMH to Project Co in satisfaction of CMH's obligation to pay the Compensation Payment to Project Co under this Project Agreement and in satisfaction of any trust obligation of CMH with respect to such payments under Section 7 of the *Construction Lien Act* (Ontario) pursuant to Section 10 of the *Construction Lien Act* (Ontario).

4.10 Payment Due under Insurance Policies

- (a) In the event of loss or damage occurring where payment becomes due under the property and boiler insurance policies, payments shall be made in accordance with the provisions of the Insurance and Bonding Trust Agreement.

4.11 [Intentionally Deleted]

4.12 Establishment of Trust Account and Manner of Payment

- (a) CMH agrees that it will make commercially reasonable efforts to establish the Trust Account in conjunction with Project Co on or before Financial Close, but if not so established, then within 90 days of Financial Close. All costs and expenses associated with the establishment, maintenance and administration of the Trust Account shall be borne solely by Project Co.

4.13 Set-Off

- (a) The Parties agree that their rights of set-off at law or in equity are limited to the right of:
 - (i) CMH to set off against any amounts otherwise due to Project Co pursuant to the terms of this Project Agreement, any amounts which are due to CMH by Project Co pursuant to the terms of this Project Agreement or by the Construction Guarantor pursuant to Schedule 22 – Form of Performance Guarantee of Construction Guarantor; and
 - (ii) Project Co to set off against any amounts otherwise due to CMH pursuant to the terms of this Project Agreement, any amounts which are due to Project Co by CMH pursuant to the terms of this Project Agreement,

and are further limited with respect to the Debt Amount as described in Section 4.5 of Schedule 12.

4.14 Effect of Payment

- (a) Subject to Section 4.5 of Schedule 12 – Compensation on Termination, no payment hereunder shall be construed as an acceptance or approval of incomplete, defective or improper performance by Project Co of any of its obligations under this Project Agreement, nor shall it operate to relieve Project Co from the performance of any of its obligations under this Project Agreement which have not been performed.

4.15 No Other Entitlement

- (a) Project Co shall not be entitled to any payments, compensation, rights, remedies, benefits or entitlements under or in connection with this Project Agreement, except as specifically and expressly set out in this Project Agreement.

4.16 Taxes

- (a) All amounts specified in this Project Agreement, including, for clarity, any compensation payable on termination, are expressed exclusive of any Taxes payable pursuant to Applicable Law by CMH. For clarity, CMH shall not be required to pay any interest and/or penalties that are imposed on or assessed against Project Co or any Project Co Party for non-compliance with Applicable Law. If Project Co is required by Applicable Law to collect any such Taxes from CMH, CMH shall pay such Tax to Project Co simultaneously with the amount to which such applicable Tax relates or applies.
- (b) CMH shall pay, or cause to be paid, when due and payable, all property taxes or payments in lieu of property taxes that are assessed in respect of ownership or use of the Site or the Facility.
- (c) CMH shall pay all applicable HST properly payable in accordance with the *Excise Tax Act* (Canada) by CMH upon and in connection with payments by CMH to Project Co under this Project Agreement.

4.17 Changes in Scope of Taxation

- (a) If, as a result of a Change in Law, the application of Taxes under Part IX of the *Excise Tax Act* (Canada) or any provincial sales tax legislation changes with respect to the provision of any goods or services by Project Co in connection with the performance of the Work, CMH and Project Co agree to co-operate to determine how such change affects their respective obligations under this Project Agreement.

4.18 Information and Assistance Provided by Project Co

- (a) Project Co shall, at CMH's request and cost, assist CMH in applying for and obtaining all remissions and credits of HST to which CMH is entitled.
- (b) CMH may apply for a global or general exemption, waiver, remission, or refund of some or all Taxes which may otherwise be applicable in relation to this Project Agreement. Project Co shall, at CMH's cost, assist CMH in making any applications for such global or general exemption, waiver, remission or refund and shall provide CMH with such documentation as CMH may reasonably require to support such application and, in any event, shall provide such consent as CMH

may require. Any exemption, waiver, remission, refund or other recovery of Taxes obtained by CMH through such application shall accrue to the sole benefit of CMH.

- (c) Project Co will provide CMH with any information reasonably requested by CMH from time to time in relation to the HST chargeable in accordance with this Project Agreement and payable by CMH to Project Co from time to time.

4.19 Residency – *Income Tax Act* (Canada)

- (a) Project Co shall not undertake any action or transaction that, if undertaken, would cause or result in Project Co becoming a Non-Resident without CMH's prior written consent, which consent may be withheld in CMH's Sole Discretion.

4.20 Taxes – General

- (a) Project Co shall not, without the prior written consent of CMH (which consent may be withheld in its Sole Discretion), undertake any action or transaction that, if undertaken, would cause CMH to have (or result in CMH having) any obligation to deduct, withhold or remit any Taxes that are required by Applicable Law to be deducted, withheld or remitted from any amounts paid or credited to Project Co or any Project Co Party under this Project Agreement or under any Implementing Agreement.

4.21 Taxes – Indemnity

- (a) If:
 - (i) Project Co becomes a Non-Resident, or
 - (ii) CMH is or becomes required by Applicable Law to deduct and withhold any amount in respect of Taxes on or in respect of any amounts paid or credited to Project Co or a Project Co Party by CMH under this Project Agreement or under any of the Project Documents, then CMH shall be entitled to make any applicable deductions or withholdings required by Applicable Law from any amount paid or credited or to be paid or credited to Project Co or a Project Co Party on or after the date on which:
 - (A) Project Co or the Project Co Party becomes a Non-Resident and at all times while it remains a Non-Resident; or
 - (B) CMH is required by Applicable Law to deduct or withhold amounts in respect of any such amounts, in each case, in respect of all Taxes that are required by Applicable Law to be deducted or withheld from amounts paid or credited to a Non-Resident or

otherwise as required by Applicable Law; and all amounts paid or credited by CMH under this Project Agreement or under any Implementing Agreement to Project Co or a Project Co Party shall be paid or credited net of such deductions or withholdings.

(b) If:

(i) Project Co becomes a Non-Resident, or

(ii) CMH is or becomes required by Applicable Law to deduct and withhold any amount in respect of Taxes on or in respect of any amounts paid or credited to Project Co or a Project Co Party by CMH under this Project Agreement or under any of the Project Documents, Project Co shall, in each case, indemnify and hold harmless CMH for:

(A) the full amount of all Taxes ("**Indemnifiable Taxes**") that arise, are imposed on or are required to be paid by CMH in respect of any amounts paid or credited by CMH to Project Co or any Project Co Party under this Project Agreement or under any Implementing Agreement as a result of either of the foregoing items less any amount withheld or deducted by CMH in respect of such Taxes, and

(B) any liability payable or incurred in connection with Indemnifiable Taxes (including penalties, interest and reasonable expenses associated with Tax compliance, reporting and contesting such liability for Indemnifiable Taxes, including reasonable professional expenses payable or incurred in connection therewith) arising from or with respect to Indemnifiable Taxes, whether or not they were correctly or legally asserted ("**Associated Liabilities**"). Payment under this indemnification shall be made within 30 days from the date CMH makes written demand for it. A certificate containing reasonable detail as to the amount of Indemnifiable Taxes and Associated Liabilities submitted to Project Co by CMH shall be conclusive evidence, absent manifest error, of the amount due from Project Co to CMH. CMH shall be entitled to exercise its rights of set off under Section 4.13 against any amounts owing under this indemnification.

5. SITE INVESTIGATION AND DOCUMENT REVIEW

5.1 Concealed or Unknown Conditions

- (a) Project Co acknowledges that it has been provided with the Site Information and has reviewed and is familiar with the Site Information. If Project Co encounters conditions at the Site which are not described in or are not properly inferable, readily apparent or readily discoverable from the documentation included in the Site Information, or would not have been properly inferable, readily apparent or readily discoverable from inspections of the Site carried out by Project Co or any Project Co Party during the Request for Proposals process prior to the Submission Date, Project Co will promptly notify the Consultant who will promptly investigate such conditions and who will then report to CMH and Project Co with a finding as to whether such conditions were or were not described in or were or were not properly inferable, readily apparent or readily discoverable from the documentation included in the Site Information or would or would not have been properly inferable, readily apparent or readily discoverable from Project Co's inspections of the Site carried out by Project Co or any Project Co Party during the Request for Proposals process prior to the Submission Date.
- (b) If the conditions were described in or were properly inferable, readily apparent or readily discoverable from the documentation included in the Site Information or would have been properly inferable, readily apparent or readily discoverable from Project Co's inspections of the Site carried out by Project Co or any Project Co Party during the Request for Proposals process prior to the Submission Date, then Project Co shall not be entitled to any adjustment in the Guaranteed Price or in the Contract Time.
- (c) If the conditions were not described in or were not properly inferable, readily apparent or readily discoverable from the documentation included in the Site Information, or would not have been properly inferable, readily apparent or readily discoverable from Project Co's inspections of the Site carried out by Project Co or any Project Co Party during the Request for Proposals process prior to the Submission Date, and the conditions justify an increase in the Guaranteed Price or an extension of the Contract Time, or both, the Consultant shall issue appropriate instructions for a Change in the Scope of the Work as provided in Schedule 11 - Change Procedure.

5.2 Document Review

- (a) Project Co acknowledges having conducted a thorough review of the Contract Documents and has reported to the Consultant and CMH any Design Issue found by Project Co in the Contract Documents during its review. If Project Co does discover any Design Issue in the Contract Documents, Project Co shall not

proceed with the Work affected until Project Co has first complied with the provisions of Section 11.18. Project Co acknowledges that it is responsible for the risks assumed by Project Co in Sections 11.17 and 11.18 and that any additional costs resulting from such risks will form part of the Project Co Design Contingency. It is intended that the review of the Contract Documents conducted by Project Co pursuant to this Section 5.2(a) be carried out by Project Co and the Project Co Parties using their own experiences and expertise in accordance with the standard of care set out in Section 11.2(a)(viii) and in accordance with the representations and warranties of Project Co set out in Section 7.1.

- (b) Except as may constitute a Design Issue properly characterized as a Project Co Design Issue under Section 11.17, and except in respect of those Contract Documents which, under the terms of this Project Agreement, Project Co is required to prepare or produce, Project Co shall not be responsible for verifying that the Contract Documents are in compliance with Applicable Law.
- (c) If the Contract Documents are at variance with Applicable Law, or if, subsequent to the Submission Date, changes are made to Applicable Law which require modification to the Contract Documents, Project Co shall notify the Consultant in writing requesting direction immediately upon such variance or change becoming known. The Consultant will make the changes required to the Contract Documents as provided in Article 21 and Schedule 11 – Change Procedure.
- (d) If Project Co fails to notify the Consultant in writing, fails to obtain direction as required in Section 5.2(c), and performs Work knowing it to be contrary to any Applicable Law, Project Co shall be responsible for and shall correct the violations thereof, and shall bear the costs, expenses and damages attributable to its failure to comply with the provisions of such Applicable Law.

6. PROJECT DOCUMENTS

6.1 Project Documents

- (a) Project Co shall perform its obligations under, and observe all of the provisions of, each of the Project Documents to which it is a party, and shall ensure that each Project Co Party shall perform its obligations under, and observe all of the provisions of, each of the Project Documents to which such Project Co Party is a party, so as to ensure that other parties to such Project Documents shall not be entitled to terminate same.

6.2 Implementing Agreements

- (a) Project Co shall not: