

Form of Commissioning Plan

Commissioning Plan (*Template*)

St. Michael's Hospital Redevelopment Project

Toronto, Ontario

TEMPLATE

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Purpose of Template

The purpose of this Commissioning Plan Template is to assist Project Co in the development of a comprehensive commissioning program for the St. Michael's Hospital Redevelopment Project. It does not replace, amend, modify or supersede any portion of the Project Agreement ("PA") whatsoever. Project Co may elect not to use this template, however, it is recommended that Project Co follow the format provided in this template. Following this template does not relieve Project Co from any of its commissioning obligations in the PA.

Some sections have been fully assembled while others are only headings with *requirement prompts in italics* to permit flexibility for Project Co and the Project Co Commissioning Authority ("PCCA") to integrate their own methodology for achieving the project's commissioning requirements.

Executive Summary

Hospital commissioning is a collaborative process which involves all the stakeholders, including the occupant, St. Michael's Hospital ("SMH"), IO, the PDC Team, the Independent Certifier, the facility engineering manager, the Design Team and the construction team. By extension, equipment manufacturers and suppliers are also involved. The commissioning program is led by the PCCA and provides documented confirmation that building systems function according to criteria set forth in the project drawings and specifications to satisfy SMH's operational needs. In addition to building systems, this program includes commissioning of specialty hospital systems such as, but not limited to: Nurse Call, RTLS System, Patient Wandering, Pneumatic Tube System, furniture, fixtures and equipment and hospital commissioning.

The St. Michael's Hospital Redevelopment Project is being delivered using a Design/Build/Finance ("DBF") model, a variant of the Design/Build/Finance/Maintain ("DBFM") model.

This will be the first hospital project delivered in Ontario without the maintenance component and as such presents unique risks for SMH. This commissioning plan template will encompass customized commissioning processes designed to mitigate these risks and successfully achieve the requirements of the PA, including but not limited to, those contained in PA Schedule 15 - Output Specifications and the "Owner's Project Requirements" ("OPR") as well as LEED certification as required in PA Schedule 15 - Output Specifications.

This Project will be completed in phases and this commissioning plan template will provide for a commissioning program for each phase which incorporates Phase Project Co Commissioning and allows for Phase SMH Commissioning. In addition to phase commissioning there will be the Tower Interim Completion Commissioning Program and the Final Commissioning Program. Due to the nature of this project and the requirement for temporary facilities and uses, it will be necessary to commission some parts of the Works more than once.

The commissioning process starts concurrent with the design phase and includes the creation of commissioning specifications and this commissioning plan template to provide guidance to Project Co. The process continues during the design phase and involves the following activities:

- review of the OPR and the Basis of Design ("BOD")
- review of design drawings during design development and again at or near issue for construction; reviewing contractor submittals ("Shop Drawings")
- further development of commissioning specifications for inclusion in the master specifications package

During the construction phase the following major activities will be performed:

- participation in focused commissioning meetings
- maintain the commissioning progress management form ("CPM Form") and provide input to the Commissioning Schedule
- witnessing/participating in selective equipment start-ups/ lab or factory testing

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- design, coordinate and conduct tests to rigorously challenge the equipment, the systems and the control sequences to confirm their functionality and performance
- reviewing contractor submittals (“O&M Manuals”)
- witnessing training program
- create the Systems Operating Manual (“SOM”)

Post construction activities include (but not limited to):

- follow-up testing as required to ensure that items of concern are resolved
- seasonal testing of mechanical systems
- Conduct of a near warrantee end review of the Facility and operation, prior to expiry of warrantee.

Project Co shall prepare a draft of the applicable Phase Commissioning Program in respect of each Phase Project Co Commissioning and Phase SMH Commissioning and shall provide a copy in accordance with the PA.

The Tower Interim Completion Commissioning Program in respect of the Tower Interim Completion Project Co Commissioning and the Tower Interim Completion SMH Commissioning and shall provide a copy in accordance with the PA.

The Final Commissioning Plan will be submitted for final review in accordance with the PA. Through meetings and discussions, all building systems and all procured equipment commissioning activities will be compiled as part of the Final Commissioning Program. This will result in the completion of an agreed Final Commissioning Program, which will then be integrated into the overall project schedule.

St. Michael's Hospital Redevelopment Project**1 Overview**

Clearly state a brief overview of the project.

1.1 Purpose and Objective

Clearly state Project Co and the PCCA commissioning as stated in the in the PA, Schedule 14 and the references included in Schedule 14.

2 Scope**2.1 General Building Information**

Project Name:

Municipal Jurisdiction:

Building Type:

Building Floor Area:

Building Storeys:

Construction Period:

2.2 Commissioning Activities during Design, Construction and Post-Construction Phase

This plan shall provide for:

- *Pre-commissioning (pre-commissioning is a testing process designed to ascertain the current or as-found condition of all existing equipment in order to assess its suitability to support phased and/or final operational requirements.)*
- *Phase SMH Commissioning*
- *Tower Interim Completion Project Co Commissioning*
- *Tower Interim Completion SMH Commissioning*
- *Project Co Commissioning*
- *SMH Commissioning*

2.2.1 Commissioning During Design Phase

This section shall contain a broad statement of commissioning aims, methodology and activities to be conducted during the design phase.

2.2.2 Commissioning During Construction Phase

This section shall contain a broad statement of commissioning aims, methodology and activities to be conducted during the construction phase.

2.2.3 Commissioning During Post-Construction Phase

This section shall contain commissioning aims, methodology and activities to be conducted during the post-construction phase including seasonal performance testing process.

St. Michael's Hospital Redevelopment Project**2.3 Development of Operational Capability****2.3.1 Technical Information, O&M Manuals and SOM Manuals**

This section shall list all the deliverables that Project Co must supply to SMH to support SMH's operational capability.

2.3.2 Maintenance Program

This section shall state how Project Co will fulfill its responsibilities with respect to the CMMS.

2.3.3 Training Program

This section broadly outlines the training scope and training groups in terms of operational capability. More details will be provided in section 5.4.

2.4 Post Occupancy Commissioning

The post-occupancy commissioning schedule is in Appendix K.

2.5 Leadership in Energy and Environmental Design (LEED®)

The project has been designed, and is intended to be constructed and certified in accordance with LEED Canada NC v1.1 Green Building Rating System. The target rating level for the Facility is LEED Silver.

Provide a list of prerequisites and credits being targeted under commissioning, including measurement and verification.

Provide the communications protocol which will be implemented to satisfy the requirements of LEED.

2.6 Building Information Model

In accordance with the SMH's specifications for a building information model ("BIM"), Project Co will be responsible for providing a BIM detailing the Tower, the New Shuter Wing and areas of renovation. Project Co will also be responsible for adding asset information and preventative maintenance information into SMH's CMMS.

The model and Facility data for the commission, operations, and maintenance of the project shall satisfy the construction operations building information exchange ("COBIE") requirements, and be submitted in compliance with the commissioning requirements of Schedule 14 of the PA.

2.7 Reference Standards

The commissioning process of each item of equipment and building system provided as part of the Works will meet the requirements established by the following standards:

(a) CAN/CSA Z8001-13 Commissioning of Health Care Facilities;

(b) 2007 ASHRAE Handbook – HVAC Applications Chapter 42 HVAC Commissioning;

(c) ASHRAE Guideline 1.1, HVAC&R Technical Requirements for the Commissioning Process; and

(d) CAN/CSA Z320-11 Building Commissioning.

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Measuring and recording instruments used on the project will be uniquely identified, recorded and supported by calibration certificates that evidence instrument accuracy at the time of instrument use.

3 Team and Organization

3.1 Commissioning Organization

Provide an organization chart in Appendix A.

Provide a combined commissioning delivery matrix and commissioning roles matrix in Appendix B (SEE SAMPLE PROVIDED).

3.2 Project Team Data

Organization and representative contact information is provided in the project team contact information table presented in Appendix C.

4 Roles and Responsibilities

4.1 Commissioning Team

See paragraph 4.1 of Schedule 14 of the PA.

4.2 General Descriptions of Roles

General descriptions of the commissioning roles are as follows:	
<i>Project Co</i>	<i>Develop from PA (Schedule 14 and Output Specifications- Schedule 15)</i>
<i>Project Co Commissioning Authority</i>	<i>Develop from PA (Schedule 14 and Output Specifications- Schedule 15)</i>
<i>SMH</i>	<i>Develop from PA (Schedule 14 and Output Specifications- Schedule 15)</i>
<i>SMH engineering/facility staff</i>	<i>Develop from PA (Schedule 14 and Output Specifications- Schedule 15)</i>
<i>PDC Team</i>	<i>Develop from PA (Schedule 14 and Output Specifications- Schedule 15)</i>
<i>SMH Commissioning Consultant</i>	<i>Develop from PA (Schedule 14 and Output Specifications- Schedule 15)</i>
<i>Independent Certifier</i>	<i>Develop from PA (Schedule 14 and Output Specifications- Schedule 15)</i>
<i>Construction Contractor</i>	<i>Develop from PA (Schedule 14 and Output Specifications- Schedule 15)</i>
<i>Design Team</i>	<i>Develop from PA (Schedule 14 and Output Specifications- Schedule 15)</i>
<i>ICT systems, electronic building & hospital systems, electrical, mechanical, architectural, civil and other trades</i>	<i>Develop from PA (Schedule 14 and Output Specifications- Schedule 15)</i>
<i>Manufacturer's Representative</i>	<i>Develop from PA (Schedule 14 and Output Specifications- Schedule 15)</i>

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*Provide approach to working with the SMH Commissioning Consultant
List the responsibilities of the Commissioning Team and its members.*

5 Commissioning and Transition Processes

5.1 Commissioning- Base Building Systems & Equipment

Commissioning activities commenced during the design phase of the project and have been underway since.

Project Co shall plan, schedule, coordinate and execute the commissioning of each item of equipment and building systems (as noted in paragraph 9 of Schedule 14 of the PA) provided as part of the Works and included in appendices of this document.

As a critical healthcare facility, a key focus of the commissioning program will be specialized integrated electronic, data, network, communication, clinical, security, audio visual system, master clock, and life safety systems.

All systems provided as part of Section 9 of Schedule 14 should be commissioned.

Project Co and PCCA shall develop test sheets based upon approved Shop Drawings and with sufficient rigor to challenge the equipment/system and the sequence of operations to confirm compliance with the contract documents and the OPR. Sample functional performance tests are attached.

5.1.1 Pre-functional Test Sheets

5.1.2 Start-up Plan

5.1.3 Functional System Test Sheets

Functional test scripts for mechanical systems will be based upon approved Shop Drawings and will contain clearly defined pass/fail criteria. Functional testing should include all input and output in the systems as well as all related administrative functions.

5.1.4 Execution of Pre-functional Test Sheets and Start-up

5.1.5 Pre-functional Checklist Deficiencies and Non-Conformance

5.1.6 Architectural and Specialty Equipment & System Checklists & Functional Test Forms

5.1.7 Specialty Hospital and Electronic System Checkout Plan

5.1.8 Execution of Functional Testing

See Appendix B for details. A sample matrix is included.

This matrix is equipment/system based and it lists the various commissioning activities and responsibilities.

5.1.9 Function System Test Deficiencies and Retesting

5.1.10 Integrated System Functional Performance Test Sheets

Figure 5.2 below provides a graphic depiction of the relationship between testing of elements and equipment within individual systems and subsequent testing of a group of integrated systems. Testing starts at the equipment/component level, then to the system level and integrated system

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level. Integration testing will not be attempted until all equipment/system testing has been successfully completed.

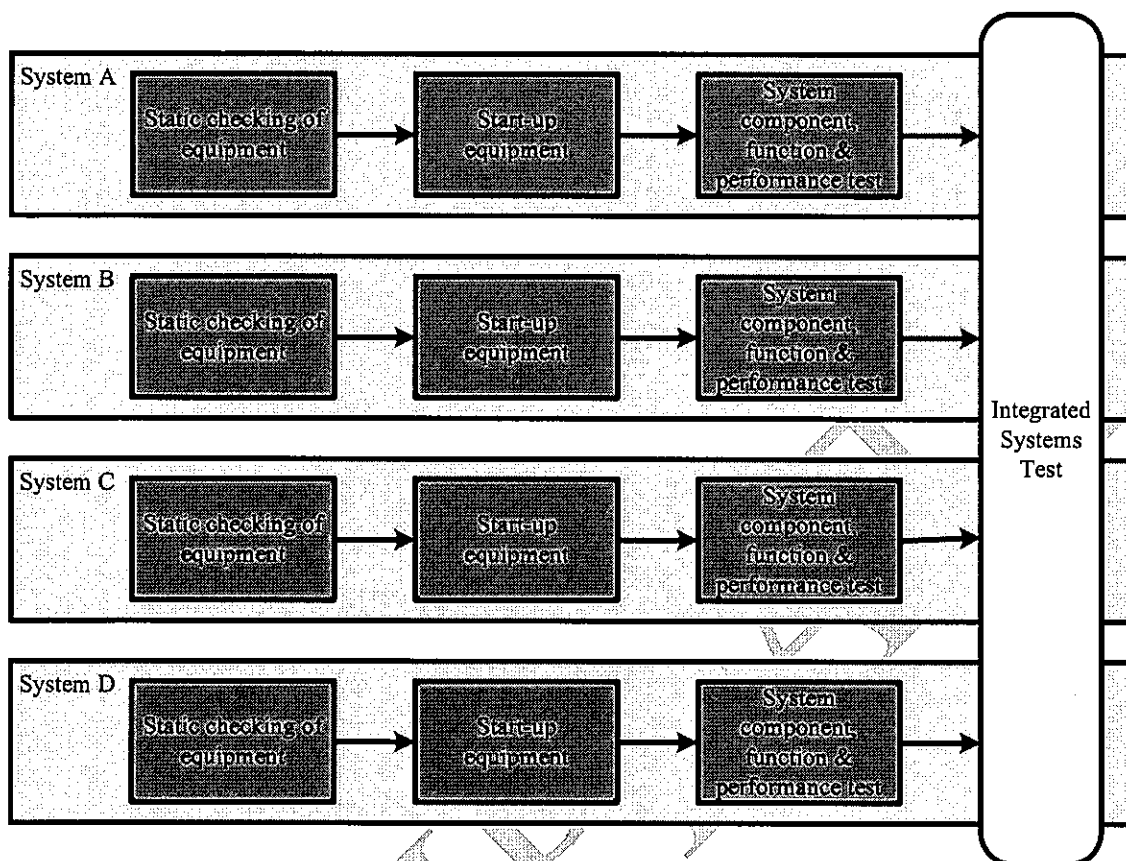


Figure 5.2 –Integrated Systems Commissioning Process

5.2 Commissioning- Furniture, Fixtures & Equipment

This section should describe the methodology, responsibility and documentation to be generated to verify the commissioning of furniture, fixture & equipment.

5.3 Commissioning Sampling and Witnessing

5.3.1 Commissioning Sampling

This section shall indicate rules for sampling (if applicable).

5.3.2 Witnessing

This section shall indicate notification requirements to ensure proper attendance/participation by SMH, engineer, Independent Certifier, etc.

5.4 Training

The training program shall include:

- *training topics;*
- *methods of training;*
- *training resources;*

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- *scheduling and coordination of training;*
- *performing training and videotaping training sessions; and,*
- *training administration and record keeping.*

5.4.1 Systems, Equipment, Process & Facility Features Training:

This section shall include classroom based training and describe integration of new equipment into new and/or existing hospital systems.

5.5 Progress Monitoring and Reporting

5.5.1 Commissioning Documentation Readiness Tracking

5.5.2 Progress Reporting and Logs

A sample CPM Form is provided in Appendix I. The CPM Form will be included within the monthly commissioning report.

PCCA shall submit reports to the Works Committee regarding commissioning progress throughout the phases.

5.5.3 Final and Addendum Commissioning Summary Reports

5.6 Document Submittal & Review

5.7 Coordination with SMH & PDC

5.8 Miscellaneous Management Protocols

The following protocols will be used on this project.

Issue (Samples)	Protocol
<i>Any issue that may reflect or appear to reflect on a conflict of interest on the part of PCCA</i>	
<i>For requests for information ("RFI") or formal documentation requests:</i>	
<i>For minor or verbal information and clarifications:</i>	
<i>For notifying contractors of deficiencies:</i>	
<i>For scheduling functional tests or training:</i>	
<i>For scheduling commissioning meetings:</i>	
<i>For making a request for significant changes:</i>	
<i>For making small changes in specified sequences of operations:</i>	
<i>Subcontractors disagreeing with requests or interpretations by PCCA shall:</i>	

5.9 Regulatory Approvals

The Authority Having Jurisdiction ("AHJ") items are identified within the Commissioning Schedule and include:

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- Ontario Hospital Association (“OHA”)
- Canadian Nuclear Safety Commission (“CNSC”)
- Transport Canada (“TC”)
- Technical Standards and Safety Authority (“TSSA”)
- The City of Toronto
- Electrical Safety Authority (“ESA”),
- Ministry of Transportation – Ontario (“MTO”)
- Ontario Ministry of the Environment (“MOE”)

6 Work Products**6.1 Commissioning Work Products**

This section shall include a list of the work products that support planning and execution of facility related commissioning work. A suggested format and content Table is provided below.

Product	Product Description and Form	Created By
<i>Scoping Meeting Minutes</i>	<i>Minutes and notes of the scoping meeting</i>	
<i>Final Commissioning Plan</i>	<i>Final commissioning plan to replace outline version of plan in PA</i>	
<i>Commissioning Schedule</i>	<i>Integrated commissioning master schedule</i>	
<i>Pre Functional Tests and Checklists</i>	<i>List by equipment of pre functional checklists and tests</i>	
<i>Start-up and Initial Checkout Plans</i>	<i>Specific listing of procedures for combining CA pre functional checklists with Subcontractors startup and checkout.</i>	
<i>Specialty Systems Contractor Initial Check-out Plan</i>	<i>Complete step-by-step plan on checkout and calibration procedures, including forms for documentation</i>	
<i>Site Instructions</i>	<i>Site instructions that affect commissioned equipment</i>	
<i>Shop Drawing Review Report</i>	<i>Review Shop Drawings and identify any commissioning, design intent, operational or maintenance issues</i>	
<i>Issues Log</i>	<i>Record / track of all issues and deficiencies</i>	
<i>Non-Compliance /Deficiency Reports</i>	<i>List of deficiencies and non-compliance with contract documents identified during commissioning</i>	
<i>Commissioning Progress Record</i>	<i>Record / track of all submittals, checklists, tests, etc.</i>	
<i>Commissioning Progress Reports</i>	<i>Give scheduling needs and update, deficiency report and commissioning progress</i>	
<i>SMH-contracted Functional Test Forms</i>	<i>Full description of test procedures in “form” format</i>	
<i>Functional Test Forms</i>	<i>Full description of test procedures in “form” format</i>	
<i>Functional Test Final Approvals</i>	<i>List of test number, description, date of test, approval signatures of CA and PM</i>	
<i>O&M Manuals</i>	<i>Documentation of design, equipment, operations and maintenance and as-built drawings</i>	
<i>System Operating Manuals</i>	<i>Detailed technical description providing system orientation and design information, operating instructions and a plan for periodic re-commissioning</i>	
<i>Training Modules and Content</i>	<i>Topics and methods</i>	
<i>Training Matrix</i>	<i>Detailed listing of training topics and staff / positions in the organization along with indication of which training and evaluation is required of each person</i>	
<i>Training Completion Records</i>	<i>List of trainees, completed hours and topics and approvals</i>	

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Product	Product Description and Form	Created By
<i>Final Commissioning Report</i>	<i>Summary report with important findings</i>	
<i>Post Occupancy Addendum Report</i>	<i>Summary report with important findings</i>	
<i>Deferred Testing Reports</i>	<i>Documentation of seasonal and deferred tests</i>	

6.2 Furniture, Fixtures & Equipment Commissioning Work Products

This section shall include a list of furniture, fixtures and equipment by category, the various test sheets and checklists, the training requirements and the O&M Manuals to be provided.

7 Meetings

7.1 Commissioning Scoping Meeting

This section describes the attendance and aim of the commissioning scoping meeting.

7.2 Regular Commissioning Meetings

This section describes the attendance, aim, standard agenda and proposed schedule for commissioning meetings. The frequency of meetings will also be detailed.

7.3 Miscellaneous Meetings

PCCA will attend selected planning and job-site meetings as required.

8 Schedule and Completion

8.1 Commissioning Schedule

This section will contain a detailed schedule of commissioning activities. Commissioning activities are included in the Works schedule.

8.2 Phase Commissioning, Tower Interim Completion Commissioning, Substantial Completion and Final Completion

The requirements for Substantial Completion are defined in the PA Sections 21 (Equipment), 23A (Phase Commissioning), 23B (Tower Interim Completion Commissioning) and 24 (Commissioning and Completion). Commissioning activities to be complete for Substantial Completion and Final Completion are included in the Works Schedule. This section shall describe how Project Co and PCCA will achieve level of completion as designated in the PA.

9 Final Commissioning Program Revisions

9.1 Program Development

This commissioning program will continue to be developed over time as details regarding program elements are elaborated.

9.2 Revision History

Revision; Date	Description

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TEMPLATE

Pre-Commissioning Summary
St. Michael's Hospital - Queen-Victoria Redevelopment Project

Document: Commissioning Plan - Annex B to Schedule 14 Rev 3

CRITERIA DESCRIPTION	
Physical Condition Assessment	Assessment Condition shall be reported based on expected life expectancy and estimated cost implication. "A" - Adequate for Redevelopment Phase and extended warrantee period. "B" - Not Adequate for Redevelopment Phase and extended warrantee period.
Capacity Assessment	ProjectCo will report "as-found" condition capacities for systems/equipment supplying areas impacted by redevelopment. This will include physical measurements such as, but not limited to air flows, water flows, sensor values, amperage draws, voltage, continuity, network compatibility, etc. ProjectCo will report these findings to stakeholders in an industry standard reporting format.
Adaptability Assessment	"A" - Equipment can be modified at minimal impact to accept additional control/monitoring elements such as VFD's or Flow metering equipment, controls upgrade, etc. "B" - Equipment can not be modified at minimal impact.

TEMPLATE CHART

Redevelopment Impacted Area:							
SMH Equipment No.	System / Equipment	Component	Criteria			Recommended Action	Estimated Cost
			Physical Condition Assessment	Capacity Assessment	Adaptability Assessment		
	AHU xxx	AHU					
		Supply Fan					
		Supply Fan Motor					
		Return Fan					
		Return Fan Motor					
		Damper Supply					
		Damper Mixing					
		BAS Sensors					
		BAS End Devices					
	Pump xxx	Pump					
		Pump Motor					
		BAS Sensors					

SCHEDULE 15

OUTPUT SPECIFICATIONS

[REDACTED]

SCHEDULE 16

TITLE ENCUMBRANCES

“Title Encumbrances” means:

1. Instrument No. CT310267, registered August 4, 1978, is a development agreement dated April 27, 1978 between The Sisters of St. Joseph, for the Diocese of Toronto, In Upper Canada (the “Sisters”) and The Corporation of the City of Toronto (the “City”).
2. Instrument No. CT549393, registered September 8, 1982, is an agreement dated August 16, 1982 between the Sisters and the City, which is an amendment to the development agreement registered as Instrument No. CT310267.
3. Instrument No. AT992277, registered November 29, 2005, is a Land Registrar’s Order correcting reference to the unmanned lane in the last line of the thumbnail description from by-law EP6307 to by-law EP4307.
4. Instrument No. AT1057440, registered February 7, 2006, is a charge from SMH in favour the Sisters securing the original principal sum of \$14,000,000 (the “Sisters First Mortgage”).
5. Instrument No. AT1057441, registered February 7, 2006, is a charge from SMH in favour of the Sisters, securing the original principal sum of \$21,000,000 (the “Sisters Second Mortgage”).
6. Instrument No. AT1078127, registered March 2, 2006, is a Land Registrar’s Order amending Instrument No. AT992277 to correct reference from by-law EP4307 to by-law EP3407 in the last line of the thumbnail description.
7. Instrument No. AT2420898, registered June 23, 2010, is notice of an agreement dated June 10, 2010 between SMH and the Sisters amending the Sisters First Mortgage.
8. Instrument No. AT2420899, registered June 23, 2010, is notice of an agreement dated June 10, 2010 between SMH and the Sisters amending the Sisters Second Mortgage.
9. Instrument No. AT2445023, registered July 13, 2010, is notice of an encroachment agreement dated July 2, 2010 between the City and SMH.
10. Instrument No. AT2445024, registered July 13, 2010, is notice of an encroachment agreement dated July 2, 2010 between the City and SMH.
11. Instrument No. AT2679790, registered May 2, 2011, is notice of a second mortgage amending agreement between SMH and the Sisters, amending the Sisters First Mortgage.

12. Instrument No. AT2679791, registered May 2, 2011, is notice of a second mortgage amending agreement between SMH and the Sisters, amending the Sisters Second Mortgage.
13. Instrument No. AT2694691, registered May 2, 2011 is notice of an encroachment agreement dated October 22, 2010 between the City and SMH.
14. Instrument No. AT2714120, registered June 7, 2011 is notice of a site plan agreement dated January 24, 2011 between SMH and the City.
15. Liens, charges or prior claims for taxes (which term includes charges, rates and assessments) or utilities (including levies or imposts for sewers and other municipal utility services) not yet due or if due, the validity of which is being contested in good faith, and liens or charges for the excess of the amount of any past due taxes or utilities charges for which a final assessment or account has not been received over the amount of such taxes or utilities charges as estimated and paid by SMH.
16. Inchoate liens incidental to construction, renovations or current operations, a claim for which shall not at the time have been registered against the Site or of which notice in writing shall not at the time have been given to SMH pursuant to the CLA or otherwise or any lien or charge, a claim for which, although registered, or notice of which, although given, relates to obligations not overdue or delinquent and in respect of any of the foregoing cases, SMH has, where applicable, complied with the holdback or other similar provisions or requirements of the relevant construction contracts so as to protect the Site therefrom.
17. The rights reserved to or vested in any municipality or governmental or other public authority by any statutory provision.
18. Any subsisting reservations, limitations, provisions and conditions contained in any original grants from the Crown of any land or interests therein, reservations of undersurface rights to mines and minerals of any kind.
19. Zoning (including, without limitation, airport zoning regulations), use and building by-laws and ordinances, federal, provincial or municipal by-laws and regulations as to the use of the Site, which do not materially impair the value of the Site or materially interfere with the use of the Site for the purposes of the Project.
20. Any encroachments, easements, rights of way or similar interests which would be revealed by an up-to-date survey of the Site.
21. Servitudes, easements, rights-of-way, or other similar rights in land for sewers, electric lines, telegraphs and telephone lines and other utilities and services which do not materially impair the value of the Site or materially interfere with the use of the Site for the purposes of the Project.

22. Minor encroachments onto or from neighboring lands which are permitted under agreements with the owners of such lands and which do not materially impair the value of the Site or materially interfere with the use of the Site for the purposes of the Project.
23. Registered subdivision, site-plan, development or other municipal agreements, if any, provided such are complied with and which do not materially impair the value of the Site or materially interfere with the use of the Site for the purposes of the Project.
24. The exceptions and qualifications contained in subsection 44(1) of the *Land Titles Act* (Ontario) except for paragraphs 11 and 14, Provincial Succession Duties and Escheats or Forfeiture to the Crown; and (b) the rights of any person who would, but for the *Land Titles Act*, be entitled to the land or any part of it through length of adverse possession, prescription, misdescription, or boundaries settled by convention.

SCHEDULE 17

WORKS REPORT REQUIREMENTS

- 1 The Works Report shall include the following:
 - (a) an executive summary;
 - (b) design status;
 - (c) Works Schedule summary, including:
 - (i) permits;
 - (ii) construction progress;
 - (iii) progress photos;
 - (iv) planned requests for service or infrastructure shut-downs;
 - (v) update to construction phasing and sequencing activities;
 - (vi) construction milestones; and
 - (vii) submissions schedule;
 - (d) update to construction infection control plan;
 - (e) update to construction access and hoarding plans;
 - (f) contractual outstanding decisions;
 - (g) quality assurance and quality control;
 - (h) organization/staffing changes and additions for Project Co and Construction Contractor;
 - (i) health and safety, including:
 - (i) lost time injuries; and
 - (ii) accidents with no lost time;
 - (j) Subcontract status, including:
 - (i) consultants;
 - (ii) Subcontracts awarded;

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- (iii) tenders;
- (iv) shop drawing submittals status; and
- (v) labour report (average workforce per sub-trade and the total workforce including own forces for the period reporting);
- (k) financial status, including:
 - (i) progress and Variations;
 - (ii) insurance summary;
 - (iii) Construction Contractor default status; and
 - (iv) cash flow projection (capital cost components);
- (l) risk management, including:
 - (i) claims;
 - (ii) liens;
 - (iii) environmental issues;
 - (iv) labour;
 - (v) market conditions;
 - (vi) outstanding disputes;
 - (vii) operational risks; and
 - (viii) other risks;
- (m) commissioning, occupancy and completion; and
- (n) Equipment status reporting, including:
 - (i) RFP release and close dates;
 - (ii) pending Equipment selections;
 - (iii) financial analysis; and
 - (iv) delivery, installation, commissioning and training dates; and

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- (o) reporting on Cash Allowance Items, including financial reporting on Cash Allowance Items in accordance with Section 3.2 of the Project Agreement.

SCHEDULE 18

COMMUNICATIONS PROTOCOL

1 GENERAL**1.1 Communications Principles**

The Project represents an important infrastructure commitment by the Province. Accordingly, a comprehensive communications and stakeholder relations plan is required to ensure the public is informed and engaged where necessary and to meet SMH's communications requirements. This plan will support effective communications between Project Co and SMH, and with SMH stakeholders, including the SMH community.

2 SMH RESPONSIBILITIES**2.1 Lead Communications Role**

SMH will assume the lead communications role. SMH will take primary responsibility for all communications matters and will be responsible for:

- (a) providing identified, dedicated lead communications contacts with applicable skills and experience with 24/7 availability on applicable aspects of communications and issues management;
- (b) providing an identified, dedicated media-trained lead media spokesperson, with back-up media-trained personnel, as required with 24/7 availability on applicable aspects of communications;
- (c) acting as primary media contact for the Project;
- (d) providing final review and approval of all public communications materials;
- (e) communicating promptly with all relevant parties on crisis issues and communicating within 24 hours on general issues;
- (f) maintaining and updating the Project website, as required; and
- (g) providing coordinated updates to internal/ external stakeholders, as required.

2.2 SMH Communications Responsibilities

SMH will be responsible for the following matters:

- (a) Communications: To develop a comprehensive communications strategy and program that includes community relations, media relations, marketing, special

events, employee communications and government relations regarding issues related to the Project.

- (b) **Crisis Communications:** To undertake, in cooperation with Project Co, required planning for potential crisis issues related to the Project. A plan will be developed within 30 days following Financial Close outlining the roles and responsibilities of both SMH and Project Co during a crisis situation.
- (c) **SMH Related Communication:** To provide all communications related to the provision of SMH Activities.
- (d) **Performance Review:** To review, on a periodic basis, Project Co's performance in providing communications support as outlined in Section 3 of this Schedule 18.

3 PROJECT CO RESPONSIBILITIES

3.1 Support Communications Role

Project Co will assume a supporting role with respect to communications related to the Project. Project Co will be responsible for:

- (a) providing identified, dedicated media-trained lead media spokesperson (with back-up media-trained personnel, as required) with 24/7 availability on applicable aspects of communications;
- (b) responding to communications issues in accordance with agreed timeframes;
- (c) reviewing and/ or providing communications and/ or technical materials reasonably requested by SMH for website content;
- (d) updating, in collaboration with SMH, internal/ external stakeholders, as required, including involvement and participation in community events, including SMH Activities;
- (e) providing the public/ media reasonable access to the Site for milestone events;
- (f) directing all media enquiries and interview requests to SMH's lead communications contact;
- (g) maintaining a written record of all material public enquiries, complaints and communications and providing copies to SMH's lead communications contact on a weekly basis (or immediately if urgent);
- (h) reporting to SMH on communications matters on an agreed upon basis;
- (i) participating in SMH communications meetings, as required; and

- (j) during a crisis situation, ensuring and making available sufficient resources to work effectively with SMH and proactively manage and perform its communications responsibilities.

3.2 Project Co Communications Responsibilities

Project Co will:

- (a) within 30 days following Financial Close and in collaboration with SMH, develop, maintain and implement a construction liaison and communications plan that includes:
 - (i) a description of Project Co's approach to all communications aspects of the Project;
 - (ii) a description of Project Co's communications team, including the roles and responsibilities for each team member and any Project Co Parties who will provide any aspect of the communications program; and
 - (iii) the identification of proposed communication tools to be used to keep the community and other stakeholders (including the SMH community) informed with respect to the progress of the Project;
- (b) update the construction liaison and communications plan on an annual basis or as reasonably requested by SMH;
- (c) coordinate with SMH in the implementation of the construction liaison and communications plan;
- (d) attend regular meetings with SMH to discuss communication issues and developments;
- (e) produce monthly progress reports, which will include information on activities, public and media enquiries, any emerging issues, and actions taken in response to issues;
- (f) through SMH, provide regular updates to the immediately affected property owners and neighbourhoods on Works related issues with particular attention to communicating the scope, schedule and status of the Works. This will include processes to proactively address any Works related enquiries and issues (e.g., public enquiries and complaints re noise, hours of work, dust, etc.);
- (g) provide regular updates to SMH related to the management of local traffic during the Works;

- (h) develop, in collaboration with SMH, a crisis communication plan outlining roles and responsibilities for a list of potential crisis issues that could develop during the Works; and
- (i) follow any guidelines provided by SMH related to signage or advertising at the Site.

4 PUBLIC DISCLOSURE AND MEDIA RELEASES

4.1 Public Disclosure and Media Releases

- (a) Project Co shall not, and shall ensure that no Project Co Party shall, issue or disseminate any media release, public announcement or public disclosure (whether for publication in the press, on the radio, television, internet or any other medium) relating to the Project, this Project Agreement, the SMH Activities or any matters related thereto, without the prior written consent of SMH.
- (b) Unless otherwise required by Applicable Law (but only to that extent), neither Party shall use the other Party's name or refer to the other Party, directly or indirectly, in any media release, public announcement or public disclosure (whether for publication in the press, on the radio, television, internet or any other medium) relating to the Project, this Project Agreement, the SMH Activities or any matter related thereto, without the prior written consent of the other Party.
- (c) Project Co shall, and shall ensure that all Project Co Parties and its and their subcontractors, agents, employees, officers and directors, in each case, comply, at all times, with SMH's media release and publicity protocols or guidelines, as such protocols and/or guidelines are updated by SMH from time to time.

5 CONSTRUCTION SIGNAGE

5.1 Construction Signage Guidelines

With respect to any signage that may be erected and maintained at or on the Site or Project, Project Co, Project Co Parties and/or the Lenders, as applicable, shall:

- (a) include the SMH logo on the sign;
- (b) ensure that the signage is no larger than the larger of: (i) an existing government project sign on the Site; or (ii) 16 feet by 8 feet;
- (c) adhere to local by-laws including by-laws regarding placement and size;
- (d) consider signage material suitable for long-term outdoor exposure;

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- (e) provide a mock-up of the signage to the SMH Representative for approval prior to printing; and
- (f) be responsible for installation, maintenance and removal of the signage.

SCHEDULE 19

[INTENTIONALLY DELETED]

SCHEDULE 20

PROCUREMENT MONITORING AND IMPLEMENTATION PLAN

[REDACTED]

SCHEDULE 21

[INTENTIONALLY DELETED]

SCHEDULE 22

VARIATION PROCEDURE

1. VARIATIONS

1.1 Definitions

- (a) The following terms shall have the following meanings:
- (i) **“Capital Expenditure”** means a capital expenditure as interpreted in accordance with Canadian GAAP.
 - (ii) **“Direct Cost”** has the meaning given in Appendix A of this Schedule 22.
 - (iii) **“Estimate”** has the meaning given in Section 1.4(a) of this Schedule 22.
 - (iv) **“Project Co Variation Notice”** has the meaning given in Section 2.1(a) of this Schedule 22.
 - (v) **“Variation”** means a variation, addition, reduction, substitution, omission, modification, deletion, removal or other change to the whole or any part of the Works.
 - (vi) **“Variation Confirmation”** has the meaning given in Section 1.7(a)(ii) of this Schedule 22.
 - (vii) **“Variation Directive”** means a written instruction which is issued on a form designated as a “Variation Directive Form” and signed by the SMH Representative directing Project Co to immediately proceed with a Variation pending the finalization and issuance of a Variation Confirmation for that Variation.
 - (viii) **“Variation Enquiry”** has the meaning given in Section 1.3(a) of this Schedule 22.

1.2 General

- (a) SMH has the right from time to time to propose and require Project Co to carry out and implement a Variation, and any such Variation shall be subject to the provisions of this Schedule 22, provided that SMH shall not be permitted to withdraw a Variation Enquiry (nor will a Variation Enquiry be deemed to have been withdrawn) with respect to those circumstances specified in the Project Agreement for which SMH is obligated to proceed with a Variation.

- (b) SMH shall be obligated to proceed with a Variation in certain circumstances specified in this Project Agreement, and any such Variation shall be subject to the provisions of this Schedule 22.
- (c) Project Co will not be entitled to any payment, compensation or extension of time for a Variation except to the extent provided in a Variation Confirmation or Variation Directive in accordance with this Schedule 22.
- (d) Project Co shall not be entitled to claim any ownership of the Schedule Cushion as a result of any Variation Confirmation or Variation Directive issued pursuant to this Schedule 22.

1.3 Variation Enquiry

- (a) If SMH proposes or is obligated pursuant to the terms of this Project Agreement or Applicable Law to initiate a Variation it shall deliver to Project Co a written notice of the proposed Variation (a “**Variation Enquiry**”).
- (b) A Variation Enquiry shall:
 - (i) describe the proposed Variation with sufficient detail to enable Project Co to prepare a detailed Estimate;
 - (ii) in the event that the proposed Variation will require a Capital Expenditure, state whether SMH intends to pay for the Variation by way of lump sum payment or payments, adjustment to the Guaranteed Price (and, if applicable, with a request for Project Co to obtain financing for all or part of the Variation), or a combination thereof; and
 - (iii) provide a preliminary indication of any provisions of this Project Agreement (including the Output Specifications or the Project Co Proposal Extracts) that will be affected by the proposed Variation, as well as the amendments to this Project Agreement (including the Output Specifications or the Project Co Proposal Extracts) that may be necessary to accommodate the Variation.

1.4 Delivery of Estimate

- (a) As soon as practicable and in any event within 15 Business Days after receipt of a Variation Enquiry, or such longer period as the Parties agree acting reasonably, Project Co shall deliver its detailed breakdown, estimate and other information (an “**Estimate**”) prepared in accordance with and meeting the requirements of Section 1.6.

1.5 Project Co Grounds for Objection

- (a) Project Co may only refuse to deliver an Estimate if Project Co can demonstrate to SMH's satisfaction, acting reasonably, within the period for delivery of an Estimate specified or agreed pursuant to Section 1.4(a), that:

- (i) the implementation of the Variation would materially and adversely affect the health and safety of any person;
 - (ii) the implementation of the Variation would:
 - (A) infringe Applicable Law;
 - (B) cause to be revoked any of the existing Permits, Licences, Approvals and Agreements required by Project Co to perform the Works, and any such Permits, Licences, Approvals and Agreements is not, using commercially reasonable efforts, capable of amendment or renewal; or
 - (C) require any new Permits, Licences, Approvals and Agreements for Project Co to perform the Works, any of which Permits, Licences, Approvals and Agreements will not, using commercially reasonable efforts by Project Co or SMH, as applicable, be obtainable;
 - (iii) the proposed Variation would have a material and adverse effect on performance of the Works (except those Works which have been specified as requiring amendment in the Variation Enquiry) in a manner not compensated pursuant to this Schedule 22;
 - (iv) the implementation of the Variation would be a departure from Good Industry Practice;
 - (v) SMH does not have the legal power or capacity to require the Variation to be implemented or to do anything envisaged by this Schedule 22 in respect of or in connection with the Variation;
 - (vi) the Variation would, if implemented, result in a change in the essential nature of the Facility;
 - (vii) the Variation Enquiry does not comply with the requirements of Section 1.3 (including a failure to include adequate information therein to enable Project Co to prepare an Estimate in respect thereof); or
 - (viii) in the case of a Variation relating to the Works, the time specified for commencement and/or completion of such Variation cannot be achieved by Project Co despite commercially reasonable efforts.
- (b) If Project Co refuses to provide an Estimate on the grounds set out in Section 1.5(a), Project Co shall, within the period for delivery of an Estimate specified or agreed pursuant to Section 1.4(a), deliver to SMH a written notice specifying the grounds upon which Project Co rejects the Variation and the details thereof.

St. Michael's Hospital Redevelopment Project**1.6 Estimate Requirements**

- (a) Unless SMH in a Variation Enquiry requires only specified limited information, each Estimate shall include the following information, sufficient to demonstrate to SMH's reasonable satisfaction:
- (i) the steps Project Co will take to implement the Variation, in such detail as is reasonable and appropriate in the circumstances;
 - (ii) any impact on a Scheduled Phase Completion Date, the Scheduled Tower Interim Completion Date or the Scheduled Substantial Completion Date and any other schedule impact on the provision of any Phase of the Works or the remainder of the Facility and completion of the Works (including for certainty, any impact of the proposed Variation after taking into consideration other Variations);
 - (iii) any impact on the performance of the Works and any other impact on this Project Agreement (including for certainty, any impact of the proposed Variation after taking into consideration other Variations);
 - (iv) any amendments to this Project Agreement or any Project Document required as a consequence of the Variation, the objective of such amendments being to ensure that (save for the obligation of SMH to make payments or altered payments in respect of the Variation) the Parties are in no better and no worse position in relation to the Project than they would have been in if the Variation had not been implemented and, in particular, that there will be no material adverse change to the risk profile of the Project as a result of the Variation;
 - (v) any impact on the Direct Costs of Project Co and the Subcontractors, including:
 - (A) any Capital Expenditure that will be incurred, reduced or avoided and the impact on Project Co's cash flows from incurring, reducing or avoiding such costs (whether financed by Project Co or SMH); and
 - (B) any other costs that will be incurred, reduced or avoided and the impact on Project Co's cash flows from incurring, reducing or avoiding such costs;
 - (vi) either, subject to Section 1.9:
 - (A) a confirmation that the proposed Variation will not affect Project Co's existing financing or that Project Co's existing financing is adequate to implement the Variation; or
 - (B) if new or additional financing is required to implement the Variation, an indication as to the availability of such new or additional financing and the cost and terms of such new or additional financing;

- (vii) Project Co's preliminary indication of the potential increase or decrease, if any, to the Guaranteed Price;
- (viii) any Permits, Licences, Approvals and Agreements that must be obtained or amended for the Variation to be implemented, and the latest date by which Project Co must receive a Variation Confirmation and obtain or amend such Permits, Licences, Approvals and Agreements for the Estimate to remain valid;
- (ix) the proposed methods of certification of any construction or operational aspect of the Works required by the Variation if not covered by the provisions of this Project Agreement; and
- (x) the total impact, if any, on the Annual Energy Target and/or the Discrete Energy Target(s) described in Schedule 33 – Energy Matters,

in each case, together with such supporting information and justification as is reasonably required.

- (b) In preparing its Estimate, Project Co shall include sufficient information to demonstrate to SMH's satisfaction, acting reasonably, that:
 - (i) Project Co has used or has obliged each Subcontractor (or will oblige any Subcontractor not yet selected) to use commercially reasonable efforts, including the use of competitive quotes or tenders (if appropriate or required by Sections 1.6(c) and 1.6(e)), to minimize any increase in costs and to maximize any reduction in costs;
 - (ii) all costs of Project Co and the Subcontractors are limited to Direct Costs;
 - (iii) Project Co and the Construction Contractor shall charge only the margins for overhead and profit as set out in Appendix B hereto (such margins each calculated on the basis of the applicable Direct Costs so that no margin of Project Co or the Construction Contractor is calculated on any other margin of Project Co or the Construction Contractor), and no other margins or mark-ups;
 - (iv) the margins for overheads and profit as set out in Appendix B hereto as applicable to Project Co's Direct Costs shall only be chargeable on Direct Costs of Project Co, such that Project Co shall not charge any margins on any amounts charged by the Construction Contractor;
 - (v) all costs of providing Works, including Capital Expenditures, reflect:
 - (A) labour rates applying in the open market to providers of services similar to those required by the Variation;
 - (B) any and all changes in the Output Specifications arising out of the proposed Variation; and

- (C) any and all changes in risk allocation;
 - (vi) the full amount of any and all expenditures that have been reduced or avoided (including for any Capital Expenditure) and that all such expenditures, including all applicable margins for overhead and profit anticipated to be incurred but for the Variation, have been taken into account and applied in total to reduce the amount of all costs; and
 - (vii) Project Co has mitigated or will mitigate the impact of the Variation, including on the Works Schedule, the performance of the Works, the expected usage of utilities and the Direct Costs to be incurred.
- (c) Project Co will use commercially reasonable efforts to obtain the best value for money when procuring any work, services, supplies, materials or equipment required by the Variation and will comply with all Good Industry Practice in relation to any such procurement, to a standard no less than Project Co would apply if all costs incurred were to its own account without recourse to SMH, including using commercially reasonable efforts to mitigate such costs.
 - (d) As soon as practicable, and in any event not more than 15 Business Days after SMH receives an Estimate, Project Co and SMH shall discuss and seek to agree on the Estimate, including any amendments to the Estimate agreed to by the Parties.
 - (e) If SMH would be required by Applicable Law or any policy applicable to SMH to competitively tender any contract in relation to the proposed Variation, SMH may require Project Co to seek and evaluate competitive tenders for the proposed Variation in accordance with such Applicable Law or policy.
 - (f) SMH may modify a Variation Enquiry in writing at any time for any matter relating to the Estimate or the discussions in relation thereto, in which case Project Co shall, as soon as practicable and in any event not more than 10 Business Days after receipt of such modification, notify SMH in writing of any consequential changes to the Estimate.
 - (g) If the Parties cannot agree on an Estimate pursuant to Section 1.6(d), then any Dispute will be determined in accordance with Schedule 27 – Dispute Resolution Procedure.

1.7 Variation Confirmation

- (a) As soon as practicable, and in any event within 15 Business Days after the later of the date the Estimate was delivered and the date the Estimate was either agreed to or any Dispute in respect thereof was determined in accordance with Schedule 27 - Dispute Resolution Procedure, SMH shall either:
 - (i) subject to Sections 1.2(b) and 1.7(e), withdraw the Variation Enquiry by written notice to Project Co; or

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- (ii) issue a written confirmation (the “**Variation Confirmation**”) of the Estimate, including any agreed modifications thereto or any modifications resulting for the determination of a Dispute in respect thereof, which Variation Confirmation may be subject to Project Co obtaining financing pursuant to Section 1.8.
- (b) If SMH does not issue a Variation Confirmation within such 15 Business Days, then, subject to Sections 1.2(b) and 1.7(e), the Variation Enquiry shall be deemed to have been withdrawn.
- (c) Upon the Variation Confirmation being issued, and if applicable upon Project Co obtaining financing pursuant to Section 1.8:
 - (i) the Parties shall as soon as practicable thereafter do all acts and execute all documents to amend this Project Agreement necessary to implement the Variation, including in respect of any required extension of time and including provision for payment to Project Co as provided in Section 1.10;
 - (ii) Project Co shall implement the Variation as provided for in the Variation Confirmation, and subject to amendments pursuant to Section 1.7(c)(i), all provisions of this Project Agreement applicable to the Works shall apply to the Works as thereby changed and no additional claim with respect to the Variation or Variation Confirmation will be considered; and
 - (iii) payment in relation to the Variation shall be as provided for in Section 1.10 and pursuant to any amendments pursuant to Section 1.7(c)(i).
- (d) If a Variation Confirmation is subject to Project Co obtaining financing pursuant to Section 1.8, then the Variation Confirmation shall not be effective until:
 - (i) Project Co obtains such financing acceptable to SMH in its sole discretion; or
 - (ii) SMH in its sole discretion waives such requirement.
- (e) Except as hereinafter provided, until a Variation Confirmation has been issued:
 - (i) the determination of whether or not to proceed with a Variation shall at all times be at SMH's sole discretion, despite any Dispute or any other matter in relation to a Variation being referred to or determined by Schedule 27 - Dispute Resolution Procedure; and
 - (ii) SMH may at any time withdraw a Variation Enquiry and, subject to Section 1.7(f), SMH shall not be obligated to Project Co in respect of a Variation until such time as SMH in its sole discretion issues a Variation Confirmation and, if applicable, Project Co has obtained the financing requested by SMH or SMH has waived such requirement,

provided that SMH may not withdraw (or be deemed to have withdrawn) a Variation Enquiry in circumstances where SMH is obligated pursuant to the terms of this Project Agreement to proceed with a Variation. In such circumstances Schedule 27 - Dispute Resolution Procedure shall be employed to finalize any aspects of the Variation which cannot otherwise be agreed to in accordance with the terms of this Schedule 22.

- (f) If a Variation Confirmation is not issued for any Variation Enquiry in respect of which Project Co has used commercially reasonable efforts to produce a fair and accurate Estimate, SMH shall reimburse Project Co for all Direct Costs reasonably and properly incurred by Project Co in connection with preparing the Estimate.

1.8 Financing

- (a) Subject to Section 1.9, if Project Co in its Estimate confirms that existing financing is not available to pay for the proposed Variation and if SMH requests Project Co to obtain financing for a Variation, then a Variation Confirmation may be issued subject to Project Co obtaining financing. In such event, Project Co shall use commercially reasonable efforts to obtain the requested financing on terms satisfactory to Project Co, the Lenders and SMH, provided that, Project Co shall not be required to seek financing from any source other than the Lenders.
- (b) If Project Co has used commercially reasonable efforts to obtain the requested financing but has been unable to obtain an offer of financing on terms reasonably satisfactory to Project Co and SMH within 60 days of the date that SMH issues the Variation Confirmation, then Project Co shall have no further obligation to obtain financing for the Variation and any Variation Confirmation subject to financing shall no longer have any effect unless SMH, in its sole discretion, waives the requirement for financing or unless SMH is obligated to proceed with the Variation pursuant to the terms of this Project Agreement.
- (c) Subject to Section 1.9, if Project Co obtains an offer of financing on terms reasonably satisfactory to Project Co, Project Co shall provide SMH with details of such financing, and SMH shall, in its sole discretion, determine whether Project Co should proceed with such financing. If SMH determines that Project Co should not proceed with such financing, then Project Co shall have no further obligation to obtain financing for the Variation and any Variation Confirmation subject to financing shall no longer have any effect unless SMH, in its sole discretion, waives the requirement for financing or unless SMH is obligated to proceed with the Variation pursuant to the terms of this Project Agreement.
- (d) Subject to Section 1.9, SMH may at any time withdraw the requirement for Project Co to use commercially reasonable efforts to obtain financing, after which Project Co shall have no further obligation to obtain financing for the Variation and any Variation Confirmation subject to financing shall no longer have any effect unless SMH in its sole discretion waives the requirement for financing or unless SMH is obligated to proceed with the Variation pursuant to the terms of this Project Agreement.

- (e) If SMH waives the requirement for financing or if Project Co has no further obligation to obtain financing for the Variation pursuant to Sections 1.8(b), 1.8(c) or 1.8(d), then Project Co shall proceed with the Variation as set out in the Variation Confirmation and SMH shall pay for the Variation as provided for in Section 1.10(a)(ii).

1.9 Increase or Decrease in the Cost of the Financing

- (a) If there is an increase or a decrease in the Cost of the Financing as a result of a Variation, the Guaranteed Price shall be increased or decreased by the increase or decrease to the Cost of the Financing. Project Co shall provide the calculation of the increase or decrease in the Cost of the Financing, together with a certificate of the Lenders' Agent verifying such calculation. Where the increase in the Cost of the Financing includes breakage costs, but the impact of the Variation on the Cost of the Financing could also be accommodated without incurring breakage costs, calculations for both options shall be provided to SMH, together with a certificate of the Lenders' Agent addressed to Project Co (which will expressly provide that the certificate may be relied upon by SMH) verifying such calculations. SMH shall, in its sole discretion, within 5 Business Days of receiving such certificate from the Lenders' Agent, select its preferred option by providing written notice to Project Co and the Lenders' Agent. For greater certainty, the increases or decreases in the Cost of the Financing shall be calculated in a commercially reasonable manner and in accordance with the Lending Agreements, and without regard to the identity of the party paying such costs and expenses and, with respect to any swap breakage costs or gains, such costs or gains shall be calculated in accordance with standard market practices.
- (b) SMH may, in its sole discretion, elect to apply any portion of the Schedule Cushion to any extension of the time for achieving a Phase Completion, Tower Interim Completion or Substantial Completion otherwise determined under a Variation, with the result that such extension of time shall be reduced or eliminated, as the case may be, by the number of days of the Schedule Cushion that SMH has elected to apply, and the determination of the increase in the Cost of the Financing associated with such Variation shall be recalculated based on the remaining extension of such time, if any, under such Variation after such application by SMH of the Schedule Cushion. If a Variation gives rise to a net benefit to Project Co through a reduction of the Cost of the Financing, then Project Co shall pay any net benefit received by Project Co to SMH.
- (c) For greater certainty, subject to Section 1.9(b) and notwithstanding Section 31.2(b) of the Project Agreement, where SMH elects to apply all or any portion of the number of days of the Schedule Cushion, Project Co shall only be entitled to compensation valued pursuant to Section 1.6(b), provided, however, the margins for overhead and profit as set out in Appendix B hereto shall be reduced by [REDACTED] percent ([REDACTED]%) and applied to the entire scope of the applicable Variation.

St. Michael's Hospital Redevelopment Project**1.10 Payment**

- (a) If a Variation Confirmation has been issued and is not subject to financing, or if the requirement for financing has been satisfied by Project Co or has been waived by SMH, a price adjustment for the Variation, as set out in the Estimate and as adjusted and confirmed by the Variation Confirmation, shall be made as follows:
- (i) the Guaranteed Price shall be adjusted as set out in the Variation Confirmation;
 - (ii) payment for Capital Expenditures as set out in the Variation Confirmation and not financed by Project Co shall be paid as follows:
 - (A) SMH shall pay such Capital Expenditures in lump sum payments based on a payment schedule agreed by SMH and Project Co, acting reasonably, to reflect the amount and timing of the Capital Expenditures to be incurred by Project Co in carrying out the Variation to the extent borne by SMH; and
 - (B) where payment for part of the Variation reflects the carrying out of, or specific progress towards, an element within the Variation, Project Co shall provide satisfactory evidence confirming that the part of the Variation corresponding to each occasion when payment is due under the payment schedule has been duly carried out.
- In the event SMH and Project Co fail to agree as to the terms of the payment schedule, the payment schedule shall be determined in accordance with Schedule 27 - Dispute Resolution Procedure, provided that, where all or any part of the Variation is being carried out by a third party under a contract with Project Co, subject to the terms of any contract between Project Co and that third party in relation to the implementation of the Variation having been approved by SMH (such approval not to be unreasonably withheld or delayed), the process under Schedule 27 - Dispute Resolution Procedure shall determine a payment schedule which would enable Project Co to be funded by SMH in time to make payments to that third party in accordance with its contract with Project Co.
- (b) SMH shall make payment to Project Co within 20 Business Days of receipt by SMH of invoices presented to SMH in accordance with the agreed payment schedule accompanied (where applicable) by the relevant evidence that the relevant part of the Variation has been carried out.
 - (c) Payments by SMH in respect of a Variation shall be subject to applicable holdback provisions of the CLA, as applicable.
 - (d) Project Co shall not be entitled to any amount in excess of the amount of the Estimate confirmed in the Variation Confirmation.

- (e) Upon request by Project Co, SMH shall provide to Project Co copies of any consent or approval issued by MOHLTC, SMH and/or SMH's board of directors in connection with a proposed Variation.

1.11 Reduction in Works

- (a) If a Variation involves any reduction in Works which results in savings in Direct Costs to Project Co, such savings shall result in a reduction in the compensation payable to Project Co under this Project Agreement in an amount equal to such reduction in Direct Costs and the Substantial Completion Payment or Tower Interim Completion Payment (as applicable, at SMH's discretion) shall be reduced accordingly.

1.12 Variation Directive

- (a) If an Estimate is not promptly agreed upon by SMH and Project Co or if there is a Dispute in relation thereto or if SMH, in its sole discretion, requires a Variation to be implemented prior to issuing a Variation Confirmation, then SMH may issue a Variation Directive and, following receipt of the Variation Directive:
- (i) Project Co shall promptly proceed with the Variation;
 - (ii) the determination of the valuation and time extensions, if any, required in connection with such Variation, shall be made as soon as reasonably possible after commencement of the implementation of the Variation; and
 - (iii) pending final determination of the valuation and time extensions, if any, required in connection with such Variation, the Independent Certifier, acting reasonably, shall determine the valuation in accordance with Appendices A and B hereto, with any Dispute to be determined in accordance with Schedule 27 - Dispute Resolution Procedure,

provided that, SMH shall fund all Variations implemented by way of a Variation Directive as provided for in Section 1.10(a)(ii).

2. PROJECT CO VARIATIONS

2.1 General

- (a) Project Co shall deliver to SMH a written notice (a "**Project Co Variation Notice**") for each Variation proposed by Project Co.

2.2 Project Co Variation Notice

- (a) A Project Co Variation Notice shall:

- (i) set out details of the proposed Variation in sufficient detail to enable SMH to evaluate it in full;
 - (ii) specify Project Co's reasons for proposing the Variation;
 - (iii) indicate all reasonably foreseeable implications of the Variation, including whether there are any costs or cost savings to SMH; and
 - (iv) indicate the latest date by which a Variation Enquiry must be issued.
- (b) If SMH, in its sole discretion, elects to consider the Variation proposed by Project Co, SMH may issue to Project Co a Variation Enquiry and the procedure set out in Section 1 will apply.
- (c) Project Co shall, promptly upon demand, reimburse SMH for all costs and expenses reasonably incurred by SMH in connection with SMH's consideration of any Variation proposed by Project Co pursuant to Article 2 of this Schedule 22, including, without limitation, legal and consulting fees and disbursements, regardless of whether (i) a Variation Enquiry or Estimate is issued in connection therewith or (ii) such Variation is implemented.

APPENDIX A

CALCULATION OF DIRECT COSTS

1. DIRECT COSTS

1.1 Subject to Section 1.2 of this Appendix A, the term “**Direct Cost**” means the cumulative total, without duplication, of only the following amounts, as paid or incurred by Project Co or the Subcontractors, as applicable, to the extent that they specifically relate to, and are attributable to, the Variation under which Project Co is expressly entitled to its Direct Cost and would not otherwise have been incurred:

- (i) wages and benefits paid for labour in the direct employ of Project Co or the Subcontractors while performing that part of the Works on Site;
- (ii) salaries, wages and benefits of Project Co's or the Subcontractors' personnel when stationed at the Site office in whatever capacity employed, or personnel engaged at shops or on the road, in expediting the production or transportation of materials or equipment;
- (iii) salaries, wages and benefits of Project Co's or the Subcontractors' office personnel engaged in a technical capacity;
- (iv) without limiting Sections 1.1(i), 1.1(ii) and 1.1(iii) of this Appendix A, contributions, assessments or taxes incurred for such items as employment insurance, provincial health insurance, workers' compensation, and Canada Pension Plan, insofar as such costs are based on the wages, salaries, or other remuneration paid to Project Co for employees pursuant to Sections 1.1(i), 1.1(ii) and 1.1(iii) of this Appendix A, but excluding for certainty all income taxes on such wages, salaries and other remuneration;
- (v) travel and subsistence expenses of Project Co's or the Subcontractors' officers or employees referred to in Sections 1.1(i), 1.1(ii) and 1.1(iii) of this Appendix A;
- (vi) the cost of materials (including hand tools which have a retail value of \$[REDACTED] or less), products, supplies, equipment, temporary services and facilities, including transportation and maintenance thereof, which are consumed in the performance of the Variation;
- (vii) the rental costs of all tools (excluding hand tools which have a retail value of \$[REDACTED] or less), machinery, and equipment used in the performance of the Variation, whether rented from or provided by Project Co or others, including installation, minor repair and replacement, dismantling, removal, transportation and delivery costs thereof;
- (viii) deposits lost;

- (ix) the amount of all Subcontracts with the Subcontractors;
- (x) the amount paid for any design services;
- (xi) the cost of third party quality assurance required by SMH, such as independent inspection and testing services;
- (xii) charges levied by Governmental Authorities, but excluding fines or penalties not related to the implementation of the Variation;
- (xiii) subject to Section 1.1(iv) of this Appendix A, Taxes and without limiting the obligation of SMH to pay HST under the Project Agreement, but excluding:
 - (A) HST;
 - (B) taxes imposed on Project Co or a Subcontractor based on or measured by income or profit or otherwise imposed under the Income Tax Act (Canada), the Income Tax Act (Ontario) or any similar statute in any other jurisdiction;
 - (C) capital taxes based on or measured by the capital of Project Co or a Subcontractor;
 - (D) taxes relating to withholdings on any payments by Project Co or a Subcontractor; and
 - (E) taxes relating to any business or activity other than the business or activities related to, and conducted for, the purposes of the Works;
- (xiv) the cost of removal and disposal of contaminants, hazardous substances, waste products and debris for which Project Co is not responsible under this Project Agreement;
- (xv) termination payments which are required under Applicable Law to be made to employees of Project Co reasonably and properly incurred by Project Co arising as a direct result of any Variation reducing the scope of the Works, except to the extent that such termination payments are provided for in contracts of employment, agreements or arrangements that were not entered into in the ordinary course of business and on commercial arm's length terms;
- (xvi) the cost of financing as calculated pursuant to Section 1.9, including additional financing costs related to any delay caused by the implementation of the Variation;
- (xvii) the cost of competitively tendering any contract in relation to the proposed Variation which is required by Applicable Law or any policy applicable to SMH;

- (xviii) the cost of any additional insurance or performance security required or approved by SMH;
- (xix) the cost of obtaining all Permits, Licences, Approvals and Agreements; and
- (xx) reasonable fees and disbursements of Project Co's legal advisors.

1.2 The Direct Cost otherwise payable shall be subject to and limited by the following:

- (i) the Direct Cost shall be net of all discounts, rebates and other price reductions and benefits, which relate to the Direct Cost incurred;
- (ii) the amount paid for materials, products, supplies and equipment incorporated into the Works as a result of the Variation shall not exceed commercially competitive rates available in the Province for such materials, products, supplies and equipment from arms-length third party suppliers;
- (iii) the amount paid for any design services included in the Direct Cost, whether provided by Project Co's personnel, consultants, manufacturers or manufacturers' consultants, for hourly paid personnel shall not exceed two times the actual salary received by those personnel (actual salary to be inclusive of all benefits, statutory remittances and holidays), and for salaried personnel, the actual salary per hour shall be calculated by dividing the annual salary (inclusive of all benefits, statutory remittances and holidays) by 2080 hours;
- (iv) the amount paid for machinery and equipment rental costs shall not exceed the prevailing competitive commercial rate for which such equipment or machinery can be obtained in Toronto, Ontario; and
- (v) the Direct Cost shall not include any cost incurred due to the failure on the part of Project Co to exercise reasonable care and diligence in its attention to the prosecution of that part of the Works.

APPENDIX B

APPLICABLE MARGINS

Party	Total Overhead and Profit Margin (as % of Direct Cost)		
	<i>For projects under \$[REDACTED]</i>	<i>For projects between \$[REDACTED] and \$[REDACTED]</i>	<i>For projects over \$[REDACTED]</i>
Project Co (Own Work)	[REDACTED]	[REDACTED]	[REDACTED]
Construction Contractor (Own Work)	[REDACTED]	[REDACTED]	[REDACTED]
Construction Contractor (Subcontracted Work)	[REDACTED]	[REDACTED]	[REDACTED]

SCHEDULE 23

COMPENSATION ON TERMINATION

1 DEFINITIONS

1.1 Definitions

The following terms shall have the following meanings:

- (a) **“Employee Termination Payments”** means termination payments which are required under Applicable Law to be made to employees of Project Co or any Project Co Party as a direct result of terminating this Project Agreement (provided that Project Co or the relevant Project Co Party shall take commercially reasonable steps to mitigate its loss) and provided that, in calculating such amount, no account should be taken of any liabilities and obligations of Project Co or the relevant Project Co Party arising out of:
- (i) contracts of employment or other agreements or arrangements entered into by Project Co or the relevant Project Co Party to the extent that such contracts of employment, agreements or arrangements were not entered into in connection with the Project; or
 - (ii) contracts of employment or other agreements or arrangements entered into by Project Co or the relevant Project Co Party other than in the ordinary course of business and on commercial arm's length terms, save to the extent that amounts would have arisen if such contracts or other agreements or arrangements had been entered into in the ordinary course of business and on commercial arm's length terms.
- (b) **“Invoice Date”** means the date that is the later of:
- (i) the date on which SMH receives an invoice from Project Co for the relevant termination sum; and
 - (ii) the date on which SMH receives the supporting evidence required pursuant to Section 5.1(a) of this Schedule 23.
- (c) **“Junior Debt Amount”** means [REDACTED].
- (d) **“Junior Debt Makewhole”** means [REDACTED].
- (e) **“Non-Default Termination Sum”** has the meaning given in Section 4.1(b) of this Schedule 23.
- (f) **“Project Co Amount”** means any amount payable to Project Co as a return and/or profit to Project Co shown in the Financial Model, including for greater certainty any loans made or capital contributed to Project Co by any Affiliate of Project Co or a Project Co

Party, prorated by a fraction, the numerator of which is the period between the date of commencement of the Works and the Termination Date, and the denominator of which is the period between the date of commencement of the Works and the Scheduled Substantial Completion Date.

- (g) **“Project Co Default Termination Sum”** has the meaning given to it in Section 3.1(b) of this Schedule 23.
- (h) **“Senior Debt Amount”** means [REDACTED].
- (i) **“Senior Debt Makewhole”** means [REDACTED].
- (j) **“SMH Default Termination Sum”** has the meaning given in Section 2.1(b) of this Schedule 23.
- (k) **“Subcontractor Losses”** means, subject to Project Co’s obligations under this Project Agreement to limit any compensation to Subcontractors, the amount reasonably and properly payable by Project Co to the Construction Contractor under the terms of the Construction Contract as a direct result of the termination of this Project Agreement (including any reasonable commercial breakage fee), provided that such amount shall be reduced to the extent that Project Co or the Subcontractors fail to take commercially reasonable steps to mitigate such amount; provided that, no account should be taken of any liabilities and obligations of Project Co to the Subcontractors arising out of:
 - (l) any loss of overhead or profit of such Subcontractor relating to any period or costs after the Termination Date (save to the extent the same are properly included in any reasonable commercial breakage fee set out in any of the Ancillary Documents);
 - (i) agreements or arrangements entered into by Project Co or the Subcontractors to the extent that such agreements or arrangements were not entered into in connection with those parties’ obligations in relation to the Project; or
 - (ii) agreements or arrangements entered into by Project Co or the Subcontractors other than in the ordinary course of business and on commercial arm’s length terms, save to the extent that amounts would have arisen if such agreements or arrangements had been entered into in the ordinary course of business and on commercial arm’s length terms.

2 COMPENSATION ON TERMINATION FOR SMH DEFAULT OR CONVENIENCE

2.1 Compensation

- (a) If Project Co terminates this Project Agreement pursuant to Section 35 of this Project Agreement or SMH terminates this Project Agreement pursuant to Section 36.3 of this Project Agreement, SMH shall pay to Project Co the SMH Default Termination Sum.

- (b) The “SMH Default Termination Sum” shall be an amount equal to the aggregate of:
- (i) the Senior Debt Amount and the Senior Debt Makewhole;
 - (ii) the Junior Debt Amount and the Junior Debt Makewhole;
 - (iii) any amount payable by SMH to Project Co in accordance with Sections 32.2(b) and 33.2(b) of this Project Agreement;
 - (iv) the Employee Termination Payments and the Subcontractor Losses;
 - (v) any reasonable costs properly incurred by Project Co to wind up its operations; and
 - (vi) the Project Co Amount;

LESS, the aggregate (without double counting) of the following, to the extent it is a positive amount:

- (vii) all credit balances on any bank accounts held by or on behalf of Project Co on the Termination Date and the value of any insurance proceeds due to Project Co or to which Project Co would have been entitled had insurance been maintained in accordance with the requirements of this Project Agreement (save where such insurance proceeds are to be applied in reinstatement, restoration or replacement, or, in the case of third party legal liability, in satisfaction of the claim, demand, proceeding or liability or where SMH is required to procure insurances and to make proceeds available to Project Co under this Project Agreement and it has failed to do so) or sums due and payable from third parties other than sums wholly unrelated to the Works, the Project and this Project Agreement (but only when received from third parties) but excluding any claims under any Subcontracts or claims against other third parties which have not been determined or have been determined but not yet paid, provided that, in such case, Project Co shall assign any such rights and claims under the Subcontracts or claims against other third parties (other than claims against other third parties wholly unrelated to the Works, the Project and this Project Agreement) to SMH and, at no additional cost to Project Co, give SMH reasonable assistance in prosecuting such claims;
- (viii) to the extent realized before the Invoice Date, the market value of any other assets and rights of Project Co (other than those transferred to SMH pursuant to this Project Agreement) less liabilities of Project Co properly incurred in carrying out its obligations under this Project Agreement as at the Termination Date, provided that no account should be taken of any liabilities and obligations of Project Co arising out of:

- (A) agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in connection with Project Co's obligations in relation to the Project; or
- (B) agreements or arrangements entered into by Project Co other than in the ordinary course of business and on commercial arm's length terms, save to the extent that liabilities and obligations would have arisen if such agreements or arrangements had been entered into in the ordinary course of business and on commercial arm's length terms;
- (ix) any amount of the Tower Interim Completion Payment, the Substantial Completion Payment, and any other amounts paid by SMH on or before the Termination Date; and
- (x) amounts which SMH is entitled to set off pursuant to Section 4.12(a)(i) of this Project Agreement,

provided that the SMH Default Termination Sum shall never be less than the aggregate of the Senior Debt Amount, the Senior Debt Makewhole, the Junior Debt Amount and the Junior Debt Makewhole.

- (c) To the extent that such assets and rights referred to in Section 2.1(b)(viii) of this Schedule 23 are not realized and applied pursuant thereto, Project Co shall, on payment of the SMH Default Termination Sum, assign such assets and rights to SMH.
- (d) SMH shall pay the SMH Default Termination Sum in accordance with Section 5 of this Schedule 23.

3 COMPENSATION ON TERMINATION FOR PROJECT CO DEFAULT

3.1 Compensation

- (a) If SMH terminates this Project Agreement pursuant to Section 34 of this Project Agreement, SMH shall pay to Project Co the Project Co Default Termination Sum.
- (b) The "Project Co Default Termination Sum" shall be an amount equal to the Guaranteed Price, as adjusted in accordance with the terms of this Project Agreement as of the Termination Date, less the aggregate, without duplication, of each of the following:
 - (i) any amount of the Tower Interim Completion Payment, the Substantial Completion Payment and any other amounts paid by SMH on or before the Termination Date;
 - (ii) SMH's estimate of the cost to complete the Works, including the cost to remedy any defective or deficient Works determined on a reasonable basis in consultation with the Independent Certifier and SMH's other consultants and including all

- reasonable and proper costs incurred by SMH in re-tendering the Works or any portion thereof;
- (iii) SMH's estimate of the aggregate of all Direct Losses suffered, sustained or incurred by SMH as a result of, in respect of, or arising out of the event or events which resulted in the termination of this Project Agreement and arising out of the termination together with all costs of entering into a new design and construction contract to complete the Works, including any warranty obligations for the Works in place and to be performed, on substantially the same terms and conditions as this Project Agreement;
 - (iv) (A) the Completion Holdback and (B) the Tower Interim Completion Holdback, in each case as at the time the Project Co Default Termination Sum is required to be made;
 - (v) the Legislative Holdback required to be maintained by SMH as at the time the Project Co Default Termination Sum is required to be made, which amount will be paid by SMH in accordance with the *Construction Lien Act* (Ontario); and
 - (vi) amounts which SMH is entitled to set off pursuant to Section 4.12(a)(i) of this Project Agreement.
- (c) To the extent that any amounts that SMH has estimated or determined pursuant to Sections 3.1(b)(ii), 3.1(b)(iii) or 3.1(b)(iv) of this Schedule 23, are in excess of what is required by SMH to complete the Work or compensate for Direct Losses, the Completion Holdback, the Tower Interim Completion Holdback or the Legislative Holdback, as applicable, SMH shall promptly return such excess amounts to Project Co.
- (d) SMH shall pay the Project Co Default Termination Sum in accordance with Section 5 of this Schedule 23.

4 CONSEQUENCES OF NON-DEFAULT TERMINATION AND TERMINATION FOR RELIEF EVENT

4.1 Consequences

- (a) If either Party terminates this Project Agreement pursuant to Section 36.1 of this Project Agreement or if either Party terminates this Project Agreement pursuant to Section 36.2 of this Project Agreement, SMH shall pay to Project Co the Non-Default Termination Sum.
- (b) The "Non-Default Termination Sum" shall be an amount equal to the aggregate of:
 - (i) the Senior Debt Amount and the Senior Debt Makewhole;
 - (ii) the Junior Debt Amount;

St. Michael's Hospital Redevelopment Project

- (iii) any amount payable by SMH to Project Co in accordance with Sections 32.2(b) and 33.2(b) of this Project Agreement; and
- (iv) the Employee Termination Payments and the Subcontractor Losses (but excluding therefrom any claims for loss of profit);

LESS, the aggregate (without double counting) of the following, to the extent it is a positive amount:

- (v) all credit balances on any bank accounts held by or on behalf of Project Co on the Termination Date and the value of any insurance proceeds due to Project Co or to which Project Co would have been entitled had insurance been maintained in accordance with the requirements of this Project Agreement (save where such insurance proceeds are to be applied in reinstatement, restoration or replacement, or, in the case of third party legal liability, in satisfaction of the claim, demand, proceeding or liability or where SMH is required to procure insurances and to make proceeds available to Project Co under this Project Agreement and it has failed to do so) or sums due and payable from third parties other than sums wholly unrelated to the Works, the Project and this Project Agreement (but only when received from third parties) but excluding any claims under any Subcontracts or claims against other third parties which have not been determined or have been determined but not yet paid, provided that, in such case, Project Co shall assign any such rights and claims under the Subcontracts or claims against other third parties (other than claims against other third parties wholly unrelated to the Works, the Project and this Project Agreement) to SMH and, at no additional cost to Project Co, give SMH reasonable assistance in prosecuting such claims; and
- (vi) to the extent realized before the Invoice Date, the market value of any other assets and rights of Project Co (other than those transferred to SMH pursuant to this Project Agreement) less liabilities of Project Co properly incurred in carrying out its obligations under this Project Agreement as at the Termination Date, provided that no account should be taken of any liabilities and obligations of Project Co arising out of:
 - (A) agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in connection with Project Co's obligations in relation to the Project; or
 - (B) agreements or arrangements entered into by Project Co other than in the ordinary course of business and on commercial arm's length terms, save to the extent that liabilities and obligations would have arisen if such agreements or arrangements had been entered into in the ordinary course of business and on commercial arm's length terms;

- (vii) any amount of the Tower Interim Completion Payment, the Substantial Completion Payment and any other amounts paid by SMH on or before the Termination Date; and
- (viii) amounts which SMH is entitled to set off pursuant to Section 4.12(a)(i) of this Project Agreement,

provided that the Non-Default Termination Sum shall never be less than the aggregate of the Senior Debt Amount, the Senior Debt Makewhole and the Junior Debt Amount.

- (c) To the extent that such assets and rights referred to in Section 4.1(b)(vi) of this Schedule 23 are not realized and applied pursuant thereto, Project Co shall, on payment of the Non-Default Termination Sum, assign such assets and rights to SMH.
- (d) SMH shall pay the Non-Default Termination Sum in accordance with Section 5 of this Schedule 23.

5 GENERAL

5.1 Payment and Interest Following Termination

- (a) In respect of the termination payments to be made pursuant to either Section 2 or 4 of this Schedule 23, as soon as practicable after, and, in any event, within 30 days after, the Termination Date, Project Co shall give to SMH an invoice for the relevant termination sum and sufficient supporting evidence, reasonably satisfactory to SMH, justifying the amount of the relevant termination sum including a detailed breakdown of each of the individual items comprising such sum.
- (b) In respect of the termination payments to be made pursuant Section 3 of this Schedule 23, as soon as practicable, and in any event, within 120 days after the Termination Date, SMH shall calculate and notify Project Co of the Project Co Default Termination Sum under Section 3.1(b) of this Schedule 23, and shall deliver to Project Co sufficient supporting evidence reasonably satisfactory to Project Co.
- (c) SMH shall:
 - (i) pay to Project Co the relevant termination sum within 60 days after the Invoice Date or the date of delivery of the notice described in Section 5.1(b) of this Schedule 23, as applicable, and so long as all of demobilization of the Works has been completed; and
 - (ii) indemnify Project Co as provided in Section 44.2(c) of this Project Agreement in respect of any damages suffered or incurred as a result of the relevant termination sum (or any part of such sum that remains outstanding) not being received on the Termination Date:

- (A) in an amount equivalent to the No Default Payment Compensation Amount for the period from (but excluding) the Termination Date to (and including) the date which is 60 days after the Invoice Date or the date of delivery of the notice described in Section 5.1(b) of this Schedule 23, as applicable; and
 - (B) thereafter, in an amount equivalent to the Payment Compensation Amount until the date of payment.
- (d) In respect of the termination payments to be made pursuant to Section 3 of this Schedule 23, if the applicable termination sum is negative, SMH shall have no obligation to make any payment to Project Co and Project Co shall also thereafter indemnify SMH as provided in Section 44.1(e) of this Project Agreement in respect of any damages suffered or incurred on such amount on the basis that the due date for the payment of the negative termination sum amount was the date 60 days after the Invoice Date until the date of payment in an amount equivalent to the Payment Compensation Amount.

5.2 Costs

- (a) The costs and expenses to be taken into account in the calculation of all termination sums due pursuant to this Schedule 23 shall only be such costs and expenses to the extent that they are reasonable and proper in quantum and shall have been or will be reasonably and properly incurred.

5.3 Undisputed Amounts

- (a) If the calculation of any termination amount is disputed then any undisputed amount shall be paid in accordance with this Section 5 and the disputed amount shall be dealt with in accordance with Schedule 27 – Dispute Resolution Procedure.

5.4 Outstanding Debt Amounts

- (a) SMH shall be entitled to rely on a certificate of the Lenders' Agent as conclusive as to the Senior Debt Amount, the Senior Debt Makewhole, the Junior Debt Amount and the Junior Debt Makewhole, as applicable, outstanding or payable at any relevant time.
- (b) If a receipt or other acknowledgement is given by the Lenders' Agent acknowledging or otherwise confirming receipt of payment or payments in respect of the Senior Debt Amount, the Senior Debt Makewhole, the Junior Debt Amount and the Junior Debt Makewhole, as applicable, such receipt or other acknowledgement shall discharge SMH's obligation to pay such portion of compensation due to Project Co that is equal to the amount acknowledged or confirmed.

SCHEDULE 24

FINANCIAL MODEL

[REDACTED]

SCHEDULE 25**INSURANCE AND PERFORMANCE SECURITY REQUIREMENTS****1. WORKS PHASE INSURANCE COVERAGE**

1.1 Subject to Section 7, from and after execution of this Project Agreement and until the Substantial Completion Date, Project Co shall, at its own expense, obtain and maintain, or cause to be obtained and maintained, exclusively through the IO Construction Insurance Program (“**IOCIP**”) the following insurances as further described in Appendix A to this Schedule 25:

- (a) “All Risks” Course of Construction Property, including Boiler and Machinery;
- (b) “Wrap-Up” Commercial General Liability and Non-Owned Automobile Liability;
- (c) Project Specific Pollution Liability (combined Contractors’ Pollution Liability and Pollution Legal Liability); and
- (d) Project Specific Professional Liability.

1.2 Subject to Section 7, from and after execution of this Project Agreement and until the Substantial Completion Date, Project Co shall, at its own expense, obtain and maintain, or cause to be obtained and maintained, the following insurances as further described in Appendix A to this Schedule 25:

- (a) Automobile Liability;
- (b) Commercial General Liability and Non-Owned Automobile Liability (to be maintained by the Construction Contractor and each of the Subcontractors involved in the Works) with respect to off-site operations and activities;
- (c) Aircraft and Watercraft Liability (if any exposure);
- (d) “All Risks” Marine Cargo (if any exposure);
- (e) “All Risks” Contractors’ Equipment;
- (f) Comprehensive Crime; and
- (g) WSIB.

2. NO LIMIT ON RECOVERY

2.1 Notwithstanding any other provision of this Project Agreement, it is hereby agreed that the limits of liability specified in this Schedule 25 for insurance policies, whether such

policies are required to be obtained (or caused to be obtained) by SMH or by Project Co, shall in no way limit Project Co's liability or obligations to SMH or SMH's liability or obligations to Project Co, as applicable.

3. ADDITIONAL COVER

- 3.1 Without prejudice to the other provisions of this Schedule 25, SMH and Project Co shall, at all relevant times and at their own expense, obtain and maintain (or cause to be obtained and maintained) those insurances which they are required to obtain and maintain (or cause to be obtained and maintained) by Applicable Law, or that they consider necessary.
- 3.2 SMH reserves the right to require Project Co to purchase such additional insurance coverage as SMH may reasonably require. SMH also reserves the right to request such higher or lower limits of insurance or otherwise alter the types of coverage requirements, their minimum amounts and deductibles (taking into consideration such matters as the nature of the Works, contract value, industry standards and availability of insurance) as SMH may reasonably require from time to time. Any additional costs of such additional and/or amended insurance shall be borne by SMH and any cost savings resulting from the implementation of such additional and/or amended insurance shall be for the account of SMH.

4. RESPONSIBILITY FOR DEDUCTIBLES

- 4.1 The Party responsible for the matter giving rise to a claim, to the extent responsible therefor, shall be responsible and liable for the payment of deductibles under any policy of insurance under which it is an insured party or under any policy of insurance Project Co is required to maintain (or cause to be maintained) under this Schedule 25. In the event that responsibility for the matter giving rise to the claim is indeterminable, the First Named Insured under the policy of insurance is responsible and liable for the payment of deductibles.

5. COOPERATION WITH INSURER'S CONSULTANT

- 5.1 If an insurer or an insurer's appointed consultant, for underwriting purposes or as a term of an insurance policy, needs to review any part of the performance of this Project Agreement, then SMH and Project Co shall, and shall require the SMH Parties and the Project Co Parties, respectively, to:
- (a) cooperate with the insurer and its consultant, including providing them with such information and documentation as they may reasonably require; and
 - (b) allow the insurer and its consultant to attend meetings between Project Co and SMH (or, as applicable, and if reasonably required by the insurer, between Project Co and those engaged by or through Project Co).

6. UNINSURABLE RISKS

- 6.1 The term “**Uninsurable Risk**” means a risk, or any component of a risk, against which Project Co is required to insure pursuant to this Schedule 25 and for which, at any time after the date of this Project Agreement, either:
- (a) the insurance required pursuant to this Schedule 25 (including the terms and conditions specified for such insurance herein) is not available in relation to that risk:
 - (i) where Applicable Laws require that the insurance be licensed in the Province of Ontario to insure such a risk, by insurers licensed in the Province of Ontario; or
 - (ii) where Applicable Laws do not require that the insurance be licensed in the Province of Ontario to insure such a risk, by any insurer otherwise permitted under the terms of the Project Agreement; or
 - (b) the insurance premium payable or the terms and conditions for insuring that risk are such that the risk is not generally being insured against in the worldwide insurance market.

Project Co has the onus of demonstrating, to SMH's reasonable satisfaction that the foregoing definition applies to a particular risk.

- 6.2 Project Co shall notify SMH as soon as possible and, in any event, within 15 Business Days of becoming aware of same, that a risk, or any component of a risk, has become an Uninsurable Risk, and shall provide SMH with all relevant details in relation to such risk, including a copy of the relevant insurance policy.
- 6.3 Project Co and SMH shall, as soon as possible following the provision of the notice referred to in Section 7.2, meet to discuss, in good faith, the appropriate means by which the Uninsurable Risk should be managed and, if Project Co and SMH are able to agree to alternative arrangements, the Uninsurable Risk shall be managed in accordance with such alternative arrangements.
- 6.4 In the event that Project Co and SMH, each acting in good faith, are unable to agree to alternative arrangements with respect to the management of an Uninsurable Risk within 15 Business Days of the expiry of the period referred to in Section 7.2, SMH may, in its absolute discretion, either:
- (a) elect to assume responsibility for the Uninsurable Risk and, in respect of the year in which the relevant risk becomes an Uninsurable Risk and every year thereafter, withhold, in equal instalments over the course of such year, from the payment or payments otherwise due to Project Co an amount equal to the annual premium (index linked) relating to the Uninsurable Risk as was current on the date

immediately prior to the date on which the relevant risk became an Uninsurable Risk, in which case this Project Agreement shall continue in full force and effect; or

- (b) terminate this Project Agreement in accordance with Section 4.9 of the Project Agreement as if such termination had occurred as a result of the Parties having failed to reach agreement in accordance with Section 4.9 of the Project Agreement following the occurrence of an event of Force Majeure, and, in accordance with the provisions of Schedule 23 – Compensation on Termination, pay to Project Co an amount equal to the Non-Default Termination Sum.

6.5 On the occurrence of an Uninsurable Risk, SMH may, in its absolute discretion, either:

- (a) pay to Project Co an amount equal to the insurance proceeds that would have been payable to Project Co in connection with such Uninsurable Risk had the relevant insurance continued to be available, in which case this Project Agreement shall continue in full force and effect; or
- (b) terminate this Project Agreement in accordance with Section 4.9 of the Project Agreement as if such termination had occurred as a result of the Parties having failed to reach agreement in accordance with Section 4.9 of the Project Agreement following the occurrence of an event of Force Majeure, and, in accordance with the provisions of Schedule 23 – Compensation on Termination, pay to Project Co an amount equal to the Non-Default Termination Sum.

6.6 With respect to any Uninsurable Risk:

- (a) Project Co shall continue to approach the insurance market on a regular basis and, in any event, at intervals of not less than 180 days and use reasonable efforts to obtain (or cause to be obtained) insurance to cover as much or all of the Uninsurable Risk as can be insured in the available insurance market from time to time; and
- (b) Subject to Section 7.6(a), Project Co shall be relieved of its obligation to maintain (or cause to be maintained) insurance in respect of the Uninsurable Risk.

6.7 Where a risk which was previously an Uninsurable Risk ceases to be so, Project Co shall, at its own expense, obtain and maintain (or cause to be obtained and maintained) insurance in accordance with the requirements of this Schedule 25 in respect of the risk and the provisions of this Section 6 shall no longer apply to such risk.

7. TOTAL OR SUBSTANTIAL DESTRUCTION

7.1 In the event of damage to, or destruction of, all or substantially all of the Facility for which there is coverage under an insurance policy, any insurance proceeds received by Project Co shall first be applied so as to ensure the performance by Project Co of its

obligations under this 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 Works, all in accordance with the terms of the Insurance Trust Agreement.

8. SUBCONTRACTORS

- 8.1 Project Co shall require that all Subcontractors are covered by, or obtain, the insurance described in this Schedule 25, provided that Project Co shall determine the applicable limits to be obtained for such insurance. Project Co shall be solely responsible and liable for any damages which SMH may suffer as a direct result of Project Co's failure to comply with the foregoing.
- 8.2 If Project Co receives notice that any Subcontractor employed by or through Project Co is not covered by any insurance required by this Schedule 25 to be obtained (or cause to be obtained) by Project Co, Project Co shall:
- (a) ensure that such insurance coverage is put in place;
 - (b) remove the Subcontractor from the Site and ensure that such Subcontractor does not perform any further part of the Works until after such insurance coverage is put in place; or
 - (c) if the Subcontractor cannot be covered by a particular policy as required by this Schedule 25, replace the Subcontractor with a new Subcontractor who can obtain the required insurance coverage; it being acknowledged by Project Co that the requirements and restrictions set forth in the Project Agreement regarding new and replaced Subcontractors shall be complied with.

9. RENEWAL

- 9.1 Project Co shall provide to SMH, at least 5 Business Days prior to the expiry date of any policy of insurance required to be obtained (or cause to be obtained) by Project Co pursuant to this Schedule 25, evidence of the renewal of each such policy satisfactory to SMH, acting reasonably.

10. NAMED AND ADDITIONAL INSUREDS AND WAIVER OF SUBROGATION

- 10.1 All insurance provided by Project Co, shall:
- (a) include Project Co, SMH and IO as Named Insureds to the extent specified in Appendix A of this Schedule 25;
 - (b) include SMH, IO, MOHLTC, the Lenders and the Lenders' Agent as Additional Insureds, or loss payees to the extent of their respective insurable interests to the extent specified in Appendix A of this Schedule 25;

St. Michael's Hospital Redevelopment Project

- (c) except with respect to the Project Specific Professional Liability, Automobile Liability, Comprehensive Crime and WSIB specified in Appendix A to this Schedule 25, contain a waiver of subrogation as against SMH, the SMH Parties, IO and their respective shareholders, officials, directors, officers, employees, servants, consultants (other than Design Consultants) and agents;
- (d) contain a breach of warranty provision whereby a breach of a condition by Project Co will not eliminate or reduce coverage for any other insured; and
- (e) be primary insurance with respect to any similar coverage provided by any insurance obtained by or available to SMH or IO without any right of contribution of any insurance carried by SMH or IO.

11. CERTIFICATES OF INSURANCE AND CERTIFIED COPIES OF POLICIES

- 11.1 Prior to the commencement of any part of the Works, Project Co will provide SMH with certified copies of policies, confirming that the insurances specified in Section 1.1 and Section 1.2 have been obtained and are in full force and effect.
- 11.2 Prior to the commencement of any part of the Works, Project Co will provide SMH with certificates of insurance or certified copies of policies, confirming that the insurances specified in Section 1.2 have been obtained and are in full force and effect. If certificates of insurance are provided, certified copies of the entire contents of all relevant insurance policies will be subsequently provided to SMH no later than 90 days after execution of this Project Agreement.

12. FAILURE TO MEET INSURANCE REQUIREMENTS

- 12.1 If Project Co fails to obtain or maintain, or cause to be obtained and maintained, the insurance required by this Schedule 25, fails to furnish to SMH a certified copy of each policy required to be obtained by this Schedule 25 or if, after furnishing such certified copy, the policy lapses, is cancelled, or is materially altered, then SMH shall have the right, without obligation to do so, to obtain and maintain such insurance itself in the name of Project Co, and the cost thereof shall either, at SMH's option, be payable by Project Co to SMH on demand or be deducted by SMH from the next payment or payments otherwise due to Project Co.
- 12.2 If coverage under any insurance policy required to be obtained (or caused to be obtained) by Project Co should lapse, be terminated or be cancelled, then, if directed by SMH, all work by Project Co shall immediately cease until satisfactory evidence of renewal is produced.

13. MODIFICATION OR CANCELLATION OF POLICIES

- 13.1 Except as noted in Appendix A to this Schedule 25, all insurance provided by Project Co shall contain endorsements confirming that the policy will not be cancelled, adversely

reduced, adversely materially altered or adversely materially amended without the insurer(s) giving at least ninety (90) days prior written notice by registered mail, at the address specified, to SMH, the Lenders' Agent and IO. For greater certainty, the terms "adversely reduced", "adversely materially altered" and "adversely materially amended" as used in this provision shall mean any decrease or reduction in policy limits, aggregate limits or sub-limits (other than as a result of claims under the policy), any increase in any policy deductible or self-insured retention, any reduction in the policy coverage period, cancellation or suspension of coverage with respect to any insured parties from the time the policy was issued for that policy period, addition of any exclusions or restrictions from the time the policy was issued for that policy period and any reduction or restriction in the scope of coverage provided under the policy, in all cases when such adverse reduction, adverse material alteration or adverse material amendment is initiated by the insurer.

- 13.2 All insurance provided by Project Co shall contain endorsements confirming that, in the event of cancellation for non-payment of premium, the insurer(s) will give at least fifteen (15) days prior written notice by registered mail, at the address specified, to SMH, the Lenders' Agent and IO.
- 13.3 With respect to insurances described in Section 1.1(a), (b) and (c), and Section 1.2(e), breach of any of the terms or conditions of the policies required to be provided by Project Co, or any negligence or wilful act or omission or false representation by an Insured under these policies, shall not invalidate the insurance with respect to SMH, IO, the Lenders or any other Insured, but only to the extent that such breach is not known to these parties.

14. INSURERS

- 14.1 All policies of insurance to be obtained (or caused to be obtained) by Project Co in accordance with this Schedule 25 shall be issued by financially sound insurers acceptable to SMH and Lenders, acting reasonably, and, where required by statute, be licensed to insure such risk in the Province of Ontario.
- 14.2 To be eligible to provide insurance, an insurer must have the capacity to provide the particular insurance and shall have current ratings from time to time of either:
- (a) a Financial Strength Rating of not lower than "A-" for three out of the previous five years but not lower than "B" at any time during those five years, and a Financial Size Category not lower than VII, such ratings being those established by A.M. Best Company (**Best**); or
 - (b) a Long-Term Financial Strength Rating of not lower than "A-" for three out of the past five years but not less than "BBB" at any time during those five years, a Short-Term Financial Strength Rating of not lower than "A-3" for three out of the previous five years and a Financial Enhancement Rating of not lower than "A-"

for three out of the previous five years but not less than “BB+” at any time during those five years, such ratings being those established by Standard and Poor’s (S&P); or

- (c) if the insurer is not rated by Best or S&P, an insurer that is acceptable to SMH and Lenders, acting reasonably, with respect to the insurances required by this Schedule 25.

15. POLICY TERMS AND CONDITIONS

- 15.1 All policies of insurance to be obtained (or caused to be obtained) by Project Co in accordance with this Schedule 25 shall be in form and substance satisfactory to SMH, its insurance advisors and Lenders, acting reasonably.
- 15.2 To achieve the minimum limits for any type of insurance required under Appendix A, it is permissible to arrange the insurance under a single policy, or by a combination of primary, umbrella and/or excess policies.

16. FAILURE TO COMPLY

- 16.1 Neither failure to comply nor full compliance by Project Co with the insurance provisions of this Schedule 25 shall relieve Project Co of its liabilities and obligations under this Project Agreement.

17. PERFORMANCE SECURITY REQUIREMENTS

- 17.1 Project Co shall obtain and deliver to SMH, original executed and sealed Bonds in the forms attached as Appendices B and C respectively, to this Schedule 25 on the Financial Close Target Date, each in an amount equal to [REDACTED] of the Cost of the Works under the Project Agreement. Each of the Bonds shall be properly executed by a Surety or by an agent or attorney in fact for the Surety, in which latter case, Project Co is required to submit with such Bonds a power of attorney to the signatory agent or the attorney in fact executed by the Surety in a form satisfactory to SMH to evidence the authority of the agent or the attorney in fact.
- 17.2 Such Bonds shall be issued by a duly licensed surety company authorized to transact a business of suretyship in the Province of Ontario and shall be maintained in good standing until the fulfilment of the Project Agreement.
- 17.3 For greater certainty, the obligations of the Surety under the Bonds shall not extend to or include any obligations relating to the Financing or Cost of the Financing, and it is agreed that the Parties intend to benefit the Surety by this Section 17.3 and that the Surety may rely upon and enforce the provisions of this Section 17.3.

18. INSURANCE TRUST AGREEMENT

- 18.1 All losses under the “All Risks” Course of Construction Property Insurance policy, including Boiler & Machinery Insurance carried by Project Co prior to Substantial Completion of the Works which relate to equipment purchased by SMH shall be payable solely to SMH and shall not be payable to the Account Trustee or distributed pursuant to the Insurance Trust Agreement.

APPENDIX A TO SCHEDULE 25
INSURANCE REQUIREMENTS

Works Insurance – St. Michael's Hospital Redevelopment Project

From First Access to Site until the Substantial Completion Date

Insurances to be provided, or caused to be provided, by Project Co and arranged through the IOCIP program

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
"All Risks" Course of Construction Property Including Boiler and Machinery	Value declared to be equal to the estimated completed project value of the Facility, including Property of Every Description and all other property supplied by the SMH Parties for incorporation into the Facility. All Existing Equipment from the start of decommissioning or removal from its original location, by or on behalf of Project Co, until such existing equipment has been relocated to the Facility and has become SMH's responsibility. Soft Costs [REDACTED] (representing [REDACTED]% of Recurring / Continuing Soft Costs) Extra and Expediting Expense (minimum [REDACTED] sub-limit)	[REDACTED] % of loss value / [REDACTED] minimum Earthquake [REDACTED] Flood [REDACTED] Testing and Commissioning [REDACTED] All other losses 30 days waiting period applicable to time element coverages 48 hour waiting period applicable to Off Premises Services Service Interruption	"All Risks" Course of Construction Property Insurance covering the full insurable replacement cost of the Works including cold and hot testing / commissioning, of Boiler & Machinery equipment, including HVAC, Delay in Start-Up, Soft Costs, with no early occupancy restriction. This coverage shall be primary with respect to the Facility without right of contribution of any insurance carried by SMH, IO or the Lenders.	TBD
Principal Extensions:	<ul style="list-style-type: none"> Replacement Cost Valuation (Property) Most Recent Technology Replacement Cost Valuation (Equipment or Machinery) Flood (to policy limit with annual aggregate) Natural or man-made earth movement, including earthquake, landslide or subsidence (to policy limit with annual aggregate) Electronic Data Processing equipment and 			

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
	media, including data restoration and re-creation costs			
•	Transit			
•	Unnamed locations			
•	Bylaws (with respect to Existing or Renovated Buildings) (minimum \$[REDACTED] sub-limit)			
•	Debris Removal (minimum \$[REDACTED] sub-limit)			
•	Off Premises Services (\$[REDACTED] sub-limit)			
•	Professional Fees (minimum \$[REDACTED] sub-limit)			
•	Fire Fighting Expenses (minimum \$[REDACTED] sub-limit)			
•	Valuable Papers (minimum \$[REDACTED] sub-limit)			
•	Accounts Receivable (minimum \$[REDACTED] sub-limit)			
•	Defence Costs (subject to a \$[REDACTED] sub-limit)			
•	Radioactive contamination caused by sudden and accidental release of radioactive isotopes (resulting from an accident to measuring, testing or medical equipment and subject to a \$[REDACTED] sub-limit)			
•	Contamination Clean-up or Removal (minimum \$[REDACTED] sub-limit)			
•	Ammonia Contamination (minimum \$[REDACTED] sub-limit)			
•	Civil Authority Access Interruption (8 weeks)			
•	Prevention of Ingress/Egress (8 weeks)			
•	Permission for Partial Occupancy prior to Substantial Completion			
•	Cost of Carrying Project Financing (12 Months), included in Delayed Start-Up or Soft Costs coverage			
•	Margin of Profit Extension for Contractors			
•	Testing and Commissioning (120 limitation each component)			

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
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Permitted Exclusions:

- Cyber risk
- Mould, fungi and fungal derivatives
- Faulty workmanship, materials construction, or design but resultant damage to be insured to a minimum DE4 standard
- War risk
- Terrorism
- Nuclear or radioactive contamination, except re radioactive isotopes intended for scientific, medical, industrial or commercial use
- Contractors' equipment

Comments
<ul style="list-style-type: none"> • Named Insured includes Project Co., Lenders, Lender's Agent, the Construction Contractor, sub-contractors, consultants, sub-consultants, SMH, IO or the Lenders, as their respective interests may appear • No provision permitted allowing a coinsurance penalty • Insurance shall be primary without right of contribution of any other insurance carried by any Named Insured • Additional key extensions of coverage: <ul style="list-style-type: none"> – Underground services, temporary works involved in the Project such as scaffolding, hoarding, etc., site preparation, including excavation and associated improvements, landscaping and property of others used in the Project – Losses payable in accordance with the Insurance Trust Agreement – Waiver of subrogation against all Named and Unnamed Insureds, including but not limited to Project Co, IO, SMH, the Construction Contractor, sub-contractors, professional consultants (other than for their professional liability), Lenders, Lenders' Agent, as well as officers, directors and employees, servants, and agents of the foregoing – Frost or freezing to concrete – but only resultant damage from a peril not otherwise excluded – Liberalization Clause – Errors and Omissions – Breach of Conditions

Underwriters Principal underwriters in compliance with Clause 14 of this Schedule 25.

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St. Michael's Hospital Redevelopment Project

Works Insurance – St. Michael's Hospital Redevelopment Project

From First Access to Site until the Substantial Completion Date

Insurances to be provided, or caused to be provided, by Project Co and arranged through the IOCIP program

Type	Amount	Maximum Deductible(s)	Principal Cover	Estimated Premium
“Wrap-Up” Commercial General Liability and Non-Owned Automobile Liability	<p>\$[REDACTED] each occurrence, and in the annual aggregate with respect to Broad Form Products and Completed Operations</p> <p>Sub-limits:</p> <ul style="list-style-type: none"> \$[REDACTED] Non-Owned Automobile Liability \$[REDACTED] Sudden and Accidental Pollution and Hostile Fire Pollution Liability \$[REDACTED] “All Risks” Tenants’ Legal Liability \$[REDACTED] Prairie or Forest Fire Fighting Expenses \$[REDACTED] Employee Benefits \$[REDACTED] Administrative Errors and Omissions \$[REDACTED] Contractors Rework \$[REDACTED] Legal Liability for Damages To Non-owned Automobiles (SEF 94) \$[REDACTED]/\$ [REDACTED] Medical Payments 	<p>\$[REDACTED] per occurrence</p> <p>\$[REDACTED] per claim with respect to Contractors Rework</p> <p>\$[REDACTED] per claim with respect to each SEF 94, Tenants’ Legal Liability, Employee Benefits</p> <p>Administrative Errors and Omissions and Prairie or Forest Fire Fighting Expenses</p>	<p>“Wrap-Up” Commercial General Liability and Non-Owned Automobile Liability insurance covering all construction operations on an occurrence basis against claims for Bodily Injury (including Death), Personal Injury, Property Damage (including Loss of Use), and including Products and Completed Operations Liability extension for a period of not less than 24 months, effective from the date of Substantial Completion of the Works.</p> <p>Coverage shall be maintained continuously from the date of the first activities at the Site, until each of the Phase Completion Dates, the Tower Interim Completion Date and the Substantial Completion Date, as applicable, at which time the Products and Completed Operations extension will take effect.</p> <p>Sudden and Accidental Pollution and Hostile Fire Pollution coverage to be not less than IBC 2313 form (240 hours detection/240 hours notice coverage structure).</p> <p>This coverage shall be primary with respect to the Facility without right of contribution of any insurance carried by SMH, IO or the Lenders.</p>	TBD
Principal Extensions:	<ul style="list-style-type: none"> SMH’s and Contractor’s Protective Blanket Contractual (written and oral) Direct and Contingent Employers Liability Employee Benefits Administrative Errors and Omissions Personal Injury (nil participation) Cross Liability and Severability of Interest with respect to each insured party Blasting/demolition/excavating/underpinning/pile 			

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St. Michael's Hospital Redevelopment Project

Type	Amount	Maximum Deductible(s)	Principal Cover	Estimated Premium
	<p>driving/shoring/caisson work/work below ground surface/tunnelling/grading, and similar operations associated with the Works, as applicable</p>			
•	Elevator and Hoist Collision Liability			
•	Liberated Notice of Claim Requirement, i.e., requirement to report will commence when knowledge is held by a designated project person(s) – to be identified by Project Co			
•	Non-Owned Automobile Liability			
•	Tenants' Legal Liability (All Risks) – subject to sub-limit			
•	Medical Expenses – subject to sub-limit			
•	Prairie or Forest Fire Fighting Expenses – subject to sub-limit			
•	Sudden and Accidental Pollution and Hostile Fire Pollution – subject to sub-limit			
•	Permission for Unlicensed Vehicles (partial road use)			
•	Unlicensed Equipment			
•	Loss of Use Without Property Damage			
•	Loading and Unloading of Automobiles			
•	Broad Form Property Damage			
•	Broad Form Completed Operations			
•	Intentional Injury, committed to Protect Persons or Property			
•	Accident Benefits			
•	Worldwide Territory, subject to suits being brought in Canada or the US			
•	Aggregate Reinstatement (in the event that the policy aggregate is eroded between any Phase Completion and Substantial Completion)			
	Permitted Exclusions:			
•	Injury to employees, where WSIB provides valid coverage			
•	Property in the care, custody or control of the insured, except as provided under Broad Form Products and Completed Operations			
•	Operation of licensed motor vehicles, other than			

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Type	Amount	Maximum Deductible(s)	Principal Cover	Estimated Premium
	attached machinery while used for its purpose, at the Project Site			
	<ul style="list-style-type: none"> Physical damage to the Project, except during Broad Form Products and Completed Operations extension period Cyber risk Mould, fungi and fungal derivatives Professional liability of engineers, architects, and other professional consultants Nuclear or radioactive contamination, except release radioactive isotopes intended for scientific, medical, industrial or commercial use 			

Comments
<ul style="list-style-type: none"> Named Insured includes Project Co and its Affiliates, SMH, IO, the Lenders, Project Co parties involved in the Works, including the Construction Contractor, all subcontractors, sub-contractors, suppliers while working on Site, tradesmen while working on Site, engineers, architects, consultants and sub-consultants, (other than for professional liability), others as Additional Insureds, as may be required from time to time, arising from all operations and activities pertaining to the Works and the control and use of the Site Directors, officers, shareholders, employees of the insured parties involved in the Works covered as Additional Insureds MOH/TC is added as an Additional Insured Insurance shall be primary without right of contribution of any other insurance carried by any Named Insured Aggregate limits will be permitted for Products and Completed Operations, Prairie and Forest Fire Fighting Expenses, Sudden and Accidental Pollution and Hostile Fire Pollution and Employee Benefits Administrative Errors & Omissions Liability, no policy general aggregate will be permitted Professional service activities integral to the project, but not covering engineers, architects or other professional consultants, i.e., incidental professional liability risk of a Named Insured and their employed professionals is to be covered, but not the professional liability of independent fee-for-service professional consultants, architects or engineers Waiver of subrogation of insurers' rights of recovery, against all Named and/or Additional Insureds, including Project Co, SMH, IO, the Construction Contractor, subcontractors, sub-subcontractors, professional consultants, engineers, architects (other than for their professional liability), Lenders, Lenders' Agent, as well as officers, directors, employees, servants and agents of the foregoing

Underwriters Principal underwriters in compliance with Clause 14 of this Schedule 25.

Works Insurance – St. Michael's Hospital Redevelopment Project

From First Access to Site (Insurance for Works) until the Substantial Completion Date
Insurances to be provided, or caused to be provided, by Project Co and arranged through the IOCIP program

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
Project Specific Pollution Liability (combined Contractors' Pollution Liability and Pollution Legal Liability):	<p>Principal Extensions:</p> <ul style="list-style-type: none"> Hazardous Substances occurring at or emanating from the Facility or Site during the Policy Period Microbial Matter (including Fungus/Mould) Underground / above ground storage tanks First Party Restoration and Clean-up Costs Disposal Site Extension, including Transportation (reporting required) Duty to Defend Canada and US Territory Contractual Liability Emergency Response Costs 	<p>Permitted Exclusions:</p> <ul style="list-style-type: none"> Terrorism War Intentional Non-compliance Prior Knowledge WSIB Employers' Liability Professional Liability 	<p>Pollution Liability insurance covering third party bodily injury, property damage consequential loss or damage, including clean-up and restoration costs, both at the Site and off-Site, as required.</p> <p>Extended Reporting Period: Minimum of 36 months after the Substantial Completion Date.</p> <p>This coverage shall be primary with respect to the Facility without right of contribution of any insurance carried by SMH, IO or the Lenders.</p>	
Combined Limit subject to Contractors' Pollution Legal Liability with a minimum \$[REDACTED] sub-limit	\$[REDACTED] per claim and \$[REDACTED] in the aggregate for all claims, inclusive of defense and all costs and expenses	\$[REDACTED] per claim inclusive of defense and all costs and expenses		

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Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
	<ul style="list-style-type: none"> Nuclear Liability Property Damage to Motor Vehicles during Transportation 			
<i>Comments</i>	<ul style="list-style-type: none"> Named Insured will include Project Co, its Affiliates, Project Co parties and all other parties engaged in the Works, including the Construction Contractor, subcontractors, sub-subcontractors, consultants and sub-consultants SMH, IO, MOHLTC and the Lenders will be identified as Additional Insureds or insured clients of Project Co and its Affiliates The directors, officers, shareholders, and employees of the foregoing shall be Additional Insureds 			
Underwriters	Principal underwriters in compliance with Clause 14 of this Schedule 25.			

St. Michael's Hospital Redevelopment Project

Works Insurance – St. Michael's Hospital Redevelopment Project

From First Access to Site (Insurance for Works) until the Substantial Completion Date
Insurances to be provided, or caused to be provided, by Project Co and arranged through the IOCIP program

Type	Amount	Self-Insured Retention	Principal Cover	Estimated Premium
Project Specific Professional Liability	<p>Principal Extensions:</p> <ul style="list-style-type: none"> • Primary insurance extension • Automatic addition of firms • Present, former partner, executive officer, director or shareholder of Named Insureds while acting within their scope of duties for the Named Insured • Any individuals or personal corporations retained by the Named Insured under a personal services contract • Claim defined as a written or oral demand for money or a written or oral allegation in breach in the rendering or failure to render professional services received by the Insured or Named Insured and resulting from a single error, omission or negligent act • Lawyer fees and associated expenses incurred in the investigation, defence, settlement, arbitration or litigation of claims • Duty to defend, even if the allegations are groundless, false or fraudulent • Worldwide Territory, subject to suits brought in Canada • Aggregate Reinstatement (in the event that the policy aggregate is eroded between any Phase Completion and 	<p>\$[REDACTED] minimum per claim / \$[REDACTED] in the aggregate (inclusive of defence and related costs and supplementary payments).</p> <p>\$[REDACTED] per claim</p>	<p>Project Specific Professional Liability Insurance in connection with the design and construction of the Project from beginning of first design, through the entire construction period, plus coverage for an extended reporting period of not less than 36 months immediately following each of the Phase Completion Dates, the Tower Interim Completion Date and the Substantial Completion Date, as applicable.</p> <p>This coverage shall be primary with respect to the Project without right of contribution of any insurance carried by SMH, IO or the Lenders.</p>	

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Type	Amount	Self-Insured Retention	Principal Cover	Estimated Premium
Substantial Completion)				

Permitted Exclusions:

- Express warranties or guarantees
- Estimates on profit, return
- Faulty workmanship, construction or work which is alleged or in fact not constructed in accordance with the design of the Project or the construction documents
- Design or manufacture of any good or products sold or supplied by the Named Insured
- Terrorism
- Nuclear Liability
- Judgments and awards deemed uninsurable by law
- Liability assumed under design contract, unless such liability would have attached to the Named Insured by law in the absence of such agreement
- Punitive or exemplary damages, fines, penalties or interest or liquidated punitive or exemplary damages or fees
- Refusal to employ, termination of employment, humiliation or discrimination on any basis or other employment related practices or policies

Comments
<ul style="list-style-type: none"> • Named Insured: Construction Contractor (as applicable), all engineers, architects, and other professional consultants that provide professional design services in connection with the Project • Professional Services covered: All architectural, engineering, land surveying, environmental, landscape architectural, interior design/space planning, soil and material testing services, geotechnical services, and procurement services, including their replacements and/or sub-consultants of any tier • Retroactive Date: Full retroactive coverage from date of first design activity • Policy to be non-cancellable except for premium non-payment, material misrepresentation or concealment of facts, or a material breach of any condition of the policy

Underwriters • Principal underwriters in compliance with Clause 14 of this Schedule 25.

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St. Michael's Hospital Redevelopment Project

Works Insurance – St. Michael's Hospital Redevelopment Project

From First Access to Site until the Substantial Completion Date

Insurances to be provided, or caused to be provided by Project Co

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
Automobile Liability	<p>\$(REDACTED) (Minimum) for Project Co and Project Co's Construction Contractor vehicles</p> <p>\$(REDACTED) (Minimum) for vehicles of any other sub-contractors, sub-subcontractors, consultants, and sub-consultants, and workmen, tradesmen or other persons working on or at the Site</p>		<p>Standard Ontario Owners Form for all vehicles operated by Project Co, the Construction Contractor, all subcontractors, sub-subcontractors, consultants and sub-consultants in connection with the Project.</p> <p>Business Automobile Liability insurance covering third party property damage and bodily injury liability (including accident benefits) arising out of any licensed vehicle.</p> <p>Policies shall be endorsed to preclude cancellation, except upon 60 days prior written notice provided to SMH, IO and the Lenders.</p>	
Commercial General Liability and Non-Owned Automobile Liability	<p>\$(REDACTED) each occurrence, and in the annual aggregate with respect to Broad Form Products and Completed Operations for Project Co and Construction Contractor</p> <p>\$(REDACTED) each occurrence and in the annual aggregate with respect to Broad Form Completed Operations for any other contractor, sub-contractors, sub-subcontractors, consultants and sub-consultants, workmen, tradesmen, or other persons involved in the Works</p> <p>In both instances, limits of liability may be structured as any combination of primary plus supplementary layers and Umbrella and/or Excess, or primary plus Umbrella and/or Excess</p> <p>Sub-limits (Project Co and Construction Contractor):</p> <ul style="list-style-type: none"> • Full policy limits with respect to Non-Owned Automobile Liability 		<p>Commercial General Liability insurance covering all operations on an occurrence basis against claims for Bodily Injury (including Death), Broad Form Property Damage (including Loss of Use), and including Broad Form Products and Completed Operations Liability.</p> <p>This Commercial General Liability insurance will cover off-site activities connected to the Project and Products and Completed Operations Liability beyond the "Wrap-Up" Commercial General Liability Insurance policy's Products and Completed Operations extension period.</p> <p>This insurance shall be maintained in effect during the Works phase until twelve (12) months following the earlier of the termination of the insured's person's involvement in the Works and Substantial Completion Date.</p>	

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Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
Liability, and Owner's and Contractor's Protective extensions	<ul style="list-style-type: none"> • \$[REDACTED] Prairie or Forest Fire Fighting Expenses <p>Principal Extensions (required to be provided by the Project Co. and the Construction Contractor; shall be endeavoured to be provided by any other contractor, sub-contractors, sub-subcontractors, consultants, sub-consultants, workmen, tradesmen or other persons involved in the Works):</p> <ul style="list-style-type: none"> • Owner's and Contractor's Protective • Blanket Contractual (written) • Direct and Contingent Employers Liability • Personal Injury (nil participation) • Cross Liability and Severability of Interest with respect to each insured party • Blasting/demolition/excavating/underpinning/pile driving/shoring/caisson work/work below ground surface/tunnelling/grading, and similar operations associated with the Works as applicable • Elevator and Hoist Collision Liability • Non-Owned Automobile Liability • Prairie or Forest Fire Fighting Expenses – subject to sub-limit • Permission for Unlicensed Vehicles' (partial road use) • Unlicensed Equipment • Loss of Use Without Property Damage • Loading and Unloading of Automobiles • Broad Form Property Damage • Broad Form Completed Operations • Intentional Injury, committed to Protect Persons or Property • Worldwide Territory, subject to suits being brought in Canada or the US 		<p>Policies shall be endorsed to preclude cancellation, except upon 90 days prior written notice provided to SMH, IO and the Lenders.</p>	
	<p>Permitted Exclusions:</p> <ul style="list-style-type: none"> • Injury to employees, where WSIB provides valid coverage 			

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
	<ul style="list-style-type: none"> Property in the care, custody or control of the insured, except as provided under Broad Form Products and Completed Operations Operation of licensed motor vehicles, other than attached machinery while used for its purpose, or at the Project Site Cyber risk Mould, fungi and fungal derivatives Professional liability of engineers, architects, and other professional consultants Nuclear or radioactive contamination, except release of radioactive isotopes intended for scientific, medical, industrial or commercial use 			

<i>Comments</i>				
	<ul style="list-style-type: none"> SMH, IO and the Lenders will be identified as Additional Insureds or insured clients of Project Co and its Affiliates 			
Aircraft and Watercraft Liability	Minimum \$[REDACTED] inclusive, including \$[REDACTED] million passenger hazard – Owned Aircraft	To be determined		Policies shall be endorsed to preclude cancellation, except upon 90 days prior written notice provided to SMH, IO and the Lenders.
(If any exposure)	Minimum \$[REDACTED] inclusive – Non-Owned Aircraft			
	Minimum \$[REDACTED] inclusive Owned or Non-Owned Watercraft			

<i>Comments</i>				
	<ul style="list-style-type: none"> SMH, IO and the Lenders will be identified as Additional Insureds or insured clients of Project Co and its Affiliates 			
"All Risks" Ocean Marine Cargo	[REDACTED] % Replacement Cost Valuation basis	\$[REDACTED]		Property of Every description destined for incorporation into the Facility during marine transit, on a full replacement value basis, with no co-insurance provision.
(If any exposure)				This coverage shall be primary with respect to the Facility without right of contribution of any

insurance carried by SMH or the Lenders.

Comments

- Named Insured includes Project Co, Lenders, Lender's Agent, IO, the Construction Contractor, sub-contractors, sub-sub-contractors, consultants and sub-consultants and SMH, as their respective interests may appear.

"All Risks" coverage on all owned, rented, leased or borrowed contractors' equipment used at the Project Site.

"All Risks" Contractors' Equipment
To cover Project Co, the Construction Contractor, sub-contractors, sub-subcontractors consultants and sub-consultants

If Site equipment is three years old or less the sum insured shall be equal to [REDACTED]% of the replacement value of all contractors equipment used at the project. If Site equipment is more than three years old, actual cash value basis of loss settlement is acceptable.

Comments

- Waiver of subrogation rights against Project Co, SMH, IO, the Construction Contractor, sub-contractors, sub-sub-contractors, consultants, sub-consultants, Lenders, Lenders' Agent as well as officers, directors, shareholders and employees of the foregoing.

Comprehensive Crime

\$[REDACTED] per loss with respect to Employee Dishonesty

Employee Dishonesty insurance against the fraudulent/dishonest acts of employees of Project Co and Project Co Parties including additional coverage for Broad Form Money and Securities, Money Orders and Counterfeit Paper, Depositors' Forgery, Computer Fraud and Funds Transfer Fraud, Audit Expenses and Credit Card Forgery, Custodial endorsement extending protection to third parties.

Insurance primary without right of contribution of any other insurance carried by SMH or the Lenders.

Underwriters (All non-IOCIP Works that are to be provided or caused to be provided by Project Co) Principal underwriters in compliance with Clause 14 of this Schedule 25.

WSIB

In accordance with Ontario Act's established benefits and schedules Not Applicable

(i) Project Co and its Affiliates shall obtain and maintain at Project Co's expense, WSIB Insurance, in accordance with the Province of Ontario requirements.

(ii) Project Co shall ensure that satisfactory evidence of WSIB Insurance is provided by all Project Co Parties, including all other consultants, sub consultants, contractors, subcontractors, suppliers and tradesmen working at the Site.

Prior to commencement of the work, each of the foregoing shall provide satisfactory written confirmation of compliance, from the appropriate authority, including confirmation that all required assessments have been paid to date.

Upon Substantial Completion of the Facility, Project Co shall be provided with satisfactory written confirmation that all required assessments have been paid to date.

On request, within 30 days of such request, Project Co shall deliver to SMH evidence of the WSIB coverage maintained by any person involved in the Works, or confirmation of that person's exemption from WSIB coverage.

**APPENDIX B TO SCHEDULE 25
PUBLIC PRIVATE PARTNERSHIP PERFORMANCE BOND**

[REDACTED]

**APPENDIX C TO SCHEDULE 25
FORM OF LABOUR AND MATERIAL PAYMENT BOND**

NOTE: This Bond is issued simultaneously with a Performance Bond and Multiple Obligee Rider and is subject to the terms and conditions of the Labour and Material Payment Bond Multiple Obligee Rider attached hereto

Bond No. _____ **Bond Amount:** _____

BONDFIELD CONSTRUCTION COMPANY LIMITED as Principal (hereinafter called the “Principal”), and [REDACTED], a corporation created and existing under the laws of Canada and duly authorized to transact the business of Suretyship in Canada as Surety, (hereinafter called the “Surety”) are subject to the conditions hereinafter contained, held and firmly bound unto **2442931 ONTARIO INC.**, as Trustee (hereinafter called the “Obligee”), for the use and benefit of the Claimants, their and each of their heirs, executors, administrators, successors and assigns, in the amount of [•]• DOLLARS (\$[•]) of lawful money of Canada for the payment of which sum well and truly to be made, the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a written contract entitled Design and Construction Contract with Obligee dated [*Insert Date*] for the St. Michael's Hospital 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 Design and 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 Design and Construction Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if the Principal shall make payment to all Claimants for all labour and material used or reasonably required for use in the performance of the Design and Construction Contract, then this obligation shall be null and void; and otherwise it shall remain in full force and effect, subject, however, to the following conditions:

1. A Claimant for the purpose of this Bond is defined as one having a direct contract with the Principal for labour, material, or both, used or reasonably required for use in the performance of the Design and Construction Contract, labour and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment directly applicable to the Design and Construction Contract provided that a person, firm or corporation who rents equipment to the Principal to be used in the performance of the Design and Construction Contract under a contract which provides that all or any part of the rent is to be applied towards the purchase price thereof, shall only be a Claimant to the extent of the prevailing industrial rental value of such equipment for the period during which the equipment was used in the performance of the Design and Construction Contract. The prevailing industrial rental value of equipment

St. Michael's Hospital Redevelopment Project

shall be determined, insofar as it is practical to do so, in accordance with and in the manner provided for in the latest revised edition of the publication of the Canadian Construction Association titled "Rental Rates on Construction Equipment" published prior to the period during which the equipment was used in the performance of the Design and Construction Contract.

2. The Principal and the Surety hereby jointly and severally agree with the Obligee, as Trustee, that every Claimant who has not been paid as provided for under the terms of his or her contract with the Principal, before the expiration of a period of ninety (90) days after the date on which the last of such Claimant's work or labour was done or performed or materials were furnished by such Claimant, may as a beneficiary of the trust herein provided for, sue on this Bond, prosecute the suit to final judgment for such sum or sums as may be justly due to such Claimant under the terms of his or her contract with the Principal and have execution thereon. Provided that the Obligee is not obliged to do or take any act, action or proceeding against the Surety on behalf of the Claimants, or any of them, to enforce the provisions of this Bond. If any act, action or proceeding is taken either in the name of the Obligee or by joining the Obligee as a party to such proceeding, then such act, action or proceeding, shall be taken on the understanding and basis that the Claimants or any of them, who take such act, action or proceeding shall indemnify and save harmless the Obligee against all costs, charges and expenses or liabilities incurred thereon and any loss or damage resulting to the Obligee by reason thereof. Provided still further that, subject to the foregoing terms and conditions, the Claimants, or any of them may use the name of the Obligee to sue on and enforce the provisions of this Bond.
3. It is a condition precedent to the liability of the Surety under this Bond that such Claimant shall have given written notice as hereinafter set forth to each of the Principal, the Surety and the Obligee, stating with substantial accuracy the amount claimed, and that such Claimant shall have brought suit or action in accordance with this Bond, as set out in sub-clauses 3(b) and 3(c) below. Accordingly, no suit or action shall be commenced hereunder by any Claimant:
 - (a) unless such Claimant shall have given written notice within the time limits hereinafter set forth to each of the Principal, the Surety and the Obligee, stating with substantial accuracy the amount claimed. Such notice shall be served by mailing the same by registered mail to the Principal, the Surety and the Obligee, at any place where an office is regularly maintained for the transaction of business by such persons or served in any manner in which legal process may be served in the Province or other part of Canada in which the subject matter of the Design and Construction Contract is located. Such notice shall be given:
 - (i) in respect of any claim for the amount or any portion thereof, required to be held back from the Claimant by the Principal, under either the terms of the Claimant's contract with the Principal, or under the construction lien legislation applicable to the Claimant's contract with the Principal, whichever is greater, within one hundred and twenty (120) days after such

- Claimant should have been paid in full under the Claimant's contract with the Principal;
- (ii) in respect of any claim other than for the holdback, or portion thereof, referred to above, within one hundred and twenty (120) days after the date upon which such Claimant did, or performed, the last of the work or labour or furnished the last of the materials for which such claim is made under the Claimant's contract with the Principal;
 - (b) after the expiration of one (1) year following the date on which the Principal ceased work on the Design and Construction Contract, including work performed under the guarantees provided in the Design and Construction Contract;
 - (c) other than in a Court of competent jurisdiction in the Province or District of Canada in which the subject matter of the Design and Construction Contract, or any part thereof, is situated and not elsewhere, and the parties hereto agree to submit to the jurisdiction of such Court.
4. The Surety agrees not to take advantage of Article 1959 of the Civil Code of the Province of Quebec in the event that, by an act or an omission of a Claimant, the Surety can no longer be subrogated in the rights, hypothecs and privileges of said Claimant.
 5. Any material change in the Design and Construction Contract between the Principal and the Obligee shall not prejudice the rights or interest of any Claimant under this Bond, who is not instrumental in bringing about or has not caused such change.
 6. The amount of this Bond shall be reduced by and to the extent of any payment or payments made in good faith and in accordance with the provisions hereof, inclusive of the payment by the Surety of construction liens which may be filed of record against the subject matter of the Design and Construction Contract, whether or not claim for the amount of such lien be presented under and against this Bond.
 7. The Surety shall not be liable for a greater sum than the specified penalty of this Bond.
 8. This Bond may be executed in counterpart, all of which when taken together constitute the Labour and Material Payment Bond.

St. Michael's Hospital Redevelopment Project

**Project Agreement – Schedule 25
Redacted Version**

IN WITNESS WHEREOF, the Principal and the Surety have signed and sealed this Bond this _____ day of _____, 20____.

SIGNED, SEALED AND DELIVERED in the presence of:

**BONDFIELD CONSTRUCTION COMPANY
LIMITED
[REDACTED]**

[REDACTED]

EXHIBIT 1 TO APPENDIX C

LABOUR AND MATERIAL PAYMENT BOND
MULTIPLE OBLIGEE RIDER

No. _____

TO BE ATTACHED TO AND FORM PART OF THE LABOUR AND MATERIAL PAYMENT BOND NO. [Insert Bond No.] dated [Insert Date] (the “L&M Bond”) concurrently with the execution of this Labour and Material Payment Bond Multiple Obligee Rider (“L&M Multiple Obligee Rider”) issued by [REDACTED], as Surety (hereinafter called the “Surety”), on behalf of BONDFIELD CONSTRUCTION COMPANY LIMITED, as Principal (hereinafter called the “Principal”), and in favour of 2442931 ONTARIO INC., as Obligee (hereinafter called the “Obligee”).

NOW THEREFORE, in consideration of [REDACTED] (\$[REDACTED]) 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 L&M Bond shall and is hereby amended to add **ST. MICHAEL'S HOSPITAL** (hereinafter called the “**Owner**”) and **BANK OF MONTREAL** (hereinafter called the “**Lender**”) as additional named Obligees, in their respective capacities as assignees of the Design and Construction Contract.
2. Capitalized terms used in this L&M Multiple Obligee Rider without definition shall have the respective meanings attributed to them in the L&M Bond and the Design and Construction Contract.
3. All of the terms, conditions and provisions of the L&M Bond are hereby incorporated herein by reference as if fully set forth herein.
4. No alteration or material change in the Design and Construction Contract or any conduct of the Principal, Obligee or Lender, shall prejudice the rights or interest of Owner or Claimant under the L&M Bond or this L&M Multiple Obligee Rider provided that Owner or Claimant have not caused such alteration or material change without the prior written consent of the Surety.
5. In the event of any ambiguity, conflict or inconsistency, the L&M Bond and the L&M Multiple Obligee Rider shall prevail over the Project Agreement and the other Project Documents.
6. Nothing herein shall alter or affect the aggregate liability of the Surety as described in the L&M Bond.

7. This L&M Multiple Obligee Rider may be executed in counterpart, all of which taken together shall constitute the L&M Multiple Obligee Rider.

St. Michael's Hospital Redevelopment Project

**Project Agreement – Schedule 25
Redacted Version**

IN WITNESS WHEREOF, the Principal, Surety, Obligee, Owner and Lender have signed and sealed this L&M Multiple Obligee Rider dated the ____ day of _____, 20__.

SIGNED, SEALED and DELIVERED

**BONDFIELD CONSTRUCTION COMPANY
LIMITED**

[REDACTED]

ZURICH INSURANCE COMPANY LTD.

[REDACTED]

2442931 ONTARIO INC.

[REDACTED]

BANK OF MONTREAL, as Agent

[REDACTED]

ST. MICHAEL'S HOSPITAL

[REDACTED]

SCHEDULE 26

RECORD PROVISIONS

1. General Requirements

- 1.1 Project Co shall prepare, retain and maintain at its own expense, all the records (including superseded records) referred to in Section 2.1, as follows:
- (a) in accordance with this Section 1;
 - (b) in accordance with the Output Specifications;
 - (c) in accordance with the requirements of Good Industry Practice, which shall include all requirements of the Canadian Institute for Health Information;
 - (d) having due regard to the guidelines and policies of the Office of the Information and Privacy Commissioner of Ontario;
 - (e) in accordance with the most stringent of Project Co's and the Construction Contractor's normal business practices;
 - (f) in accordance with Canadian GAAP;
 - (g) in chronological order;
 - (h) in sufficient detail, in appropriate categories and generally in such a manner as to enable Project Co to comply with Project Co's obligations under Section 26 of the Project Agreement; and
 - (i) in a form that is capable of audit.
- 1.2 Project Co shall retain and maintain all records on the Site.
- 1.3 Wherever practical, original records shall be retained and maintained in a hard copy form. Project Co may retain true copies of original records where it is not practical to retain original records.
- 1.4 Any drawings (including, without limitation, the As Built Drawings) required to be made or supplied pursuant to this Project Agreement shall be of a size appropriate to show the detail to be depicted clearly without magnifying aids, shall be consistent in size and format to drawings previously submitted by Project Co to SMH, and shall conform to the Output Specifications and Good Industry Practice. Where by prior agreement SMH and Project Co have agreed to accept microfilm, microfiche, CD-ROM or other storage media, Project Co shall make or supply drawings and other documents in such form as has been agreed by the Parties and shall include secure back up facilities.

St. Michael's Hospital Redevelopment Project

- 1.5 Records may, with the consent of SMH, not to be unreasonably withheld or delayed, be stored in electronic form if SMH has access thereto and will continue to have access thereto, such that SMH will be able to read, copy, download, and search same without licence or payment.
- 1.6 Subject to Sections 1.7 and 1.8, Project Co shall retain and maintain in safe storage, at its expense, all records referred to in Section 2.1 for a period of at least 7 years or such longer period as required by Applicable Law.
- 1.7 Project Co shall notify SMH if Project Co wishes to destroy any records referred to in this Schedule 26 which are more than 7 years old, or in respect of which the required period under Applicable Law for their retention has expired. The Parties agree that:
- (a) within 60 days of such notice, SMH may elect to require Project Co to deliver such records to SMH, in which case Project Co shall, at the expense of SMH, deliver such records (with the exception of Sensitive Information) to SMH in the manner and to the location as SMH shall specify; or
 - (b) if SMH fails to notify Project Co of its election pursuant to Section 1.7(a) within such 60 day period, Project Co may, at its expense, destroy such records.
- 1.8 In the event of termination of this Project Agreement in accordance with its terms, Project Co shall deliver all records that Project Co retains and maintains pursuant to this Schedule 26 to SMH in the manner and to the location that SMH shall reasonably specify. SMH shall make available to Project Co all the records Project Co delivers pursuant to this Section 1.8 subject to prior reasonable notice. Project Co may deliver true copies of original records required by:
- (a) statute to remain with Project Co;
 - (b) Project Co in connection with its fulfilment of any outstanding obligations under this Project Agreement; or
 - (c) Project Co in connection with its fulfilment of any outstanding obligations under the Lending Agreements.
- 1.9 Where the termination of this Project Agreement arises:
- (a) as a result of an SMH Event of Default or pursuant to Section 36.3 of this Project Agreement, then the costs of delivering the records and the costs for retaining such records in safe storage will be borne by SMH; or
 - (b) for any other cause, then the costs of delivering the records and the costs for retaining such records in safe storage for a period of at least six years following the Termination Date (unless a longer period is required by Applicable Law), shall be borne by Project Co.

St. Michael's Hospital Redevelopment Project

- 1.10 Within 30 days after the end of each year or partial year of the Project Term, Project Co shall deliver to SMH a report, as reasonably requested by SMH in connection with SMH's financial reporting, detailing to the best of Project Co's knowledge at the time of any such report any and all liabilities, claims and demands, including contingent liabilities, claims and demands, that Project Co has or may have against SMH or that may be owing by SMH to Project Co. The Parties acknowledge and agree that the contents of any such report or the failure to mention any matter in any such report shall not limit either Party's rights or remedies against the other Party as contemplated by this Project Agreement.
- 1.11 Project Co shall provide to SMH not later than 60 days after the end of each fiscal quarter in each fiscal year, part or all of which falls in a year of the Project Term, a copy of Project Co's unaudited financial statements in respect of that period, and 120 days after the end of each fiscal year, a copy of Project Co's audited financial statements, in respect of that period, prepared in accordance with Applicable Law and Canadian GAAP, together with copies of all related auditors' reports and, to the extent publicly available, all related directors' reports and other notices and circulars to shareholders or partners, all of which documents, whether or not marked or identified as confidential or proprietary but subject to the exceptions contained in Section 40 of the Project Agreement, shall be treated by SMH as Confidential Information of Project Co.

2. Records To Be Kept

- 2.1 Without limiting any other requirement of this Project Agreement, Project Co shall prepare, retain and maintain at its own expense:
- (a) this Project Agreement, its Schedules and the Ancillary Documents, including all amendments to such agreements;
 - (b) all records relating to the appointment and replacement of the SMH Representative and the Project Co Representative;
 - (c) any documents, drawings (including, without limitation, the As Built Drawings) or submissions in accordance with Schedule 10 - Review Procedure;
 - (d) any documents relating to Development Approvals and other Project Co Permits, Licences, Approvals and Agreements, including any refusals and appeals relating to any applications;
 - (e) all records relating to any statutory inspections of the Facility or the Site, including any roadways;
 - (f) any notices, reports, results and certificates relating to any Phase Completion, Tower Interim Completion, Substantial Completion, Final Completion, Phase Project Co Commissioning, Tower Interim Completion Project Co Commissioning and Project Co Commissioning;

- (g) all operation and maintenance manuals;
- (h) any documents relating to events of Force Majeure, Delay Events, Compensation Events, Relief Events and Excusing Causes;
- (i) all documents submitted in accordance with Schedule 22 - Variation Procedure;
- (j) any documents related to decisions resulting from the Dispute Resolution Procedure;
- (k) any documents related to a Project Co Change in Ownership or Change in Control;
- (l) any documents relating to any Refinancing;
- (m) all accounts for Taxes and transactions relating to Taxes, including in relation to HST applicable to the Project, but excluding any records for:
 - (i) Project Co's liabilities or payments under the Income Tax Act (Canada), the Income Tax Act (Ontario) or any similar statute in any other jurisdiction;
 - (ii) Project Co's liabilities or payments for capital taxes based on or measured by the capital of Project Co;
 - (iii) the withholdings of any payments by Project Co; or
 - (iv) any business or activity in addition to the business or activities related to, and conducted for, the purpose of the Project;
- (n) the financial accounts of Project Co referred to in Section 1.11;
- (o) all records required by Applicable Law (including in relation to health and safety matters) to be maintained by Project Co with respect to the Works;
- (p) any documents relating to insurance and insurance claims;
- (q) all Jointly Developed Materials; and
- (r) all other records, documents, information, notices or certificates expressly required to be produced or maintained by Project Co pursuant to this Project Agreement.

2.2 Either Party may review the documents required to be prepared, retained and maintained by Project Co pursuant to Section 2.1.

SCHEDULE 27

DISPUTE RESOLUTION PROCEDURE

1. General

- 1.1 All disputes, controversies, or claims arising out of or relating to any provision of this Project Agreement, or the alleged wrongful exercise or failure to exercise by a Party of a discretion or power given to that Party under this Project Agreement, or the interpretation, enforceability, performance, breach, termination, or validity of this Project Agreement, including, without limitation, this Schedule 27, or any matter referred to for resolution pursuant to this Schedule 27 (collectively and individually, a “**Dispute**”) shall be resolved in accordance with the provisions of this Schedule 27.
- 1.2 The Parties agree that at all times, both during and after the Project Term, each of them will make bona fide efforts to:
- (a) resolve by amicable negotiations any and all Disputes arising between them on a without prejudice basis; and
 - (b) have all Disputes resolved at the lowest level of management before engaging the dispute resolution processes described in Articles 2 to 9 of this Schedule 27.
- 1.3 If the Parties are unable to resolve a Dispute at the lowest level of management pursuant to Section 1.2(b) of this Schedule 27, either Party may deliver to the SMH Representative or the Project Co Representative, as applicable, a written notice of dispute (the “**Notice of Dispute**”), which Notice of Dispute shall, subject to the terms of this Schedule 27 requiring resolution of a Dispute pursuant to a specific dispute resolution process set forth in this Schedule 27, initiate the dispute resolution process described in Articles 2 to 9 of this Schedule 27, as applicable, as more particularly described in this Schedule 27. To be effective, the Notice of Dispute must expressly state that it is a notice of dispute, set out the particulars of the matter in dispute, describe the remedy or resolution sought by the Party issuing the Notice of Dispute and be signed by the SMH Representative, if given by SMH, or by the Project Co Representative, if given by Project Co.

2. Amicable Resolution by Party Representatives

- 2.1 On receipt of a Notice of Dispute, the SMH Representative and the Project Co Representative (collectively “**Party Representatives**” and individually “**Party Representative**”) shall each promptly and diligently make all reasonable bona fide efforts to resolve the Dispute. Each Party Representative shall provide to the other, on a without prejudice basis, frank, candid and timely disclosure of relevant facts, information and documents (except such documentation that is subject to legal privilege) as may be required or reasonably requested by the other to facilitate the resolution of the Dispute.

St. Michael's Hospital Redevelopment Project**3. Amicable Resolution by Senior Officers of each Party**

- 3.1 If, following the process referred to in Article 2 of this Schedule 27 (or as otherwise agreed to in writing by the Parties pursuant to Section 13.6 of this Schedule 27), a Dispute is not resolved by the Party Representatives within 10 Business Days after receipt by a Party of the applicable Notice of Dispute, or within such longer period of time as the Party Representatives may both expressly agree, then at any time after the expiry of such period of time either Party Representative may, by notice in writing to the other, refer the Dispute to an executive of a Party who:
- (a) is in a position of authority above that of the SMH Representative or the Project Co Representative, as the case may be; and
 - (b) subject only to approval of the board of directors or similar governing body of the Party, has full authority to resolve and settle the Dispute.
- 3.2 Once a Dispute is referred to them, the executive of each Party shall promptly and diligently make all reasonable bona fide efforts to resolve the Dispute. All discussions and negotiations, and all documents exchanged, between them related to the Dispute shall be on a without prejudice basis to facilitate the resolution of the Dispute.

4. Independent Certifier

- 4.1 This Article 4 applies to all Disputes that fall within the description of Section 4.2 of this Schedule 27 that cannot be resolved as provided in Articles 2 and 3 of this Schedule 27 or as otherwise agreed to in writing by the Parties pursuant to Section 13.6 of this Schedule 27.
- 4.2 All Disputes related to the Works and that:
- (a) arise prior to, or otherwise in relation to a Phase Completion, Tower Interim Completion or Substantial Completion;
 - (b) relate to completion of Phase Minor Deficiencies, Tower Interim Completion Minor Deficiencies or Minor Deficiencies;
 - (c) relate to whether any proposed work constitutes a Variation;
 - (d) relate to a review of Estimates or any other matters relating to Variations as the Independent Certifier is entitled to review and determine pursuant to Article 38 of the Project Agreement;
 - (e) are referred to in this Project Agreement for determination by the Independent Certifier; or

- (f) relate to the Certification Services or any Certification Service Variations (as those terms are defined in the Independent Certifier Agreement);

shall initially be submitted to the Independent Certifier for independent determination by the Independent Certifier within such period as may be specified in this Project Agreement, or if no period is specified, within 10 Business Days after submission to the Independent Certifier.

- 4.3 Without limiting any obligations of the Parties under the Independent Certifier Agreement, the Parties shall cooperate with the Independent Certifier and provide such information, records and documents as may be required by the Independent Certifier to make the determination within the period referred to in Section 4.2 of this Schedule 27.
- 4.4 The Independent Certifier's decision to issue or not to issue:
- (a) the Tower Interim Completion Certificate shall be final and binding on the Parties solely in respect of determining the Tower Interim Completion Payment Date and a Dispute in relation to the Tower Interim Completion Payment Date shall not be subject to resolution pursuant to this Schedule 27; and
- (b) the Substantial Completion Certificate shall be final and binding on the Parties solely in respect of determining the Substantial Completion Payment Date and a Dispute in relation to the Substantial Completion Payment Date shall not be subject to resolution pursuant to this Schedule 27.

Save and except as aforesaid, the Independent Certifier's determinations are not binding on the Parties, and all Disputes in relation to the Independent Certifier's decisions shall be resolved pursuant to this Schedule 27, provided however that Section 6 of this Schedule 27 shall not apply unless otherwise agreed by the Parties on terms acceptable to the Parties.

5. [Intentionally Deleted]

6. Adjudication

- 6.1 If the Parties fail to resolve any Dispute through the process referred to in Section 2 and 3 of this Schedule 27 within 15 Business Days following referral of the Dispute to an executive in accordance with Section 3.1 (or such other period as may be agreed or expressly stipulated in respect of the relevant matter) and it is not a Dispute referred to in Section 4.2 of this Schedule 27 or a Dispute referred to arbitration or litigation pursuant to Section 4.4 of this Schedule 27 (except as otherwise agreed to in writing by the Parties pursuant to Section 13.6 of this Schedule 27), either Party may refer the Dispute to an adjudicator selected in accordance with Section 6.2 of this Schedule 27 (the "Adjudicator").

St. Michael's Hospital Redevelopment Project

- 6.2 The Adjudicator nominated by the Party issuing the Notice of Dispute shall be agreed between the Parties or, failing agreement, shall be determined by the Ontario Superior Court of Justice (following an application thereto by the Party issuing the Notice of Dispute) pursuant to the *Arbitration Act* (Ontario) as if the adjudicator was an arbitrator under the *Arbitration Act* (Ontario) and shall:
- (a) be independent of and at arm's length to Project Co, SMH, any Government Entity, the Lenders and any other person having an interest in the Facility or any of the Project Documents;
 - (b) if the Dispute arises during the Project Term, be familiar with building operations and management and hospital activities; and
 - (c) be a person who has the qualifications and experience with respect to the particular issues in Dispute, including, where the issues in Dispute include whether Project Co has or will adversely impact the SMH Activities, then such qualifications and experience should include relevant experience in the provision of activities similar to the SMH Activities in a major acute care hospital.
- 6.3 The Adjudicator shall resolve the Dispute in accordance with the United Kingdom Construction Industry Council's *Model Adjudication Procedure; Fourth Edition* (the "Model Adjudication Procedure") the terms of which are incorporated herein by reference, subject to the following modifications:
- (a) notwithstanding paragraph 14 of the Model Adjudication Procedure, within 7 Business Days of appointment in relation to a particular Dispute, the Adjudicator shall require the Parties to submit in writing their respective arguments; provided that, where necessary, the onus of proving that the Facility is permitting the SMH Activities to proceed in accordance with all relevant specifications and requirements set forth in the Project Agreement is on Project Co. The Adjudicator shall, in his absolute discretion, determine the procedure of the adjudication proceedings including without limitation, whether a hearing is necessary in order to resolve the Dispute;
 - (b) notwithstanding paragraphs 16 and 24 of the Model Adjudication Procedure, in any event, and subject to Section 6.4 of this Schedule 27, the Adjudicator shall provide to both Parties his written decision on the Dispute, within 10 Business Days of appointment (or within such other period as the Parties may agree after the reference). The Adjudicator shall give detailed reasons for the Adjudicator's decision. The Adjudicator shall be entitled to award compensation to a Party and shall be entitled to state the relief for such Party, which may include deeming the occurrence of any Relief Event, Delay Event and/or Compensation Event. Unless otherwise provided for in this Schedule 27, the Adjudicator's decision shall be binding on the Parties, but not final.

St. Michael's Hospital Redevelopment Project

- (c) notwithstanding paragraphs 29 and 30 of the Model Adjudication Procedure, the Adjudicator's costs, including any legal fees, of any reference shall be borne as the Adjudicator shall specify or in default, equally by the Parties. In no circumstances shall the Adjudicator be entitled to order a successful or partially successful Party in an adjudication to pay more than one half of the Adjudicator's fees. Each Party shall bear its own costs arising out of the reference, including legal costs and the costs and expenses of any witnesses.
- (d) the Adjudicator shall be deemed not to be an arbitrator but shall render his decision as an expert and the provisions of the *Arbitration Act* (Ontario) and the law relating to arbitration shall not apply to the Adjudicator (other than as set out in Section 6.2 of this Schedule 27) or his determination or the procedure by which he reached his determination;
- (e) notwithstanding paragraph 26 of the Model Adjudication Procedure, the Adjudicator shall act impartially and may take the initiative in ascertaining the facts and the law. Unless otherwise expressly provided in this Project Agreement, the Adjudicator shall have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given under this Project Agreement. For greater certainty, the Independent Certifier's decision to issue or not to issue:
- (i) the Tower Interim Completion Certificate shall be final and binding solely in respect of determining the Tower Interim Completion Payment Date and a Dispute in relation to the Tower Interim Completion Payment Date shall not be subject to resolution pursuant to this Schedule 27; and
 - (ii) the Substantial Completion Certificate shall be final and binding solely in respect of determining the Substantial Completion Payment Date and a Dispute in relation to the Substantial Completion Payment Date shall not be subject to resolution pursuant to this Schedule 27;
- (f) the Adjudicator shall execute a non-disclosure agreement (the "**Non-Disclosure Agreement**") in a form satisfactory to the Parties, providing that, among other things, all information, data and documentation disclosed or delivered by a Party to the Adjudicator in consequence of or in connection with his appointment as the Adjudicator shall be treated as confidential and without prejudice to any potential litigation proceedings. The Adjudicator shall not, save except as expressly permitted by the Non-Disclosure Agreement, disclose to any person any such information, data or documentation, and all such information, data or documentation shall remain the property of the Party disclosing or delivering the same and all copies shall be returned to such Party on completion of the Adjudicator's mandate with respect to the Dispute; and
- (g) notwithstanding paragraph 34 of the Model Adjudication Procedure, the Adjudicator shall not be liable for anything done or omitted to be done in the discharge or

purported discharge of his functions as Adjudicator unless the act or omission is in bad faith. Any employee or agent of the Adjudicator is similarly protected from liability.

- 6.4 Where it is determined by the Adjudicator that:
- (a) corrective measures must be taken by Project Co to resolve a Dispute, those measures must be implemented by Project Co as soon as reasonably practical, without payment by SMH unless (i) the Adjudicator determines otherwise; or (ii) that determination is subsequently reversed by a binding and final determination made in a court proceeding;
 - (b) corrective measures are not required to be taken by Project Co to resolve a Dispute, SMH may, at its option, require corrective measures to be taken forthwith by Project Co, in which case those measures must be implemented by Project Co as soon as reasonably practical provided that SMH undertakes to pay Project Co for Direct Costs, plus reasonable overhead and profit incurred by Project Co as such costs are so incurred; provided that no such costs should exceed the amount Project Co is entitled to receive pursuant to Schedule 22 – Variation Procedure thereby incurred upon completion of those corrective measures, but any such undertaking and payment shall be without prejudice to SMH's right to contest the determination made by the Adjudicator in a subsequent proceeding. SMH shall provide Project Co such reasonable extensions of time in respect of Project Co's obligations under this Project Agreement necessary to allow Project Co to effect the corrective measures and such extension of time may be treated as a Delay Event, if so determined by the Adjudicator.
- 6.5 Subject to a right to require the Dispute to be arbitrated or litigated pursuant to Sections 7, 8 and 9 of this Schedule 27 by giving the required notices to arbitrate or litigate within the time periods specified therein, the Parties agree that the Adjudicator's determination is final and binding and not subject to appeal, arbitration, litigation or any other dispute resolution process, and both Parties expressly waive all rights of appeal in connection with the Adjudicator's determination.

7. Referral of Disputes to Arbitration or Litigation

- 7.1 If:
- (a) the amount awarded by the Adjudicator pursuant to Section 6 of this Schedule 27 is more than \$[REDACTED] (index linked) in the aggregate or \$[REDACTED] (index linked) in any one year,
 - (b) the Dispute involves issues other than monetary claims by one Party against the other Party and which a Party reasonably believes are material and significant to that Party,
or

- (c) a Notice of Dispute has been issued for a Dispute in relation to the Independent Certifier's decisions for which Section 4.4 of this Schedule 27 provides that Section 6 of this Schedule 27 shall not apply to resolve such Dispute,

then, subject to the right of a Party to require litigation of the Dispute pursuant to Section 9.1 of this Schedule 27 or a consolidation of proceedings pursuant to Section 10 of this Schedule 27, either Party may, by written notice signed by their Party Representative, request that the Dispute be resolved by arbitration pursuant to Section 8 of this Schedule 27 upon the written consent of the other Party. Such notice will not be effective unless it indicates it is a notice to arbitrate, is signed by the Party Representative and is delivered to the other Party Representative within 15 Business Days after receipt of the Adjudicator's decision or the Notice of Dispute referred to in Section 7.1(c) of this Schedule 27, as applicable, and provided further that such notice expressly identifies the specific Dispute and decision of the Adjudicator or the Independent Certifier, as applicable, that is to be the subject of the arbitration.

- 7.2 If a Party is entitled to refer a Dispute to which Section 6 of this Schedule 27 applies to arbitration or litigation pursuant to Sections 7.1 or 9.1 of this Schedule 27 then, unless the Parties otherwise expressly agree in writing, all information, documents and submissions prepared by a Party for the Adjudicator which are not business records that would otherwise be kept in the normal course of business by the Party for its business purposes, and all decisions and determinations by the Adjudicator, shall be confidential and inadmissible in any arbitration or litigation proceeding. For greater certainty, the Adjudicator shall not be called as a witness by either party in any arbitration or litigation proceeding.

8. Resolution by Arbitration

- 8.1 Upon the mutual written consent of the parties,

- (a) where the Parties fail to resolve a Dispute through the process set out in Sections 2, 3, 4 and 6 (to the extent required) of this Schedule 27, and
- (b) all other requirements set out in this Schedule 27 have been satisfied,

such Dispute may be referred to arbitration in accordance with the Arbitration Act, 1991 (Ontario) and this Section 8.

- 8.2 Disputes referred to arbitration shall be resolved by a single arbitrator unless one of the Parties, by notice in writing delivered to the other Party within 5 Business Days after a notice to arbitrate pursuant to Section 7.1 of this Schedule 27 has been delivered, expressly requires that the Dispute that is the subject of that notice to arbitrate be resolved by a three person arbitration tribunal, in which case that particular Dispute shall be resolved by a three person arbitration tribunal.

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- 8.3 If the arbitration tribunal is comprised of a single arbitrator, the arbitrator shall be appointed as follows:
- (a) if the Parties agree on the arbitrator, the Parties shall jointly appoint the arbitrator as soon as possible and in any event within 5 Business Days after delivery of the notice to arbitrate pursuant to Section 7 of this Schedule 27; and
 - (b) if the Parties fail to agree or jointly appoint the arbitrator within such 5 Business Day period, either Party may apply to the Ontario Superior Court of Justice for appointment of the arbitrator, in which case the court shall appoint the arbitrator at the earliest opportunity in accordance with the following:
 - (i) from the lists of potential arbitrators submitted to the court by the Parties, provided that potential arbitrators meeting the necessary qualifications and experience set out in this Schedule 27 are on the list; or
 - (ii) if one Party fails to submit its list of potential arbitrators to the court within 5 Business Days of a request from the court to submit a list, from the list submitted by the other Party provided that potential arbitrators meeting the necessary qualifications and experience set out in this Schedule 27 are on the list of that other Party; or
 - (iii) if no list is submitted by either Party, or if the list or lists submitted do not include potential arbitrators with the necessary qualifications and experience, the court shall be entitled at its sole discretion to appoint anyone who meets the requirements set out in this Schedule 27 for the qualifications and experience of the arbitrator.
- 8.4 If the arbitration tribunal is comprised of three arbitrators:
- (a) the arbitrators shall be appointed as follows:
 - (i) each Party shall appoint one arbitrator no later than 5 Business Days after delivery of the notice to arbitrate pursuant to Section 7 of this Schedule 27;
 - (ii) if a Party fails to appoint an arbitrator within 5 Business Days after delivery of the notice to arbitrate, the other Party is entitled to apply to the Ontario Superior Court of Justice to appoint that arbitrator, in which case the court shall appoint that arbitrator at the earliest opportunity using a comparable process to that described in Section 8.3(b) of this Schedule 27;
 - (iii) the arbitrators appointed in accordance with the foregoing shall, within 5 Business Days after their appointment, jointly appoint a third arbitrator who shall also act as the chair of the arbitration tribunal and who, in addition to all other required qualifications, shall have experience in arbitration or judicial processes and procedures; and

- (iv) if the two arbitrators appointed by the Parties fail to appoint a third arbitrator within the required time, either of the other two arbitrators may apply to the Ontario Superior Court of Justice for appointment of the third arbitrator, in which case the court shall appoint the third arbitrator at the earliest opportunity using a comparable process to that described in Section 8.3(b) of this Schedule 27; and
 - (b) the arbitrators appointed by the Parties shall at all times be neutral and act impartially and shall not act as advocates for the interests of the Party who appointed them.
- 8.5 All arbitrators must have qualifications and experience relevant to the issues in the Dispute and also have qualifications and experience as arbitrators. Where the issues in Dispute include whether Project Co has or will adversely impact the SMH Activities, then such qualifications and experience should include relevant experience in the provision of activities similar to the SMH Activities in a major acute care hospital.
- 8.6 No one shall be nominated or appointed to act as an arbitrator who is or was in any way interested, financially or otherwise, in the conduct of the Works or in the business affairs of SMH, Project Co, or any consultant, subconsultant or subcontractor of any of them.
- 8.7 The arbitrator(s) shall have the jurisdiction and power to:
 - (a) amend or vary any and all rules under the *Arbitration Act, 1991* (Ontario), including rules relating to time limits, either by express agreement of the Parties or, failing such agreement, as the arbitrator(s) consider appropriate and necessary in the circumstances to resolve the Dispute and render an award;
 - (b) require some or all of the evidence to be provided by affidavit;
 - (c) hold a hearing at which evidence and submissions are presented by the Parties;
 - (d) direct either or both Parties to prepare and provide the arbitrator(s) with such documents, test results or other things as the arbitrator(s) may require to assist them in the resolution of the Dispute and rendering of an award;
 - (e) require either Party to supply or prepare for examination by the arbitrator(s) and the other Party, any document or information the arbitrator(s) considers necessary;
 - (f) inspect the Works, giving reasonable notice to each Party of the time when, and the place where, the arbitrator(s) intend(s) to conduct any inspections;
 - (g) award any remedy or relief that a court or judge of the Ontario Superior Court of Justice could order or grant subject to and in accordance with this Project Agreement, including, without limitation, interim orders, interim and permanent injunctions, and specific performance; and

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- (h) require either or both Parties to take and provide to the arbitrator(s) such measurements, perform such tests, perform such audits, or take any and all such other measures or steps as the arbitrator(s) consider necessary or desirable to aid them in making a fair and reasonable award.
- 8.8 The place of arbitration shall be Toronto, Ontario. The language of the arbitration shall be English.
- 8.9 The costs of an arbitration are in the discretion of the arbitrator(s) who, in addition to any jurisdiction and authority under applicable law to award costs, has the jurisdiction and authority to make an order for costs on such basis as the arbitrator(s) considers appropriate in the circumstances, including to award actual legal fees and disbursements and expert witness fees, and to specify or order any or all of the following:
- (a) the Party entitled to costs;
 - (b) the Party who must pay the costs;
 - (c) the amount of the costs or how that amount is to be determined; and
 - (d) how all or part of the costs must be paid.
- 8.10 In exercising discretion to award costs, however, the arbitrator(s) will take into account the desire of the Parties that costs should generally be awarded to each Party in proportion to the relative success that each Party has in the arbitration.
- 8.11 The award of the arbitrator(s) shall be final and binding upon both Parties, and both Parties expressly waive all rights of appeal in connection with the award of the arbitrator(s). Judgment may be entered upon the award in accordance with Applicable Law in any court having jurisdiction.
- 8.12 The Parties agree to and shall co-operate fully with the arbitrator(s) and proceed with the arbitration expeditiously, including in respect of any hearing, in order that an award may be rendered as soon as practicable by the arbitrator(s), given the nature of the Dispute. The arbitrator(s) shall render a decision as soon as possible and, in any event, shall use all reasonable efforts to render a decision no later than 20 Business Days after the date of the hearing, or such longer period of time as agreed to in writing by the Parties. If the arbitration tribunal is comprised of three arbitrators, the decision of a majority of the arbitration tribunal shall be deemed to be the decision of the arbitration tribunal, and where there is no majority decision, the decision of the chair of the arbitration tribunal shall be deemed to be the decision of the arbitration tribunal.
- 8.13 This Project Agreement, including this Schedule 27, constitutes an agreement to arbitrate that shall be specifically enforceable.

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- 8.14 Any arbitrator appointed pursuant to this Section 8 of this Schedule 27 shall keep all information about the Dispute confidential and shall not disclose such information to anyone other than the Parties.

9. Litigation

- 9.1 Notwithstanding that a notice to arbitrate has been delivered pursuant to Section 7.1 of this Schedule 27, following receipt of the Adjudicator's award or determination pursuant to Section 6 of this Schedule 27, or if applicable, a Notice of Dispute has been issued following receipt of a decision of the Independent Certifier if the Dispute is a Dispute in relation to the Independent Certifier's decisions for which Section 4.4 of this Schedule 27 provides that Section 6 of this Schedule 27 shall not apply, if one or more of the following apply then either Party may elect, by written notice signed by their Party Representative, to require that the Dispute be referred to and resolved solely by litigation in the Ontario Superior Court of Justice, and both Parties agree to attorn to the exclusive jurisdiction of the courts of the Province of Ontario in respect of the Dispute:
- (a) if the actual or potential total value or amount at issue in the Dispute (as determined by adding all claims and counterclaims) is more than \$[REDACTED] (index linked) in the aggregate or \$[REDACTED] (index linked) in any one year; or
 - (b) if the Dispute is considered by SMH to involve material issues of public health or safety.

Such notice will not be effective unless it indicates it is a notice to submit the Dispute to litigation, is signed by the Party Representative and is delivered to the other Party Representative within 15 Business Days after receipt of the Adjudicator's determination, or the Notice of Dispute referred to in Section 7.1(c) of this Schedule 27, as applicable, and provided further that such notice expressly identifies the specific Dispute and determination of the Adjudicator or Independent Certifier, as applicable, that is to be the subject of the litigation.

- 9.2 If neither Party delivers a notice of election to resolve a particular Dispute by litigation in the manner and within the time specified in Section 9.1 of this Schedule 27, then provided that one Party has, in the manner and within the time period specified in Section 7.1 of this Schedule 27, given notice to the other Party of election to resolve that Dispute by arbitration, and subject to a consolidation of proceedings pursuant to Section 10 of this Schedule 27, that Dispute shall be resolved only by arbitration pursuant to Sections 8.2 to 8.14 of this Schedule 27.

10. Consolidation of Project Agreement Adjudication, Arbitration and Litigation

- 10.1 For all Disputes in respect of a Phase of the Works that arise prior to such Phase of the Works' Phase Completion, unless:

- (a) both Parties otherwise agree;
- (b) the issue in a particular Dispute arises in connection with the Review Procedure;
- (c) the issue in a particular Dispute is such that waiting until after the applicable Phase Completion to resolve that Dispute will cause irreparable harm to one of the Parties;
- (d) the issue in a particular Dispute arises in connection with requirements of achieving or deficiencies in not achieving the applicable Phase Completion; or
- (e) in respect to a particular Dispute, the Dispute is consolidated with any Third Arbitration or Third Party Litigation (as hereinafter defined) pursuant to Section 11 of this Schedule 27,

all adjudication, arbitral and litigation proceedings between the Parties prior to such Phase Completion shall be stayed and consolidated into, as applicable, a single adjudication, arbitration and a single litigation proceeding, with the adjudication, arbitration and, if applicable, litigation, proceeding promptly and expeditiously after the such Phase Completion.

10.2 For all Disputes in respect of the Tower (for clarity, which are not Phases of the Works) that arise prior to Tower Interim Completion, unless:

- (a) both Parties otherwise agree;
- (b) the issue in a particular Dispute arises in connection with the Review Procedure;
- (c) the issue in a particular Dispute is such that waiting until after Tower Interim Completion to resolve that Dispute will cause irreparable harm to one of the Parties;
- (d) the issue in a particular Dispute arises in connection with requirements of achieving or deficiencies in not achieving Tower Interim Completion; or
- (e) in respect to a particular Dispute, the Dispute is consolidated with any Third Arbitration or Third Party Litigation (as hereinafter defined) pursuant to Section 11 of this Schedule 27,

all adjudication, arbitral and litigation proceedings between the Parties in respect of the Tower prior to Tower Interim Completion shall be stayed and consolidated into, as applicable, a single adjudication, arbitration and a single litigation proceeding, with the adjudication, arbitration and, if applicable, litigation, proceeding promptly and expeditiously after Tower Interim Completion.

10.3 For all Disputes in respect of the Facility except for the Tower and any Phase of the Works that arise prior to Substantial Completion, unless:

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- (a) both Parties otherwise agree;
- (b) the issue in a particular Dispute arises in connection with the Review Procedure;
- (c) the issue in a particular Dispute is such that waiting until after Substantial Completion to resolve that Dispute will cause irreparable harm to one of the Parties;
- (d) the issue in a particular Dispute arises in connection with requirements of achieving or deficiencies in not achieving Substantial Completion; or
- (e) in respect to a particular Dispute, the Dispute is consolidated with any Third Arbitration or Third Party Litigation (as hereinafter defined) pursuant to Section 11 of this Schedule 27,

all adjudication, arbitral and litigation proceedings between the Parties in respect of the Facility (except for the Tower and any Phase of the Works) prior to Substantial Completion shall be stayed and consolidated into, as applicable, a single adjudication, arbitration and a single litigation proceeding, with the adjudication, arbitration and, if applicable, litigation, proceeding promptly and expeditiously after Substantial Completion.

11. Consolidation with Third Party Disputes

- 11.1 Subject to Section 11.4 of this Schedule 27, if either Party is involved in an arbitration in the Province of Ontario with a third party ("**Third Party Arbitration**"), and if such Third Party Arbitration involves common factual or legal issues (including common issues of damages) which are also the subject of a Dispute between the Parties for which a Notice of Dispute has been given, then any arbitration of the Dispute between the Parties which includes those common factual, legal or damages issues ("**Project Agreement Arbitration**") shall be stayed, consolidated or joined with the Third Party Arbitration(s) but only if SMH, Project Co and the other Parties all agree or, failing their agreement, if a court in the Province of Ontario on application considers it just and convenient in all the circumstances that the Project Agreement Arbitration should be stayed or consolidated or joined with the Third Party Arbitration.
- 11.2 Subject to Section 11.4 of this Schedule 27, if either Party is involved in litigation in the Province of Ontario with a third party ("**Third Party Litigation**") and if:
 - (a) such Third Party Litigation involves common factual or legal issues (including common issues of damages) which are the subject of a Project Agreement Arbitration; and
 - (b) one of the Parties is brought directly into the Third Party Litigation as a Party to that litigation,

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then on the application of either Party to the court in the Province of Ontario having jurisdiction the court may, if it determines that it is just and convenient in all the circumstances, order a stay of either or both the Project Agreement Arbitration proceeding and Third Party Litigation, or order a joinder of the Project Agreement Arbitration and the Third Party Litigation. If such joinder is ordered, the Project Agreement Arbitration and the Third Party Litigation ordered to be joined by the court shall be determined by that court or by another court in Ontario such that the Project Agreement Arbitration and the Third Party Litigation shall be resolved in one forum. For purposes of the foregoing, joinder of the Project Agreement Arbitration and the Third Party Litigation shall be construed to include stays and conditional stays of issues in the Project Agreement Arbitration pending the commencement and completion of third party proceedings by one or both of the Parties in the Third Party Litigation.

11.3 In considering whether to order a stay, consolidation or joinder of a Project Agreement Arbitration with a Third Party Arbitration or Third Party Litigation, the court will be entitled to give substantial weight to the desire by the Parties that all Disputes which are related to Third Party Arbitration or Third Party Litigation be resolved in a single forum to avoid multiplicity of proceedings and the potential for contradictory findings of fact, liability and quantum, and to ensure the arbitrator or court has the advantage of obtaining full evidence and disclosure from the Parties and from the other Parties, as applicable and as required to resolve the Dispute and to make findings of fact, liability and quantum of damages and awards or judgments binding on the Parties based on all available evidence.

11.4 Sections 11.1 and 11.2 of this Schedule 27 only apply:

- (a) if the Dispute between the Parties includes a claim by one Party against the other for contribution or indemnity for that Party's liability or potential liability to the third party where such liability results or will result from an award in the Third Party Arbitration or a judgment in the Third Party Litigation; and
- (b) to those specific issues that are common issues in the Project Agreement Arbitration, the Third Party Arbitration and the Third Party Litigation, such that all other issues in the Dispute shall continue to be resolved by Project Agreement Arbitration and shall not be consolidated with the Third Party Arbitration or Third Party Litigation.

12. [Intentionally Deleted]

13. Miscellaneous

13.1 Project Co and SMH shall diligently carry out their respective obligations under this Project Agreement during the pendency of any Disputes, including, without limitation, adjudication proceedings, arbitration proceedings or litigation proceedings. If during the pendency of any Dispute it is considered necessary by either Party to proceed in respect of the matter that is in Dispute, then without prejudice to Project Co's rights in respect of the Dispute (including in

respect of Delay Events, Compensation Events and Variations), Project Co shall proceed in accordance with the direction of SMH, and in the event the matter in dispute is determined in favour of Project Co, proceeding in accordance with SMH's position shall: (i) subject to and in accordance with Section 30 of this Project Agreement, be treated as a Delay Event; (ii) subject to and in accordance with Section 31 of this Project Agreement, be treated as a Compensation Event; and (iii) subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation. For greater certainty, in respect of any Dispute relating to the Works referred to in Section 4.2 of this Schedule 27, the Independent Certifier shall be the decision maker of first instance and the Parties shall comply with the initial decision of the Independent Certifier unless and until it is overturned in a subsequent arbitration or litigation proceeding.

- 13.2 Nothing contained in this Schedule 27 will prevent the Parties from seeking interim protection from the courts of the Province of Ontario, including seeking an interlocutory injunction, if necessary to prevent irreparable harm to a Party.
- 13.3 The Parties shall indemnify each other in respect of any damages suffered or incurred on amounts agreed to be paid pursuant to resolution of a Dispute by the Party Representatives or by the executives of the Parties pursuant to Sections 2 and 3 of this Schedule 27, and on the amount of any award or judgment as follows:
- (a) for amounts payable by Project Co to SMH, Project Co shall indemnify SMH as provided for at Section 44.1(e) of this Project Agreement from and against any damages suffered or incurred resulting from any overpayment to Project Co or, as applicable, any underpayment or non-payment by Project Co from the date of any overpayment to Project Co or, as applicable, from the date on which payment was due under this Project Agreement to SMH until the date of payment; or
 - (b) for amounts payable by SMH to Project Co, SMH shall indemnify Project Co as provided for at Section 44.2(c) of this Project Agreement from and against any damages suffered or incurred resulting from any overpayment to SMH or, as applicable, any underpayment or non-payment by SMH from the date of any overpayment to SMH or, as applicable, from the date on which payment was due under this Project Agreement to Project Co until the date of payment.
- 13.4 Project Co shall ensure that any and all documents and other information in the possession or control of any Project Co Party that are available to Project Co and that may be necessary for the resolution of a Dispute on an informed basis by the Party Representatives or by the executives of the Parties pursuant to Sections 2 and 3 of this Schedule 27, or by an expert, an adjudicator, an arbitrator or a court of competent jurisdiction, are made available in a timely manner to SMH and the SMH Representative.
- 13.5 SMH shall ensure that any and all documents and other information in the possession or control of any SMH Party that are available to SMH and that may be necessary for the resolution of a Dispute on an informed basis by the Party Representatives or by the

executives of the Parties pursuant to Sections 2 and 3 of this Schedule 27, or by an adjudicator, an arbitrator or court of competent jurisdiction, are made available in a timely manner to Project Co and the Project Co Representative.

13.6 The Parties can, by written agreement, on a Dispute by Dispute basis:

- (a) extend any or all timelines set out in this Schedule 27;
- (b) agree to waive or by-pass any one or more of the Dispute resolution processes in Sections 2, 3, 4 and 6 of this Schedule 27 and, instead, proceed directly to resolution of the Dispute by arbitration or litigation pursuant to Sections 7, 8 and 9 of this Schedule 27; and
- (c) agree to (i) resolve a Dispute by litigation rather than adjudication or arbitration notwithstanding the requirements of Section 6 and Section 8 of this Schedule 27, or (ii) agree to resolve a Dispute by arbitration rather than adjudication or litigation notwithstanding the requirements of Section 6 and Section 9 of this Schedule 27, or (iii) agree to resolve a Dispute by adjudication rather than arbitration or litigation notwithstanding the requirements of Section 8 and Section 9 of this Schedule 27.

SCHEDULE 28

STANDBY LETTER OF CREDIT

Letter of Credit: #[•]

Date: [•]

St. Michael's Hospital
[REDACTED]

Attn: [REDACTED]

Dear Sir/Madam:

RE: St. Michael's Hospital Redevelopment Project

At the request of our client, 2442931 Ontario Inc. ("Project Co"), we, [REDACTED], hereby issue in your favour an irrevocable standby letter of credit (the "Letter of Credit") in the amount of [REDACTED] Dollars (\$[REDACTED]).

The amount available under this Letter of Credit is payable to St. Michael's Hospital ("SMH"), at any time and from time to time, upon (a) receipt by us of a written demand for payment, accompanied by a certificate signed by two officers of SMH certifying that SMH is entitled to draw on this Letter of Credit pursuant to Section 2.3(c) of a project agreement dated [•] (as amended from time to time, the "Project Agreement"), and (b) presentation of the original of this Letter of Credit.

This Letter of Credit will expire at 5:00 p.m. on [insert the date that is 180 days after the Financial Close Target Date] (the "Expiry Date"), and SMH may call for payment of any amount outstanding under this Letter of Credit at any time up to 5:00 p.m. on that date should this Letter of Credit not be renewed.

It is a condition of this Letter of Credit that it shall be automatically extended, without amendment, for one year from the expiration date hereof, or any future expiration date, unless, at least 30 days prior to any expiration date, we notify you, in writing, that we elect not to consider this Letter of Credit renewed for any such additional period. Upon receipt by you of such notice, you may draw the full amount hereunder by means of your demand.

Partial drawings are permitted.

We hereby agree that demands delivered under this Letter of Credit will be duly honoured upon presentation provided that all terms and conditions herein have been complied with.

Written demands drawn under this Letter of Credit shall state on their face that they are drawn under Letter of Credit #[•].

It is understood that [REDACTED] is obligated under this Letter of Credit for payments of monies only.

The Project Agreement is referred to herein for reference purposes only and does not form part of the terms of this Letter of Credit.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) of the International Chamber of Commerce (ICC Publication No. 600) (the "UCP") with the exception of Articles 18-30 inclusive (other than Article 29a, which shall apply) and Articles 31b, 31c and 32 except to the extent, if any, inconsistent with the express terms of this Letter of Credit. Notwithstanding Article 36 of the UCP, if this Letter of Credit expires during an interruption of business as contemplated in such Article 36, we shall honour any demand made under this Letter of Credit prior to the Expiry Date, within 30 days after the date on which such interruption of business ends (and we shall notify you promptly when it does so end). For matters not covered by such publication, this Letter of Credit shall be governed by and construed in accordance with the laws of the Province of Ontario.

Yours very truly,

[REDACTED]

SCHEDULE 29

REFINANCING

1. DEFINITIONS

1.1 The following terms shall have the following meanings:

- (a) **“Exempt Refinancing”** means:
- (i) a change in taxation or change in accounting treatment pursuant to a Change in Law or change in Canadian GAAP;
 - (ii) the exercise of any right, the grant of any amendment, waiver or consent or any similar action under the Lending Agreements by the Lenders that does not provide for a financial benefit to Project Co under those agreements;
 - (iii) any Qualifying Bank Transaction;
 - (iv) any Rescue Refinancing;
 - (v) any Refinancing that was approved by SMH prior to the execution of this Project Agreement and occurs during the first six months following the date of this Project Agreement;
 - (vi) any amendment, variation or supplement of any agreement approved by SMH as part of any Variation under this Project Agreement; or
 - (vii) any Permitted Borrowing.
- (b) **“Qualifying Bank”** means a lending institution that is:
- (i) a bank listed in Schedule I, II or III of the *Bank Act* (Canada); or
 - (ii) a bank, life insurance company, pension fund or fund managed by a professional fund manager that controls, either directly or through its affiliates, funds in excess of \$[REDACTED],

provided such institution is not a Restricted Person or a person whose standing or activities are inconsistent with SMH's role as a hospital or may compromise SMH's reputation or integrity or the nature of the Province's health care system so as to affect public confidence in that system.

(c) **“Qualifying Bank Transaction”** means:

- (i) the disposition by a Lender of any of its rights or interests in the Lending

- Agreements to a Qualifying Bank;
- (ii) the grant by a Lender to a Qualifying Bank of any rights of participation in respect of the Lending Agreements; or
 - (iii) the disposition or grant by a Lender to a Qualifying Bank of any other form of benefit or interest in either the Lending Agreements or the revenues or assets of Project Co, whether by way of security or otherwise.
- (d) **“Qualifying Refinancing”** means any Refinancing that will give rise to a Refinancing Gain that is not an Exempt Refinancing.
- (e) **“Refinancing”** means:
- (i) any amendment, variation, novation, supplement or replacement of any Lending Agreement;
 - (ii) the exercise of any right, or the grant of any waiver or consent, under any Lending Agreement;
 - (iii) the disposition of any rights or interests in, or the creation of any rights of participation in respect of, the Lending Agreements or the creation or granting of any other form of benefit or interest in either the Lending Agreements or the contracts, revenues or assets of Project Co whether by way of security or otherwise; or
 - (iv) any other arrangement put in place by Project Co or another person which has an effect which is similar to any of the foregoing provisions of this definition above or which has the effect of limiting Project Co's ability to carry out any of the foregoing provisions of this definition.
- (f) **“Refinancing Financial Model”** means a comprehensive and detailed financial model satisfactory to SMH, acting reasonably, prepared for the purpose of Section 2 of this Schedule 29, which financial model shall be similar in form and content to the Financial Model, suitable for the purposes for which it will be used in this Schedule 29, and shall take into account:
- (i) cash flows for the entire remaining Project Term;
 - (ii) any changes in structure and funding since the date of this Project Agreement;
 - (iii) the performance of the Works to the date of the Refinancing;
 - (iv) macroeconomic assumptions; and

- (v) all other relevant factors.
- (g) **"Refinancing Gain"** means an amount equal to the greater of zero and $(A - B)$, where:
 - A = the sum of the Senior Debt Amount and Junior Debt Amount as projected to be outstanding at Substantial Completion immediately prior to the Refinancing (using the Refinancing Financial Model but without taking into account the effect of the Refinancing).
 - B = the sum of the Senior Debt Amount and Junior Debt Amount as projected to be outstanding at Substantial Completion immediately prior to the Refinancing (using the Refinancing Financial Model and taking into account the effect of the Refinancing).
- (h) **"Rescue Refinancing"** means any Refinancing which takes place due to the failure or prospective failure of Project Co to comply with any material financial obligation under the Lending Agreements, or any of them, which does not increase any liability of SMH, whether actual or potential.

2. REFINANCING

2.1 Project Co shall not carry out:

- (a) any Qualifying Refinancing unless Project Co has obtained the prior written consent of SMH, which consent, subject to Section 2.2, shall not be unreasonably withheld or delayed; or
- (b) any Exempt Refinancing or any other Refinancing which does not result in a Refinancing Gain unless Project Co has delivered notice of such Refinancing to SMH before 5 Business Days of such Refinancing, except that such notice shall not be required for a disposition by a Lender of its rights or participation in the Lending Agreements where such disposition is a trade of bonds issued as provided under a book-based system of a depository and pursuant to a trust indenture that comprises a portion of the Financing.

2.2 SMH may withhold its consent to any Qualifying Refinancing, in its sole discretion:

- (a) where any person with whom Project Co proposes to carry out a Qualifying Refinancing is a Restricted Person;
- (b) if, at the time the Qualifying Refinancing is contemplated and effected, the Qualifying Refinancing will materially adversely affect the ability of Project Co to perform its obligations under the Project Documents or this Project Agreement; or

- (c) if, at the time the Qualifying Refinancing is contemplated and effected, the Qualifying Refinancing will have the effect of increasing any liability of SMH, whether actual or contingent, present or future, known or unknown.
- 2.3 SMH shall be entitled to receive:
- (a) a [REDACTED]% share of any Refinancing Gain arising from a Qualifying Refinancing, in respect of any Refinancing Gain up to (when considered in aggregate with all previous Qualifying Refinancings) a Refinancing Gain of \$[REDACTED];
- (b) a [REDACTED]% share of any further Refinancing Gain arising from a Qualifying Refinancing, in respect of any Refinancing Gain in excess of \$[REDACTED] and up to (when considered in aggregate with all previous Qualifying Refinancings) a Refinancing Gain of \$[REDACTED]; and
- (c) a [REDACTED]% share of any further Refinancing Gain arising from a Qualifying Refinancing.
- 2.4 Project Co shall promptly provide SMH with full details of any proposed Qualifying Refinancing, including a copy of the proposed Refinancing Financial Model and the basis for the assumptions used in the proposed Refinancing Financial Model. SMH shall (before, during and at any time after any Refinancing) have unrestricted rights of audit over the Refinancing Financial Model and any documentation (including any aspect of the calculation of the Refinancing Gain) used in connection with such Refinancing (whether or not such Refinancing is determined to be a Qualifying Refinancing). Project Co shall promptly, and, in any event, within 5 Business Days of receiving a written request from SMH, provide any information in relation to a proposed Refinancing as SMH may reasonably require. Project Co shall keep SMH informed as to any changes to the terms of the Refinancing. Both SMH and Project Co shall at all time act in good faith with respect to any Refinancing.
- 2.5 SMH's share of the Refinancing Gain shall be received as a reduction in the amount of the Substantial Completion Payment.
- 2.6 SMH and Project Co will negotiate in good faith to agree upon the basis and method of calculation of the Refinancing Gain. If the parties fail to agree upon the basis and method of calculation of the Refinancing Gain or the payment of SMH's share, the Dispute shall be determined in accordance with Schedule 27 - Dispute Resolution Procedure. Both SMH and Project Co shall work collaboratively to establish the rate setting process required to complete the Refinancing.
- 2.7 The Refinancing Gain shall be calculated after taking into account the reasonable out-of-pocket costs that each Party directly incurs in relation to the Qualifying Refinancing and on the basis that, within 15 Business Days of any Qualifying Refinancing, Project Co will reimburse SMH for all such reasonable out-of-pocket costs incurred by SMH.

**SCHEDULE 30
INSURANCE TRUST AGREEMENT**

THIS AGREEMENT is made as of the ____ day of January, 2015

AMONG:

ST. MICHAEL'S HOSPITAL, a non-share capital corporation incorporated under the laws of Ontario

("SMH")

AND:

BANK OF MONTREAL, a Canadian chartered bank, acting as agent for and on behalf of the Lenders

(the "Lenders' Agent")

AND:

2442931 ONTARIO INC., [REDACTED]

("Project Co")

AND:

BNY TRUST COMPANY OF CANADA, a company continued under the *Trust and Loan Companies Act*

(the "Account Trustee")

WHEREAS:

- A. SMH and Project Co have entered into the Project Agreement.
- B. SMH, the Lenders' Agent and Project Co have entered into the Lenders' Direct Agreement.
- C. SMH, the Lenders' Agent and Project Co have agreed that all amounts from time to time contained in the Insurance Trust Account are to be held in trust by the Account Trustee in accordance with the terms of this Insurance Trust Agreement, and that no releases, distributions or transfers of any funds from the Insurance Trust Account shall be made other than in accordance with the terms of this Insurance Trust Agreement.
- D. SMH, the Lenders' Agent and Project Co have agreed that the Bonds are to be held in trust by the Account Trustee in accordance with the terms of this Insurance Trust

Agreement and that no releases of the original copy of the Bonds shall be made other than in accordance with the terms of this Insurance Trust Agreement.

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

In this Insurance Trust Agreement, unless the context otherwise requires:

- (a) “**Account Trustee**” has the meaning given in the introductory paragraph of this Insurance Trust Agreement.
- (b) “**Appointed Representative**” has the meaning given in the Lenders’ Direct Agreement.
- (c) “**Bank**” means Account No. 37529674-18 at BMO Nesbitt Burns.
- (d) “**Bonds**” has the meaning given in Schedule 1 – Definitions and Interpretations of the Project Agreement.
- (e) “**Business Day**” has the meaning given in the Project Agreement.
- (f) “**Change of Authorization Event**” has the meaning given in Section 9(a)(ii) of this Insurance Trust Agreement.
- (g) “**Change of Authorization Notice**” has the meaning given in Section 9(b)(ii) of this Insurance Trust Agreement.
- (h) “**Default Notice**” means a written notice given by the Lenders’ Agent to the Account Trustee and SMH that an event of default under the Lending Agreements has occurred and is continuing.
- (i) “**Default Period**” means the period commencing on the date upon which the Account Trustee and SMH receives a Default Notice and ending on the date upon which the Account Trustee and SMH receives written notice from the Lenders’ Agent that the event of default which was the subject matter of the applicable Default Notice has been cured.
- (j) “**Governmental Authority**” has the meaning given in the Project Agreement.
- (k) “**Insurance Policies**” has the meaning given in Section 4 of this Insurance Trust Agreement.
- (l) “**Insurance Proceeds**” has the meaning given in Section 7(a) of this Insurance Trust Agreement.

Project Agreement - Schedule 30
Redacted Version

St. Michael's Hospital Redevelopment Project

- (m) **"Insurance Trust Account"** means [REDACTED].
- (n) **"Insurance Trust Agreement"** means this Insurance Trust Agreement.
- (o) **"Lenders"** has the meaning given in the Project Agreement.
- (p) **"Lenders' Agent"** has the meaning given in the introductory paragraph of this Insurance Trust Agreement.
- (q) **"Lenders' Direct Agreement"** means the Lenders' Direct Agreement made on or about the date hereof between SMH, Project Co and the Lenders' Agent.
- (r) **"Lending Agreements"** has the meaning given in the Project Agreement.
- (s) **"Multiple Obligee"** means a multiple obligee under the applicable Bond.
- (t) **"Multiple Obligee Rider(s)"** means the multiple obligee rider(s) applicable to the Bonds pursuant to which Project Co, SMH and the Lenders' Agent are multiple obligees under the Bonds.
- (u) **"Notice Period"** has the meaning given in the Lenders' Direct Agreement.
- (v) **"Order"** has the meaning given in Section 8(k) of this Insurance Trust Agreement.
- (w) **"Party"** means any of SMH, Project Co, the Lenders' Agent or the Account Trustee, and **"Parties"** means all of SMH, Project Co, the Lenders' Agent and the Account Trustee.
- (x) **"Project"** has the meaning given in the Project Agreement.
- (y) **"Project Agreement"** means the project agreement made on or about the date hereof between SMH and Project Co.
- (z) **"Project Co"** has the meaning given in the introductory paragraph of this Insurance Trust Agreement.
- (aa) **"Project Co Event of Default"** has the meaning given in the Project Agreement.
- (bb) **"Replacement Project Agreement"** has the meaning given in the Lenders' Direct Agreement.
- (cc) **"Replacement Project Co"** has the meaning given in the Lenders' Direct Agreement.
- (dd) **"SMH"** has the meaning given in the introductory paragraph of this Insurance Trust Agreement.

Project Agreement - Schedule 30
Redacted Version

St. Michael's Hospital Redevelopment Project

- (ee) “**Step-In Notice**” has the meaning given in the Lenders’ Direct Agreement.
- (ff) “**Step-In Period**” has the meaning given in the Lenders’ Direct Agreement.
- (gg) “**Surety**” has the meaning given in the Project Agreement.
- (hh) “**Trust Property**” means all of the property held in trust by the Account Trustee pursuant to this Insurance Trust Agreement, including, without limitation, the original copy of the Bonds, the Insurance Trust Account, and all amounts from time to time contained therein, the Insurance Policies and the Insurance Proceeds.

2. INTERPRETATION

This Insurance Trust Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

- (a) The headings in this Insurance Trust Agreement are for convenience of reference only and shall not constitute a part of this Insurance Trust Agreement or be taken into consideration in the interpretation of, or affect the meaning of, this Insurance Trust Agreement.
- (b) Unless the context otherwise requires, references to specific Sections, Clauses, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Clauses, Paragraphs, Subparagraphs, or divisions of this Insurance Trust Agreement and the terms “Section” and “Clause” are used interchangeably and are synonymous.
- (c) Words importing persons or parties are to be broadly interpreted and include an individual, corporation, limited liability company, joint stock company, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.
- (d) Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.
- (e) References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of this Insurance Trust Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- (f) The words in this Insurance Trust Agreement shall bear their natural meaning.

- (g) References containing terms such as:
- (i) “hereof”, “herein”, “hereto”, “hereinafter”, and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Insurance Trust Agreement taken as a whole; and
 - (ii) “includes” and “including”, whether or not used with the words “without limitation” or “but not limited to”, shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean “includes without limitation” and “including without limitation”.
- (h) In construing this Insurance Trust Agreement, the rule known as the ejusdem generis rule shall not apply nor shall any similar rule or approach to the construction of this Insurance Trust Agreement and, accordingly, general words introduced or followed by the word “other” or “including” or “in particular” shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
- (i) Where this Insurance Trust Agreement states that an obligation shall be performed “no later than” or “within” or “by” a stipulated date or event which is a prescribed number of days after a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (j) Where this Insurance Trust Agreement states that an obligation shall be performed “on” a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (k) Any reference to time of day or date means the local time or date in Toronto, Ontario.
- (l) Unless otherwise indicated, time periods will be strictly construed and time shall be of the essence hereof.
- (m) Whenever the terms “will” or “shall” are used in this Insurance Trust Agreement they shall be construed and interpreted as synonymous and to read “shall”.

3. BONDS AND INSURANCE TRUST ACCOUNT

- (a) Prior to the commencement of a Default Period, the original copy of the Bonds the Insurance Trust Account and all amounts from time to time contained therein,

including interest thereon, shall be held in trust by the Account Trustee for the benefit of Project Co. During a Default Period, the original copy of the Bonds and Insurance Trust Account, and all amounts from time to time contained therein, shall be held in trust by the Account Trustee for the benefit of the Lenders' Agent and the Lenders, provided that, upon receipt by the Account Trustee of a Change of Authorization Notice, the original copy of the Bonds, the Insurance Trust Account, and all amounts from time to time contained therein, shall be held in trust by the Account Trustee for the benefit of SMH.

- (b) The Account Trustee shall not release the original copy of the Bonds or release, distribute or transfer any funds from the Insurance Trust Account other than in accordance with the terms of this Insurance Trust Agreement.
- (c) Notwithstanding any other provision of this Insurance Trust Agreement and subject to Section 3(d), the Lenders' Agent, SMH, and Project Co agree that (x) if Project Co or the Lenders' Agent receives the original copy of the Bonds, the Bonds will be enforced for the purpose of completion of the Project or for such other purpose as may be expressly set out in the Bonds, and (y) if any of them either receives any Insurance Proceeds from the Insurance Trust Account or has the right to direct the Account Trustee to advance funds in respect of any Insurance Proceeds from the Insurance Trust Account to third parties, such funds shall be directed, used or advanced only for one of the following purposes:
 - (i) the repair, reinstatement, restoration or replacement of the Facility or any other assets, materials or goods necessary or desirable for the carrying out of the Works in respect of which such Insurance Proceeds have been paid;
 - (ii) the completion of the Project; or
 - (iii) indemnification for any SMH loss for which the subject Insurance Proceeds were paid under the Insurance Policies (as defined below).

For greater certainty, use of any Insurance Proceeds received in respect of a claim by Project Co for delay in start-up, soft costs or business interruption may be applied in accordance with the terms of the Lending Agreements so as to enable Project Co to carry out the Works.

- (d) Notwithstanding anything in this Insurance Trust Agreement, if SMH is entitled to indemnification under the Insurance Policies in respect of any loss incurred by SMH, such related insurance proceeds are to be paid directly to SMH by the insurer or the Account Trustee and shall not be Insurance Proceeds subject to Section 3(c)(i) or (ii) of this Insurance Trust Agreement. For greater certainty it is understood and agreed that SMH shall be required to use such proceeds for carrying out the purposes referred to in Sections 3(c)(i) and (ii) in respect of which such proceeds have been paid.

4. DELIVERY OF ORIGINAL BONDS AND INSURANCE POLICIES

Project Co shall deliver, or cause to be delivered, to the Account Trustee an original copy of all Bonds Project Co is required to obtain under the Project Agreement and all originals of all insurance policies that Project Co is required to maintain under the Project Agreement (collectively, the “**Insurance Policies**”), and the Account Trustee shall hold the original copy of the Bonds and Insurance Policies in trust for the benefit of each of the beneficiaries and loss payees, as the case may be, thereunder.

5. BONDS

- (a) If the Account Trustee and SMH have received a Default Notice, and if Lender's Agent presents to the Account Trustee (and the other parties to this Insurance Trust Agreement) a declaration that it or any person Lender's Agent designates requires possession of the original copy of the Bonds for the purpose of establishing and/or enforcing the rights of any Multiple Obligee thereunder, and the Account Trustee has received written authorization from SMH confirming Lender's Agent's right to receive the original copy of the Bonds, the Account Trustee shall provide the original copy of the Bonds to Lender's Agent or such designated party, without the need for further investigation or inquiry by the Account Trustee, provided that, if at any time prior to the release of the original copy of the Bonds to Lender's Agent or a person designated by it, pursuant to the foregoing, the Account Trustee receives a Change of Authorization Notice and SMH presents to the Account Trustee a declaration that it or any person designated by it requires possession of the original copy of the Bonds for the purpose of establishing and/or enforcing the rights of any Multiple Obligee thereunder, the Account Trustee shall provide the same to SMH or such designated party, without the need for further investigation or inquiry by the Account Trustee that SMH or the designated party presenting the declaration is entitled to receive the original copy of the Bonds. SMH shall provide, no later than 5 Business Days following receipt by SMH of a request by the Lender's Agent, either (i) the written authorization referred to in this Section 5(a); or (ii) written justification detailing SMH's rationale for refusing to provide such authorization.
- (b) Project Co agrees to obtain or cause to be obtained from the Surety any required amendment to the Bonds to provide for the foregoing provisions by way of amendment or replacement of the Multiple Obligee Rider now attached to and forming part of the Bonds.
- (c) SMH, Lender's Agent and Project Co covenant and agree to observe and perform their respective covenants, agreements and obligations under the provisions of the Lender's Direct Agreement and further covenant and agree as between them, that if there is any conflict or inconsistency between the provisions of Lender's Direct Agreement and this Insurance Trust Agreement, the provisions of the Lender's

Direct Agreement shall govern and prevail to the extent of such conflict or inconsistency.

6. INSURANCE PROCEEDS

- (a) Subject to Section 3(d), the Account Trustee shall distribute any proceeds of any Insurance Policy that are paid over to it by any insurer, Project Co, the Lenders' Agent or SMH (the "**Insurance Proceeds**") as follows:
- (i) in the case of third party legal liability or employer's liability insurance, to the relevant claimant in satisfaction of the claim, demand, proceeding or liability in respect of which such Insurance Proceeds are payable;
 - (ii) in the case of any property builders' risk "All Risk" insurance, boiler and machinery insurance or property insurance policies that Project Co is required to maintain under the Project Agreement:
 - (A) if the Account Trustee has not received a Default Notice and:
 - (1) if the amount of such Insurance Proceeds, together with the aggregate of all Insurance Proceeds in respect of the assets in respect of which such Insurance Proceeds have been paid in the same calendar month, is less than \$[REDACTED], to Project Co to repair, restore or replace the assets in respect of which such Insurance Proceeds have been paid; or
 - (2) if the amount of such Insurance Proceeds, together with the aggregate of all Insurance Proceeds in respect of the assets in respect of which such Insurance Proceeds have been paid in the same calendar month, is equal to or greater than \$[REDACTED], to the Lenders' Agent to reimburse Project Co for the costs of repairing, restoring or replacing the assets in respect of which such Insurance Proceeds have been paid; or
 - (B) if the Account Trustee has received a Default Notice, to the Insurance Trust Account to be distributed by the Account Trustee in such amounts and to such persons as the Lenders' Agent may at any time or from time to time direct in writing, provided that, if the Account Trustee has received a Change of Authorization Notice, the Account Trustee shall release such Insurance Proceeds from the Insurance Trust Account in such amounts and to such parties as SMH may at any time or from time to time direct in writing, in each case, to repair, restore or replace the assets in respect of which such Insurance Proceeds have been paid; and

- (iii) in the case of any other Insurance Policies, to the Lenders' Agent, or, following receipt by the Account Trustee of a Change of Authorization Notice, to SMH, to be distributed to the parties entitled thereto.
- (b) The Account Trustee shall distribute any excess Insurance Proceeds remaining after the distributions contemplated in Section 5(a) have been made, including, without limitation, any Insurance Proceeds held in the Insurance Trust Account:
 - (i) if the Account Trustee has not received a Default Notice, to Project Co; and
 - (ii) if the Account Trustee has received a Default Notice, to such persons as the Lenders' Agent, or, following receipt by the Account Trustee of a Change of Authorization Notice, SMH, may at any time or from time to time direct in writing.
- (c) Each of Project Co, the Lenders' Agent and SMH shall forthwith deliver, or cause to be delivered, to the Account Trustee, any and all Insurance Proceeds it received from time to time and is not otherwise entitled to in accordance with the terms of this Insurance Trust Agreement.
- (d) The Account Trustee shall deposit to the Insurance Trust Account all amounts that are paid over to it pursuant to the Insurance Policies or otherwise by Project Co, SMH or the Lenders' Agent and shall not transfer, release or distribute any such proceeds other than in accordance with this Insurance Trust Agreement.

7. ACCOUNT AGREEMENT

- (a) The Account Trustee hereby agrees to promptly provide to the Lenders' Agent all monthly statements and other information with respect to the Insurance Trust Account provided to the Account Trustee by the Bank pursuant to the relevant account agreement. The Account Trustee further agrees that it shall make such requests to the Bank for additional information with respect to the Insurance Trust Account as the Lenders' Agent may from time to time request in writing.
- (b) The Account Trustee hereby agrees to promptly provide to SMH all monthly statements and other information with respect to the Insurance Trust Account provided to the Account Trustee by the Bank pursuant to the relevant account agreement. The Account Trustee further agrees that it shall make such requests to the Bank for additional information with respect to the Insurance Trust Account as SMH may from time to time request in writing.

8. THE ACCOUNT TRUSTEE

- (a) The Account Trustee shall not have any duty or obligation to manage, control, use, make any payment in respect of, register, record, insure, inspect, sell, dispose

of or otherwise deal with any part of the Trust Property except as expressly provided by the terms of this Insurance Trust Agreement. The Account Trustee shall carry out all written directions given by the Lenders' Agent, SMH or Project Co, as applicable, in accordance with this Insurance Trust Agreement and shall not be required to exercise any discretion in exercising any of its duties under this Insurance Trust Agreement in pursuance of such written directions. The Account Trustee shall not be bound to do or take any act, action or proceeding by virtue of the powers conferred on it hereby unless and until it shall have been required to do so under the terms hereof and has received instruction, advice or direction from the Lenders' Agent, SMH or Project Co, as applicable, as to the action to be taken (except with respect to actions specifically set out herein to be performed by the Account Trustee).

- (b) The Account Trustee will exercise its powers and carry out its obligations hereunder as account trustee honestly, in good faith and in the best interests of the beneficiaries hereunder and in connection therewith will exercise that degree of care, diligence, and skill that a reasonably prudent professional trustee would exercise in comparable circumstances. Unless otherwise required by law, the Account Trustee will not be required to give bond surety or security in any jurisdiction for the performance of any duties or obligations hereunder. No provision of this Insurance Trust Agreement shall be construed to relieve the Account Trustee from liability for its own dishonesty, fraud, negligence (including, without limitation, negligence in the handling of funds), wilful misconduct, bad faith or reckless disregard of any duty hereunder.
- (c) The Account Trustee will not be subject to any liability whatsoever, in tort, contract or otherwise in connection with the Trust Property or the carrying out of its duties under this Insurance Trust Agreement to the Lenders' Agent, the Lenders, SMH, Project Co or any other person for any action taken or permitted by it to be taken, or for its failure to take any action, or for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of the Account Trustee (including, but not limited to, any act or provision of any present or future law or of any Governmental Authority, any act of God or war, or the unavailability of any wire or communication facility), provided that the foregoing limitation will not apply in respect of any action or failure to act arising from or in connection with wilful misconduct, negligence or reckless disregard of duty by the Account Trustee. The Account Trustee in doing anything or permitting anything to be done in respect of the Trust Property or the carrying out of its duties under this Insurance Trust Agreement is, and will be conclusively deemed to be, acting as trustee for the beneficiaries hereunder and not in any other capacity. Except to the extent provided in this Section 8(c), the Account Trustee will not be subject to any liability for debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Trust Property, arising out of anything done or permitted by it to be done or its failure to take any action in

respect of the execution of its duties hereunder and resort will be had solely to the Trust Property for the payment or performance thereof, and no other property or assets of the Account Trustee, whether owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure with regard to any obligation under this Insurance Trust Agreement.

- (d) The Account Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers hereunder, or in acting at the request or direction of the Lenders' Agent on behalf of the Lenders or of SMH or of Project Co, unless it shall have received adequate indemnity or security against such risk or liability satisfactory to it.
- (e) Notwithstanding the foregoing, the Account Trustee shall be liable for any action or failure to act arising from or in connection with the dishonesty, fraud, negligence (including, without limitation, negligence in the handling of funds), wilful misconduct, bad faith or reckless disregard of any duty hereunder by the Account Trustee or any of its directors, officers or employees, or the failure to comply with the standard of care referred to in Section 8(b).
- (f) Except as otherwise provided in Sections 8(c), 8(d) and 8(e):
 - (i) the Account Trustee may rely and shall be protected in acting or refraining from acting upon any signature, resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order or other paper or document reasonably believed by it in good faith to be genuine and to have been signed or presented by the proper party or parties; and
 - (ii) the Account Trustee may exercise its powers and perform its duties by or through such attorneys, representatives, agents and employees as it shall appoint; and may consult with counsel, accountants and other skilled persons selected and employed or retained by it, and the Account Trustee shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the written advice of such counsel, accountants or other skilled persons (provided that such advice pertains to such matters as the Account Trustee may reasonably presume to be within the scope of such person's area of competency) and not contrary to any express provision in this Insurance Trust Agreement.
- (g) Project Co hereby agrees to pay, indemnify and hold harmless the Account Trustee from and against any and all loss, liability, cost, claim and expense incurred by the Account Trustee with respect to the performance of this Insurance Trust Agreement by the Account Trustee or any of the Account Trustee's directors, officers or employees, unless arising from its or their own dishonesty,

- fraud, negligence (including, without limitation, negligence in the handling of funds), wilful misconduct, bad faith or reckless disregard of any duty hereunder.
- (h) Subject to the terms and conditions set forth in the Account Trustee fee letter, the Account Trustee shall receive from the Trust Property reasonable compensation for its services hereunder and shall be reimbursed by Project Co for its reasonable fees and expenses (including the disbursements and reasonable fees of counsel).
 - (i) The Account Trustee agrees to look solely to Project Co, and not, except as expressly set forth herein, to the Lenders' Agent, the Lenders or SMH for any claim for indemnification which may arise under this Insurance Trust Agreement.
 - (j) The Account Trustee shall be responsible for keeping all appropriate books and records relating to the receipt and disbursement of all money which it receives hereunder.
 - (k) If at any time the Account Trustee is served with any judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process which in any way affects the Trust Property held by it hereunder (including, but not limited to, orders of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of Trust Property) (each, an "Order"), the Account Trustee is authorized to comply therewith in any manner as it or legal counsel of its own choosing deems appropriate. The Account Trustee shall in no way be bound to call for further evidence (whether as to due execution validity or effectiveness, or the jurisdiction of any court, or as to the truth of any fact), and shall not be responsible for any loss that may be occasioned by its failing to do so. If the Account Trustee complies with any Order, the Account Trustee shall not be liable to any of the parties hereto or to any other person or entity even though such Order may be subsequently modified or vacated or otherwise determined to have been without legal force or effect. If the Account Trustee is served with any Order, it shall forthwith and, in any event, within three (3) Business Days, deliver a copy of such Order to each of the Lenders' Agent, SMH and Project Co.
 - (l) Unless otherwise specifically set forth herein, the Account Trustee shall proceed as soon as practicable to collect any cheques or other collection items at any time deposited hereunder. All such collections shall be subject to the Account Trustee's usual collection practices or terms regarding items received by the Account Trustee for deposit or collection. Except and to the extent provided herein, the Account Trustee shall not be required, or have any duty, to notify any person of any payment or maturity under the terms of any instrument deposited hereunder, nor to take any legal action to enforce payment of any cheque, note or security deposited hereunder, or to exercise any right or privilege which may be afforded to the holder of any such security.
 - (m) In the event that the Account Trustee determines that any direction, instruction, notice or other communication given under this Insurance Trust Agreement by the

Lenders' Agent or, where the Account Trustee has received a Change of Authorization Notice, SMH, is ambiguous or uncertain, the Account Trustee may, in its sole discretion, refrain from taking any action other than retaining possession of the Trust Property, unless the Account Trustee has received written instructions, signed by the Lenders' Agent or, if the Account Trustee has received a Change of Authorization Notice, SMH, which resolve such ambiguity or uncertainty, provided that the Account Trustee shall, forthwith upon determining that such direction, instruction, notice or other communication is ambiguous or uncertain, seek clarification from the Lenders' Agent, or where the Account Trustee has received a Change of Authorization Notice, SMH, to resolve such ambiguity or uncertainty.

- (n) Prior to receipt of a Change of Authorization Notice by the Account Trustee, any instruction, notice or other communication delivered to the Account Trustee by the Lenders' Agent shall be paramount to and supersede any direction, instruction, notice or other communication from any other party to this Insurance Trust Agreement, and the Account Trustee shall comply with such direction, instruction, notice or other communication from the Lenders' Agent. After the Account Trustee has received a Change of Authorization Notice, any instruction, notice or other communication delivered to the Account Trustee by SMH shall be paramount to and supersede any direction, instruction, notice or other communication from any other party to this Insurance Trust Agreement, and the Account Trustee shall comply with such direction, instruction, notice or other communication from SMH.
- (o) Each of the Lenders' Agent and SMH shall provide to the Account Trustee an incumbency certificate setting out the names and sample signatures of individuals authorized to give instructions to the Account Trustee hereunder. The Account Trustee shall be entitled to rely on each such incumbency certificate until a revised or replacement incumbency certificate is provided to the Account Trustee by the Lenders' Agent or SMH, as applicable. The Account Trustee shall refuse to act upon any instruction given by the Lenders' Agent or SMH which is signed by any person other than an individual named in the incumbency certificate provided to the Account Trustee by the Lenders' Agent or SMH, as applicable, pursuant to this Section 8(o), as any such incumbency certificate may be amended, supplemented or replaced from time to time.
- (p) The Account Trustee shall be entitled to rely on, and act upon, any direction, instruction, notice or other communication provided to it hereunder which is sent to it by facsimile transmission, provided that any such direction, instruction, notice or other communication is signed by an individual named in the incumbency certificate delivered to the Account Trustee by the Lenders' Agent or SMH, as applicable, pursuant to Section 8(o).

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- (q) The Account Trustee 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 Account Trustee, 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 Account Trustee, in its sole judgment, determine at any time that its acting under this Insurance Trust 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 10 days' written notice to Project Co and SMH, or any shorter period of time as agreed to by Project Co and SMH, notwithstanding the provisions of Section 8(a) of this Insurance Trust Agreement, provided that (i) the Account Trustee's written notice shall describe the circumstances of such non-compliance; and (ii) if such circumstances are rectified to the Account Trustee's satisfaction within such 10 day period, then such resignation shall not be effective.

9. LENDER'S AGENT AND SMH RIGHTS TO DIRECT

- (a) Until the first to occur of:
- (i) the expiry of the Notice Period under the Lenders' Direct Agreement where no Step-In Notice has been delivered thereunder;
 - (ii) the expiry of the Step-In Period under the Lenders' Direct Agreement where:
 - (A) there has been no assignment to a Replacement Project Co;
 - (B) no Replacement Project Agreement has been entered into; or
 - (C) the Appointed Representative has not cured the Project Co Event of Default,

(each, a "**Change of Authorization Event**"), the Lenders' Agent shall, subject to Sections 3 and 4 of this Insurance Trust Agreement, have the exclusive right to direct the Account Trustee with respect to the Insurance Trust Account, the Insurance Policies, the Bonds and the Insurance Proceeds.

- (b) Upon the occurrence of a Change of Authorization Event:
- (i) the Lenders' Agent shall cease to be entitled, and SMH shall thenceforth be entitled, to direct the Account Trustee with respect to the Insurance Trust Account, the Insurance Policies, the Bonds and the Insurance Proceeds; and

- (ii) the Lenders' Agent and SMH shall jointly provide notice to the Account Trustee (a "**Change of Authorization Notice**") that SMH shall, as of the date of such Change of Authorization Event, have the exclusive right to direct the Account Trustee with respect to the original copy of the Insurance Trust Account, the Insurance Policies, the Bonds and the Insurance Proceeds.

10. TERMINATION

- (a) Subject to the provisions of Section 10(b), this Insurance Trust Agreement shall remain in full force and effect and be binding in accordance with and to the extent of its terms until:
 - (i) the obligations of Project Co to the Lenders' Agent and the Lenders under the Lending Agreements have been paid and performed in full and the Lenders have no further obligation to make any further advances or other credit accommodations under the Lending Agreements; and
 - (ii) the obligations of Project Co to SMH have been paid and performed in full.
- (b) The Account Trustee may terminate this Insurance Trust Agreement at any time upon 60 days prior written notice to the other parties hereto, provided that no termination of this Insurance Trust Agreement by the Account Trustee shall be effective until such time as the Lenders' Agent, SMH, and Project Co have entered into a replacement Insurance Trust Agreement on the same terms and conditions as this Insurance Trust Agreement with a replacement account trustee satisfactory to the Lenders' Agent, the Lenders and SMH.

11. ASSIGNMENT

The Account Trustee shall not assign, transfer or otherwise dispose of any of its rights or obligations under this Insurance Trust Agreement without the prior written consent of the Lenders' Agent, SMH and Project Co.

12. NOTICES

- (a) All notices, requests, demands, instructions, certificates, consents and other communications required or permitted under this Insurance Trust Agreement shall be in writing (whether or not "written notice" or "notice in writing" is specifically required by the applicable provision of this Insurance Trust Agreement) and served by sending the same by registered mail, facsimile or by hand, as follows:

If to SMH:

[REDACTED]

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Redacted Version**

Fax No.: [REDACTED]

Attn: [REDACTED]

With a copy to the following addressees (which shall not constitute notice):

[REDACTED]

Fax No.: [REDACTED]

Attn.: [REDACTED]

If to the Lenders' Agent:

[REDACTED]

Fax No.: [REDACTED]

Attn.: [REDACTED]

If to Project Co:

[REDACTED]

Fax No.: [REDACTED]

Attn.: [REDACTED]

If to the Account Trustee:

[REDACTED]

Fax No.: [REDACTED]

Attn.: [REDACTED]

- (b) Where any notice is provided or submitted to a Party via facsimile, an original of the notice sent via facsimile shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a Party's failure to comply with this Section 12(b).
- (c) Any Party to this Insurance Trust Agreement may, from time to time, change any of its contact information set forth in Section 12(a) by prior notice to the other Parties, and such change shall be effective on the Business Day that next follows

the recipient Party's receipt of such notice unless a later effective date is given in such notice.

- (d) Subject to Sections 12(e), 12(f) and 12(g):
- (i) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
 - (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
 - (iii) a notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.
- (e) If the Party giving the notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission in accordance with this Section 12.
- (f) If any notice delivered by hand or transmitted by facsimile is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such notice shall be deemed to have been received by such recipient on the next Business Day.
- (g) A notice given by facsimile shall be deemed to have been received by the recipient on the day it is transmitted only if a facsimile transmission report (maintained by the sender) indicates that the transmission of such notice was successful.

13. AMENDMENTS

This Insurance Trust Agreement may not be varied, amended or supplemented except by an agreement in writing signed by duly authorized representatives of the Parties and stating on its face that it is intended to be an amendment, restatement or other modification, as the case may be, to this Insurance Trust Agreement.

14. WAIVER

- (a) No waiver made or given by a Party under or in connection with this Insurance Trust Agreement shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the Party giving such waiver, and delivered by such Party to the other Parties. No waiver made with respect to any right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy.

- (b) Failure by any Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

15. RELATIONSHIP BETWEEN THE PARTIES

The Parties are independent contractors. This Insurance Trust Agreement is not intended to and does not create or establish between the Parties any relationship as partners, joint venturers, employer and employee, master and servant, or, except as provided in this Insurance Trust Agreement, of principal and agent.

16. ENTIRE AGREEMENT

Except where provided otherwise in this Insurance Trust Agreement, this Insurance Trust Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Insurance Trust Agreement.

17. SEVERABILITY

Each provision of this Insurance Trust Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Insurance Trust Agreement is declared invalid, unenforceable or illegal by the courts of a competent jurisdiction, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Insurance Trust Agreement. If any such provision of this Insurance Trust Agreement is invalid, unenforceable or illegal, the Parties shall, acting in good faith, promptly negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Insurance Trust Agreement as near as possible to its original intent and effect.

18. ENUREMENT

This Insurance Trust Agreement shall enure to the benefit of, and be binding on, each of the Parties and their respective successors and permitted transferees and assigns.

19. GOVERNING LAW AND JURISDICTION

- (a) This Insurance Trust Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) The Parties agree that the courts of the Province of Ontario and all courts competent to hear appeals therefrom shall have exclusive jurisdiction to hear and

settle any action, suit, proceeding or dispute in connection with this Insurance Trust Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.

20. FURTHER ASSURANCE

Each Party shall do all things, from time to time, and execute all reasonable further documents necessary to give full effect to this Insurance Trust Agreement.

21. LANGUAGE OF AGREEMENT

Each Party acknowledges having requested and being satisfied that this Insurance Trust Agreement and related documents be drawn in English. Chacune des parties reconnaît avoir demandé que ce document et ses annexes soient rédigés en anglais et s'en déclare satisfaite.

22. COUNTERPARTS

This Insurance Trust Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the Parties shall constitute a full, original and binding agreement for all purposes. Counterparts may be executed either in original or faxed form provided that any Party providing its signature in faxed form shall promptly forward to such Party an original signed copy of this Insurance Trust Agreement which was so faxed.

23. COPYRIGHT NOTICE

The Parties acknowledge that the Queen's Printer for Ontario is the exclusive owner of the copyright in the Project Agreement.

[EXECUTION PAGES IMMEDIATELY FOLLOW]

St. Michael's Hospital Redevelopment Project

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Redacted Version**

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

ST. MICHAEL'S HOSPITAL

[REDACTED]

BANK OF MONTREAL

[REDACTED]

2442931 ONTARIO INC.

[REDACTED]

BNY TRUST COMPANY OF CANADA

[REDACTED]

SCHEDULE 31

PROJECT CO INFORMATION

[REDACTED]

SCHEDULE 32

TRUST ACCOUNT AGREEMENT

THIS TRUST ACCOUNT AGREEMENT is made as of the ____ day of January, 2015

BETWEEN:

ST. MICHAEL'S HOSPITAL, a non-share capital corporation incorporated under the laws of Ontario

("SMH")

AND:

2442931 ONTARIO INC., [REDACTED]

("Project Co")

AND:

BNY TRUST COMPANY OF CANADA, a company continued under the *Trust and Loan Companies Act*

(the "Trustee")

WHEREAS:

- A. SMH and Project Co have entered into the Project Agreement.
- B. The Parties wish to establish a trust account for certain monies in connection with the Project.
- C. SMH is, under the Project Agreement, obligated to pay certain amounts to Project Co, including the Tower Interim Completion Payment, Substantial Completion Payment and any Compensation Payment.
- D. Under the Lenders' Direct Agreement, SMH has been authorized and instructed to pay all sums payable to Project Co under the Project Agreement to the Proceeds Account.
- E. Project Co has granted to the Lenders' Agent for the benefit of the Lenders a security interest in all of its properties, including an assignment of its rights under this Trust Account Agreement and its interest in the Trust Funds.
- F. SMH has irrevocably designated the Trust Account as the "Bank Account" under the SMH Funding and Approval Letter into which payments from MOHLTC of MOHLTC's share of

the Tower Interim Completion Payment, Substantial Completion Payment, any Compensation Payment and any other amounts that may from time to time be payable by SMH to Project Co under the Project Agreement pursuant to the SMH Funding and Approval Letter will be made.

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

In this Trust Account Agreement, unless the context otherwise requires:

- (a) “**Beneficiaries**” has the meaning given in Section 3(a) of this Trust Account Agreement.
- (b) “**Business Day**” has the meaning given in the Project Agreement.
- (c) “**Compensation Payment**” has the meaning given in the Project Agreement.
- (d) “**Dispute Resolution Procedure**” has the meaning given in the Project Agreement.
- (e) “**Governmental Authority**” has the meaning given in the Project Agreement.
- (f) “**IO**” has the meaning given in the Project Agreement.
- (g) “**Lenders**” has the meaning given in the Project Agreement.
- (h) “**Lenders’ Agent**” means Bank of Montreal, acting as agent for and on behalf of the Lenders.
- (i) “**Lenders’ Direct Agreement**” means the lenders’ direct agreement made on or about the date hereof between SMH, Project Co and the Lenders’ Agent.
- (j) “**Major Bond Rating Agency**” means any one of Dominion Bond Rating Service Limited, Standard & Poor’s Rating Group, Moody’s Canada Inc. or any of their successors.
- (k) “**MOHLTC**” has the meaning given in the Project Agreement.
- (l) “**Non-Payment Notice**” has the meaning given in Section 4(d)(ii) of this Trust Account Agreement.
- (m) “**Party**” means any of SMH, Project Co or the Trustee, and “**Parties**” means all of SMH, Project Co and the Trustee.
- (n) “**Payment Instruction**” means a written instruction to the Trustee from:
 - (i) SMH in accordance with Section 4(b)(iii) and in the form attached as **Appendix A hereto**; or

- (ii) SMH and Project Co in accordance with Section 4(b)(i) or 4(b)(ii) and in the form attached as **Appendix B** hereto,
- in each case directing the disposition of Trust Funds.
- (o) **“Permitted Investments”** means:
- (i) demand deposits, term deposits, bankers’ acceptances or certificates of deposit of or guaranteed by any bank or other financial institution which are rated by a Major Bond Rating Agency at least AA (low) or AA-; and
- (ii) any bonds, debentures, notes, bills of exchange, securities or other evidences of indebtedness (including specific interest and principal payments thereof) issued or guaranteed by:
- (A) the Government of Canada; or
- (B) any Province of Canada,
- provided that such instruments are rated by a Major Bond Rating Agency at least AA (low) or AA- (as such ratings are determined as of the date hereof by Dominion Bond Rating Service Limited and Standard & Poor’s Rating Group, respectively).
- (p) **“Privacy Laws”** has the meaning given in Section 7(g) of this Trust Account Agreement.
- (q) **“Proceeds Account”** means [REDACTED].
- (r) **“Project”** has the meaning given in the Project Agreement.
- (s) **“Project Agreement”** means the project agreement made on or about the date hereof between SMH and Project Co (as may be amended, restated and/or supplemented from time to time).
- (t) **“SMH Funding and Approval Letter”** has the meaning given in the Project Agreement.
- (u) **“Substantial Completion Payment”** has the meaning given in the Project Agreement.
- (v) **“Termination Date”** has the meaning given in the Project Agreement.
- (w) **“Tower Interim Completion Payment”** has the meaning given in the Project Agreement.
- (x) **“Trust Account”** means [REDACTED].
- (y) **“Trust Account Agreement”** means this trust account agreement.
- (z) **“Trust Funds”** means, as of any particular time, all monies which have been transferred, conveyed or paid to, or acquired by the Trustee pursuant to this Trust Account Agreement,

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including all income, earnings, profits and gains therefrom, and which at such time are held by the Trustee.

- (aa) “Trustee” means BNY Trust Company of Canada.

2. INTERPRETATION

This Trust Account Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

- (a) The headings in this Trust Account Agreement are for convenience of reference only, shall not constitute a part of this Trust Account Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Trust Account Agreement.
- (b) Unless the context otherwise requires, references to specific Sections, Clauses, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Clauses, Paragraphs, Subparagraphs, or divisions of this Trust Account Agreement and the terms “Section” and “Clause” are used interchangeably and are synonymous.
- (c) Words importing persons or parties are to be broadly interpreted and include an individual, corporation, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.
- (d) Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.
- (e) References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of this Trust Account Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- (f) The words in this Trust Account Agreement shall bear their natural meaning.
- (g) References containing terms such as:
- (i) “hereof”, “herein”, “hereto”, “hereinafter”, and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Trust Account Agreement taken as a whole; and
 - (ii) “includes” and “including”, whether or not used with the words “without limitation” or “but not limited to”, shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean “includes without limitation” and “including without limitation”.

- (h) In construing this Trust Account Agreement, the rule known as the *ejusdem generis* rule shall not apply nor shall any similar rule or approach to the construction of this Trust Account Agreement and, accordingly, general words introduced or followed by the word “other” or “including” or “in particular” shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
- (i) Where this Trust Account Agreement states that an obligation shall be performed “no later than” or “within” or “by” a stipulated date or event which is a prescribed number of days after a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (j) Where this Trust Account Agreement states that an obligation shall be performed “on” a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (k) Any reference to time of day or date means the local time or date in Toronto, Ontario.
- (l) Unless otherwise indicated, time periods will be strictly construed.
- (m) Whenever the terms “will” or “shall” are used in this Trust Account Agreement they shall be construed and interpreted as synonymous and to read “shall”.

3. DECLARATION OF TRUST

- (a) The Trustee hereby declares that it holds in trust as trustee all Trust Funds deposited in the Trust Account for the benefit of Project Co and SMH (collectively, the “**Beneficiaries**” and, individually, a “**Beneficiary**”), in accordance with and subject to the provisions of this Trust Account Agreement.
- (b) The purpose of this Trust Account Agreement is to establish the Trust Account for the benefit of the Beneficiaries and to provide for the delivery and distribution of the Trust Funds in accordance with this Trust Account Agreement.
- (c) The Trustee hereby accepts the trusts and other obligations in this Trust Account Agreement declared and provided and agrees to perform the same upon the terms and conditions herein set forth.

4. PURPOSE

- (a) SMH and Project Co acknowledge and agree that the Trust Account is established for the purpose of:
 - (i) receiving the monies contributed by MOHLTC which are designated, pursuant to the SMH Funding and Approval Letter, for payment of MOHLTC’s share of the Tower Interim Completion Payment, Substantial Completion Payment, any Compensation

Payment and any other amounts that may from time to time be payable by SMH to Project Co under the Project Agreement; and

- (ii) in accordance with the related Payment Instructions, paying to the applicable payee (or as it may direct), any payment that is outstanding under the Project Agreement.
- (b) The Trustee shall not accept any Payment Instruction to distribute Trust Funds other than as follows:
- (i) for the Tower Interim Completion Payment, the Substantial Completion Payment or a Compensation Payment to Project Co, in accordance with a Payment Instruction signed by both SMH and Project Co;
 - (ii) for any other amounts that may from time to time be payable by SMH to Project Co under the Project Agreement, in accordance with a Payment Instruction signed by both SMH and Project Co; or
 - (iii) in accordance with a Payment Instruction signed only by SMH if:
 - (A) the monies are to reimburse MOHLTC for any amount over-contributed by MOHLTC in respect of MOHLTC's share of the Tower Interim Completion Payment, the Substantial Completion Payment, any Compensation Payment or any other amounts that may from time to time be payable by SMH to Project Co under the Project Agreement;
 - (B) the monies are to reimburse SMH for any monies expended by SMH in respect of which SMH at that time has a right of set-off or is entitled to reimbursement under the Project Agreement; or
 - (C) the monies are to pay to SMH interest earned in accordance with Section 8(b),

and SMH certifies as to (A) and/or (B), as applicable. A Payment Instruction given by SMH pursuant to this 4(b)(iii) shall be addressed to Project Co and the Lenders' Agent as well as the Trustee.
- (c) The Trustee shall deliver a copy of any Payment Instruction signed only by SMH under Section 4(b)(iii) to Project Co and the Lenders' Agent forthwith upon receipt and, in any event, not less than five (5) Business Days before the Trustee distributes any Trust Funds pursuant to such Payment Instruction. At any time prior to the distribution of Trust Funds by the Trustee pursuant to the aforementioned Payment Instruction, Project Co may deliver to the Trustee an objection to the distribution of such Trust Funds.
- (d) Project Co agrees that the basis of an objection is limited to:
- (i) that the Payment Instruction is not for any of the purposes set out in Sections 4(b)(iii)(A), 4(b)(iii)(B) or 4(b)(iii)(C) in whole or in part; or

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- (ii) that SMH is, at the time, in default of any of its payment obligations under the Project Agreement and Project Co has issued a notice of non-payment to SMH under Section 35.1(a) of the Project Agreement (the “**Non-Payment Notice**”).
- (e) Project Co shall state in its objection the amount under the Payment Instruction that is disputed which, in the case of 4(d)(ii) above shall not exceed the amount set out in the Non-Payment Notice. The Trustee shall not distribute any disputed Trust Funds until any disputed Payment Instruction has been resolved in accordance with Section 4(g).
- (f) Where the objection is only in respect to a portion of the amount under a Payment Instruction or where the amount under the Non-Payment Notice is less than the amount under the Payment Instruction, the objection of Project Co shall state the amount under the Payment Instruction that is not disputed and the undisputed portion of the amount under the Payment Instruction may be distributed by the Trustee.
- (g) Where Project Co objects to a Payment Instruction signed only by SMH, such dispute shall be resolved in accordance with the Dispute Resolution Procedure and, to the extent that such resolution confirms the entitlement of SMH to a withdrawal of disputed Trust Funds, the Trustee shall distribute such Trust Funds pursuant to a supplementary Payment Instruction signed only by SMH.

5. PAYMENT OF TRUST PROPERTY

- (a) Subject to Sections 4(c) to 4(g), the Trustee will comply with Payment Instructions from SMH under Section 4(b)(iii) and from SMH and Project Co under Sections 4(b)(i) and 4(b)(ii) from time to time given to the Trustee. SMH and Project Co agree that all Payment Instructions shall be consistent with the Project Agreement.
- (b) The Trustee will have the power to incur and make payment of any charges or expenses which in the reasonable opinion of the Trustee are necessary or incidental to or proper for carrying out any of the purposes of this Trust Account Agreement and the administration of the Trust Account.
- (c) The Trustee will be entitled to be paid by Project Co, in default of which the Trustee is entitled to be paid from the Trust Funds, without any requirement of a passing of accounts in respect thereof or approval of any Beneficiary, such fees as the Trustee, SMH and Project Co may agree to from time to time for its services hereunder and all reasonable expenses, disbursements and advances incurred or made by the Trustee in the administration and execution of this Trust Account Agreement until all the duties of the Trustee shall be finally and fully performed, except any such expense, disbursement or advance as may arise from or in connection with the dishonesty, bad faith, wilful misconduct, fraud, negligence or reckless disregard of any duty or the failure to comply with the standard of care referred to in Section 7(a) by the Trustee, its officers, employees or agents. All such amounts will be payable at such times as the Trustee, SMH and Project Co may agree from time to time. Any amount not paid when due shall bear interest at a rate per annum equal to the rate designated by the Trustee as the then current rate charged by the Trustee or its successors from time to time to

its corporate customers, payable on demand. After default, all amounts so payable and the interest thereon shall be payable out of any funds coming into the possession of the Trustee or its successors in the trusts hereunder in priority to any payments to Beneficiaries. Project Co agrees with SMH that any amount not paid by Project Co to the Trustee in accordance with the foregoing and which the Trustee has satisfied by payment out of the Trust Funds may be set-off by SMH against any amounts that may from time to time be payable by SMH to Project Co under the Project Agreement. This Section 5(c) shall survive the termination of this Trust Account Agreement or the resignation or removal of the Trustee.

- (d) Payment Instructions purporting to be given to the Trustee under this Trust Account Agreement will, subject to Sections 4(c) to 4(g), be conclusive authority for the Trustee to act in accordance with that Payment Instruction. The Trustee is not obliged or required to monitor any requirements or obligations of SMH or any other person pursuant to this Trust Account Agreement or any other agreement and has no duty to question any Payment Instruction provided to the Trustee. Subject to Sections 4(c) to 4(g), each of Project Co and SMH authorizes the Trustee to act on any such Payment Instruction and waives any claim or action against the Trustee in connection therewith.

6. REPLACEMENT OF TRUSTEE

- (a) If the Trustee desires to resign and be discharged from the trusts and powers reposed in or conferred on it by this Trust Account Agreement, it shall provide not less than 60 days prior notice in writing thereof, or such lesser notice as SMH and Project Co may accept. SMH and Project Co may, by instrument in writing, jointly appoint a successor trustee that is acceptable to replace the Trustee. If SMH and Project Co fail to appoint a successor trustee within a reasonable period of time, then application will be made by the Trustee to a Justice of the Ontario Superior Court of Justice at Toronto for appointment of a successor trustee hereunder. The resignation of the Trustee shall not be effective until the appointment of its successor in accordance with the provisions of this Section 6(a). The expense of any act, document, deed or other instrument or thing required under this Section 6(a) will be satisfied from the Trust Funds.
- (b) The term of office of the Trustee will automatically terminate and a vacancy will occur in the event of the bankruptcy or insolvency of the Trustee or inability of the Trustee to exercise its duties under this Trust Account Agreement. No vacancy shall operate to annul this Trust Account Agreement. If a vacancy occurs in the office of the Trustee for any reason, SMH and Project Co may, by instrument in writing, jointly appoint a trustee to replace the Trustee. If SMH and Project Co fail to make such appointment, then an application will be made to a Justice of the Ontario Superior Court of Justice at Toronto for appointment of a successor trustee hereunder. Such application will be made by the Trustee or, if the Trustee elects not to do so, by SMH and Project Co. The expense of any act, document, deed or other instrument or thing required under this Section 6(b) will be satisfied from the Trust Funds.

St. Michael's Hospital Redevelopment Project**7. STANDARD OF CARE, LIMITATION OF LIABILITY OF TRUSTEE AND OTHER MATTERS**

- (a) The Trustee will exercise its powers and carry out its obligations hereunder as trustee honestly, in good faith and in the best interests of the Beneficiaries and in connection therewith will exercise that degree of care, diligence, and skill that a reasonable and prudent professional trustee would exercise in comparable circumstances. Unless otherwise required by law, the Trustee will not be required to give a bond, surety or security in any jurisdiction for the performance of any duties or obligations hereunder. The duties, responsibilities and obligations of the Trustee shall be limited to those expressly set forth herein and no duties, responsibilities or obligations shall be inferred or implied. The Trustee shall not be subject to, nor required to comply with, any other agreement between or among any or all of the parties hereto, even though reference thereto may be made herein, or to comply with any direction or instruction other than those contained herein or delivered in accordance herewith. The Trustee shall not be required to, and shall not, expend or risk any of its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder.
- (b) The Trustee will not be subject to any liability whatsoever, in tort, contract or otherwise, in connection with the Trust Funds, to the Beneficiaries, or to any other person, for any action taken or permitted by it to be taken or for its failure to take any action including, without limitation, the failure to compel in any way any former or acting trustee to redress any breach of trust in respect of the execution of the duties of its office or in respect of the Trust Funds, provided that the foregoing limitation will not apply in respect of any action or failure to act arising from or in connection with dishonesty, bad faith, wilful misconduct, fraud, negligence or reckless disregard of a duty by the Trustee. The Trustee, in doing anything or permitting anything to be done in respect of the execution of the duties of its office or in respect of the Trust Funds, is and will be conclusively deemed to be acting as trustee of the Trust and not in any other capacity. Except to the extent provided in this Section 7(b), the Trustee will not be subject to any liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Trust Account, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the execution of the duties of its office or for or in respect of the Trust Funds or the Trust activities and resort will be had solely to the Trust Funds for the payment or performance thereof. No property or assets of the Trustee, owned in its personal capacity or otherwise, will be subject to levy, execution, or other enforcement procedure with regard to any obligation under this Trust Account Agreement.
- (c) Subject as hereinafter specifically provided, the Trustee, its officers, directors, employees and agents, will at all times be indemnified and saved harmless by Project Co, in default of which the Trustee is entitled to be paid out of the Trust Funds, without any requirement of a passing of accounts in respect thereof or the approval of any Beneficiary, from and against all claims, demands, losses, actions, causes of action, costs, charges, expenses, damages and liabilities whatsoever, including without limitation, arising out of or related to actions taken or omitted to be taken by any agent appointed hereunder, reasonable legal fees and disbursements on a substantial indemnity basis and costs and expenses incurred in

connection with the enforcement of this indemnity, which the Trustee may suffer or incur, whether at law or in equity, in any way caused by or arising, directly or indirectly, in respect of any act, deed, matter or thing whatsoever made, done, acquiesced in or omitted in or about or in relation to the execution of its duties as the Trustee or which it sustains or incurs in or about or in relation to the Trust Funds. Further, the Trustee will not be liable to any Beneficiary or to any other person for any loss or damage relating to any matter regarding the Trust Account, including any loss or diminution in the value of the Trust Funds. The foregoing provisions of this Section 7(c) do not apply to the extent that in any circumstances there has been dishonesty, bad faith, wilful misconduct, fraud, negligence or reckless disregard of a duty by the Trustee or its employees or agents engaged by the Trustee in the performance of its duties or obligations hereunder. Notwithstanding any other provision hereof, this indemnity shall survive the removal or resignation of the Trustee and termination of any trust created hereby. Project Co agrees with SMH that any amount not paid by Project Co to the Trustee in accordance with the foregoing and which the Trustee has satisfied by payment out of the Trust Funds may be set-off by SMH against any amounts that may from time to time be payable by SMH to Project Co under the Project Agreement.

- (d) The Trustee may exercise its powers and perform its duties by or through such attorneys, representatives, agents and employees as it shall appoint; and may consult with counsel, accountants and other skilled persons selected and employed or retained by it, and the Trustee shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the written advice of such counsel, accountants or other skilled persons (provided that such advice pertains to such matters as the Trustee may reasonably presume to be within the scope of such person's area of competency) and not contrary to any express provision in this Trust Account Agreement.
- (e) The Trustee may rely and act upon any statement, report or opinion prepared by or any advice received from SMH and Project Co, and shall not be responsible or held liable for any loss resulting from so relying or acting if the Trustee acted reasonably in relying thereon.
- (f) The Trustee 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 Trustee, 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 Trustee, in its sole judgment, determine at any time that its acting under this Trust Account 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 10 days' written notice to Project Co and SMH, or any shorter period of time as agreed to by Project Co and SMH, notwithstanding the provisions of Section 6(a) of this Trust Account Agreement, provided that (i) the Trustee's written notice shall describe the circumstances of such non-compliance; and (ii) if such circumstances are rectified to the Trustee's satisfaction within such 10 day period, then such resignation shall not be effective.
- (g) The parties acknowledge that federal and/or provincial legislation that addresses the protection of individuals' personal information (collectively, "Privacy Laws") may apply to obligations and activities under this Trust Account Agreement. Despite any other provision

of this Trust Account Agreement, neither party shall take or direct any action that would contravene, or cause the other to contravene, applicable Privacy Laws. Project Co and SMH shall, prior to transferring or causing to be transferred personal information to the Trustee, obtain and retain required consents of the relevant individuals to the collection, use and disclosure of their personal information, or shall have determined that such consents either have previously been given upon which the parties can rely or are not required under the Privacy Laws. The Trustee shall use commercially reasonable efforts to ensure that its services hereunder comply with Privacy Laws. Specifically, the Trustee agrees: (a) to have a designated chief privacy officer or any other such individual or individuals designated to ensure compliance with all Privacy Laws; (b) to maintain policies and procedures to protect personal information and to receive and respond to any privacy complaint or inquiry; (c) to use personal information solely for the purposes of providing its services under or ancillary to this Trust Account Agreement and not to use it for any other purpose except with the consent of or direction from Project Co or SMH or the individual involved; (d) not to sell or otherwise improperly disclose personal information to any third party; and (e) to employ administrative, physical and technological safeguards to reasonably secure and protect personal information against loss, theft, or unauthorized access, use or modification.

- (h) Subject to Section 7(c), the Beneficiaries will not be held to have any personal liability as such, and no resort will be had to their private property for satisfaction of any obligation or claim arising out of or in connection with any contract or obligation in respect of which the Beneficiaries would otherwise have to indemnify the Trustee for any liability incurred by the Trustee as such, but rather the Trust Funds only will be subject to levy or execution for such satisfaction.
- (i) Any written instrument creating an obligation of the Trustee will be conclusively deemed to have been executed by the Trustee only in its capacity as the Trustee. Any written instrument creating an obligation of the Trustee will contain a provision to the effect that the obligations thereunder are not binding upon the Trustee except in its capacity as the Trustee, nor will resort be had to the property of the Trustee except in its capacity as the Trustee, but that the Trust Funds or a specific portion thereof only will be bound, and may contain any further provisions which the Trustee may deem appropriate, but the omission of any such provision will not operate to impose liability on the Trustee except as aforesaid.
- (j) If at any time the Trustee is served with any judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process which in any way affects the Trust Funds (including but not limited to orders of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of Trust Funds), the Trustee is authorized to comply therewith in any manner as it or its legal counsel of its own choosing deems appropriate. The Trustee shall in no way be bound to call for further evidence (whether as to due execution, validity or effectiveness, or the jurisdiction of any court, or as to the truth of any fact), and shall not be responsible for any loss that may be occasioned by its failing to do so. If the Trustee complies with any such judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process, the Trustee shall not be liable to any of the parties hereto or to any other person or entity even though such

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order, judgment, decree, writ or process may be subsequently modified or vacated or otherwise determined to have been without legal force or effect.

- (k) The Trustee shall not incur any liability for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of the Trustee (including but not limited to any act or provision of any present or future law or regulation or governmental authority, any act of God or war, or the unavailability of any wire or communication facility).
- (l) Each of SMH and Project Co shall provide to the Trustee an incumbency certificate setting out the names and sample signatures of persons authorized to give instructions to the Trustee hereunder. The Trustee shall be entitled to rely on such certificate until a revised certificate is provided to it hereunder. The Trustee shall be entitled to refuse to act upon any instructions given by a party which are signed by any person other than a person described in the incumbency certificate provided to it pursuant to this section.
- (m) The Trustee agrees to provide prompt written notice of all payments to or withdrawals from the Trust Funds and any amendments to this Trust Account Agreement to each of the Parties hereto and IO and MOHLTC.

8. RECORDS AND OTHER MATTERS

- (a) The Trustee will keep or cause to be kept at Toronto, Ontario or at such other place in Canada designated by it proper records and books of account as are by law or good business practice necessary. Such books and records will be available for inspection by either Beneficiary upon reasonable notice during the normal business hours of the Trustee.
- (b) Any monies held by the Trustee may be invested and reinvested in the name or under the control of the Trustee in Permitted Investments, on the written direction of SMH. Pending such investment, such monies may be placed by the Trustee on deposit in any chartered bank in Canada against demand deposit certificates or with its own deposit department. No Party shall be responsible for ensuring the rate of return, if any, on the Permitted Investments. The Trustee shall have no responsibility or liability for any diminution of the funds invested which may result from any investment made in accordance with this Section 8(b). All interest (and interest on interest) earned shall be the property of SMH.

9. TERMINATION OF THIS AGREEMENT

This Trust Account Agreement will continue in full force and effect from the date hereof until the Termination Date and thereafter for so long as any Trust Funds remain with the Trustee unless earlier terminated by joint written direction of the Beneficiaries.

10. ASSIGNMENT

The Trustee shall not assign, transfer or otherwise dispose of any of its rights or obligations under this Trust Account Agreement without the prior written consent of SMH and Project Co.

St. Michael's Hospital Redevelopment Project**11. NOTICES**

- (a) All notices, requests, demands, instructions, certificates, consents and other communications required or permitted under this Trust Account Agreement shall be in writing (whether or not “written notice” or “notice in writing” is specifically required by the applicable provision of this Trust Account Agreement) and served by sending the same by registered mail, facsimile or by hand, as follows:

If to SMH: [REDACTED]

Fax No.: [REDACTED]
Attn.: [REDACTED]

If to Project Co: [REDACTED]

Fax No.: [REDACTED]
Attn.: [REDACTED]

If to the Trustee: [REDACTED]

Fax: [REDACTED]
Attn.: [REDACTED]

- (b) Where any notice is provided or submitted to a Party via facsimile, an original of the notice sent via facsimile shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a Party's failure to comply with this Section 11(b).
- (c) Any Party to this Trust Account Agreement may, from time to time, change any of its contact information set forth in Section 11(a) by prior notice to the other Parties, and such change shall be effective on the Business Day that next follows the recipient Party's receipt of such notice unless a later effective date is given in such notice.
- (d) Subject to Sections 11(e), 11(f) and 11(g):
- (i) a Notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
 - (ii) a Notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
 - (iii) a Notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.

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- (e) If the Party giving the Notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such Notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission in accordance with this Section 11.
- (f) If any Notice delivered by hand or transmitted by facsimile is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such Notice shall be deemed to have been received by such recipient on the next Business Day.
- (g) A Notice given by facsimile shall be deemed to have been received by the recipient on the day it is transmitted only if a facsimile transmission report (maintained by the sender) indicates that the transmission of such Notice was successful.

12. AMENDMENTS

This Trust Account Agreement may not be varied, amended or supplemented except by an agreement in writing signed by duly authorized representatives of the Parties and stating on its face that it is intended to be an amendment, restatement or other modification, as the case may be, to this Trust Account Agreement.

13. WAIVER

- (a) No waiver made or given by a Party under or in connection with this Trust Account Agreement shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the Party giving such waiver, and delivered by such Party to the other Parties. No waiver made with respect to any right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy.
- (b) Failure by any Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

14. RELATIONSHIP BETWEEN THE PARTIES

The Parties are independent contractors. This Trust Account Agreement is not intended to and does not create or establish between the Parties any relationship as partners, joint venturers, employer and employee, master and servant, or, except as provided in this Trust Account Agreement, of principal and agent.

15. ENTIRE AGREEMENT

Except where provided otherwise in this Trust Account Agreement, this Trust Account Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and

understandings, whether oral, written, express or implied, concerning the subject matter of this Trust Account Agreement.

16. SEVERABILITY

Each provision of this Trust Account Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Trust Account Agreement is declared invalid, unenforceable or illegal by the courts of a competent jurisdiction, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Trust Account Agreement. If any such provision of this Trust Account Agreement is invalid, unenforceable or illegal, the Parties shall, acting in good faith, promptly negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Trust Account Agreement as near as possible to its original intent and effect.

17. ENUREMENT

This Trust Account Agreement shall enure to the benefit of, and be binding on, each of the Parties and their respective successors and permitted transferees and assigns.

18. GOVERNING LAW AND JURISDICTION

- (a) This Trust Account Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) The Parties agree that the courts of the Province of Ontario and all courts competent to hear appeals therefrom shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Trust Account Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.

19. FURTHER ASSURANCE

Each Party shall do all things, from time to time, and execute all further documents necessary to give full effect to this Trust Account Agreement.

20. LANGUAGE OF AGREEMENT

Each Party acknowledges having requested and being satisfied that this Trust Account Agreement and related documents be drawn in English. Chacune des parties reconnaît avoir demandé que ce document et ses annexes soient rédigés en anglais et s'en déclare satisfaite.

21. COUNTERPARTS

This Trust Account Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the Parties shall constitute a full, original and binding agreement for all purposes. Counterparts may be executed either

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in original or faxed form provided that any Party providing its signature in faxed form shall promptly forward to such Party an original signed copy of this Trust Account Agreement which was so faxed.

22. COSTS

Each of Project Co and SMH shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution and delivery of this Trust Account Agreement. Project Co shall be responsible for paying the Trustee's costs and expenses incurred in connection with the negotiation, preparation and execution and delivery of this Trust Account Agreement.

[Remainder of this Page Intentionally Left Blank]

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

ST. MICHAEL'S HOSPITAL
[REDACTED]

2442931 ONTARIO INC.
[REDACTED]

BNY TRUST COMPANY OF CANADA
[REDACTED]

APPENDIX A

FORM OF PAYMENT INSTRUCTION BY SMH ONLY

BNY Trust Company of Canada
[REDACTED]

Dear Sir or Madam,

Re: Instruction for Payment

We refer to the Trust Account Agreement made as of January __, 2015 (the “**Trust Account Agreement**”), between SMH, 2442931 Ontario Inc. and BNY Trust Company of Canada.

In accordance with Section 4(b)(iii) of the Trust Account Agreement, this letter constitutes a Payment Instruction with respect to the payment of Trust Funds by the Trustee. **OR** In accordance with Section 4(g) of the Trust Account Agreement, this letter constitutes a supplementary Payment Instruction with respect to the payment of Trust Funds by the Trustee.

Please transfer the sum of \$[•] to [•] for credit to Account No. [•] maintained in the name [•].

[Where the Payment Instruction is signed by SMH pursuant to Section 4(b)(iii), SMH must also certify that the monies are being drawn as permitted by Section 4(b)(iii) and the Payment Instruction must also be addressed to each of Project Co and Lenders' Agent.]

ST. MICHAEL'S HOSPITAL
[REDACTED]

APPENDIX B

FORM OF PAYMENT INSTRUCTION BY SMH AND PROJECT CO

BNY Trust Company of Canada
[REDACTED]

Dear Sir or Madam,

Re: Instruction for Payment

We refer to the Trust Account Agreement made as of January ____, 2015 (the "Trust Account Agreement"), between SMH, 2442931 Ontario Inc. and BNY Trust Company of Canada.

In accordance with Section 4(b)(i) or 4(b)(ii) of the Trust Account Agreement, this letter constitutes a Payment Instruction with respect to the payment of Trust Funds by the Trustee.

Please transfer the sum of \$[•] to [•] for credit to Account No. [•] maintained in the name [•].

ST. MICHAEL'S HOSPITAL
[REDACTED]

2442931 ONTARIO INC.
[REDACTED]

SCHEDULE 33

ENERGY MATTERS

1. DEFINITIONS

- 1.1 “**Actual Consumption**” means the actual consumption of all Energy at the Tower as determined by the relevant metering data for the Initial Period and the Energy Year, provided that where Energy is provided to the Tower by existing equipment (e.g. existing chillers) then actual consumption shall be determined by the consumption of the provided Energy (e.g. chilled water) by that equipment as measured by installed energy meters.
- 1.2 “**Adjusted Annual Energy Target**” means the Annual Energy Target derived from the Aggregate Energy Model after adjusting pursuant to Sections 2.3 and 2.4 and adjusting for End User Load consumption for the Initial Period and the Energy Year in accordance with this Schedule 33.
- 1.3 “**Adjusted Discrete Annual Energy Target**” or “**ADAET**” means the Discrete Energy Target derived from the Aggregate Energy Model after adjusting pursuant to Sections 2.3 and 2.4 and adjusting for End User Load consumption for the Initial Period and the Energy Year in accordance with this Schedule 33, provided that where Energy is provided to the Tower by existing equipment (e.g. existing chillers) then the ADAET includes Energy delivered by that equipment and not the Energy required to operate the existing equipment; for example, in the case of an existing chiller, the supplied chilled water is included in the ADAET, not the consumption of Energy by any upstream equipment (e.g. electricity used by chillers and distribution pumps).
- 1.4 “**Aggregate Energy Model**” or “**AEM**” means the energy model prepared by Project Co in accordance with Section C.1.28 of Part 1 of Schedule 3 to the Request for Proposals and which shall be submitted to SMH within thirty (30) days after the date of the Project Agreement; as such AEM may be adjusted pursuant to the Final Energy Target Letter and to reflect the Operational Parameters and as may be further adjusted pursuant to this Schedule 33 from time to time.
- 1.5 “**Annual Energy Target**” or “**AET**” means the target consumption of Energy in the Initial Period and the Energy Year in respect of each of the Tower Load, the Secondary Tower Load and the End User Load; provided that where Energy is provided by existing equipment (e.g. existing chillers) then the Annual Energy Target includes Energy delivered by that equipment and not the Energy required to operate the existing equipment; for example, in the case of an existing chiller, the supplied chilled water is included in the Annual Energy Target, not the consumption of Energy by any upstream equipment (e.g. electricity used by chillers and distribution pumps).
- 1.6 “**Annual Review Date**” means the anniversary of the end of the Initial Period.

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- 1.7 **“Discrete Energy Unit Cost”** means the cost of each unit of an individual Energy Service indexed to CPI in accordance with Section 2.31 of Schedule 1 of the Project Agreement, which as of the date of the Project Agreement shall be as follows:

[REDACTED]

provided that where Energy is provided to the Tower by existing equipment (e.g. an existing chiller) reasonable operating efficiencies must be assumed and agreed upon by Project Co and SMH in determining the applicable unit cost of that Energy and provided further that if the Parties are unable to agree upon the unit cost of such Energy, the matter shall be resolved pursuant to the Dispute Resolution Procedure, which may, for clarity, require a determination of the unit cost of such Energy by adjudication in accordance with Section 6 of Schedule 27.

- 1.8 **“Discrete Energy Service Actual Consumption”** means the actual consumption of an individual Energy Service at the Tower as determined by the relevant metering data for such Energy Service for the Initial Period and the Energy Year. In addition, the Energy provided to the Tower by existing equipment (e.g. existing chillers) will be determined by additional metering data from installed Energy meters as adjusted by modeling for reasonable operating efficiencies for such existing equipment as agreed upon by Project Co and SMH, both acting reasonably, provided that if Project Co and SMH are unable to reach such an agreement, the matter shall be resolved pursuant to the Dispute Resolution Procedure.
- 1.9 **“Discrete Energy Target(s)”** or **“DET”** means the target consumption of an individual Energy Service in the Initial Period and Energy Year in respect of the Tower Load, the Secondary Tower Load and the End User Load. Energy Service shall include any energy provided by existing equipment.
- 1.10 **“End User Equipment Ratios”** means the ratios of the increases or decreases of the Tower Load to the corresponding End User Load consumption which caused the increase or decrease in the Tower Load as determined pursuant to Section 2.4(c). For greater certainty, the End User Equipment Ratios may vary over time depending on the season and other factors.
- 1.11 **“End User Load”** means the provision of Energy other than Tower Load (including Secondary Tower Load) as defined in this Schedule 33 including, but not limited to, any receptacle loads, central computer servers, autoclave steam, specialized medical equipment, communications and IT equipment and any built-in audio visual systems provided by SMH and not by Project Co.
- 1.12 **“Energy”** means energy, including electricity, natural gas, district steam, oil and any other energy source used at the Tower measured at the utility connection and measured at installed energy meters for energy provided by existing equipment (e.g. chillers).
- 1.13 **“Energy Analysis Report”** is described in Sections 8.7, 8.8 and 8.9 of this Schedule 33.

- 1.14 “**Energy Service**” means any metered provision of Energy in respect of the Tower Load (including the Secondary Tower Load) and the End User Load, and including any metered or modeled provision of Energy supplied by any existing equipment (e.g. chillers).
- 1.15 “**Energy Year**” means the period of 12 months beginning on the day after the expiry of the Initial Period and ending on the first Annual Review Date.
- 1.16 “**Final Energy Target Letter**” means the letter submitted by Project Co to SMH pursuant to Schedule 2 to the Project Agreement.
- 1.17 “**Gainshare Adjustment**” means the adjustment calculated in accordance with this Schedule 33.
- 1.18 “**Initial Period**” means the period beginning on the first day of the fourth full calendar month immediately after the Tower Interim Completion Date and ending one year thereafter.
- 1.19 “**Operational Parameters**” are those inputs into the Aggregate Energy Model that are under the control of SMH or its designated responsible person for the operations and maintenance of HVAC, lighting, mechanical, electrical, architectural and structural systems, and other energy consuming systems that impact the Tower Load, as may be adjusted pursuant to this Schedule 33 from time to time. The Parties shall agree upon the original Operational Parameters within sixty (60) days after the date of the Project Agreement.
- 1.20 “**Operational Watchdog**” is described in Section 9 of this Schedule 33.
- 1.21 “**Painshare Adjustment**” means the adjustment calculated in accordance with this Schedule 33.
- 1.22 “**Periodic Energy Report**” shall have the meaning given to it in Section 4.1 of Appendix B of this Schedule 33.
- 1.23 “**Quarterly Monitoring Meeting**” has the meaning set out in Section 2.2 of Appendix B of this Schedule 33.
- 1.24 “**Review Meeting**” has the meaning set out in Section 8.4.
- 1.25 “**Secondary Tower Load**” means that portion of the Tower Load that varies in response to and dependent on the End User Loads. The Secondary Tower Load is a type of Tower Load which is included in the Adjusted Annual Energy Target and is a product of the applicable End User Equipment Ratios and corresponding End User Loads.
- 1.26 “**Tower Load**” means provision of Energy for the base building systems and equipment designed and provided by Project Co for the basic functioning of the Tower. Such uses include, but are not limited to, humidification, space cooling, dehumidification, space

heating, ventilation loads, fans, lighting, HVAC pumping, HVAC equipment, domestic water pumping, domestic water heating, general (non-task) lighting, security systems, IT server room cooling and controls, vertical transportation systems, security systems and AV systems.

- 1.27 “**Unit of Energy**” means one GigaJoule (GJ) or such other applicable unit of Energy, as the case may be. .
- 1.28 “**Utilities Management Subcommittee**” has the meaning set out in Section 2.3 of Appendix B of this Schedule 33.
- 1.29 “**Weather Data**” means meteorological data as reported by Environment Canada and provided in format CTMY2 for the location Pearson Airport, Toronto, Ontario.

2. CALCULATION OF ANNUAL ENERGY TARGET

2.1 Purpose

- (a) The Annual Energy Target and the Discrete Energy Target(s) shall be established in respect of the entire Tower pursuant to Section 2.3. The Adjusted Annual Energy Target and the Adjusted Discrete Annual Energy Target upon which any Painshare Adjustment or Gainshare Adjustment calculations are made shall be based upon subtracting End User Load consumption and making any adjustments pursuant to Sections 2.3 and 2.4 for the Initial Period and the Energy Year.
- (b) After the Parties agree to the Operational Parameters following the date of the Project Agreement, the Operational Parameters may be adjusted, from time to time, by Project Co following consultation with, and approval of SMH, acting reasonably, during the Initial Period and Energy Year to reflect changes in the manner in which the Tower is being operated by SMH. The impact of such adjustments shall be reflected and accounted for in the Adjusted Annual Energy Target and the Adjusted Discrete Annual Energy Target pursuant to and in accordance with Section 2.4(e).
- (c) If separate or additional meters or metering plans are required to implement the terms of this Schedule 33 which are in addition to the metering or metering plans required by the terms of the Project Agreement (including the Output Specifications), Project Co shall provide notice thereof to SMH and the Parties shall meet within ten (10) Business Days of such notice to consult with respect to such separate or additional meters or metering plans and to reach an agreement on whether a Variation is required as a result of such separate or additional meters or metering plans, and, if the Parties have not, within ten (10) Business Days of this meeting, reached an agreement, either Party may refer the Dispute for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.

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- (d) The Parties acknowledge and agree that nothing in this Schedule 33 limits, amends or constitutes a waiver of SMH's rights or remedies under the Project Agreement in respect of any failure of the Facility or the Works to satisfy the Output Specifications or any other term or condition of the Project Agreement, including but not limited to, in respect of Phase Minor Deficiencies, Minor Deficiencies, Construction Defects and Construction Latent Defects.

2.2 Annual Energy Target

- (a) The initial Annual Energy Target and the initial Discrete Energy Target(s) are as set out in the Final Energy Target Letter.
- (b) If Section 3.1(a)(i) applies in respect of the Initial Period, Project Co shall, at its sole cost and expense, take corrective action in accordance with Section 3.1(b) to improve the energy performance of the Tower.
- (c) The Annual Energy Target and the Discrete Energy Target(s) shall be adjusted in accordance with this Schedule 33.

2.3 Program or Variation Adjustments to the Annual Energy Target

- (a) At any time commencing after the first anniversary of the date that is four months following the Tower Interim Completion Date, either Project Co or SMH may request an energy audit as contemplated in Section 2.3(c), and Project Co and SMH shall, acting reasonably, agree to make any adjustments to the Annual Energy Target and the Discrete Energy Target(s) only in the event of:
 - (i) changes implemented in accordance with the Project Agreement that would cause Tower Load and/or Secondary Tower Load changes or other changes in Energy usage; or
 - (ii) changes in the utilization, occupancy or operations of the Tower from that described in the Project Agreement, but not including changes in End User Load consumption.
- (b) Pursuant to Section 2.3(a), Project Co may elect to propose a correction to the Annual Energy Target and the Discrete Energy Target(s).
- (c) The Party requesting an amendment to the Annual Energy Target and the Discrete Energy Target(s) as a result of either Section 2.3(a) or (b) shall appoint, subject to the other Party's approval (acting reasonably), a partial or complete energy audit, as may be required by the circumstances, to be conducted by a third party auditor. With respect to Section 2.3(a)(i) and Section 2.3(a)(ii), the Party responsible for the changes will be responsible for the cost of the audit. With respect to Section 2.3(b), Project Co will be responsible for the cost of the audit. The energy audit shall include a detailed computer simulation of Energy use by function and a

comprehensive evaluation of Energy use patterns. The energy auditor shall prepare a report making a recommendation regarding amendments to the Annual Energy Target and Discrete Energy Target(s). Both SMH and Project Co shall have twenty (20) days following receipt of such report to agree to the amended Annual Energy Target and Discrete Energy Target(s). If there is no agreement within a further ten (10) day period, then either Party may refer the matter to the Dispute Resolution Procedure.

2.4 Annual Adjustments to the Annual Energy Target

- (a) By no later than thirty (30) days after the end of each of the Initial Period and the Energy Year, Project Co shall provide to SMH a certificate showing the Actual Consumption and the Discrete Energy Service Actual Consumption in each calendar month during the Initial Period or the Energy Year, as applicable, expressed as a number of Units of Energy and measured in accordance with Section 8.
- (b) Project Co and SMH shall obtain the Weather Data from Environment Canada. Project Co and SMH shall then adjust the Aggregate Energy Model by revising the following input data:
 - (i) the only inputs to be adjusted in Weather Data shall be dry bulb temperature, dew point temperature, total horizontal radiation, atmospheric pressure, wind speed and wind direction. Hourly values for the Initial Period or the Energy Year, as applicable, shall be obtained for weather station Pearson Airport, Ontario from Environment Canada. To adjust the weather file, start with the Energy Plus weather file for the same location as specified for Weather Data (.epw extension). Convert this file to a .csv file and import into Excel. Adjust the Dry Bulb Temperature and Dew Point Temperature as per the Environment Canada weather data and save. Convert this file back to .epw. Use the program eQ_WthProc (available from www.doe2.com) to convert the new .epw file into a .bin file for use with the model.
- (c) The End User Equipment Ratios shall be calculated by Project Co and agreed upon between Project Co and SMH at the end of the Initial Period. The End User Equipment Ratio for a particular time period will be equal to the weighted-average ratio of the sum of increases or decreases in the Tower Loads that are attributable to the increases or decreases in the End User Load Consumption to the corresponding sum of the End User Loads or based on the affected equipment's manufacturer's data, as the case may be, for the applicable time period. The End User Equipment Ratios are used to ensure that any internal gains or reduction resulting from the change in End User Load consumption are adequately represented in the calculation of the Adjusted Annual Energy Target and the ADAET. If manufacturer's data is not available for specific pieces of such equipment, a reasonable ratio will be determined and agreed upon between

Project Co and SMH for such equipment. The product of the End User Equipment Ratios with their corresponding End User Load, will be represented in the Aggregate Energy Model as Secondary Tower Load, so that the internal gains or losses associated with the changes in the End User Load consumption are appropriately captured in the Annual Energy Target and the Discrete Energy Target. When equipment is added to or removed from the Tower, the End User Equipment Ratios may be adjusted, in the year following the Initial Period upon the written consent of both SMH and Project Co, to account for the changes in equipment. The Parties acknowledge that internal gains may increase or decrease through these changes, depending on the specific changes to the End User Load during the Initial Period and the Energy Year. Project Co shall provide metering such that End User Loads are on separate meters from other Tower Loads, provided that if any separate or additional meters are required to meter End User Loads which are in addition to the metering required by the terms of the Project Agreement, the provisions of Section 2.1(c) shall apply with respect to the costs associated with such separate or additional meters. Project Co and SMH shall then adjust the Annual Energy Target accordingly.

- (d) Project Co shall provide SMH with the End User Load Energy consumption from the metered data. If the End User Load consumption as per the metered data provided by Project Co increases or decreases from the assumed values for such consumption in the Aggregate Energy Model for the Initial Period and the Energy Year, then the new End User Load consumption shall be entered into and shall adjust the Annual Energy Target. This adjustment shall also include the adjustment to the Secondary Tower Load.
- (e) The Operational Parameters used in the Aggregate Energy Model will be updated in accordance with the reasonable observations made by the Operational Watchdog and following the obtainment of the approval of SMH, acting reasonably. Subject to the approval of SMH, acting reasonably, the Operational Parameters will be updated at the end of the Initial Period and throughout the Energy Year if changes to the Operational Parameters are required as a result of the observations of the Operational Watchdog. These observations will be provided to SMH and Project Co at the end of the Initial Period as well as throughout the Energy Year through the quarterly energy meetings. The potential changes include all operation and maintenance items that are within the control of SMH that impact the Tower Load, including, without limitation, system set points, operational schedules (including those controlled by end-users) for fans, pumps, lights, ventilation, expected occupancy (e.g. office hours) that can drive changes in Tower Loads outside of the Secondary Tower Loads, the maintenance of energy saving control devices and sensors (e.g. occupancy and daylighting sensors), VFD pumps, VFD fans, filter maintenance, ventilation rates and demand control ventilation controls and sensors (if any) and minimum supply fan flow rates.

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- (f) Notwithstanding the Annual Energy Target, SMH acknowledges that changes to the Operational Parameters from the design intent specified in Schedule 15 – Output Specifications may not be modelled within the Aggregate Energy Model. In addition, some changes to the Operational Parameters may have knock-on effects or other implications in the Aggregate Energy Model. Should such changes be identified by the Operational Watchdog, Project Co and SMH shall negotiate in good faith their impact on the Annual Energy Target and Discrete Energy Targets, if any.
- (g) Any other modifications to the Aggregate Energy Model are subject to the procedure outlined in Section 2.3(c) of this Schedule 33.
- (h) SMH may, in its sole discretion, appoint an auditor to audit Project Co's adjustments (including all input data) in accordance with Section 2.3(c), above. If the audit concludes that Project Co has materially overestimated the adjustments to the Aggregate Energy Model, then Project Co shall reimburse SMH for its costs incurred in respect of the audit.

3. COMPARING ACTUAL CONSUMPTION OF ENERGY WITH TARGET**3.1 Comparing Annual Energy Target**

- (a) After the acceptance of the Energy Analysis Report described in Sections 8.7 to 8.9 for each of the Initial Period and the Energy Year, the Discrete Energy Service Actual Consumption for each Energy Service shall be compared to the Adjusted Discrete Annual Energy Target for each Energy Service, and:
 - (i) if the Discrete Energy Service Actual Consumption in respect of any discrete Energy Service is greater than [REDACTED]% of the Adjusted Discrete Annual Energy Target in respect of such Energy Service then if such calculation is in respect of the Initial Period, Section 3.1(b) shall apply, and if such calculation is in respect of the Energy Year, Project Co shall calculate the Painshare Adjustment for the applicable Energy Services set out in Section 4.1(b); and
 - (ii) if the Discrete Energy Service Actual Consumption in respect of any discrete Energy Service is less than [REDACTED]% of the Adjusted Discrete Annual Energy Target in respect of such Energy Service then if such calculation is in respect of the Energy Year, Project Co shall calculate the Gainshare Adjustment for the applicable Energy Services set out in Section 0;

For greater certainty, it is possible for both the Gainshare Adjustment and the Painshare Adjustment to apply, where certain Energy Services exceed the applicable Adjusted Discrete Annual Energy Target and others are less than the Adjusted Discrete Annual Energy Target.

Illustration for the Energy Year

Energy Service	Year "X"	Painshare Adjustment/Gainshare Adjustment then equals:
If the positive or negative variance from ADAET for the purposes of calculating the Painshare Adjustment or Gainshare Adjustment in the Energy Year was:	[REDACTED]	0
If the positive or negative variance from ADAET for the purposes of calculating the Painshare Adjustment or Gainshare Adjustment in the Energy Year was:	[REDACTED]	To be calculated in accordance with Section 4.1

- (b) If Section 3.1(a)(i) applies in respect of the Initial Period, then Project Co and SMH shall meet within fourteen (14) days of the calculation pursuant to Section 3.1(a) to discuss means and measures to reduce the relevant Discrete Energy Service Actual Consumption such that it will not exceed the [REDACTED]% threshold established in Section 3.1(a)(i) for the Energy Year. Within no more than thirty (30) days of such meeting, Project Co shall submit to SMH a detailed plan to implement means and measures to reduce the relevant Discrete Energy Service Actual Consumption. Subject to and following the approval of such plan by SMH, acting reasonably, and with the reasonable assistance and coordination of SMH, Project Co shall use commercially reasonable efforts to implement such plan. If the implementation of such plan by Project Co is not successful such that the Painshare Adjustment in Section 3.1(a)(i) is applied with respect to such Discrete Energy Service Actual Consumption for the Energy Year, then the Painshare Adjustment set out in Section 4.1(b) will apply.

4. CALCULATION OF GAINSHARE ADJUSTMENT OR PAINSHARE ADJUSTMENT

- 4.1 The formulae to calculate the Gainshare Adjustment and the Painshare Adjustment for each Energy Service are:

- (a) For the purposes of Section 4.1(b):

[REDACTED]

- (b) In respect of the Energy Year:
[REDACTED]
- (c) In respect of the Energy Year:
[REDACTED]
- (d) Any disputes regarding the determination of whether a Painshare Adjustment or Gainshare Adjustment for an Energy Service shall apply in respect of the Energy Year or regarding the calculation of the amount of a Painshare Adjustment or Gainshare Adjustment for an Energy Service shall be subject to the Dispute Resolution Procedure.

5. [Intentionally Deleted]

6. APPLICATION OF GAINSHARE ADJUSTMENT OR PAINSHARE ADJUSTMENT

- 6.1 Where it is established in accordance with this Schedule 33 that a Painshare Adjustment arises, upon Notice from SMH to Project Co, provided that such Notice shall not be provided until after the payment of the Substantial Completion Payment by SMH, the amount of such Painshare Adjustment shall automatically become an amount due and owing by Project Co to SMH under the Project Agreement and shall be paid by Project Co to SMH within 30 days following the date such Notice is received. If such payment is not made by Project Co to SMH by the expiry of such 30 day period, SMH may, in its sole discretion:
- (a) draw down on the Warranty Letter of Credit for up to an amount equal to the amount of the Painshare Adjustment, and/or
 - (b) without duplication of any amount drawn down by SMH from the Warranty Letter of Credit, demand in a Notice to the Construction Guarantor that the Construction Guarantor make such payment (or any portion thereof) for and on behalf of Project Co pursuant to the Performance Guarantee of Construction Guarantor, which payment shall be promptly made to SMH by the Construction Guarantor without further inquiry within 10 Business Days following the Construction Guarantor's receipt of such Notice.
- 6.2 Where it is established in accordance with this Schedule 33 that a Gainshare Adjustment arises, upon Notice from Project Co to SMH, provided that such Notice shall not be provided until after the payment of the Substantial Completion Payment by SMH, the amount of such Gainshare Adjustment shall automatically become an amount due and owing by SMH to Project Co under the Project Agreement and shall be paid by SMH to Project Co within 30 days following the date such Notice is received.

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6.3 The Parties confirm that the Financial Model contains no provision for the cost of purchasing Energy.

7. SUPPLY OF ENERGY

7.1 SMH shall from time to time as required enter into contracts with Energy suppliers for the supply of Energy to the Tower and shall be responsible for all payments due pursuant to such supply contracts.

7.2 The Parties agree that it is important to maintain an appropriate balance between (i) on the one hand, ensuring the efficient use of Energy and minimizing the level of emissions of greenhouse gases and harmful substances caused by the use of Energy (regardless of where the Energy is generated) and (ii) on the other hand, minimizing the monetary cost of Energy usage.

8. MEASUREMENT

8.1 Without prejudice to Schedule 15 – Output Specifications or anything else in this Schedule 33, Project Co shall measure the amount of Actual Consumption and Discrete Energy Service Actual Consumption for the Tower in respect of each calendar month beginning at the start of the Initial Period and ending on the expiry of the Energy Year.

8.2 Without prejudice to Schedule 15 – Output Specifications or anything else in this Schedule 33, Project Co shall provide to SMH a summary of Actual Consumption and Discrete Energy Service Actual Consumption in respect of each type of Energy at the Tower, at the end of each month of the Initial Period and the Energy Year, in the form of a monthly report. For greater certainty, End User Loads, Tower Loads and Secondary Tower Loads should be set out separately in the monthly report.

8.3 Project Co shall provide SMH with a draft Energy Analysis Report within sixty (60) days following the end of each of Initial Period and the Energy Year, which report shall include copies of all working papers to fully support the draft Energy Analysis Report. The draft Energy Analysis Report shall be consistent with the format and content requirements set out in Sections 8.7 to 8.9 of this Schedule 33.

8.4 As soon as practicable and in any event within eighty (80) days following the end of each of the Initial Period and the Energy Year (or on such other date as may be agreed between SMH and Project Co), Project Co and SMH shall convene a review meeting to be attended by the Project Co Representative, the SMH Representative and such other individuals as may be agreed to by the Parties (the “**Review Meeting**”). At the Review Meeting, Project Co shall present the draft Energy Analysis Report to SMH, and SMH and Project Co shall discuss the Actual Consumption and the Discrete Energy Service Actual Consumption for each discrete Energy Service for the preceding year and Energy Services.

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- 8.5 SMH shall promptly notify Project Co of the details of any disagreement of all or any aspect of the draft Energy Analysis Report, and the parties shall then seek to agree to any matters in dispute, but where matters cannot be resolved within a twenty (20) day period (or such other period as may be otherwise agreed between the SMH Representative and the Project Co Representative, acting reasonably) it shall be dealt with in accordance with the Dispute Resolution Procedure.
- 8.6 Subject to Section 8.5, within twenty (20) days following the Review Meeting, or within such period as may be otherwise agreed between the SMH Representative and the Project Co Representatives, acting reasonably:
- (i) SMH shall confirm its acceptance of all or any aspect of the Energy Analysis Report; and
 - (ii) subject to Sections 2 and 3, Project Co and SMH shall agree to any adjustments to the Annual Energy Target and the Discrete Energy Target(s) after taking into account load, changes to the Operational Parameters or usage changes as a result of any changes in occupancy, utilization or operations.
- 8.7 Content and Format of the Energy Analysis Report
- (a) The Energy Analysis Report shall present findings of Actual Consumption and the Discrete Energy Service Actual Consumption for each separate Energy Service for each of the Initial Period and the Energy Year and shall include the following:
 - (i) a summary of actual usage and breakdown by utility in megajoules, kilowatt-hours and cubic meters, or other utility rate units, and shall include the actual usage and breakdown by Energy Service in the Unit of Energy. The summary should also highlight any exceptional changes in consumption or pattern of use since any previous survey; and
 - (ii) accurate and precise metering and consumption data.
- 8.8 The objectives of the Energy Analysis Report are to confirm Actual Consumption and Discrete Energy Service Actual Consumption for each individual Energy Service at the Tower in each of the Initial Period and the Energy Year and to provide data to calculate Adjusted Annual Energy Target and Adjusted Discrete Annual Energy Target for each individual Energy Service.
- 8.9 Consistent with the objectives set out in Section 8.8 of this Schedule 33, Project Co shall ensure that the Energy Analysis Report has the following components:
- (a) presentation of Actual Consumption, Discrete Energy Service Actual Consumption for each individual Energy Service and the Adjusted Annual Energy Target;

- (b) correlated energy Weather Data graph;
- (c) establishment of a basis for continued monitoring of energy and utility consumption and adjustments to the Annual Energy Target and/or the Discrete Energy Targets; and
- (d) utility metering data collected by Project Co shall be presented in the table set out in Appendix A to this Schedule 33.
- (e) Detailed analysis of metered end-uses:
 - Lighting systems and controls;
 - Steam supplied by Enwave;
 - Heating water supplied by Enwave;
 - HVAC distribution pump energy;
 - Chiller plant;
 - Chilled water – tenants;
 - Air handling systems – fan energy;
 - Air handling systems - cooling energy;
 - Air handling systems - heating energy;
 - Natural gas – tenants;
 - Domestic water use – patient care, public, administration;
 - Domestic water use - tenant;
 - Domestic water use – irrigation (if applicable);
 - Domestic water use – process;
 - Domestic water use – cooling tower makeup;
 - Domestic water distribution pump energy;
 - Service Water Heating supplied by Enwave;

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- Building related process energy and equipment;
 - IT server room and associated cooling;
 - Vertical transportation systems;
 - Pneumatic Tube System Blowers;
 - Security Systems;
 - Electrical energy – tenants;
 - End User Loads;
 - Any additional system(s) required to obtain LEED Credit EAc5: Measurement and Verification; and
 - Any other metered systems.
- (f) Detailed description of building systems:
- Variable frequency drive operation;
 - Air and water economizer and heat recovery cycles;
 - Air distribution static pressures and ventilation air volumes; and
 - Any other pertinent information regarding system performance as it affects Energy consumption.
- (g) Adjustments to the Annual Energy Target and Discrete Energy Target(s), complete with detailed explanations of any changes made to the Aggregate Energy Model.
- (h) Adjustments made to the Annual Energy Target and Discrete Energy Target(s) due to the implementation of any Variations pursuant to Schedule 22 – Variation Procedure of the Project Agreement.
- (i) Table showing the percentage variation in Actual Consumption against the Adjusted Annual Energy Target, the Adjusted Discrete Energy Target(s) and the Discrete Energy Service Actual Consumption for each discrete Energy Service.
- (j) Tables and graphs showing the consumption, unit costs, and total costs for all purchased Energy for the previous twelve (12) months. Breakdown of Energy

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types and costs for each energy use described in this Schedule 33 and any other major energy use for the previous twelve (12) months.

- (k) Appendices - The appendices shall include graphs, calculations and miscellaneous data that are relevant to the Energy Analysis Report.

9. OPERATIONAL WATCHDOG

- 9.1 The Actual Consumption of the Tower is significantly impacted by Operational Parameters that are primarily within the control and responsibility of SMH during the Initial Period, the Energy Year and the remaining lifetime of the Tower. These Operational Parameters may contradict the design intent (e.g. temperature setpoints for space temperature, hot/cold water supply) as well as the inputs used to develop the Aggregate Energy Model and the Aggregate Energy Target. SMH's primary responsibility is to operate and maintain the Tower to minimize complaints, and reduce operating costs. However, SMH may be partially insulated from Energy cost increases due to energy impacting operational adjustments to the buildings systems, and Project Co may take on cost responsibility for aspects of the operation that it has no authority over. Therefore, the Operational Watchdog will observe the operations of the Tower and report on Operational Parameters that change inputs to the Aggregate Energy Model and that will impact the Adjusted Annual Energy Target.
- 9.2 Project Co may, at its sole cost and expense, appoint an energy consultant (the "**Operational Watchdog**") acceptable to SMH, acting reasonably, to perform the functions of the Operational Watchdog set out in this Schedule 33. The Operational Watchdog is responsible for observing the Operational Parameters used in the Tower that will impact the Actual Consumption of the Tower. The Operational Watchdog will report to SMH and Project Co on areas of concern or on areas that deviate from design assumptions, provided that SMH may continue to operate the Tower as SMH sees fit.
- 9.3 During the Initial Period, the Operational Watchdog, working with the Commissioning Agent, will review the Operational Parameters implemented by SMH in connection with the operation of the Tower. The Commissioning Agent will instruct the operators of the Tower on the design intents and best practices to maintain the intended energy performance of the Tower. The Operational Watchdog will observe the Operational Parameters that impact the Aggregate Energy Model and the Annual Energy Target and report back to Project Co and SMH.
- 9.4 During the Initial Period and the Energy Year, the Operational Watchdog will, at a minimum, visit the Existing Facilities and the Facility once a month, for 2-3 days. SMH will accommodate these visits, giving the Operational Watchdog complete access to the Tower, its systems, building automation systems and other items that are identified by the Operational Watchdog.
- 9.5 The Operational Watchdog will participate in the Energy Protocol as described in Appendix B.

- 9.6 The Operational Watchdog will report their findings in the Energy Analysis Report.
- 9.7 Consistent with the objectives set out in Section 8.8 of this Schedule 33, the Operational Watchdog shall ensure that the Energy Analysis Report has the components required by Section 8.9 of this Schedule 33.

10. ENERGY MODEL INTELLECTUAL PROPERTY OWNERSHIP AND LIABILITIES

10.1 Intellectual Property

- (a) For greater certainty, the provisions of Article 39 – Intellectual Property of the Project Agreement shall apply in respect of the Aggregate Energy Model and the Energy Analysis Report or Periodic Energy Reports delivered to SMH or the Energy Model Services Provider pursuant to this Schedule 33.
- (b) For greater certainty, Project Co acknowledges and agrees that SMH shall not be liable to Project Co for, and Project Co shall not seek to recover from SMH, any Government Entity or any SMH Party, any damages, losses, costs, liabilities or expenses which may arise (whether in contract, tort or otherwise) as a result of any errors in the Aggregate Energy Model, the Energy Analysis Report or the Periodic Energy Reports.

11. ENERGY INCENTIVE PROGRAMS

- 11.1 Project Co shall provide reasonable assistance and information to SMH during the Initial Period and Energy Year relating to the energy performance of the Tower in connection with SMH's applications for energy incentive programs for which the Tower qualifies, including, but not limited to, the High Performance New Construction (HPNC) programs administered by City of Toronto Better Building Partnerships New Construction.

APPENDIX A

Total Energy Summary	Adjusted Discrete Annual Energy Targets		Actual Consumption		Discrete Energy Service Actual Consumption		Percent Variance between vi and ii	Painshare Adjustment or Gainshare Adjustment
	Usage (Units of Energy)	Adjusted Cost Target for Energy Year (calculated based on Adjusted Discrete Energy Annual Targets multiplied by applicable Discrete Energy Unit Cost)	Usage (Units of Energy)	Usage (Units of Energy)	Usage (Units of Energy)	Cost for Energy Year (for each of the discrete Energy multiplied by Discrete Energy Unit Cost of each such discrete Energy)		
	i	ii	iii	V	vi	vii	viii	
Electricity								
Steam								
Natural Gas								
Other								
Aggregate sums	[To include Annual Energy Target]		[Actual Consumption: ●]					
Units of Energy				[Discrete Energy Service Actual Consumption: ●]				

APPENDIX B

ENERGY PROTOCOL

1. PROTOCOL OBJECTIVES

- 1.1 SMH and Project Co seek to minimize energy usage and costs within the parameters described within the Project Agreement through the design, construction, operation and efficient occupancy of the Tower.

2. UTILITIES MANAGEMENT SUBCOMMITTEE AND CONTINUAL ADVICE

- 2.1 Project Co shall provide an energy monitoring, energy targeting and energy management service to SMH in accordance with this Appendix B.
- 2.2 A joint working group responsible for the management of the energy provisions within this Schedule 33 shall meet each quarter throughout the Initial Period and the Energy Year (each is a “**Quarterly Monitoring Meeting**”) to review and discuss the monitoring of and record taking from plant and equipment (carried out by Project Co in accordance with Attachment 1 hereto (Outline of Energy Monitoring Procedures)) to ensure continued optimum performance. The Commissioning Agent, during the Initial Period, and the Operational Watchdog, during the Initial Period and the Energy Year, shall be permitted to attend all meetings of such joint working group for the purpose of providing assistance, consultation and advice to such group.
- 2.3 The joint working group shall be composed of three (3) representatives nominated by Project Co and three (3) representatives nominated by SMH (the “**Utilities Management Subcommittee**”). Project Co will propose a detailed format and agenda for such Quarterly Monitoring Meetings at least two (2) weeks prior to each meeting (see Attachment 2 hereto for an example agenda). At the start of each Quarterly Monitoring Meeting, the representatives shall appoint one of their number to act as chairperson, ensuring that the position is held by a Project Co representative and then a SMH representative on an alternating basis.
- 2.4 In connection with the ongoing monitoring, Project Co will also be expected to provide quarterly projections for the consumption of energy for the forthcoming twelve (12) months. Such projections will then be used by SMH for financial planning requirements.
- 2.5 Without prejudice to Project Co’s obligations as articulated in the Project Agreement, prime energy usage monitoring must be undertaken on a utility by utility basis by the provision of metering which must be data logged, the results of which will be one of the inputs at the Quarterly Monitoring Meetings. Further information as to the methods of monitoring is contained in Attachment 1 hereto (Outline of Energy Monitoring Procedures).
- 2.6 At the Quarterly Monitoring Meetings, SMH will report on scheduled maintenance being undertaken together with unscheduled maintenance and emergency maintenance being

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- undertaken relevant to Energy consumption to ensure best operating efficiencies for the Tower and the Utilities Management Subcommittee will review and provide feedback on such report.
- 2.7 Without limiting any of Project Co's obligations under Section 3.1(b), Project Co will be proactive at the Quarterly Monitoring Meetings and shall undertake regular value management reviews for the Tower to ascertain whether minor design alterations, technology changes or other technological enhancements will further improve energy performance of the installations to the joint and equal benefit of the Parties. SMH may, but shall not be obliged to invoke the Variation Procedure, as outlined in Schedule 22 - Variation Procedure to the Project Agreement, in respect of any such suggestion.
- 2.8 SMH will be proactive at the Quarterly Monitoring Meetings and shall undertake regular value management reviews for the Tower to ascertain whether operational adjustments or other technological enhancements will further improve energy performance of the installations to the joint and equal benefit of the Parties. SMH may, but shall not be obliged to invoke the Variation Procedure, as outlined in Schedule 22 - Variation Procedure, in respect of the implementation of any such operational adjustments or technological enhancements.
- 2.9 In the event that the Parties and/or the Utilities Management Subcommittee are unable to reach agreement on any of the matters covered in this Appendix B, such matter shall be determined using the Dispute Resolution Procedure as set out in Schedule 27 - Dispute Resolution Procedure.
- 2.10 Project Co (acting through the Utilities Management Subcommittee and on the advice and reporting of the Operational Watchdog) will advise SMH in relation to the following measures which it will expect SMH and SMH Parties to implement:
- (a) control, operational setpoints and other operational parameters impacting the efficient use of space heating and cooling;
 - (b) control operational setpoints and other operational parameters impacting the efficient use of lighting;
 - (c) control operational setpoints and other operational parameters impacting the efficient use of hot water;
 - (d) control operational setpoints and other operational parameters impacting the efficient use of plugged-in equipment;
 - (e) any energy awareness campaigns; and
 - (f) all other relevant Energy consumption advice.

3. INITIAL MONITORING

- 3.1 Throughout the Initial Period, Project Co shall ensure that all necessary energy management procedures and energy optimization initiatives are undertaken in accordance with Attachment 1 hereto.
- 3.2 Project Co shall demonstrate, to SMH's satisfaction, that during the Initial Period systems are optimized to operate at peak efficiencies and that all energy reduction techniques designed and included within the job are functioning correctly.
- 3.3 SMH shall review Operational Parameters established during the Initial Period and confirm that they are reasonably representative of how SMH will operate the Tower throughout the Energy Year. Notwithstanding such confirmation, Operational Parameters may be adjusted during the Energy Year in accordance with this Schedule 33 and their impact accounted for with respect to the Adjusted Annual Energy Target in accordance with Sections 2.3 and 2.4.
- 3.4 Energy measurements and meter readings shall be undertaken by Project Co on a calendar month basis during the Initial Period and Project Co shall provide a report on the measurements and readings to SMH as part of the Periodic Energy Reports.

4. REPORTING SERVICES

- 4.1 From the commencement of the Initial Period, Project Co shall provide to SMH a periodic report of the energy efficiency performance (each a "**Periodic Energy Report**") which shall be provided on a quarterly basis unless such report indicates that the actual consumption of Energy at the Tower for the Initial Period or the Energy Year, as applicable, determined in accordance with this Schedule 33 is expected to exceed **[REDACTED]**% of the Annual Energy Target, in which case the Periodic Energy Report shall be provided monthly.
- 4.2 Each Periodic Energy Report shall compare actual performance to date with the performance targets as required by this Schedule 33 and quarterly monitoring of the Tower shall include data on the thermal efficiency of the entire plant and equipment and operational efficiency of distribution systems, observed changes to Operational Parameters and concerns reported by the Operational Watchdog to ensure continued optimum performance. It will also include trend analysis that will indicate malfunctions.

5. ENERGY MONITORING

- 5.1 All energy supplied to and used within the Tower shall be monitored using the building management system, capable of verification by SMH.

6. COMPLIANCE

- 6.1 SMH is entitled from time to time to appoint an energy consultant of its choice and at its cost to monitor and check Project Co's compliance with the provisions of this Appendix B. Project Co must co-operate with any such consultant and must allow such access to the Tower, all energy records and all facilities management maintenance data as such consultant may reasonably require.

7. SMH AND PROJECT CO'S UNDERTAKINGS

- 7.1 SMH shall assist, and shall encourage the SMH Parties to assist, Project Co to achieve the Energy consumption targets through the adoption of good housekeeping techniques, to be determined by the Utilities Management Subcommittee in respect of lighting, water, office equipment and space heating and air conditioning, to be achieved through management and involvement of SMH staff. SMH will ensure that SMH Parties involve management, clinical and non-clinical staff in energy efficiency focus in order to incorporate good practice as part of SMH and SMH Parties' overall activities.
- 7.2 SMH and Project Co recognize that the Energy consumption targets can only be achieved with the co-operation of their staff and therefore respectively undertake that their commitment to and the commitment of SMH staff and Project Co staff, service providers and other relevant parties (as the case may be) to energy efficiency will be adopted throughout their respective organizations, to ensure that staff are aware of and have been encouraged to practise the energy saving policy so that SMH, SMH staff, Project Co and Project Co staff, service providers and other relevant parties will prevent excessive energy usage. This will include without limitation:
- (a) providing their respective staff with information about why energy conservation is important, describing practical and environmental benefits;
 - (b) stressing that most energy is used by building occupants;
 - (c) informing staff of the minimum legal/design operation temperature requirements;
 - (d) including energy efficiency briefing within staff familiarization, training and new staff inductions;
 - (e) switching off equipment not in use or not required, including discouraging the leaving of equipment in standby mode where technically appropriate;
 - (f) sharing departmental energy use information with departmental managers;
 - (g) obtaining feedback from staff on measures to improve energy efficiency;
 - (h) appointing departmental/unit managers, and energy monitors to implement good housekeeping measures as set out in Section 7.1 hereof;

- (i) distributing appropriate promotional and publicity material to raise awareness of energy efficiency measures and achievements; and
 - (j) providing access to information on Operational Parameters to the Operational Watchdog upon request as described in Section 9 of this Schedule 33.
- 7.3 SMH shall advise each quarterly meeting of the Utilities Management Subcommittee of any departmental operational changes, which may affect utilities usage. This would include changes to the assumptions on which Project Co's original Energy consumption figures were calculated, including, material increases in occupancy levels, department opening times and equipment levels, BAS setpoints, maintenance considerations, identification of recalibration requirements or failure of controls and assisting the Operational Watchdog with their reporting of items outlined in Section 9.7 of this Schedule 33.
- 7.4 Project Co undertakes that it shall not intentionally alter the proportions of different types of energy consumed from the agreed proportions referred to within this Appendix B without the prior agreement of the Utilities Management Subcommittee.

ATTACHMENT 1 – OUTLINE OF ENERGY MONITORING PROCEDURES**1. INTRODUCTION**

The purpose of this Attachment 1 is to outline how Energy consumption will be monitored and measured at the Tower.

2. ENERGY MONITORING

Subject to Section 2.1(c) of this Schedule 33, Project Co will provide, as a minimum, the metering required pursuant to Schedule 15 –Output Specifications and this Schedule 33 (including Section 8.9) and the following metering within the Tower:

- (a) electrical consumption;
- (b) steam consumption;
- (c) gas consumption;
- (d) chilled water; and
- (e) other Energy consumption as described in contract documents.

The metering will be an integral part of the building management system, which will have the ability to record and log data regarding the Energy consumption.

The data will be collected and presented in spreadsheet format or trend graphing allowing trends to be identified in the Periodic Energy Reports.

Once a database of monthly consumptions has been established any significant change which is apparent will be investigated.

3. VARIATION DUE TO WEATHER AND CLIMATE DATA

Project Co will obtain external temperature profiles from the Environment Canada local weather office and the building management system in furtherance of Section 2.3(c) of this Schedule 33. The temperature profiles will be used to assist in the evaluation of quarterly energy trends particularly in the event that excessive summertime temperatures have been experienced. However, the Environment Canada local weather office data will be the prime source of Weather Data. Any trends in climate change will be noted and included in the Periodic Energy Reports.

4. VARIATIONS DUE TO END USERS' CONSUMPTION

Project Co will use available information to determine usage and where appropriate investigate the cause of any excess consumption.

This will require a period of operation under steady state conditions to allow collection of a representative database.

A summary of the database will be included in the Periodic Energy Report.

Project Co will evaluate all deviations as part of its duties to the Utilities Management Subcommittee as defined in Appendix B to this Schedule 33. The results will be logged as either:

- (a) deficient maintenance requiring rectification;
- (b) external influences outside Project Co's control (e.g. abnormal weather conditions);
- (c) deviations which may be subject to Schedule 22 - Variation Procedure to the Project Agreement;
- (d) incidence of misuse of energy by SMH; and
- (e) incidence of misuse of energy by Project Co or any Project Co Party.

All deviations will be reviewed at the next Quarterly Monitoring Meeting where appropriate actions will be agreed.

In the event that the Utilities Management Subcommittee is unable to agree on the cause or magnitude of the deviation, the matter shall be determined using the Dispute Resolution Procedure.

5. VARIATIONS DUE TO CHANGES IN OPERATIONAL PARAMETERS

Project Co will use available information and the Operational Watchdog reporting to determine the current Operational Parameters, adjustments to BAS equipment, the usage of "hand" or "manual" on energy consumption equipment and where appropriate inform the SMH operators of the potential impact on energy consumption.

This will require a period of operation under steady state conditions to allow collection of a representative database.

A summary of the database will be included in the Periodic Energy Report.

Project Co will evaluate all deviations from the current Operational Parameters as part of its duties to the Utilities Management Subcommittee as defined in Appendix B to this Schedule 33. The results will be logged as either:

- (a) deficient operations or maintenance by SMH operators requiring rectification;
- (b) deviations which may be subject to Schedule 22 - Variation Procedure to the Project Agreement; and

(c) incidence of disabling energy saving controls, setpoints, schedules by SMH;

All deviations from the current Operational Parameters will be reviewed at the next Quarterly Monitoring Meeting where appropriate actions will be agreed.

In the event that the Utilities Management Subcommittee is unable to agree on the cause or magnitude of the deviation, the matter shall be determined using the Dispute Resolution Procedure.

6. TOTAL ENERGY CONSUMPTION

Total Energy consumption for the Tower will be recorded on a monthly basis and will be included in the Periodic Energy Report. This will be identified separately as steam, fossil (gas), and electricity consumption using industry standard units of measurement.

ATTACHMENT 2 – QUARTERLY MONITORING MEETING AGENDA

- Meeting Title: Quarterly Monitoring Meeting of the Utilities Management Subcommittee
For The Period _____
- Date of Meeting: _____
- Venue: _____
- Those Present: Project Co Representatives
SMH Representatives
- Item 1 Apologies for absence
- Item 2 Recorded energy consumption for the quarter
- Steam: _____
- Gas: _____
- Electric: _____
- Chilled
Water: _____
- Item 3 Report on Weather Data for corresponding period
- Item 4 SMH Variations under Schedule 22 - Variation Procedure
- Item 5 Actual energy consumption compared against target
- Item 6 Review Painshare Adjustment and Gainshare Adjustment mechanisms
and projected Painshare Adjustment or Gainshare Adjustment, if any
- Item 7 Report on Procedures
- Item 8 Report on plant and systems performance
- Item 9 Review of energy trends and recommendations for improved energy
efficiency and training
- Item 12 Disputes subject to Schedule 27 - Dispute Resolution Procedure
- Item 13 AOB and date of next meeting

THIS IS EXHIBIT "D" TO
THE AFFIDAVIT OF EDEN ORBACH
SWORN BEFORE ME THIS 17th
DAY OF DECEMBER, 2018.

Anees Tavir

A Commissioner etc.

EXECUTION VERSION**CONTRACTOR DIRECT AGREEMENT**

THIS CONTRACTOR DIRECT AGREEMENT is made as of January 27, 2015.

BETWEEN:

BONDFIELD CONSTRUCTION COMPANY LIMITED, a corporation incorporated under the laws of the Province of Ontario

(the "**Contractor**")

AND:

BANK OF MONTREAL, as administrative agent for the Lenders

(the "**Administrative Agent**")

AND:

2442931 ONTARIO INC., a corporation incorporated under the laws of the Province of Ontario

(the "**Project Co**")

WHEREAS:

- A. St. Michael's Hospital ("**SMH**"), with the assistance of Ontario Infrastructure and Lands Corporation ("**IO**"), wishes to procure the design, construction and financing of the Facility (the "**Project**").
- B. Project Co and the Contractor have entered into a guaranteed price contract dated as of the date hereof (the "**Construction Contract**") with respect to the Project.
- C. Pursuant to that certain credit agreement dated as of the date hereof (the "**Credit Agreement**") between Project Co, each of the financial institutions and other entities from time to time parties thereto in their capacity as Lead Arrangers, providers of the Commitments under the Credit Facility or as providers of the Interest Rate Swaps (the "**Lenders**") and the Administrative Agent, as administrative agent, the Lenders have made certain credit facilities available to Project Co on the terms and conditions set forth in the Credit Agreement.
- D. It is a condition precedent to the Financial Closing Date that the Contractor enter into this Agreement.

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:

SECTION 1 – INTERPRETATION

1.1 Credit Agreement Definitions

Unless otherwise indicated, capitalized terms used in this Agreement have the meanings given to them in the Credit Agreement. The rules of construction and interpretation set out in Article 1 of the Credit Agreement shall apply to this Agreement.

1.2 Other Defined Terms

In this Agreement:

- (1) *Agreement* means this Contractor Direct Agreement.
- (2) *Contractor Obligations* means:
 - (a) the performance of the Works; and
 - (b) the performance of all other obligations of the Contractor under the Construction Contract.
- (3) *Lender Cure Period* has the meaning given to it in Section 7.3.
- (4) *Loan Amount* means all loans and other amounts outstanding under the Credit Facility, including principal, interest and fees, pursuant to the terms of the Credit Agreement.
- (5) *Non-Default Termination Sum* has the meaning given to it in the Project Agreement.
- (6) *Relevant Project Documents* means the Construction Contract, the Contractor Support Agreement, and such other agreements as may be entered into between the Contractor and, *inter alia*, Project Co which are designated as such by the Administrative Agent.
- (7) *Site* has the meaning given to it in the Project Agreement.
- (8) *Works* has the meaning given to it in the Construction Contract.

1.3 Order of Precedence

In the event of any conflict or inconsistency between the provisions of this Agreement and the provisions of the Construction Contract, the provisions of this Agreement shall govern.

SECTION 2 – REPRESENTATIONS AND WARRANTIES

The Contractor represents and warrants to and in favour of the Administrative Agent and Lenders, as of the date hereof and on each Funding Date with the same effect as if such representations and warranties had been made and given on and as of each such date, that:

- (1) ***Creation and Existence.*** 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.
- (2) ***Power and Authority.*** The execution, delivery and performance by the Contractor of this Agreement, the Contractor Support Agreement and each other Loan Document and Material Project Documents to which it is a party (a) are within the powers of the Contractor, (b) have been duly authorized by all necessary corporate or shareholder action with respect to 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 Contractor, (ii) any Applicable Law, or (iii) any other document to which it is a party or by which it is bound, and (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.
- (3) ***Authorization, Execution, Delivery and Binding Effect.*** This Agreement, the Contractor Support Agreement and each other Loan Document and Material Project Document to which the Contractor is a party has been duly authorized, executed and delivered by the Contractor and constitutes a legal, valid and binding obligation of the Contractor, enforceable against the Contractor 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.
- (4) ***Representations and Warranties in the Credit Agreement.*** Each of the representations and warranties with respect to the Contractor set out in Section 2 of the Credit Agreement is true and correct, as at each time on which such representation and warranty is made under the Credit Agreement, except where any such representation or warranty relates to a specified date, in which case such representation or warranty shall be made as of the date to which it relates.

SECTION 3 – CONSENT TO SECURITY

3.1 Acknowledgement and Consent to Security

The Contractor hereby acknowledges that Project Co has granted a security interest in favour of the Administrative Agent for and on behalf of itself and the Lenders in all of Project Co's right, title and interest in, to and under the Material Project Documents to which Project Co is party pursuant to and in accordance with the terms of the Security Documents and consents to the granting of such security interest.

3.2 Acknowledgement re Enforcement

The Contractor hereby acknowledges that no consent of the Contractor is required for the enforcement by the Administrative Agent of any rights or remedies under the Credit Agreement or any other Loan Document.

3.3 No Notice of Security Interest

The Contractor hereby confirms that it has not received notice of any other security interest granted over Project Co's rights under any Material Project Document, except to SMH pursuant to the Construction Contractor's Direct Agreement (as defined in the Project Agreement).

3.4 No Assumed Liabilities or Obligations

The Contractor acknowledges that, save as provided therein, none of the Administrative Agent or the Lenders assumes any liability or obligation under any Material Project Document as a result of taking or enforcing any security referred to in Section 3.1.

3.5 Acknowledgement re Amendments

The Contractor agrees that it will not, without the prior written consent of the Administrative Agent, agree to amend, modify or waive any material provision of any Material Project Document.

3.6 Receipt of Credit Agreement

The Contractor hereby acknowledges receipt of a fully executed copy of the Credit Agreement.

SECTION 4 – SECURITY OVER LEGISLATIVE HOLDBACK

4.1 Grant of Security Interest Over Legislative Holdback

The Contractor hereby assigns, transfers and sets over and grants a security interest in, to, and in favour of Administrative Agent, in trust for the rateable benefit of the Lenders, all of the Contractor's right, title and interest in and to the Legislative Holdback.

4.2 Direction re: Payment of Legislative Holdback

The Contractor hereby irrevocably directs Project Co to pay any amounts payable by Project Co to the Contractor in respect of the Legislative Holdback to the Funding Account or such other account as may be designated by the Administrative Agent and to use the Legislative Holdback to the extent of any holdback with respect to work performed by the Contractor's own forces, to repay the Lenders in accordance with Section 5.2 of the Credit Agreement.

SECTION 5 – CONTRACTOR COVENANTS

The Contractor covenants with the Administrative Agent and Lenders as set forth in this Section 5.

5.1 Credit Agreement Covenants

The Contractor shall comply with and duly perform all obligations in respect of those covenants set out in Section 9 of the Credit Agreement in which Project Co has undertaken to cause the Contractor to comply and perform, in each case in accordance with their terms, and shall ensure that all amounts received or receivable by the Contractor from SMH are, where applicable, applied in accordance with the relevant provisions of the Credit Agreement, the Irrevocable Direction and the Material Project Documents.

5.2 Notice and Information

The Contractor shall deliver to the Administrative Agent and the Lenders' Consultant (i) copies of all material notices delivered by the Contractor to SMH or any Major Project Party under the Construction Contract or any other Material Project Document concurrently with delivery thereof to SMH or such other Major Project Party, and (ii) immediately upon receipt of same, copies of all material notices received by the Contractor from SMH or any other Major Project Party under the Construction Contract or any other Material Project Document, including notices in respect of Variations, Variation Directives, any default or event of default under any Material Project Document, any event or circumstance that could give rise to any relief or compensation from SMH under the Construction Contract or any other Material Project Document and any event or circumstance which has given rise to, or which could give rise to, any right of any party to a Material Project Document to require delivery of a remedial plan or to terminate any Material Project Document. To the extent that the Contractor has become aware of the occurrence of any of the foregoing events or circumstances but has not received notice of same from any other person, the Contractor shall promptly give notice to the Administrative Agent and the Lenders' Consultant of the occurrence of any such event or circumstance. Where the same notice or information is required to be delivered to the Administrative Agent and/or the Lenders' Consultant by both Project Co under the Credit Agreement and the Contractor under this Agreement, delivery of such notice or information shall be made to each of the Administrative Agent and the Lenders' Consultant by either Project Co or the Contractor.

5.3 Subcontract Assignment Provisions

In respect of each Material Subcontract entered into by the Contractor in connection with the Works, the Contractor shall, at the request of the Administrative Agent, enter into an assignment of such Material Subcontract in favour of the Administrative Agent.

5.4 Lenders' Consultant

The Contractor shall ensure that the Lenders' Consultant and the Administrative Agent and/or any person(s) authorized by them, have (i) such access to the Site and place of the Works

during normal working hours as is reasonably requested by the Administrative Agent from time to time, (ii) reasonable prior notice of all tests and all construction progress update meetings between the Contractor and SMH which the Administrative Agent and the Lenders' Consultant have the right to attend, and (iii) all assistance reasonably necessary or desirable to allow the Lenders' Consultant to carry out its duties in connection with the Works.

5.5 Distributions

The Contractor shall not receive any Distributions other than as permitted under the terms of the Credit Agreement, and to the extent it shall receive any such Distributions contrary to the terms of the Credit Agreement it shall hold the amount of such Distributions in trust for and for the benefit of the Administrative Agent.

5.6 Subordination and Postponement

- (1) Subject to Section 5.6(2), the Contractor hereby covenants and agrees that payment of all Subordinate Debt is hereby unconditionally and irrevocably subordinated, deferred and postponed in all respects to the prior indefeasible repayment in full by Project Co of all Obligations. For purposes of this Section, "**Subordinate Debt**" means all indebtedness, liabilities and obligations, of any nature or kind, present or future, direct or indirect, absolute or contingent owing by Project Co to the Contractor, but excluding any amounts that are legitimately owing to Subcontractors as trust funds under the *Construction Lien Act* (Ontario);
- (2) Notwithstanding Section 5.6(1), so long as no Event of Default has occurred and is continuing, the Contractor may receive from Project Co payments on account of amounts owing under the Construction Contract, Transaction Expenses payable to the Contractor on the Financial Closing Date and any administration fees so long as such fees are accounted for in the Financial Model, all in amounts consistent with the Financial Model.

5.7 Cost Overrun

In the event of a Cost to Complete Deficiency or the occurrence of the Event of Default set out in Section 10.1(29) of the Credit Agreement, in either case resulting from any Cost Overrun, the Contractor covenants and agrees that it shall, at its option, either:

- (a) without duplication of any amounts paid by or withheld from the Contractor pursuant to Section 3.2 of the Contractor Support Agreement, contribute cash to the Funding Account or post other liquid security satisfactory to the Administrative Agent, in either case in an amount sufficient to remedy the Cost to Complete Deficiency; or
- (b) deliver evidence satisfactory to the Administrative Agent, acting reasonably and on the advice of the Lenders' Consultant, that the Contractor (a) has entered into, or will enter into, arrangements with one or more of its Subcontractors pursuant to which liability for the Cost Overrun giving rise to the Cost to Complete Deficiency has been transferred to such Subcontractor(s), or (b) has agreed to pay such incremental

amounts to any applicable Subcontractors or as may otherwise be required to complete the Works in an amount equal to the relevant Cost to Complete Deficiency out of the Contractor's own funds or resources; or

- (c) deliver evidence satisfactory to the Administrative Agent, acting reasonably and on the advice of the Lenders' Consultant, that the Contractor has self-performed, or will have self-performed, such portion of the Works as may be required to offset the relevant Cost to Complete Deficiency using the Contractor's own funds and resources.

5.8 Completion Undertaking

The Contractor undertakes to complete the Works in accordance with the provisions of the Construction Contract and the other Material Project Documents to which it is a party, except where the Lenders fail to fund under the Credit Agreement in breach of their obligations thereunder, and without limiting the generality of the foregoing the Contractor will complete the Works:

- (a) in the event of any loss or damage to the Works of any kind for which Project Co or the Contractor were obligated to obtain insurance pursuant to the Material Project Documents, whether or not the Contractor receives insurance proceeds promptly or at all;
- (b) in the event of any Delay Event, Compensation Event, Force Majeure, Change in Law (all as defined in the Project Agreement) or other event or thing which causes or could cause a delay of the Works, whether or not the Contractor receives any amounts payable to it with respect to such events promptly or at all, subject to the rights of Project Co and the Contractor arising from a College Event of Default, Delay Event, Compensation Event, Force Majeure or Change in Law (all as defined in the Project Agreement) pursuant to the Project Agreement;
- (c) in the event SMH withholds, delays, reduces or sets-off any amount from Project Co and Project Co withholds, delays, reduces or sets-off a corresponding amount from the Contractor, whether or not the Contractor disputes such withholding, delay, reduction or set-off; and
- (d) in the event Project Co is in default of the Project Agreement or any other Material Project Document with respect to the Works.

SECTION 6 – CONTRACTOR COVENANTS – INSOLVENCY EVENTS

6.1 General

If:

- (a) any resolution is passed or any order or appointment is made in respect of the winding up, liquidation, dissolution or administration of Project Co; or

- (b) Project Co becomes subject to any insolvency, bankruptcy, reorganisation, receivership (whether relating to all or any of its assets and whether or not resulting from the enforcement of any security granted pursuant to the terms of the Credit Agreement), liquidation, dissolution or other similar proceeding, whether voluntary or involuntary (and whether or not involving insolvency); or
- (c) Project Co becomes subject to any distribution of its assets as a result of insolvency, bankruptcy, reorganisation, liquidation, dissolution or administration; or
- (d) Project Co assigns its assets for the benefit of its creditors or enters into any composition or arrangement with its creditors generally or any arrangement is ordered or declared whereby its affairs or assets, or both, are submitted to the control of, or are protected from, its creditors; or
- (e) any event occurs or proceeding is taken with respect to Project Co in any jurisdiction to which it is subject which has an effect equivalent or similar to any of the events referred to above,

the following provisions of this Section 6 (as appropriate) shall apply.

6.2 Subordination

If any of the circumstances mentioned in Section 6.1 occurs before the Obligations are repaid pursuant to the terms of the Credit Agreement, the claims of the Contractor against Project Co shall be subordinate in right of payment to the claims of the Administrative Agent, for and on behalf of itself and the Lenders, in respect of the Obligations.

6.3 Direction

If any of the circumstances referred to in Section 6.1 occurs before the Obligations are repaid pursuant to the terms of the Credit Agreement:

- (a) each party will direct the trustee in bankruptcy, liquidator, assignee or other Person distributing the assets of Project Co or their proceeds to pay any amounts owed to it by Project Co directly to the Administrative Agent;
- (b) without prejudice to subsection (a) above, each party will hold all distributions or payments in cash or in kind received or receivable by it, other than any amounts that are legitimately owing to Subcontractors as trust funds under the Construction Lien Act (Ontario), in trust for the Administrative Agent and as soon as reasonably practicable pay them to the Administrative Agent for application to the Obligations; and
- (c) each party will give all such notices and do all such things as the Administrative Agent may request to give effect to this Section 6.3.

SECTION 7 – RIGHTS AND REMEDIES OF ADMINISTRATIVE AGENT AND LENDERS

7.1 Right to Appoint Subcontractors

The Contractor agrees that, at any time after the occurrence and during the continuance of an Event of Default and provided that Project Co would then be entitled to terminate the Construction Contract, the Administrative Agent shall have the right, subject to the terms of the Contractor P3 Performance Bond and to the extent permitted under the Lenders' Direct Agreement and subject to the terms and conditions thereof, to cause Project Co to transfer all or any of the Contractor's rights and obligations under the Construction Contract and the other relevant Material Project Documents to a replacement contractor appointed by the Administrative Agent and Lenders, acting on the advice of the Lenders' Consultant, and the Contractor agrees that it shall take all actions as may reasonably be required by the Administrative Agent to give effect to the Administrative Agent's rights under this Section 7.1. The Administrative Agent shall not exercise its rights under any assignment of a Material Subcontract prior to the termination of the Construction Contract in accordance with its terms and the provisions of the Lenders' Direct Agreement.

7.2 Termination of Construction Contract

Upon the occurrence of any event which would entitle Project Co to terminate the Project Agreement and give rise to SMH's obligation to pay to Project Co the Non-Default Termination Sum, the Contractor shall terminate the Construction Contract upon the request of the Administrative Agent.

7.3 Lender Cure Period

Upon the occurrence of any Project Co default or event of default under the Construction Contract in respect of any obligations retained by Project Co other than as a result of a default by the Administrative Agent in providing any Funding in accordance with its obligations under the Credit Agreement, the Contractor shall provide notice to the Administrative Agent of the occurrence of such default or event of default and, for a period of 30 days following the delivery of such notice (the "**Lender Cure Period**"), (i) the Administrative Agent shall have the right (but not the obligation) to cure the relevant default or event of default, and (ii) the Contractor shall not be entitled to exercise any right under the Construction Contract to terminate the Construction Contract or suspend performance of the Work solely as a result of such Project Co default or event of default during the Lender Cure Period.

7.4 Lender Step-In Obligations

- (1) Subject to Section 7.4(2), upon and for so long as the Administrative Agent is exercising its step-in rights under Article 8 of the Lenders' Direct Agreement, the Administrative Agent shall perform all of the obligations of Project Co under and in respect of the Construction Contract, all to the extent required and in accordance with the Lenders' Direct Agreement.

- (2) The Contractor agrees and acknowledges that, if the Administrative Agent exercises its step-in rights under Article 8 of the Lenders' Direct Agreement or if the Administrative Agent (or another Person on the Administrative Agent's or the Lenders' behalf) assumes the obligations of Project Co under the Construction Contract as a result of exercising the Administrative Agent's rights under the Security Documents, the Contractor's sole remedy in respect of any liability incurred or arising prior to the effective date of such step-in or assumption by the Administrative Agent (or such other Person) of Project Co's obligations under the Construction Contract shall be solely against Project Co and not the Administrative Agent or the Lenders; provided that the foregoing shall not limit the right of the Contractor to receive payment under the Construction Contract for work properly performed by it prior to the date the Administrative Agent exercises its step in rights or assumes (or such other Person assumes) the obligations of Project Co under the Construction Contract. The Contractor shall be entitled to receive payment for all such work properly performed by it from advances made by the Lenders under the Credit Agreement, except to the extent that the Lenders have previously advanced funds to Project Co prior to the date the Administrative Agent exercises its step in rights or assumes (or such other Person assumes) the obligations of Project Co under the Construction Contract and Project Co has failed for any reason whatsoever to pay such previously advanced amounts over to the Contractor.

SECTION 8 – PAYMENTS UNDER THE CONTRACTOR SUPPORT AGREEMENT

8.1 Acknowledgement

The Contractor hereby acknowledges that Project Co has granted a security interest in all of its right, title and interest in or to any amounts payable to Project Co by the Contractor under or in connection with the Contractor Support Agreement, and assigned same, to the Administrative Agent for the benefit of itself and Lenders as security for the Obligations and the Contractor hereby consents to such assignment and the granting of such security interest.

8.2 Irrevocable Payment Direction

Project Co unconditionally, absolutely and irrevocably directs the Contractor to pay any amounts payable by the Contractor to Project Co under or in connection with the Contractor Support Agreement to the Funding Account for application in accordance with the Credit Agreement and this shall be the Contractor's sole and sufficient authority for so doing. The Contractor covenants in favour of the Administrative Agent that it shall comply with the irrevocable payment direction set out in this Section 8.2.

SECTION 9 – NOTICES

9.1 Notices

- (1) All notices and other communications provided herein shall be in writing and shall be delivered by hand or overnight courier service, or sent by telecopier, to the addresses or telecopier numbers set out in Section 9.3.

- (2) Notices sent by hand or overnight courier service 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 9.2 shall be effective as provided in Section 9.2.

9.2 Electronic Communications

- (1) A party 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.
- (2) 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.
- (3) 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 immediately preceding paragraph of notification that such notice or communication is available and identifying the website address therefor.

9.3 Addresses

The addresses for notice are as follows:

- (a) if to the Contractor:

Bondfield Construction Company Limited
407 Basaltic Road
Concord, Ontario
L4K 4W8

Fax: 416-667-8462
Attn: Vice-President

if to Project Co:
2442931 ONTARIO INC.
407 Basaltic Road
Concord, Ontario
L4K 4W8

Fax: 416-667-8462
Attn: John Aquino, President

if to the Administrative Agent:

Bank of Montreal
Corporate Finance Division
11th Floor 100 King Street West
Toronto, Ontario
M5X 1A1

Fax No.: 416-360-7168
Attention: James Di Giacomo
Managing Director, Underwriting and Syndications
Corporate Finance Division

9.4 Changes

Any party hereto may change its address or telecopier number for notices and other communications hereunder by notice to the other parties.

SECTION 10 – MISCELLANEOUS

10.1 Governing Law and Jurisdiction

This Agreement is governed by, and is to be construed and interpreted in accordance with, the laws of the Province of Ontario and the laws of Canada applicable in the Province of Ontario. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the Province of Ontario. Each party waives any right it has to object to an action being brought in those courts, including by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

10.2 Assignment

- (1) This Agreement shall enure to the benefit of and be binding on the parties, their respective successors and any permitted assignees or transferees of some or all of the parties' rights or obligations hereunder.
- (2) Neither the Contractor nor Project Co shall assign or transfer its rights and obligations under this Agreement without the prior written consent of the Administrative Agent.
- (3) The Administrative Agent may assign or transfer its rights and obligations under this Agreement in connection with any permitted assignment or transfer under the Credit Agreement, but not otherwise without the prior written consent of Project Co and the Contractor. The Contractor and Project Co will, upon reasonable request by any such successor to the Administrative Agent, enter into a new direct agreement with that party on terms that are the same in all material respects as the terms of this Agreement.

10.3 Amendment and Waiver

No modification, variation or amendment of any provision of this Agreement shall be made except by a written agreement executed by the parties, and no waiver of any provision hereof shall be effective unless in writing.

10.4 Further Assurances

The Contractor shall at its own cost promptly execute and deliver to the Administrative Agent such further documents, instruments and assurances and take or cause to be taken such further action as the Administrative Agent from time to time may reasonably request in order to carry out the intent and purpose of this Agreement and to establish and protect the rights and remedies created or intended to be created in favour of the Administrative Agent.

10.5 Severability

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

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

10.6 Counterparts

This Agreement and any amendment, variation, supplement, restatement, renewal, replacement or termination of any provision of this Agreement may be executed and delivered in any number of counterparts, each of which when executed and delivered is an original but all of which taken together constitute one and the same instrument.

10.7 Entire Agreement

Unless otherwise stated in this Agreement, this Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Agreement. No party has relied on any representation except as expressly set out in this Agreement.

10.8 Delivery by Fax

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

10.9 Receipt of Agreement

Contractor hereby acknowledges receipt of a copy of the Credit Agreement, this Agreement and the other Loan Documents and Material Project Documents and all of the provisions therein contained and consents to and approves the same.

[SIGNATURE PAGE FOLLOWS]

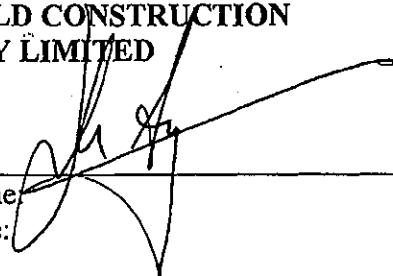
IN WITNESS WHEREOF the parties have executed this Agreement as of the date first above written.

**BONDFIELD CONSTRUCTION
COMPANY LIMITED**

By: _____

Name: _____

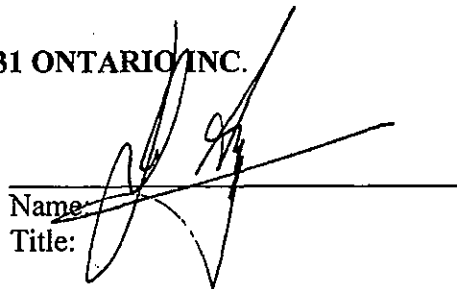
Title: _____



2442931 ONTARIO INC.

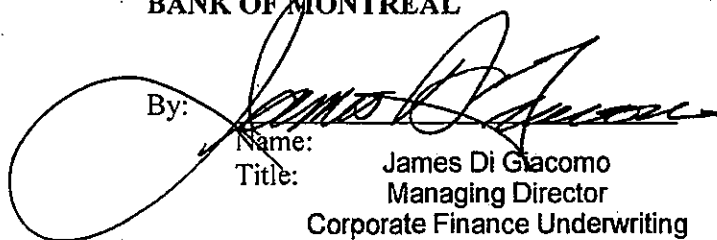
By:

Name:
Title:

A handwritten signature in black ink is written over a horizontal line. The signature is stylized and appears to be a name. The horizontal line extends to the right of the signature.

BANK OF MONTREAL

as administrative agent

By: 

Name: James Di Giacomo
Title: Managing Director
Corporate Finance Underwriting
and Syndications

THIS IS EXHIBIT "E" TO
THE AFFIDAVIT OF EDEN ORBACH
SWORN BEFORE ME THIS 17th
DAY OF DECEMBER, 2018.



A Commissioner etc.

LENDERS' DIRECT AGREEMENT

THIS AGREEMENT is made as of the 27 day of January, 2015

BETWEEN:

ST. MICHAEL'S HOSPITAL, a non-share capital corporation
incorporated under the laws of Ontario

(**"SMH"**)

- AND -

BANK OF MONTREAL, a Canadian chartered bank, acting as
agent for and on behalf of the Lenders

(the **"Lenders' Agent"**)

- AND -

2442931 ONTARIO INC., a corporation incorporated under the laws of the
Province of Ontario

(**"Project Co"**)

WHEREAS:

- A. SMH and Project Co have entered into the Project Agreement.
- B. The overriding priorities of SMH in entering into and implementing the Project Agreement are the health and safety of the patients of the Facility and the Existing Facilities, their healthcare needs and the provision of first-rate healthcare services.
- C. Under the Lending Agreements, financing is to be provided to Project Co by the Lenders to finance the Works, conditional on, among other things, Project Co granting the Security to the Lenders' Agent.
- D. The Lenders' Agent has agreed to enter into this lenders' direct agreement (the **"Lenders' Direct Agreement"**) with SMH in relation to the Security, the exercise of its rights under the Security Documents and the remedying of breaches by Project Co under the Project Agreement.
- E. Project Co, the Lenders' Agent and the Lenders recognize and understand that SMH is a public hospital under the Public Hospitals Act (Ontario) and is, therefore, subject to a highly regulated legal and operational environment.
- F. With a view to ensuring that SMH is able to properly and effectively discharge its duties, functions and responsibilities under Applicable Law, Project Co, the Lenders' Agent and

the Lenders commit to working collaboratively, responsibly and cooperatively with SMH 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

In this Lenders' Direct Agreement, unless the context otherwise requires:

- (a) **"Affiliate"** has the meaning given in the Project Agreement.
- (b) **"Appointed Representative"** means any of the following to the extent so identified in an Appointed Representative Notice:
 - (i) the Lenders' Agent, any Lender or any of their Affiliates;
 - (ii) a receiver or receiver and manager of Project Co appointed under the Security Documents;
 - (iii) a trustee in bankruptcy or court-appointed receiver of Project Co;
 - (iv) an administrator of Project Co;
 - (v) a person directly or indirectly owned or controlled by the Lenders' Agent and/or any of the Lenders; or
 - (vi) any other person approved by SMH (such approval not to be unreasonably withheld or delayed).
- (c) **"Appointed Representative Notice"** has the meaning given in Section 8(b).
- (d) **"Business Day"** has the meaning given in the Project Agreement.
- (e) **"Construction Contractor"** has the meaning given in the Project Agreement.
- (f) **"Construction Contractor's Direct Agreement"** has the meaning given in the Project Agreement.
- (g) **"Default Notice"** has the meaning given in Section 7(b)(i).
- (h) **"Design and Construction Contract"** has the meaning given in the Project Agreement.
- (i) **"Enforcement Action"** means any acceleration of amounts due and owing to the Lenders under any of the Lending Agreements and/or any enforcement proceeding or enforcement action commenced or taken under any of the Security Documents.

- (j) **"Enforcement Event"** means an event of default as defined in the Lending Agreements, or any other event which permits an Enforcement Action.
- (k) **"Exercise Date"** has the meaning given in Section 12(b).
- (l) **"Facility"** has the meaning given in the Project Agreement.
- (m) **"Governmental Authority"** has the meaning given in the Project Agreement.
- (n) **"Indebtedness Notice"** has the meaning given in Section 7(b)(ii).
- (o) **"Lender Representative"** means a representative (which may be the Lenders' Agent) acting as agent or trustee for and on behalf of all of the lenders lending to a Suitable Substitute.
- (p) **"Lenders"** has the meaning given in the Project Agreement.
- (q) **"Lenders' Agent"** means Bank of Montreal, acting as agent for and on behalf of the Lenders.
- (r) **"Lenders' Construction Contractor Direct Agreement"** means the direct agreement among the Lenders' Agent, the Construction Contractor and Project Co.
- (s) **"Lenders' Direct Agreement"** means this lenders' direct agreement.
- (t) **"Lending Agreements"** has the meaning given in the Project Agreement.
- (u) **"Longstop Date"** has the meaning given in the Project Agreement.
- (v) **"Notice Period"** means the period starting on the date of delivery of a Default Notice and ending 90 days later.
- (w) **"Novation Date"** has the meaning given in Section 10(a).
- (x) **"Novation Notice"** has the meaning given in Section 10(a).
- (y) **"Party"** means any of SMH, Project Co or the Lenders' Agent, and **"Parties"** means all of SMH, Project Co and the Lenders' Agent.
- (z) **"person"** has the meaning given in the Project Agreement.
- (aa) **"Phase Completion Date"** has the meaning given in the Project Agreement.
- (bb) **"Project"** has the meaning given in the Project Agreement.
- (cc) **"Project Agreement"** means the project agreement made on or about January 21, 2015 between SMH and Project Co.

- (dd) **"Project Co"** means 2442931 Ontario Inc.
- (ee) **"Project Co Event of Default"** has the meaning given in the Project Agreement.
- (ff) **"Project Co Party"** has the meaning given in the Project Agreement.
- (gg) **"Project Documents"** has the meaning given in the Project Agreement.
- (hh) **"Province"** has the meaning given in the Project Agreement.
- (ii) **"Refinancing"** has the meaning given in the Project Agreement.
- (jj) **"Restricted Person"** has the meaning given in the Project Agreement.
- (kk) **"Scheduled Phase Completion Date"** has the meaning given in the Project Agreement.
- (ll) **"Scheduled Substantial Completion Date"** has the meaning given in the Project Agreement.
- (mm) **"Scheduled Tower Interim Completion Date"** has the meaning given in the Project Agreement.
- (nn) **"Security"** means the security interests granted by Project Co to the Lenders' Agent pursuant to the Security Documents.
- (oo) **"Security Documents"** means all security granted by Project Co to the Lenders (or any trustee or agent thereof, including the Lenders' Agent) pursuant to or in connection with the Lending Agreements, including but not limited to:
 - (i) General security agreement between Project Co and the Lenders' Agent dated the date of the Project Agreement;
 - (ii) Assignment of accounts to the Lenders' Agent from Project Co dated the date of the Project Agreement;
 - (iii) Limited recourse guarantee and security agreement between Project Co, Construction Contractor and the Lenders' Agent dated the date of the Project Agreement;
 - (iv) Assignment of material documents from Construction Contractor to the Lenders' Agent dated the date of the Project Agreement;
 - (v) Contractor direct agreement between Project Co, Construction Contractor and the Lenders' Agent dated the date of the Project Agreement;
 - (vi) Irrevocable direction from Project Co to SMH dated the date of the Project Agreement;

- (vii) Blocked account agreement between Project Co, the Lenders' Agent and Bank of Montreal dated the date of the Project Agreement;
 - (viii) Lenders' Direct Agreement;
 - (ix) Construction Contractor Support Agreement; and
 - (x) Bonds.
- (pp) "SMH Activities" has the meaning given in the Project Agreement.
- (qq) "SMH Project Documents" means the Project Agreement and all other documents to which both SMH and Project Co are parties pursuant to or in connection with the Project Agreement.
- (rr) "Step-In Date" means the date on which SMH receives a Step-In Notice from the Lenders' Agent.
- (ss) "Step-In Notice" means the notice given by the Lenders' Agent to SMH pursuant to Section 8(a) stating that the Lenders' Agent is exercising its step-in rights under this Lenders' Direct Agreement.
- (tt) "Step-In Period" means the period from the Step-In Date up to and including the earlier of:
- (i) the Step-Out Date;
 - (ii) the Termination Date (provided that SMH has complied with its obligations in Section 7 of this Lenders' Direct Agreement);
 - (iii) the date that a transfer of Project Co's rights and obligations under the SMH Project Documents to a Suitable Substitute pursuant to Section 10 becomes effective; and
 - (iv) if the Step-In Date occurs prior to the Substantial Completion Date, the earlier of:
 - (A) the date falling 120 days after the Longstop Date; or
 - (B) the date falling 2 years after the Step-In Date.
- (uu) "Step-Out Date" means the date falling 30 days after the date on which SMH receives a Step-Out Notice.
- (vv) "Step-Out Notice" has the meaning given in Section 9(a).
- (ww) "Subcontractor's Direct Agreement" has the meaning given in the Project Agreement.

- (xx) “**Subsequent Indebtedness Notice**” has the meaning given in Section 7(c).
- (yy) “**Substantial Completion Date**” has the meaning given in the Project Agreement.
- (zz) “**Suitable Substitute**” means a person, approved in writing by SMH in accordance with Sections 10(b) and 10(c), which:
 - (i) has the legal capacity, power and authority to become a party to and perform the obligations of Project Co under the SMH Project Documents; and
 - (ii) employs individuals having the appropriate qualifications, experience and technical competence, and having the resources available to it (including committed financial resources and subcontracts) that are sufficient to enable it to perform the obligations of Project Co under the SMH Project Documents.
- (aaa) “**Termination Date**” has the meaning given in the Project Agreement.
- (bbb) “**Tower Interim Completion Date**” has the meaning given in the Project Agreement.
- (ccc) “**Works**” has the meaning given in the Project Agreement.

2. INTERPRETATION

This Lenders' Direct Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

- (a) The headings in this Lenders' Direct Agreement are for convenience of reference only, shall not constitute a part of this Lenders' Direct Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Lenders' Direct Agreement.
- (b) Unless the context otherwise requires, references to specific Sections, Clauses, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Clauses, Paragraphs, Subparagraphs, or divisions of this Lenders' Direct Agreement and the terms “Section” and “Clause” are used interchangeably and are synonymous.
- (c) Words importing persons or parties are to be broadly interpreted and include an individual, corporation, limited liability company, joint stock company, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.

- (d) Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.
- (e) References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of this Lenders' Direct Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- (f) The words in this Lenders' Direct Agreement shall bear their natural meaning.
- (g) References containing terms such as:
 - (i) "hereof", "herein", "hereto", "hereinafter", and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Lenders' Direct Agreement taken as a whole; and
 - (ii) "includes" and "including", whether or not used with the words "without limitation" or "but not limited to", shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be "without limitation and construed and interpreted to mean "includes without limitation" and "including without limitation".
- (h) In construing this Lenders' Direct Agreement, the rule known as the *ejusdem generis rule* shall not apply nor shall any similar rule or approach to the construction of this Lenders' Direct Agreement and, accordingly, general words introduced or followed by the word "other" or "including" or "in particular" shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
- (i) Where this Lenders' Direct Agreement states that an obligation shall be performed "no later than" or "within" or "by" a stipulated date or event which is a prescribed number of days after a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (j) Where this Lenders' Direct Agreement states that an obligation shall be performed "on" a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (k) Any reference to time of day or date means the local time or date in Toronto, Ontario.

- (l) Unless otherwise indicated, time periods will be strictly construed.
- (m) Whenever the terms "will" or "shall" are used in this Lenders' Direct Agreement they shall be construed and interpreted as synonymous and to read "shall".

3. CONFLICT OF DOCUMENTS

In the event of any ambiguity, conflict or inconsistency between the provisions of this Lenders' Direct Agreement, the Project Agreement and the Construction Contractor's Direct Agreement, the provisions of this Lenders' Direct Agreement shall prevail and govern to the extent of such ambiguity, conflict or inconsistency.

4. TERM

- (a) This Lenders' Direct Agreement shall terminate automatically on the earliest of:
 - (i) the date on which all amounts which may be or become owing to the Lenders under the Lending Agreements have been irrevocably paid in full;
 - (ii) the Termination Date (provided that SMH has complied with its obligations in Section 7 of this Lenders' Direct Agreement); and
 - (iii) the date that any transfer of Project Co's rights and obligations under the SMH Project Documents to a Suitable Substitute pursuant to Section 10 becomes effective and the agreements contemplated in Section 10(e)(iii) are executed and delivered by the parties thereto.
- (b) Within 30 days following its occurrence, the Lenders' Agent shall provide notice to SMH of the date referred to in Section 4(a)(i).

5. AGREEMENTS AND SECURITY

- (a) Project Co and the Lenders' Agent shall not amend or modify the Lending Agreements, or any of them, except where Project Co is permitted to do so pursuant to Section 8.3 of the Project Agreement.
- (b) Project Co shall not, prior to the Substantial Completion Date, exercise any rights of voluntary prepayment, voluntary redemption, or other early repayment of loan, as applicable, under the Lending Agreements without the prior written consent of SMH, acting in its sole discretion. In exercising its sole discretion to grant consent, SMH shall be entitled to request and consider, and Project Co shall be required to provide within 10 Business Days of a request by SMH, amongst other things and not limited to, the following:
 - (i) written certification by an officer of Project Co of the Cost to Complete (as such term is defined in the Lending Agreements) the Works at the date of such proposed prepayment and/or redemption;

- (ii) written certification by an officer of Project Co that no Cost to Complete Deficiency (as such term is defined in the Lending Agreements) would reasonably be expected to arise as a consequence of such prepayment and/or redemption, including any related cancellation of unutilized commitments, if applicable, under the Lending Agreements;
 - (iii) written confirmation from the Lenders' technical advisor, addressed to SMH, that the Project Co's calculation in (i) above and Project Co's certification in (ii) above is, in the opinion of the Lenders' technical advisor, correct;
 - (iv) written confirmation from the Lenders' technical advisor, addressed to SMH, that no incremental delay in achieving a Phase Completion Date (beyond the applicable Scheduled Phase Completion Date), the Tower Interim Completion Date (beyond the Scheduled Tower Interim Completion Date) or the Substantial Completion Date (beyond the Scheduled Substantial Completion Date) would reasonably be expected as a consequence of such prepayment and/or redemption and related cancellation of unutilized commitments, if applicable, under the Lending Agreements; and
 - (v) written confirmation from the Lenders' technical advisor, addressed to SMH, that each Phase Completion Date is likely to occur on or prior to the then applicable Scheduled Phase Completion Date, the Tower Interim Completion Date is likely to occur on or prior to the then Scheduled Tower Interim Completion Date and the Substantial Completion Date is likely to occur on or prior to the then Scheduled Substantial Completion Date.
- (c) Project Co and SMH shall not amend or modify the SMH Project Documents (other than in accordance with the terms of those agreements) without the prior written consent of the Lenders' Agent, not to be unreasonably withheld or delayed, which consent shall not be withheld if the relevant amendment or modification shall not (i) materially adversely affect the ability of the Lenders to exercise their rights under the Security, (ii) materially adversely affect the value of the Security, or (iii) increase the liability of the Lenders or Project Co under the relevant agreement. The Lenders' Agent shall respond to any request for consent under this Section 5(b) within 30 days of receipt thereof.
- (d) Project Co acknowledges and consents to the arrangements set out in this Lenders' Direct Agreement, and agrees not to do or omit to do anything that may prevent any other Party from enforcing its rights under this Lenders' Direct Agreement.
- (e) The Lenders' Agent acknowledges having received a copy of the Project Agreement.

- (f) SMH acknowledges having received copies of the Lending Agreements, and confirms that they are in form and substance satisfactory to SMH as at the date of Financial Close.
- (g) SMH acknowledges notice of and consents to the Security, and confirms that it has not received notice of any other security interest granted over Project Co's rights under any of the SMH Project Documents.
- (h) Project Co and the Lenders' Agent hereby authorize and instruct SMH (and SMH agrees) to pay all sums payable to Project Co under the Project Agreement to the following account:

Bank: Bank of Montreal
Global Payment Services
129 St. Jacques Rue
Montreal, PQ

Swift Address: BOFMCAM2

Account Number 00021447805

and Project Co and SMH agree that upon the occurrence of an Enforcement Event, if so directed in writing by the Lenders' Agent upon giving reasonable notice, SMH shall pay any sum which it is obliged to pay to Project Co under the Project Agreement to a bank account specified by the Lenders' Agent.

- (i) Prior to the irrevocable payment in full of all amounts owing to the Lenders under the Lending Agreements, SMH shall not take any action to wind-up, liquidate, dissolve or appoint a receiver or receiver and manager of Project Co or to institute or sanction a voluntary arrangement or any other bankruptcy or insolvency proceedings in relation to Project Co.
- (j) The Lenders' Agent shall appoint the Lenders' Consultant who shall be responsible to advise the Lenders' Agent and the Lenders with respect to the amount of any Legislative Holdback to be maintained in accordance with the Project Agreement. Project Co agrees that it shall, in respect of all payments under the Project Agreement, comply with Part IV of the *Construction Lien Act* (Ontario). The Lenders' Agent shall cause the Lenders' Consultant to provide SMH with a copy of any written assessment or report prepared by the Lenders' Consultant in relation to the status or progress of the Works under the Design and Construction Contract, including but not limited to, any certificate of payment, concurrently with its delivery to the Lenders' Agent. The Lenders' Agent acknowledges and agrees that this Section 5(j) shall constitute sufficient authority for the Lenders' Consultant to provide, without delay, a copy of any and all of its written assessments and reports to SMH.

6. ENFORCEMENT OF SECURITY BY LENDERS' AGENT

- (a) The Lenders' Agent shall promptly notify SMH of any Enforcement Event, any Enforcement Action, any notice from the Lenders to Project Co to accelerate the maturity of any amounts owing by Project Co to the Lenders under the Lending Agreements or any notice from the Lenders to Project Co to demand repayment of any amounts owing by Project Co to the Lenders under the Lending Agreements.
- (b) The Lenders' Agent may assign, transfer or otherwise dispose of any right, title or interest it may have in, or rights or obligations it may have pursuant to, the Security Documents to a successor agent in accordance with the terms of the Lending Agreements except where:
 - (i) such assignment, transfer or other disposition would constitute a Refinancing and the provisions of Schedule 29 - Refinancing to the Project Agreement have not been complied with in connection therewith; or
 - (ii) the person to whom such assignment, transfer or other disposition is to be made, or an Affiliate of such person, is a Restricted Person or a person whose standing or activities: (i) are inconsistent with SMH's role as a public hospital or the SMH Activities; (ii) may compromise SMH's reputation or integrity or the nature of the Province's health care system, so as to affect public confidence in that system.
- (c) Any Lender may assign, transfer or otherwise dispose of any right, title or interest it may have in, or rights or obligations it may have pursuant to, the Lending Agreements in accordance with the terms of the Lending Agreements.

7. TERMINATION OF PROJECT AGREEMENT BY SMH

- (a) Subject only to the rights expressly afforded to the Lenders' Agent pursuant to, and the restrictions set forth in, this Section 7, SMH may, at any time, serve notice terminating the Project Agreement if it is entitled to do so under the terms of the Project Agreement.
- (b) At any time other than during the Step-In Period (with the restriction on termination during the Step-In Period set out in Section 7(d)), SMH shall not exercise any right it may have to terminate or serve notice terminating the Project Agreement for a Project Co Event of Default unless:
 - (i) SMH promptly delivers written notice (a "**Default Notice**") to the Lenders' Agent setting out the Project Co Event of Default in reasonable detail;
 - (ii) not later than 30 days after the date of a Default Notice, SMH delivers written notice (an "**Indebtedness Notice**") to the Lenders' Agent setting out:

- (A) all amounts owed by Project Co to SMH and any other existing liabilities and unperformed obligations of Project Co to SMH of which SMH is aware (having made reasonable enquiry), in each case, as of the date on which SMH sent the Default Notice; and
 - (B) all amounts which will become owing by Project Co to SMH and any other liabilities and obligations of Project Co to SMH of which SMH is aware (having made reasonable enquiry), in each case, on or before the end of the Notice Period; and
 - (iii) the Notice Period has expired and the Lenders' Agent has not delivered a Step-In Notice.
- (c) At any time after SMH sends an Indebtedness Notice but before SMH receives a Step-In Notice, if SMH discovers amounts that have become owing by Project Co to SMH or any other liabilities or obligations of Project Co to SMH that have come due but which were not included in the Indebtedness Notice, SMH shall deliver written notice (a "**Subsequent Indebtedness Notice**") to the Lenders' Agent setting out those amounts, liabilities or obligations.
- (d) During the Step-In Period, SMH shall not terminate the Project Agreement on grounds:
- (i) that the Lenders' Agent has served a Step-In Notice or enforced any Security Document; or
 - (ii) arising prior to the Step-In Date of which SMH was aware (having made due inquiry) and whether or not continuing at the Step-In Date unless:
 - (A) the grounds arose prior to the Substantial Completion Date, and the Substantial Completion Date does not occur on or before the date falling 120 days after the Longstop Date; or
 - (B) the grounds (whenever they first arose) did not give rise to any right to terminate the Project Agreement until after the Step-In Date; or
 - (iii) arising solely in relation to Project Co.
- (e) SMH shall be entitled to terminate the Project Agreement by written notice to Project Co and the Appointed Representative:
- (i) if any amount referred to in Section 7(b)(ii)(A) has not been paid to SMH on or before the Step-In Date;
 - (ii) if any amount referred to in Section 7(b)(ii)(B) has not been paid on or before the last day of the Notice Period;

- (iii) if amounts included in a Subsequent Indebtedness Notice have not been paid on or before the date falling 30 days after the date on which the Subsequent Indebtedness Notice is delivered to the Lenders' Agent; or
- (iv) on grounds arising after the Step-In Date in accordance with the terms of the Project Agreement.

8. STEP-IN RIGHTS

- (a) Subject to Section 8(b) and without prejudice to rights of the Lenders' Agent to enforce the Security, the Lenders' Agent may give SMH a Step-In Notice at any time:
 - (i) during which a Project Co Event of Default is subsisting (whether or not a Default Notice has been served);
 - (ii) during the Notice Period; or
 - (iii) during which an Enforcement Event is subsisting.
- (b) At least 5 Business Days before the Lenders' Agent delivers a Step-In Notice, the Lenders' Agent shall deliver written notice (an "**Appointed Representative Notice**") to SMH of:
 - (i) its intention to deliver a Step-In Notice; and
 - (ii) the identity of its proposed Appointed Representative.
- (c) Upon issuance of a Step-In Notice, the Appointed Representative shall assume, jointly with Project Co, all of Project Co's rights under the SMH Project Documents.
- (d) During the Step-In Period, SMH shall deal with the Appointed Representative instead of Project Co in connection with all matters related to the SMH Project Documents. Project Co agrees to be bound by all such dealings between SMH and the Appointed Representative to the same extent as if they had been between SMH and Project Co.

9. STEP-OUT RIGHTS

- (a) The Appointed Representative may, at any time during the Step-In Period, deliver written notice (a "**Step-Out Notice**") to SMH to terminate the Step-In Period on the Step-Out Date.
- (b) On expiry of the Step-In Period:
 - (i) the rights and obligations of the Appointed Representative in relation to SMH under the SMH Project Documents arising prior to the expiry of the

Step-In Period will be assumed by Project Co to the exclusion of the Appointed Representative;

- (ii) SMH will no longer deal with the Appointed Representative and will deal with Project Co in connection with all matters related to the SMH Project Documents; and
 - (iii) the Appointed Representative and SMH shall be and hereby are released from all obligations and liabilities to one another under the SMH Project Documents.
- (c) There will not be more than one Step-In Period in respect of any one Default Notice.

10. NOVATION TO SUITABLE SUBSTITUTE

- (a) Subject to Section 10(b), at any time:
 - (i) after an Enforcement Event has occurred;
 - (ii) during the Notice Period; or
 - (iii) during the Step-In Period,

the Lenders' Agent may deliver to SMH and any Appointed Representative written notice (a "Novation Notice") that it wishes to transfer Project Co's rights and obligations under the SMH Project Documents to a proposed transferee, together with all information reasonably necessary for SMH to decide whether the proposed transferee is a Suitable Substitute. The Novation Notice shall specify a Business Day not less than 30 days from the date on which SMH receives the Novation Notice ("Novation Date") for the transfer of Project Co's rights and obligations under the SMH Project Documents to the proposed transferee in accordance with the provisions of Section 10(e).

- (b) SMH shall promptly notify the Lenders' Agent of any additional information it requires in order to assess whether the proposed transferee is a Suitable Substitute. SMH shall notify the Lenders' Agent, in writing, as to whether the person to whom the Lenders' Agent proposes to transfer Project Co's rights and liabilities under the SMH Project Documents is approved by SMH as a Suitable Substitute, on or before the date falling 30 days after the later of the date of receipt by SMH of the Novation Notice and the date of receipt of any additional information requested by SMH. For greater certainty, if SMH fails to respond within such period, SMH shall be deemed not to have approved the proposed transferee.
- (c) SMH shall not unreasonably withhold or delay its approval of a proposed transferee as a Suitable Substitute, but it shall, without limitation, be reasonable for SMH to withhold its approval if:

- (i) there are unremedied breaches under the Project Agreement which are capable of being remedied by the Appointed Representative or the Suitable Substitute and there is no rectification plan acceptable to SMH, acting reasonably, in respect of such breaches;
 - (ii) the proposed transferee is a Restricted Person or other person who is not permitted to be a Project Co Party pursuant to the Project Agreement; or
 - (iii) the proposed security interests to be granted by the Suitable Substitute to the Lender Representative are materially different from the Security, materially adversely affect the ability of the Suitable Substitute to perform under the SMH Project Documents or have the effect of increasing any liability of SMH, whether actual or potential.
- (d) If SMH withholds its approval of a proposed transferee as a Suitable Substitute in accordance with Section 10(c), the Lenders' Agent may give one or more subsequent Novation Notices pursuant to the provisions of Section 10(a) containing changed particulars relating to the same proposed transferee or particulars relating to another proposed transferee which the Lenders' Agent has good cause to believe will be acceptable to SMH, acting reasonably, provided that only one Novation Notice may be outstanding at any one time.
- (e) On the Novation Date:
- (i) Project Co and SMH will be released from their obligations under the SMH Project Documents to each other, and the Suitable Substitute and SMH will assume those same obligations towards each other;
 - (ii) each of the rights of Project Co against SMH under the SMH Project Documents and the rights of SMH against Project Co under the SMH Project Documents will be cancelled, and the Suitable Substitute and SMH will acquire those same rights against each other;
 - (iii) the Parties will enter into, and the Lenders' Agent shall cause the Suitable Substitute and the Lender Representative to enter into, all such agreements or other documents as are reasonably necessary to give effect to the foregoing, including:
 - (A) an agreement between SMH and the Suitable Substitute, on substantially the same terms as the Project Agreement; and
 - (B) an agreement among SMH, the Suitable Substitute and the Lender Representative on substantially the same terms as this Lenders' Direct Agreement;
 - (iv) any subsisting ground for termination by SMH of the Project Agreement will be deemed to have no effect and any subsisting Default Notice will be automatically revoked.

11. TRANSFERS

SMH shall, at Project Co's cost and expense, take whatever action the Lenders' Agent, the Appointed Representative or a Suitable Substitute may reasonably require for perfecting any assumption or transfer of or release pursuant to Sections 8, 9 or 10, including the execution of any transfer or assignment, and the giving of any notice, order or direction and the making of any registration which, in each case, the Lenders' Agent, the Appointed Representative or the Suitable Substitute reasonably requires.

12. CONSTRUCTION CONTRACTOR'S DIRECT AGREEMENT

- (a) Notwithstanding any provision in the Construction Contractor's Direct Agreement, SMH hereby undertakes that it will not exercise any rights it may have under or arising out of any of the Construction Contractor's Direct Agreement, except as provided in Sections 12(b) to 12(f) inclusive.
- (b) Following termination of the Project Agreement (other than as a result of a novation pursuant to this Lenders' Direct Agreement) in accordance with this Lenders' Direct Agreement, SMH shall from such date (the "Exercise Date") be entitled to exercise its rights under the Construction Contractor's Direct Agreement to step in to and/or novate the Design and Construction Contract in accordance with the Construction Contractor's Direct Agreement.
- (c) Following the Exercise Date, SMH shall not do anything to prejudice the rights which are not transferred to it pursuant to the Construction Contractor's Direct Agreement.
- (d) Where all amounts which may be or become owing by Project Co to the Lenders under the Lending Agreements have been irrevocably paid in full, the Lenders' Agent shall promptly release and discharge all Security in respect of the Design and Construction Contract assumed or novated by SMH pursuant to the Construction Contractor's Direct Agreement.
- (e) Notwithstanding the terms of the Construction Contractor's Direct Agreement and any other provisions of this Section 12, the Construction Contractor (and any guarantor thereof) shall remain responsible, and be liable, to Project Co in respect of all costs, claims, damages, losses and liabilities which shall have arisen out of or in connection with the Design and Construction Contract in respect of the period prior to the Exercise Date.
- (f) Without prejudice to Sections 12(a) to 12(e) inclusive, SMH shall not, prior to the date on which this Lenders' Direct Agreement terminates:
 - (i) claim, recover, retain or receive (or seek to claim, recover, retain or receive) any amount under the Construction Contractor's Direct Agreement (and/or the Design and Construction Contract) from the Construction Contractor;

- (ii) take any action to wind-up, liquidate, dissolve or appoint a receiver or receiver and manager of the Construction Contractor or to institute or sanction a voluntary arrangement or any other bankruptcy or insolvency proceedings in relation to the Construction Contractor; or
- (iii) compete with the rights of the Lenders' Agent on a winding-up or other insolvency or bankruptcy of the Construction Contractor, nor claim to be subrogated to any rights of the Lenders' Agent or any Lender.

SMH agrees and undertakes that if it receives any amount in contravention of the provisions of this Section 12(f), it will immediately turn the same over to the Lenders' Agent for the account of the Lenders' Agent and the Lenders and, pending such payment, hold the same in trust for the Lenders' Agent and the Lenders.

12A. SUBCONTRACTOR'S DIRECT AGREEMENT

Notwithstanding any provision in a Subcontractor's Direct Agreement, SMH hereby undertakes that it will not exercise any rights it may have under or arising out of any Subcontractor's Direct Agreement unless:

- (a) the Project Agreement and the Design and Construction Contract have been terminated;
- (b) SMH is entitled to terminate the Project Agreement pursuant to the terms thereof and of this Lenders' Direct Agreement; or
- (c) SMH is entitled to exercise its rights under the Construction Contractor's Direct Agreement pursuant to Section 12(b).

12B. PERFORMANCE GUARANTEE OF CONSTRUCTION GUARANTOR

Notwithstanding any provision in the Performance Guarantee of Construction Guarantor, SMH hereby undertakes that it will not exercise any rights it may have under or arising out of the Performance Guarantee of Construction Guarantor unless:

- (a) the Project Agreement has been terminated; or
- (b) SMH is entitled to terminate the Project Agreement pursuant to the terms thereof and of this Lenders' Direct Agreement.

13. ASSIGNMENT

- (a) No Party to this Lenders' Direct Agreement may assign, transfer or otherwise dispose of any part of its rights or obligations under this Lenders' Direct Agreement save as provided in this Section 13.

- (b) Project Co may assign, transfer or otherwise dispose of the benefit of this Lenders' Direct Agreement to any person to whom Project Co assigns, transfers or otherwise disposes of its interest in the Project Agreement pursuant to Section 47.1 of the Project Agreement and the provisions of the Lending Agreements, and shall provide written notice to SMH and the Lenders' Agent of such assignment, transfer or other disposition. Such assignee, as a condition precedent to any such assignment, transfer or other disposition, shall assume the obligations and acquire the rights of Project Co under this Lenders' Direct Agreement pursuant to an assumption agreement with, and in form and substance satisfactory to, SMH and the Lenders' Agent, each acting reasonably. SMH and the Lenders' Agent shall, at Project Co's cost and expense, do all things and execute all further documents as may be necessary in connection therewith.
- (c) SMH may assign, transfer or otherwise dispose of the benefit of this Lenders' Direct Agreement to any person to whom SMH assigns, transfers or otherwise disposes of its interest in the Project Agreement pursuant to Section 47.2 of the Project Agreement, and shall provide written notice to Project Co and the Lenders' Agent of such assignment, transfer or other disposition.
- (d) The Lenders' Agent may only assign, transfer or otherwise dispose of any interest in this Lenders' Direct Agreement as permitted by the Lending Agreements, and shall provide written notice to Project Co and SMH of such assignment, transfer or other disposition; provided that, notwithstanding any provision to the contrary in the Lending Agreements, the Lenders' Agent may not assign, transfer or otherwise dispose of any interest in this Lenders' Direct Agreement to a Restricted Person. The Lenders' Agent, as a condition precedent to any such assignment, transfer or other disposition, shall cause the assignee to enter into a new agreement with Project Co and SMH on substantially the same terms as this Lenders' Direct Agreement and Project Co and SMH shall enter into such new agreement with the assignee. Project Co and SMH shall, at the Lenders' Agent's cost and expense, do all things and execute all further documents as may be necessary in connection therewith.

14. NOTICES

- (a) All notices, requests, demands, instructions, certificates, consents and other communications required or permitted under this Lenders' Direct Agreement shall be in writing (whether or not "written notice" or "notice in writing" is specifically required by the applicable provision of this Lenders' Direct Agreement) and served by sending the same by registered mail or by hand, as follows:

If to SMH:

St. Michael's Hospital
30 Bond Street
Toronto, Ontario
M5B 1W8

Fax No.: (416) 864-5948

Attn: Vice President and Chief Planning Officer

With a copy to the following addressees (which shall not constitute notice):

Ontario Infrastructure and Lands Corporation

777 Bay Street, 6th Floor
Toronto, Ontario
M5G 2C8

Fax No.: (416) 326-9291

Attn.: Vice-President, Project Delivery, SMH Project

If to the Lenders' Agent:

Bank of Montreal

Corporate Finance Division
100 King Street West
1 First Canadian Place, 11th Floor
Toronto, Ontario
M5X 1A1

Fax No.: (416) 360-7168

Attn.: James Di Giacomo, Managing Director, Underwriting and
Syndications Corporate Finance Division

If to Project Co:

2442931 Ontario Inc.

407 Basaltic Road
Concord, Ontario
L4K 4W8

Fax No.: (416) 667-8462

Attn.: John Aquino, President

If to the Construction Guarantor:

Bondfield Construction Company Limited

407 Basaltic Road
Concord, Ontario
L4K 4W8

Fax No.: (416) 667-8462

Attn.: John Aquino, Vice-President

- (b) Any Party to this Lenders' Direct Agreement may, from time to time, change any of its contact information set forth in Section 14(a) by prior notice to the other Parties, and such change shall be effective on the Business Day that next follows the recipient Party's receipt of such notice unless a later effective date is given in such notice.
- (c) Subject to Sections 14(d) and 14(e):
 - (i) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing; and
 - (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered.
- (d) If the Party giving the notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such notice shall not be mailed but shall be made by personal delivery in accordance with this Section 14.
- (e) If any notice delivered by hand is so delivered either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such notice shall be deemed to have been received by such recipient on the next following Business Day.

15. AMENDMENTS

This Lenders' Direct Agreement may not be varied, amended or supplemented except by an agreement in writing signed by duly authorized representatives of the Parties and stating on its face that it is intended to be an amendment, restatement or other modification, as the case may be, to this Lenders' Direct Agreement.

16. WAIVER

- (a) No waiver made or given by a Party under or in connection with this Lenders' Direct Agreement shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the Party giving such waiver, and delivered by such Party to the other Parties. No waiver made with respect to any right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy.
- (b) Failure by any Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies.

The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

17. RELATIONSHIP BETWEEN THE PARTIES

The Parties are independent contractors. This Lenders' Direct Agreement is not intended to and does not create or establish between the Parties any relationship as partners, joint venturers, employer and employee, master and servant, or, except as provided in this Lenders' Direct Agreement, of principal and agent.

18. ENTIRE AGREEMENT

Except where provided otherwise in this Lenders' Direct Agreement, this Lenders' Direct Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Lenders' Direct Agreement.

19. SEVERABILITY

Each provision of this Lenders' Direct Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Lenders' Direct Agreement is declared invalid, unenforceable or illegal by the courts of a competent jurisdiction, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Lenders' Direct Agreement. If any such provision of this Lenders' Direct Agreement is invalid, unenforceable or illegal, the Parties shall, acting in good faith, promptly negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Lenders' Direct Agreement as near as possible to its original intent and effect.

20. ENUREMENT

This Lenders' Direct Agreement shall enure to the benefit of, and be binding on, each of the Parties and their respective successors and permitted transferees and assigns.

21. GOVERNING LAW AND JURISDICTION

- (a) This Lenders' Direct Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) The Parties agree that the courts of the Province of Ontario and all courts competent to hear appeals therefrom shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Lenders' Direct Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.

22. DISPUTE RESOLUTION PROCEDURE

The Parties agree that the dispute resolution procedure provided for in Schedule 27 - Dispute Resolution Procedure to the Project Agreement shall not apply to any dispute under this Lenders' Direct Agreement.

23. FURTHER ASSURANCE

Each Party shall do all things, from time to time, and execute all further documents necessary to give full effect to this Lenders' Direct Agreement.

24. LANGUAGE OF AGREEMENT

Each Party acknowledges having requested and being satisfied that this Lenders' Direct Agreement and related documents be drawn in English. Chacune des parties reconnaît avoir demandé que ce document et ses annexes soient rédigés en anglais et s'en déclare satisfaite.

25. COUNTERPARTS

This Lenders' Direct Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the Parties shall constitute a full, original and binding agreement for all purposes. Counterparts may be executed either in original or faxed form provided that any Party providing its signature in faxed form shall promptly forward to such Party an original signed copy of this Lenders' Direct Agreement which was so faxed.

26. CONFIDENTIALITY

The Lenders' Agent agrees to comply with the obligations imposed on Project Co by the provisions of Sections 40 and 41 of the Project Agreement, *mutatis mutandis*, provided that the Lenders' Agent will be permitted to disclose to any relevant regulatory authority only such Confidential Information and Personal Information as is necessary for the Lenders' Agent to comply with Applicable Law.

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

ST. MICHAEL'S HOSPITAL

Per: _____

Tom O'Neill
Name: Tom O'Neill
Title: Chair of the Board of Directors

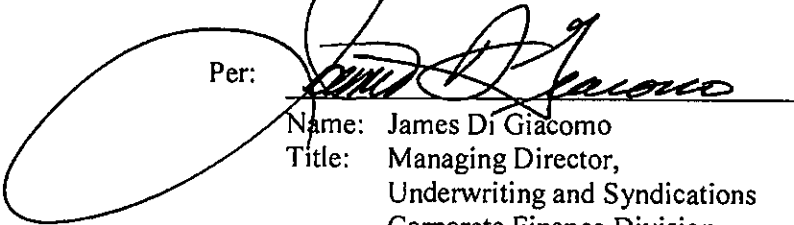
Per: _____

Robert Howard
Name: Robert Howard
Title: President and Chief Executive Officer

I/We have authority to bind the corporation.

BANK OF MONTREAL, in its capacity as
Lenders' Agent for and on behalf of the Lenders

Per:



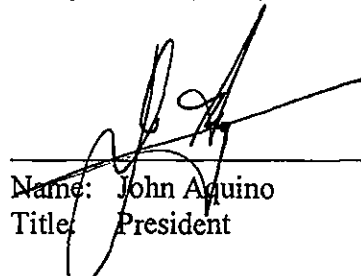
A large, stylized handwritten signature in black ink is written over a horizontal line. The signature is cursive and appears to read 'James Di Giacomo'. The signature is positioned to the right of the 'Per:' label.

Name: James Di Giacomo
Title: Managing Director,
Underwriting and Syndications
Corporate Finance Division

I have authority to bind the corporation.


2442931 ONTARIO INC.

Per: _____


Name: John Aquino
Title: President

I have authority to bind the corporation.

THIS IS EXHIBIT "F" TO
THE AFFIDAVIT OF EDEN ORBACH
SWORN BEFORE ME THIS 17th
DAY OF DECEMBER, 2018.



A Commissioner etc.

GENERAL SECURITY AGREEMENT

Made as of January 27, 2015

Between

2442931 ONTARIO INC.

and

BANK OF MONTREAL
as administrative agent for the Lenders

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SCHEDULE 4.1(i) - LOCATIONS

GENERAL SECURITY AGREEMENT

This general security agreement is made as of January 27, 2015, between:

2442931 ONTARIO INC., a corporation formed under the laws of Ontario (the “**Grantor**”)

and

BANK OF MONTREAL, in its capacity as administrative agent for the Lenders (in such capacity, the “**Agent**”)

RECITALS

A. Pursuant to that certain credit agreement dated as of the date hereof (the “**Credit Agreement**”), between the Grantor, the Lenders from time to time party thereto and the Agent, the Lenders have agreed to make available loans and other financial accommodations to the Grantor.

B. It is a condition precedent to the Financial Closing Date that the Grantor shall have executed and delivered this Agreement as security for the Obligations.

FOR VALUE RECEIVED, the parties agree as follows:

ARTICLE 1 – INTERPRETATION

Section 1.1 Terms Defined in PPSA

Whenever the terms “**accession**”, “**chattel paper**”, “**documents of title**”, “**equipment**”, “**financing change statement**”, “**financing statement**”, “**goods**”, “**instrument**”, “**intangible**”, “**inventory**”, “**investment property**”, “**money**” and “**proceeds**” are used herein, they shall be interpreted in accordance with their respective meanings in the PPSA unless expressly stated or provided otherwise herein. Any reference herein to “**Collateral**” shall, unless the context otherwise requires, be deemed a reference to “**Collateral or any part thereof**”.

Section 1.2 Terms Defined in STA

Whenever the terms “**certificated security**”, “**control**”, “**entitlement holder**”, “**entitlement order**”, “**financial asset**”, “**security certificate**”, “**securities account**”, “**security entitlement**”, “**securities intermediary**” and “**uncertificated security**” are used herein, they shall be interpreted in accordance with their respective meanings in the STA unless expressly stated or provided otherwise herein; provided that, when used herein, the terms “**certificated security**” and “**uncertificated security**” shall be understood to mean a certificated security or uncertificated security, as the case may be, that is held directly by and registered in the name of or endorsed to the Grantor or the Agent or their respective nominees, as applicable, and not a certificated security or uncertificated security to which the Grantor or the Agent, as applicable, has a security entitlement.

Section 1.3 Terms Defined in the Credit Agreement

Any term used and not otherwise defined herein shall have the meaning given to it in the Credit Agreement.

Section 1.4 Other Defined Terms

Unless otherwise defined or stated, capitalized terms used herein have the following meanings:

- (1) **"accounts"** means all debts, book debts, accounts, claims, demands, rents, monies and choses in action and all other forms of obligations whatsoever (including claims against the College and claims under insurance policies), which are now or which may at any time hereafter be due and owing to or owned by the Grantor, or in which the Grantor, now or hereafter, has any other interest, or any part thereof, together with all contracts, securities, bills, notes, lien notes, judgments, chattel mortgages, mortgages and all other rights, benefits and documents now or hereafter taken, vested in or held by the Grantor in respect of or as security for the same and the full benefit and advantage thereof, and all rights of action or claims which the Grantor now has or may at any time hereafter have against any Person in respect thereof and, for greater certainty and without limiting the foregoing, includes all "accounts" as defined in the PPSA.
- (2) **"Agreement"** means this general security agreement together with all schedules hereto.
- (3) **"Collateral"** has the meaning given to it in Section 2.1.
- (4) **"Contracts"** means all contracts, undertakings, or agreements (other than rights evidenced by chattel paper, securities or instruments) in or under which the Grantor may now or hereafter have any right, title or interest, including any agreement relating to the terms of payment or the terms of performance of any account.
- (5) **"Contractual Rights"** has the meaning given to it in Section 2.2.
- (6) **"control Agreement"** means:
 - (a) with respect to any uncertificated securities included in the Collateral, an agreement between the Grantor of such uncertificated securities and another Person whereby such Grantor agrees to comply with instructions that are originated by such person in respect of such uncertificated securities, without the further consent of the Grantor; and
 - (b) with respect to any securities accounts or security entitlements included in the Collateral, an agreement between the securities intermediary in respect of such securities accounts or security entitlements and another person to comply with any entitlement orders with respect to such securities accounts or security entitlements that are originated by such person, without the further consent of the Grantor.
- (7) **"Credit Agreement"** has the meaning given to it in Recital A.

- (8) **“equipment”** means all **“equipment”**, as such term is defined in the PPSA, now owned or hereafter acquired by the Grantor, wherever located, together with all additions and accessions thereto, replacements therefor, all parts therefor and all manuals, drawings, instructions, warranties and rights with respect thereto, and all products and proceeds thereof and any Condemnation awards and insurance proceeds with respect thereto.
- (9) **“Plans”** means all present and future specifications, plans, drawings, information and documentation in relation to the Works.
- (10) **“Pledged Securities”** has the meaning given to it in Section 4.1(b).
- (11) **“PPSA”** means the *Personal Property Security Act* (Ontario).
- (12) **“Related Property”** means all books, statements of account, bills, invoices, letters, papers, other documents (including those stored in computers) and computer records, data and software in any way evidencing or relating to any accounts to the extent reasonably required to enforce the payment thereof, and all agreements, guarantees, securities, bills, notes, judgments, Liens and other rights and benefits which are now or may hereafter be vested in the Grantor in respect of or as security for any accounts, in each case to the extent assignable or transferable without the consent of any other Person or with the consent of any Person that has consented to such assignment or transfer; provided that the Grantor shall, upon receipt of a request to do so from the Agent, make commercially reasonable efforts to obtain any such consent when required.
- (13) **“Receiver”** includes a receiver, manager and receiver-manager, whether interim or otherwise.
- (14) **“Secured Obligations”** means all of the Obligations of the Grantor, including any and all indebtedness, liabilities and obligations, now or hereafter existing, direct or indirect, absolute or contingent, as principal or surety, of the Grantor to the Agent and the other Secured Parties or any of them arising under, by virtue of or otherwise in connection with the Credit Agreement and the other Loan Documents.
- (15) **“Secured Parties”** means the Agent and the Lenders.
- (16) **“Security Interest”** has the meaning given to it in Section 2.1.
- (17) **“STA”** means the *Securities Transfer Act, 2006* (Ontario).
- (18) **“Termination Date”** has the meaning given to it in Section 7.11.

Section 1.5 Headings

The headings used in this Agreement are for convenience only and are not to be considered a part of this Agreement and do not in any way limit or amplify the terms and provisions of this Agreement.

Section 1.6 References

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 this Agreement to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement; and
- (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 for greater certainty shall include all regulations issued thereunder.

ARTICLE 2 - GRANT OF SECURITY

Section 2.1 Grant of Security

As continuing collateral security for the due payment and performance by the Grantor of all of the Secured Obligations, the Grantor hereby assigns, mortgages, pledges, charges and grants a security interest in, as and by way of a first, fixed and specific mortgage, pledge, charge and security interest, to and in favour of the Agent, for the benefit of the Secured Parties in accordance with the terms hereof, all of the present and future legal, beneficial and equitable right, title, estate and interest of the Grantor, whether now owned or hereafter acquired, in and to, and all benefit and advantage accruing to the Grantor or to be derived by the Grantor from (such assignment, mortgage, pledge, charge and security interest, collectively, the “**Security Interest**”):

- (a) all accounts and sources of revenue;
- (b) all amounts now or hereafter deposited to, and all Permitted Investments now or hereafter forming part of, all Project Accounts;
- (c) all Related Property in respect of accounts of the Grantor;

- (d) proceeds of any insurance payable to the Grantor;
- (e) all warranties, guarantees and indemnities in respect of products, construction, services or otherwise in favour or for the benefit of or otherwise available to the Grantor pursuant to any agreement or arrangement with any Person (including pursuant to the Loan Documents);
- (f) all construction, completion and performance bonds, sureties, letters of credit or other financial instruments and all similar contracts, instruments and agreements in favour or for the benefit of the Grantor, including the Contractor Bonds;
- (g) the Project Agreement, the other Material Project Documents and all other Contracts;
- (h) all Plans;
- (i) all Consents and arrangements and agreements with Governmental Authorities;
- (j) all leases of equipment and motor vehicles and other personal property;
- (k) all Intellectual Property;
- (l) all other present and after acquired personal property in which a security interest can be taken, reserved, created or granted, whether under the PPSA or otherwise, and which is now or hereafter owned by the Grantor or in which the Grantor now has or hereafter acquires any interest of any nature whatsoever, excluding "consumer goods" (as defined in the PPSA) but including all equipment, inventory, goods, instruments, securities, documents of title, chattel paper, accounts, money, investment property, securities, instruments, financial assets, securities accounts, intangibles, fixtures, computer hardware, software and databases, contract rights, credits, claims, demands, debts, choses in action, trade-marks, patents and all other Intellectual Property; and
- (m) all proceeds of the property or interests therein described in paragraphs (a) to (l) above, including all present and future property in any form derived directly or indirectly from any dealing with such property or interests or the proceeds therefrom and any personal property received when such property or interest therein or proceeds are sold, exchanged, collected or otherwise disposed of.

The foregoing property is collectively referred to as the "Collateral".

Section 2.2 Exception to Last Day

The Security Interest shall not extend or apply to, and Collateral shall not include:

- (a) the last day of the term of any lease of real property or agreement therefor; provided that the Grantor shall hold its interest therein in trust for the Secured Parties for the purposes and subject to the terms hereof to assign and dispose thereof as the Agent shall for such purposes direct as and when the Agent is entitled to realize upon the Collateral in accordance with Article 6; and

- (b) any agreement, entitlement, right, franchise, licence or Permit (each, a "**Contractual Right**") to which the Grantor is a party or of which the Grantor has the benefit, to the extent that the creation of the Security Interest would constitute a breach of the terms of or permit any Person to terminate such Contractual Right; provided that the Grantor shall hold its interest therein in trust for the Secured Parties for the purposes and subject to the terms hereof to assign and dispose thereof as the Agent shall for such purposes direct as and when the Agent is entitled to realize upon the Collateral in accordance with Article 6, and shall subject such Contractual Right to the Security Interest forthwith upon obtaining the consent or approval of the other party thereto as contemplated by this Section 2.2.

The Grantor agrees that it will, upon the request of the Agent, use all commercially reasonable efforts to obtain any consent required to permit any Contractual Rights to be subjected to the Security Interest.

Section 2.3 Liability for Deficiency

If the Collateral is realized upon and the Security Interest in the Collateral is not sufficient to satisfy all Secured Obligations, the Grantor acknowledges and agrees that it shall continue to be liable for any Secured Obligations remaining outstanding and the Agent shall be entitled to pursue full payment thereof.

Section 2.4 Attachment

The Grantor and the Agent hereby acknowledge that (i) value has been given, (ii) the Grantor has rights in the Collateral or the power to transfer rights in the Collateral and, to the extent that the Grantor does not acquire rights or interests in any of the Collateral until after the execution and delivery of this Agreement, the Security Interest created hereby shall attach to such Collateral at the time the Grantor acquires rights or interests therein, (iii) the Grantor has not agreed to postpone the time of attachment of the Security Interest, and (iv) this Agreement constitutes a security agreement as that term is defined in the PPSA.

Section 2.5 Grant of License to Use Intellectual Property

For purposes of enabling the Agent to exercise its rights and remedies pursuant to Article 6, at such time as the Agent shall be lawfully entitled to exercise its rights and remedies and for no other purpose, the Grantor grants to the Agent an irrevocable, non-exclusive licence (exercisable without payment of royalty or other compensation to the Grantor) to use, assign or sublicense any of the Intellectual Property wherever the same may be located, including in such licence access to (i) all media in which any of the licensed items may be recorded or stored, and (ii) all computer programs used for compilation or print-out.

ARTICLE 3 - AGENT'S RIGHTS AND OBLIGATIONS

Section 3.1 Rights and Duties of the Agent

- (1) The Agent shall have and be entitled to exercise all such powers hereunder as are specifically delegated to the Agent by the terms hereof, together with such powers as are incidental thereto. The Agent may execute any of its duties hereunder by or through its officers or employees and shall be entitled to retain counsel and to act in reliance upon the advice of such counsel concerning all matters pertaining to its duties hereunder.
- (2) In the event that the Collateral is in the possession of the Agent, the Agent and any nominee on its behalf shall be bound to exercise in the holding of the Collateral the same degree of care as it would exercise with respect to similar property of its own of similar value.
- (3) Subject to Section 3.1(2), the Agent shall not be (i) liable or accountable for any failure to collect, realize or obtain payment in respect of the Collateral, (ii) bound to institute proceedings for the purpose of collecting, enforcing, realizing or obtaining payment of the Collateral or for the purpose of preserving any rights of any Persons in respect of the Collateral, (iii) responsible for any loss occasioned by any sale or other dealing with the Collateral or by the retention of or failure to sell or otherwise deal with the Collateral, or (iv) bound to protect the Collateral from depreciating in value or becoming worthless.
- (4) Neither the Agent, the Lenders nor any nominee acting on its or their behalf, nor any director, officer or employee of the Agent, any Lender or any such nominee, shall be liable for any action taken or omitted to be taken by it hereunder or in connection herewith, except for its own gross negligence or wilful misconduct.
- (5) For greater certainty, except to the extent permitted under this Agreement, the Credit Agreement, the Lenders' Direct Agreement or the Blocked Account Agreement and notwithstanding Section 17 of the PPSA, the Agent and each other Secured Party may not sell, transfer or use any investment property included in the Collateral of which the Agent or such Secured Party has "control" within the meaning of subsection 1(2) of the PPSA.

Section 3.2 Grantor Remains Liable

- (1) It is expressly agreed by the Grantor that, anything herein to the contrary notwithstanding, the Grantor shall remain liable under each of the Material Project Documents and any other Contracts to which it is party to observe and perform all the conditions and obligations to be observed and performed by it thereunder. Neither the Agent nor any other Secured Party shall have any obligation or liability in respect of the Grantor's obligations under any Material Project Document or other Contract by reason of or arising out of this Agreement or the grant of the Security Interest therein. Neither the Agent nor any other Secured Party shall be required or obligated in any manner to perform or fulfill any of the obligations of the Grantor under or pursuant to any Material Project Document or other Contract, or to make any payment, or to make any inquiry as to the nature or the sufficiency of any payment received by it or the sufficiency of any performance by any party under any Material Project Document or Contract, or to present or file any claims, or to take any action to collect or

enforce any performance or the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times.

- (2) The Grantor hereby indemnifies and agrees to save and hold harmless the Agent and each of the other Secured Parties from and against any and all claims, demands, actions, causes of action, losses, suits, damages and costs whatsoever of any Person arising directly or indirectly from or out of any Material Project Document or in connection with any breach by the Grantor of any of its obligations under any Material Project Document which exist, arise or occur prior to the effective assumption by the Agent (or another Person on the Agent's or the other Secured Parties' behalf) of such Material Project Document, except to the extent of any gross negligence or wilful misconduct of the Agent or any Secured Party following the effective assumption by the Agent (or another Person on the Agent's or the other Secured Parties' behalf) of such Material Project Document.

Section 3.3 Registration or Transfer of Securities

- (1) The Agent shall have the right to have any uncertificated securities or certificated securities included in the Collateral registered in its name or in the name of its nominee; and for such purpose the Grantor shall comply with Section 5.1(4)(i), Section 5.1(4)(ii) or Section 5.1(4)(iii), as applicable, upon the request of the Agent.
- (2) The Agent shall have the right to become or have its nominee become the entitlement holder with respect to any security entitlements or investment property included in the Collateral; and for such purpose the Grantor shall comply with Section 5.1(4)(iv) upon the request of the Agent.
- (3) As the registered holder of any uncertificated securities or certificated securities or the entitlement holder with respect to any investment property included in the Collateral, the Agent shall be entitled but not bound or required to exercise any of the rights that any holder of such Securities or such entitlement holder may at any time have; provided that, at all times other than during the continuance of an Event of Default, the Grantor will be entitled to exercise (in a manner which would not (i) be prejudicial to the interests of the Secured Parties, or (ii) violate or be inconsistent with this Agreement) all voting power from time to time exercisable in respect of the Securities or the security entitlements thereto and to receive and deal with any interest and regular cash dividends at any time payable on or with respect to the Pledged Securities. No Secured Party will be responsible for any loss occasioned by its exercise of any of such rights or by failure to exercise the same within the time limited for the exercise thereof.

ARTICLE 4 - REPRESENTATIONS AND WARRANTIES

Section 4.1 Representations and Warranties of the Grantor

The Grantor hereby represents and warrants that:

- (a) the Grantor's legal name is set forth on the signature page hereto;

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- (b) the Grantor is the registered, legal and beneficial owner of the Collateral consisting of investment property and financial assets (collectively, the “**Pledged Securities**”) and is the legal and beneficial owner of all other Collateral;
- (c) the Collateral is free and clear of all Liens other than Permitted Liens, and none of the Collateral is held by the Grantor in a trust capacity other than as specified in Section 2.22;
- (d) the Security Interest in Collateral with respect to which a security interest may be perfected by filing pursuant to the PPSA has been perfected as a security interest in favour of the Agent for the benefit of the Secured Parties and all action by the Grantor necessary to protect and perfect such Security Interest on each item of the Collateral has been duly taken;
- (e) the Grantor has not granted nor has it agreed to grant a Lien in or any right to acquire an interest in any of the instruments or chattel paper;
- (f) the Grantor has not given its consent to any agreement whereby any third party agrees to comply with instructions that are originated by any Person other than the Grantor in respect of any investment property without the further consent of the Grantor, other than any such consents given by the Grantor relating to agreements for instructions to be originated by the Agent;
- (g) upon receipt by the Agent of the Pledged Securities, the Agent has obtained control of the Pledged Securities;
- (h) no Person other than the Agent has control or has the right to obtain control of the Pledged Securities; and
- (i) the Grantor’s jurisdiction of incorporation, chief executive office, principal place of business, registered office according to its constating documents, corporate offices and the locations of all of its books and records concerning the Collateral are set forth on Schedule 4.1(i) hereto.

The representations and warranties set forth in this **Error! Reference source not found.** shall survive the execution and delivery of this Agreement.

ARTICLE 5 - COVENANTS

Section 5.1 Covenants of the Grantor

The Grantor covenants and agrees with the Agent, for the benefit of the Secured Parties, as set forth in this Section 5.1 from and after the date of this Agreement and until the Termination Date.

- (1) The Grantor shall keep and maintain, at its own cost and expense, satisfactory and complete records of the Collateral, including a record of any and all payments received and any and all credits granted with respect to the Collateral and all other dealings with the Collateral.

- (2) Except for Collateral that is disposed of in accordance with the Loan Documents, the Grantor shall prevent Collateral from being or becoming an accession not covered by this Agreement.
- (3) The Grantor acknowledges that it is not authorized to file any financing change statement with respect to any financing statement that has been filed in respect of any Loan Document without the prior written consent of the Agent.
- (4) Promptly upon request from time to time by the Agent, acting reasonably, the Grantor shall:
 - (i) deliver (or cause to be delivered) to the Agent, endorsed to the Agent or such nominee as it may direct and/or accompanied by such instruments of assignment and transfer in such form and substance as the Agent may reasonably request, any and all instruments, Pledged Securities, documents of title and chattel paper included in or relating to the Collateral as the Agent may specify in its request, to be held by the Agent subject to the terms of this Agreement;
 - (ii) direct the issuer of any and all certificated securities included in or relating to the Collateral as the Agent may specify in its request to register the applicable security certificates in the name of the Agent or such nominee as it may direct;
 - (iii) direct the issuer of any and all uncertificated securities included in or relating to the Collateral as the Agent may specify in its request to register the Agent or such nominee as it may direct as the registered owner of such uncertificated securities;
 - (iv) direct the securities intermediary for any security entitlements or securities accounts included in or relating to the Collateral as the Agent may specify in its request to transfer any or all of the financial assets to which such security entitlements or securities accounts relate to such one or more securities accounts as the Agent may specify such that the Agent shall become the entitlement holder with respect to such financial assets or the Person entitled to exercise all rights with respect to such securities account; and
 - (v) cause the Agent to obtain control over any Collateral described in Section 5.1(4)(i) (as determined pursuant to the PPSA) and the Grantor shall neither cause nor permit any Person other than the Agent to have control of any Pledged Securities or financial asset.
- (5) Promptly upon request from time to time by the Agent, acting reasonably, the Grantor shall hold its security entitlements in a securities account that (i) is maintained in the name of the Grantor at an office of a securities intermediary located in Ontario, and (ii) together with all financial assets credited thereto and all related security entitlements, is subject to a control Agreement. The Grantor shall, at the request of the Agent (in the Agent's sole discretion), (iii) enter into and cause any securities intermediary holding a securities account in respect of Pledged Securities to enter into a control Agreement, in form and substance satisfactory to the Agent acting reasonably, in respect of all Pledged Securities constituting security entitlements of the Grantor, and (iv) deliver each such control Agreement to the Agent. The

Grantor shall cause all Pledged Securities underlying any security entitlements acquired by the Grantor after the date hereof to be credited to a securities account that is subject to a control Agreement described herein.

- (6) The Grantor shall promptly inform the Agent in writing of the acquisition by the Grantor of any personal property which is not adequately described in this Agreement, and the Grantor will execute and deliver, at its own expense, from time to time amendments to this Agreement or additional security agreements or schedules as may be required by the Agent in order that the Security Interest shall attach to such personal property.
- (7) The Grantor shall promptly execute and deliver to the Agent such further documents, instruments and assurances and take or cause to be taken such further action as the Agent from time to time may reasonably request in order to carry out the intent and purpose of this Agreement and to establish and protect the rights and remedies created or intended to be created in favour of the Agent.

ARTICLE 6 - REMEDIES

Section 6.1 Remedies

- (1) If an Event of Default has occurred and is continuing, the Security Interest shall become immediately enforceable and the Agent may in its discretion protect and/or enforce its rights under this Agreement by such appropriate private or judicial proceedings as the Agent shall deem most effectual to protect and enforce such rights. Without limiting the generality of the foregoing, if an Event of Default has occurred and is continuing, the Agent may exercise one or more of the following powers:
 - (a) appoint a Receiver, as agent for the Grantor with full power of attorney as set out in Section 7.11, to exercise all rights and remedies available to the Agent hereunder, remove or replace such Receiver from time to time or institute proceedings in any court of competent jurisdiction for the appointment of a Receiver for the Collateral, and in respect thereof:
 - (i) such Receiver shall be vested with the rights and remedies which could have been exercised by the Agent in respect of the Grantor or the Collateral and such other powers and discretions as are granted in the instrument of appointment and any instrument or instruments supplemental thereto;
 - (ii) the identity of the Receiver, any replacement thereof and any remuneration thereof shall be within the sole and unfettered discretion of the Agent;
 - (iii) such Receiver shall act as agent for the Agent for the purposes of taking possession of the Collateral, but otherwise and for all other purposes as agent for the Grantor;
 - (iv) the Grantor agrees to ratify and confirm all actions of the Receiver acting as agent for the Grantor, and to release and indemnify the Receiver in respect of all such actions;

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- (v) neither the Agent nor any other Secured Party, in appointing or refraining from appointing any Receiver, shall incur any liability to the Receiver, the Grantor or otherwise, and shall not be responsible for any actions or failure to act on the part of such Receiver (including any misconduct, negligence or gross negligence of such Receiver);
- (b) exercise its rights under the Direct Agreements and/or the Blocked Account Agreement (including any step-in rights under the Lenders' Remedies Agreement);
- (c) give notice of the Security Interest to any Person obligated to pay any indebtedness or liability comprising part of the Collateral and direct such Person to make all payments on account of any such Indebtedness or liability to the Agent, and give or withhold all consents, waivers and ratifications in respect of any or all thereof and otherwise act with respect thereto as though it were the absolute owner thereof; the Grantor acknowledges that any payments received by the Grantor from such Persons after notification of the Security Interest to such Persons after the occurrence of an Event of Default shall be received and held by the Grantor in trust for the Secured Parties and shall be forthwith turned over to the Agent upon request;
- (d) require the Grantor, by notice in writing given by the Agent to the Grantor, to disclose to the Agent the location or locations of the Collateral and, at the Grantor's expense, to assemble the Collateral at a place or places designated by notice in writing given by the Agent to the Grantor;
- (e) take possession of the Collateral and require the Grantor to collect the Collateral and deliver or make the Collateral available to the Agent at such place or places as may be specified by the Agent and sell, lease or otherwise dispose of the Collateral, or any part thereof, at public auction, by private tender, by private sale or otherwise, either for cash or credit upon such terms and conditions as the Agent may determine and without notice to the Grantor unless required by Applicable Law;
- (f) take such steps as it considers desirable to maintain, preserve, repair, improve or protect the Collateral, including the authority to borrow or raise money on behalf of the Grantor on the security of the interests of the Grantor in any of its assets for the purpose of paying for the maintenance, preservation or protection of the Collateral notwithstanding any restriction on the incurrence of Debt contained in the Credit Agreement;
- (g) demand, commence, continue or defend any judicial or administrative proceedings for the purpose of protecting, seizing, collecting, realizing or obtaining possession or payment of the Collateral, and give valid and effectual receipts and discharges therefor and compromise or give time for the payment or performance thereof, and generally enforce any rights of the Grantor in respect of the Collateral, in any manner permitted by Applicable Law but subject to the terms of the Project Agreement and the Lenders' Remedies Agreement;
- (h) exercise any and all rights of conversion, exchange, subscription or any other rights, privileges or options pertaining to any or all securities which constitute Collateral as if it were the absolute owner thereof, and participate in any recapitalization,

reclassification, reorganization, consolidation, redemption, merger or liquidation of any issuer of such securities, and in connection therewith may deposit or surrender control of the Collateral, accept money or other property in exchange for the Collateral, and take such action as it deems proper in connection therewith, and any other money or property received in exchange for the Collateral shall be held by the Agent thereafter as part of the Collateral pursuant to the provisions hereof;

- (i) charge on its own behalf and pay to others all reasonable amounts for expenses incurred and for services rendered including reasonable advisory, legal and accounting fees and expenses, in connection with the exercise of rights and remedies of the Agent under this Section 6.1;
 - (j) make such other payments as are required to protect the rights of the Secured Parties, including the payment of insurance premiums, including obtaining and maintaining reasonable levels of insurance on behalf of the Grantor, the payment of Construction Costs and other costs and, subject to the terms of the Lenders' Remedies Agreement, the performance of the Grantor's obligations under the Project Agreement and, in every such case, the amounts so paid (together with all costs, charges and expenses incurred in connection therewith, including interest thereon at an annual rate equal to the interest rate applicable to outstanding Loans) shall be added to and form part of the Secured Obligations;
 - (k) commence an action or proceeding to enforce the right of the Secured Parties to require the Grantor to carry out any covenant or agreement with the Secured Parties and to perform its duties under the Loan Documents and the Material Project Documents;
 - (l) exercise its rights under Section 7.11;
 - (m) commence an action to enjoin any acts or things which may be unlawful or in violation of the rights of the Secured Parties; and
 - (n) pursue any other remedy or proceeding authorized or permitted by law or equity in respect of the Collateral.
- (2) Neither the Agent nor any other Secured Party shall be obliged to exhaust its recourses against the Grantor or any other Person or against any other security it may hold in respect of the Secured Obligations before realizing upon or otherwise dealing with the Collateral in such manner as the Agent may consider desirable.

Section 6.2 Rights and Remedies under PPSA

In addition to those rights granted herein and in any other agreement now or hereafter in effect between the Grantor and any Secured Party, and in addition to any other rights any Secured Party may have at law or in equity, the Agent shall have, both before and after the occurrence of any Event of Default that is continuing, all rights and remedies of a secured party under the PPSA. However, the Agent shall not be liable or accountable for any failure to exercise its remedies, take possession of, collect, enforce, realize, sell, lease, license or otherwise dispose of Collateral or to institute any proceedings for such purposes. Furthermore, neither the Agent nor any other Secured Party shall

have any obligation to take any steps to preserve rights against prior parties to any instrument or chattel paper, whether Collateral or proceeds and whether or not in the Agent's or any other Secured Party's possession, and shall not be liable or accountable for failure to do so. The taking of any action or proceeding or refraining from doing so, or any other dealings with any other security for the Secured Obligations secured by this Agreement, shall not release or affect the Collateral or the Security Interest.

Section 6.3 Co-operation of the Grantor

The Grantor acknowledges that, upon the occurrence and during the continuance of an Event of Default, the Agent or any Receiver appointed by or at the request of the Agent may take possession of Collateral wherever it may be located and by any method permitted by law and the Grantor agrees, upon request from the Agent or any such Receiver, to assemble and deliver possession of Collateral, at the Grantor's expense, at such place or places as directed.

Section 6.4 Costs

The Grantor shall pay all costs, charges and expenses reasonably incurred by the Agent, any other Secured Party or any Receiver appointed by or at the request of the Agent, whether directly or for services rendered (including reasonable legal and auditors' costs and expenses and Receiver remuneration), in operating the Grantor's accounts, in preparing or enforcing this Agreement, taking and maintaining custody of, preserving, repairing, processing, preparing for disposition and disposing of Collateral and in enforcing or collecting indebtedness and all such costs, charges and expenses, together with any amounts owing as a result of any borrowing by the Agent, any other Secured Party or any Receiver appointed by or at the request of the Agent, as permitted hereby, shall be a first priority Security Interest on the proceeds of realization, collection or disposition of Collateral and shall be secured hereby.

Section 6.5 Sale

- (1) The Agent will give the Grantor such notice, if any, of the date, time and place of any public sale or of the date after which any private disposition of Collateral is to be made as may be required by the PPSA.
- (2) Without prejudice to the ability of the Agent or its agent or a Receiver to dispose of the Collateral in any manner which is commercially reasonable, the Grantor acknowledges that a disposition of such Collateral by the Agent or such agent or Receiver which takes place substantially in accordance with the following provisions shall be deemed to be commercially reasonable:
 - (a) Collateral may be disposed of whether or not the Agent or such agent or Receiver has taken possession thereof;
 - (b) Collateral may be disposed of in whole or in part;
 - (c) the Collateral may be disposed of by public auction, public tender or private contract, with or without advertising and without any other formality;

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- (d) the Agent may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for the sale, and such sale may, subject to Applicable Law, without further notice be made at any time or place to which the same may be so adjourned;
 - (e) any purchaser or lessee of the Collateral may be a customer of the Agent or any Secured Party;
 - (f) a disposition of the Collateral may be on such terms and conditions as to credit or otherwise as the Agent, in its sole discretion, may deem advantageous;
 - (g) the Agent may establish an upset or reserve bid or price in respect of the Collateral;
 - (h) the Agent and any Secured Party may buy in, rescind or vary any contract for the disposition of Collateral, again without being obligated to account or be answerable for any gain or loss occasioned thereby.
- (3) No person dealing with the Agent or its agent or a Receiver shall be required (i) to determine whether the Security Interest has become enforceable, (ii) to determine whether the powers which the Agent or such agent or Receiver is purporting to exercise have become exercisable, (iii) to determine whether any money remains due to the Agent or any other Secured Party by the Grantor or other Persons, (iv) to determine the necessity or expediency of the stipulations and conditions subject to which any sale, lease, licence or other disposition shall be made, (v) to determine the propriety or regularity of any sale or of any other dealing by the Agent or such agent or Receiver with the Collateral, or (vi) to see to the application of any money paid to the Agent or such agent or Receiver.

Section 6.6 Waiver by the Grantor

To the maximum extent permitted by Applicable Law, the Grantor waives all claims, damages and demands against the Agent or any other Secured Party or any Receiver appointed by or at the request of the Agent arising out of the repossession, retention or sale of the Collateral except such as arise solely out of the gross negligence or wilful misconduct of the Agent or any other Secured Party or any Receiver appointed by or at the request of the Agent as finally determined by a court of competent jurisdiction.

ARTICLE 7 - MISCELLANEOUS

Section 7.1 Extensions, etc.

The Agent may grant time, renewals, extensions, indulgences, releases and discharges to, take security from and give the same and any or all existing Collateral up to, abstain from taking security from or from perfecting Collateral of, cease or refrain from giving credit or making loans or advances to, accept compositions from, compound, compromise, settle, grant releases and discharges and otherwise deal with, the Grantor and others and with all Collateral as the Agent may see fit, and, subject to the Credit Agreement, may apply all monies at any time received from the Grantor or others or from Collateral upon such part of the Secured Obligations as the Agent deems best and change any such application in whole or in part from time to time as the Agent may see fit, the whole

without in any way limiting the rights of the Agent under this Agreement, and no loss of or in respect of or resulting from the enforcement of any Collateral received by the Agent from the Grantor or others, whether occasioned by the fault or negligence of the Agent or otherwise, shall in any way limit the rights of the Agent under this Agreement.

Section 7.2 No Waiver

No delay or omission by the Agent in exercising any right or remedy hereunder or by the Agent or any other Secured Party with respect to any of the Secured Obligations shall operate as a waiver thereof or of any other right or remedy, and no single or partial exercise thereof shall preclude any other or further exercise thereof or the exercise of any other right or remedy. Furthermore, the Agent or any other Secured Party may remedy any Event of Default by the Grantor hereunder or with respect to any Secured Obligations in any reasonable manner without waiving the Event of Default remedied and without waiving any other prior or subsequent Event of Default by the Grantor.

Section 7.3 Waiver of Protest

The Grantor waives protest of any instrument constituting Collateral at any time held by the Agent on which the Grantor is in any way liable and, subject to Section 6.5, notice of any other action taken by the Agent, each to the extent permitted by Applicable Law.

Section 7.4 Assignment and Enurement

This Agreement will enure to the benefit of and be binding upon the successors and permitted assigns of the parties hereto. The Grantor shall not assign, delegate or transfer all or any part of its rights or obligations hereunder without the prior written consent of the Agent, which consent may be withheld by the Agent in its sole discretion. The Agent shall be permitted to assign its rights and obligations hereunder to any successor administrative agent appointed in accordance with the relevant provisions of the Credit Agreement.

Section 7.5 Amendment

Save for any schedules which may be added hereto pursuant to the provisions hereof, no modification, variation or amendment of any provision of this Agreement shall be made except by a written agreement executed by the parties hereto, and no waiver of any provision hereof shall be effective unless in writing.

Section 7.6 Notices

Except as otherwise provided herein, whenever it is provided herein that any notice, demand, request, consent, approval, declaration or other communication shall or may be given to or served upon one party by another party, or whenever one party desires to give or serve upon another party any communication with respect to this Agreement, each such notice, demand, request, consent, approval, declaration or other communication shall be validly served, given or delivered if served, given or delivered as provided for in Section 14.5 of the Credit Agreement.

Section 7.7 Remedies Cumulative

This Agreement and the security afforded hereby is in addition to and not in substitution for any other security now or hereafter held by the Agent or any other Secured Party and is intended to be a continuing security agreement and shall remain in full force and effect until all Secured Obligations and any extensions or renewals thereof together with interest accruing thereon shall be paid in full. All rights and remedies of the Agent granted or recognized in this Agreement are cumulative and may be exercised at any time and from time to time independently or in combination.

Section 7.8 Reinstatement

This Agreement shall remain in full force and effect and continue to be effective should any petition be filed by or against the Grantor for liquidation or reorganization, should the Grantor become insolvent or make an assignment for the benefit of any creditor or creditors, or should a receiver or trustee or similar person be appointed for all or any significant part of the Grantor's assets, and shall continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Secured Obligations, or any part thereof, is pursuant to Applicable Law rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Secured Obligations, whether as a "voidable preference", "fraudulent conveyance" or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Secured Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

Section 7.9 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.

Section 7.10 Powers of Attorney

- (1) Subject to section 7.10(2), the Grantor hereby appoints the Agent, or a Receiver appointed by the Agent as the agent of the Grantor, as the Grantor's attorney, with full power of substitution, in the name and on behalf of the Grantor, to execute, deliver and do all such acts, deeds, leases, documents, transfers, demands, conveyances, assignments, contracts, assurances, consents, financing statements and things as the Grantor has herein agreed to execute, deliver and do as may be reasonably required by the Agent to give effect to this Agreement or in the exercise of any rights, powers or remedies hereby or thereby conferred on the Agent, and generally to use the name of the Grantor in the exercise of all or any of the rights, powers or remedies hereby or thereby conferred on the Agent, including the right to bring actions for and in the name of the Grantor, the right to collect accounts, the right to disburse or make payments from any Project Accounts as required in the Credit Agreement and the right to exercise the rights of the Grantor under the Project Agreement and all other Contracts and to cure any defaults thereunder.

- (2) The Agent shall only exercise its rights pursuant to section 7.10(1) after the occurrence of and during the continuance of an Event of Default, except that the Agent may exercise its rights under section 7.10(1) from the date of this Agreement with respect to preparation and filing of financing statements or mortgages and such other documents and instruments as may be required to register or give notice of or perfect or preserve the Security Interest.
- (3) The appointment in section 7.10(1) is coupled with an interest and shall not be revoked by the insolvency, bankruptcy, dissolution, liquidation or other termination of the existence of the Grantor or for any other reason. All acts of the attorney are ratified and approved by the Grantor, and the attorney shall not be liable to the Grantor or any other Person for any act, failure to act or any other matter or thing, except for its own gross negligence or wilful misconduct.

Section 7.11 Termination of this Agreement

Subject to Section 7.8, this Agreement and the Security Interest granted hereunder shall terminate upon full and irrevocable payment and satisfaction of the Secured Obligations and all obligations of the Agent and the Lenders under the Credit Agreement and the other Loan Documents having terminated (the "**Termination Date**"). As soon as practical after such termination, any Collateral then in the custody of the Agent or its nominee shall be delivered to the Grantor with all certificates being duly endorsed in blank for transfer or accompanied by a power of attorney/stock power in respect of each such certificate duly executed in blank by the Agent.

Section 7.12 Governing Law

This Agreement is governed by, and is to be construed and interpreted in accordance with, the laws of the Province of Ontario and the laws of Canada applicable in the Province of Ontario. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the Province of Ontario. Each party waives any right it has to object to an action being brought in those courts, including by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

Section 7.13 Counterparts; Delivery by Fax

This Agreement and any amendment, variation, supplement, restatement, renewal, replacement or termination of any provision of this Agreement may be executed and delivered in any number of counterparts, each of which when executed and delivered is an original but all of which taken together constitute one and the same instrument. Any party may deliver an executed copy of this Agreement by fax but that party shall immediately deliver to the other parties an originally executed copy of this Agreement.

Section 7.14 No Deemed Subordination

No reference to Permitted Liens in this Agreement or any other Loan Document, or any statement or provision as to the acceptability of any Permitted Lien or any other Lien or the permitted priority thereof, shall in any way constitute or be construed so as to provide for a subordination of any rights

of the Agent or the other Secured Parties hereunder or arising under any other Loan Documents in favour of any holder of such Permitted Lien or any Lien ranking in priority to such Permitted Liens.

Section 7.15 Benefit of Secured Parties

All Liens granted or contemplated hereby shall be for the benefit of the Agent and the other Secured Parties, and all proceeds or payments realized from Collateral in accordance herewith shall be applied to the Secured Obligations in accordance with the terms of the Credit Agreement and the other Loan Documents.

Section 7.16 Copy

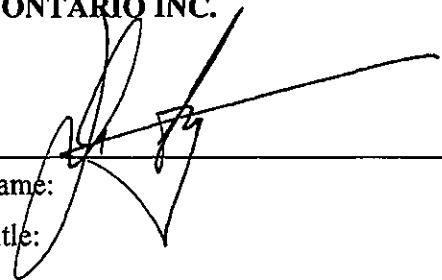
The Grantor hereby acknowledges receipt of a copy of this Agreement.

[THIS SPACE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first written above.

2442931 ONTARIO INC.

By:



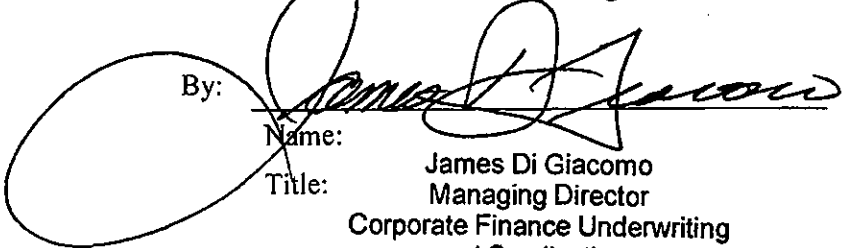
Name:

Title:

Name:

Title:

BANK OF MONTREAL, as the Agent

By: 
Name: _____
Title: **James Di Giacomo
Managing Director
Corporate Finance Underwriting
and Syndications**

By: _____
Name: _____
Title: _____

SCHEDULE 4.1(h)
Locations

Locations of the Grantor's chief executive office and principal place of business:

407 Basaltic Road
Concord, Ontario L4K 4W8

Locations of the Grantor's corporate offices including registered office (where different from that set out above):

407 Basaltic Road
Concord, Ontario L4K 4W8

All premises where Collateral is located:

407 Basaltic Road
Concord, Ontario L4K 4W8

Locations of books and records concerning Collateral:

407 Basaltic Road
Concord, Ontario L4K 4W8

THIS IS EXHIBIT "G" TO
THE AFFIDAVIT OF EDEN ORBACH
SWORN BEFORE ME THIS 17th
DAY OF DECEMBER, 2018.



A Commissioner etc.

EXECUTION VERSION

**LIMITED RECOURSE GUARANTEE AND SECURITY
AGREEMENT**

Made as of January 21, 2015

Between

BONDFIELD CONSTRUCTION COMPANY LIMITED

and

BANK OF MONTREAL
as administrative agent for the Lenders

and

2442931 ONTARIO INC.

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LIMITED RECOURSE GUARANTEE AND SECURITY AGREEMENT

This limited recourse guarantee and security agreement is made as of January 21, 2014 between:

BONDFIELD CONSTRUCTION COMPANY LIMITED, a corporation incorporated under the laws of the Province of Ontario (the "**Guarantor**")

and

BANK OF MONTREAL, in its capacity as administrative agent for the Lenders (in such capacity, the "**Agent**")

and

2442931 ONTARIO INC., a corporation incorporated under the laws of the Province of Ontario (the "**Borrower**")

RECITALS

A. Pursuant to the Credit Agreement dated as of the date hereof (the "**Credit Agreement**"), between the Borrower, the Agent and the Lenders (as defined therein), the Lenders have agreed to make available certain loans and other financial accommodations to the Borrower.

B. The Guarantor is the registered and beneficial owner of 100% of the issued and outstanding Equity Securities of the Borrower.

C. It is a condition precedent to the Financial Closing Date that the Guarantor provide a limited recourse guarantee of the full and irrevocable payment and performance of the Guaranteed Obligations and that the Guarantor grant a security interest over the outstanding Equity Securities it holds in the Borrower to the Agent as continuing collateral security for the Guarantor's obligations hereunder.

FOR VALUE RECEIVED, the parties agree as follows:

ARTICLE 1 – INTERPRETATION

Section 1.1 Terms Defined in the Credit Agreement

Any term used and not otherwise defined herein shall have the meaning given to it in the Credit Agreement.

Section 1.2 Other Defined Terms

Unless otherwise defined or stated, capitalized terms used herein have the following meanings:

- (1) **“adverse claim”** has the meaning given to it in Section 1(1) of the *Securities Transfer Act, 2006* (Ontario);
- (2) **“Collateral”** has the meaning given to it in Section 3.1;
- (3) **“Equity Securities”** means all shares, units, options, warrants, interests, participations or other equivalents (regardless of how designated) of or in a corporation, partnership, limited partnership or equivalent entity, whether voting or non-voting or participating or non-participating;
- (4) **“Guaranteed Obligations”** means all Obligations and all out-of-pocket expenses (including counsel fees and disbursements on a solicitor and his or her own client basis) incurred by any of the Secured Parties in enforcing any of their respective rights under this Agreement;
- (5) **“Pledged Securities”** means all Equity Securities of or in the capital stock of the Borrower owned by the Guarantor as of the date hereof, as more particularly described in Schedule Section 1.2(5), and all Equity Securities of or in the capital stock of the Borrower acquired by the Guarantor from time to time following the date hereof;
- (6) **“PPSA”** means the *Personal Property Security Act* (Ontario);
- (7) **“Receiver”** includes a receiver, manager and receiver-manager, whether interim or otherwise;
- (8) **“Security Interest”** has the meaning given to it in Section 3.1; and
- (9) **“Termination Date”** has the meaning given to it in Section 7.10.

Section 1.3 Headings

The headings used in this Agreement are for convenience only and are not to be considered a part of this Agreement and do not in any way limit or amplify the terms and provisions of this Agreement.

Section 1.4 References

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 this Agreement to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement; and
- (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 for greater certainty shall include all regulations issued thereunder.

ARTICLE 2 – GUARANTEE

Section 2.1 Guarantee

- (1) The Guarantor hereby irrevocably and unconditionally guarantees to the Agent and the Lenders the punctual, complete and irrevocable payment when due (whether at stated maturity, by acceleration, declaration, demand or otherwise), and at all times thereafter, and the performance of, all of the Guaranteed Obligations; provided that, in the event that demand for payment of the Guaranteed Obligations is made by the Agent or any Lender pursuant to this Agreement, the Agent's and the Lenders' recourse shall be limited as set forth in Section 2.2.
- (2) If acceleration of the time for payment, or the liability of the Borrower to make any payment, or any amount specified to be payable by the Borrower in respect of, the Guaranteed Obligations is stayed, prohibited or otherwise affected upon the insolvency, bankruptcy, reorganization or winding-up of the Borrower or any moratorium affecting the payment of the Guaranteed Obligations by the Borrower, all such amounts otherwise subject to acceleration or payment shall nonetheless be deemed for all purposes of this guarantee to be and to become due and payable by the Borrower and shall be payable by the Guarantor hereunder forthwith after demand by the Agent.

Section 2.2 Limitation on Recourse

The liability of the Guarantor to the Agent and the Lenders hereunder is limited to the extent that such liability is required to permit the Agent to realize upon the Collateral and, in the event that the Guarantor shall default in its obligations hereunder, the sole recourse of the Agent and the Lenders against the Guarantor shall be with respect to the Security Interest granted to the Agent in the Collateral and the Agent and the Lenders shall not have any right to payment from the Guarantor or against any of its other property or assets.

Section 2.3 Payment

Upon the occurrence and during the continuance of an Event of Default, the Guarantor agrees to make immediate payment to the Agent of all Guaranteed Obligations owing or payable to the Agent and the Lenders on written demand by the Agent to the Guarantor. The liability of the Guarantor shall bear interest from the date of such demand at the rate or rates of interest then applicable to the Obligations under and calculated in the manner provided in the Credit Agreement (including any adjustment to give effect to the *Interest Act* (Canada)).

Section 2.4 Secured Parties Need Not Exhaust Recourse

This guarantee constitutes a guarantee of payment when due and not of collection and the Guarantor specifically agrees that neither the Agent nor any Lender shall be bound to exhaust its recourse against the Borrower, any other party to the Credit Agreement or the other Loan Documents or any other Person prior to being entitled to enforce its rights under this Agreement. The Guarantor renounces all benefits of discussion and division.

Section 2.5 Obligations Not Affected

Without limiting the generality of Section 7.1, the obligations of the Guarantor hereunder shall not be affected or impaired by any act, omission, matter or thing whatsoever, occurring before, upon or after any demand for payment hereunder (and whether or not known to the Guarantor, the Agent or any Lender) which, but for this provision, might constitute a whole or partial defence to a claim against the Guarantor hereunder or might operate to release or otherwise exonerate the Guarantor from any of its obligations hereunder or otherwise affect such obligations, whether occasioned by default of the Agent, any Lender or otherwise, including:

- (a) any limitation of status or power, disability, incapacity or other circumstance relating to the Guarantor or the Borrower, including any insolvency, bankruptcy, liquidation, reorganization, readjustment, composition, dissolution, winding-up or other proceeding involving or affecting the Guarantor or the Borrower;
- (b) any irregularity, defect, unenforceability or invalidity in respect of any indebtedness or other obligation of the Guarantor or the Borrower under the Loan Documents or any other document or instrument;
- (c) any failure of the Guarantor or the Borrower, whether or not without fault on their part, to perform or comply with any of the provisions of the Credit Agreement or the other Loan Documents or any failure of the Borrower or any other Person, whether or not without fault on their part, to give notice thereof to the Guarantor;
- (d) the taking or enforcing or exercising, or the refusal or neglect to take or enforce or exercise, any right or remedy against the Guarantor or the Borrower or their respective assets, or the release or discharge of any such right or remedy;

- (e) the granting of time, renewals, extensions, compromises, concessions, waivers, releases, discharges (other than by a complete irrevocable written discharge executed by the Agent) and other indulgences to the Guarantor or the Borrower;
- (f) any amendment, variation, modification, supplement or replacement of the Credit Agreement or any other Loan Document (other than this Agreement and then only as expressly provided in writing by such amendment, variation, modification, supplement or replacement) or any other document or instrument;
- (g) any change in the ownership, control, name, objects, businesses, assets, capital structure or constitution of the Guarantor or the Borrower;
- (h) any merger or amalgamation of the Guarantor or the Borrower with any Person or Persons;
- (i) the occurrence of any change in the laws, rules, regulations or ordinances of any jurisdiction or by any present or future action of any Governmental Authority or court amending, varying, reducing or otherwise affecting, or purporting to amend, vary, reduce or otherwise affect, any of the Guaranteed Obligations under this Agreement;
- (j) the existence of any claim, set-off or other rights which the Guarantor or the Borrower may have at any time against any Person (including the other, or the Agent or any Lender), whether in connection with the Credit Agreement, the other Loan Documents or otherwise; and
- (k) any other circumstance (other than by complete irrevocable payment and by a complete irrevocable written discharge executed by the Agent and the Lenders) that might otherwise constitute a legal or equitable discharge or defence of the Borrower under the Credit Agreement or any other Loan Document, or of the Guarantor in respect of its guarantee hereunder.

Section 2.6 Waiver

Without in any way limiting the provisions of Section 2.5, the Guarantor hereby waives notice of acceptance hereof, notice of any liability of the Guarantor hereunder, notice or proof of reliance by the Agent or any Lender upon the obligations of the Guarantor hereunder, and diligence, presentment, demand for payment on the Borrower, protest, notice of dishonour or non-payment of any of the Guaranteed Obligations, or other notice or formalities to the Guarantor or the Borrower of any kind whatsoever.

Section 2.7 Waiver of Rights of Subrogation, Reimbursement, Etc.

- (1) The Guarantor hereby irrevocably waives any claim or other rights that it may now or hereafter acquire against the Borrower that arise from the existence, payment, performance or enforcement of the Guaranteed Obligations under this Agreement, the Credit Agreement or any other Loan Document, including any right of subrogation, reimbursement,

exoneration, contribution or indemnification and any right to participate in any claim or remedy of the Agent or any Lender against the Borrower, or any collateral, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, including the right to take or receive from the Borrower, directly or indirectly, in cash or other property or by set-off or in any other manner, payment or security on account of such claim, remedy or right; provided that:

- (a) such waiver shall terminate on the Termination Date; and
 - (b) the Agent shall be entitled to hold any Potential Preference Payment (as hereafter defined) in trust for its own benefit, to be credited and applied following the expiry of the potential preference period, to the Guaranteed Obligations, whether matured or unmatured, in accordance with the terms of the Credit Agreement or any other applicable Loan Document.
- (2) The term “**Potential Preference Payment**” shall mean any payment or other transfer received for the benefit of the Agent for or on account of the Guaranteed Obligations which could be avoided by a trustee in bankruptcy for the Borrower or the Guarantor, or by or for the benefit of other creditors of the Borrower or the Guarantor, as a “**preference**” or a “**preferential transfer**” or for any other reason under any applicable bankruptcy, insolvency or similar law now or hereafter in effect in any bankruptcy, insolvency or similar proceeding with respect to the Borrower or the Guarantor.
- (3) The Guarantor acknowledges that it will receive direct and indirect benefits from the financing arrangements contemplated by the Credit Agreement and that the waiver set forth in this Section 2.7 is knowingly made in contemplation of such benefits.

Section 2.8 Continuing Agreement

This Agreement shall be a continuing agreement and, subject to the limitation of recourse set out in Section 2.2, shall cover all the Guaranteed Obligations and it shall apply to and secure any ultimate balance due or remaining unpaid by the Guarantor on account of the Guaranteed Obligations determined without regard to any compromise, arrangement, settlement or release of the Borrower, whether arising by private agreement, pursuant to a reorganization, restructuring or arrangement under applicable statute law, operation of law or otherwise, and for all purposes under this Agreement the Guaranteed Obligations shall not be considered fully or completely satisfied and performed until no such ultimate balance exists.

Section 2.9 Obligations Guaranteed

No provision in this Agreement shall give rise to an obligation on the part of the Guarantor that is greater in amount, scope or extent than that of the Borrower under the Credit Agreement or any other Loan Document.

Section 2.10 Rights and Waivers

- (1) The Guarantor hereby agrees that, without the necessity of any reservation of rights against the Guarantor and without notice to or further agreement by the Guarantor, any demand for payment of any of the Guaranteed Obligations made by the Agent may be rescinded by the Agent and the Guaranteed Obligations or the liability of the Guarantor or any other party upon or for any part thereof, or any collateral security or guarantee therefor or right of set-off or compensation with respect thereto, may, from time to time, in whole or in part, be renewed, extended, amended, modified, accelerated, compromised, waived, surrendered, or released by the Agent and any collateral security documents or guarantees or documents in connection therewith may be amended, modified, supplemented or terminated, in whole or in part, as the Agent may deem advisable from time to time, and any collateral security at any time held by the Agent for the payment of the Guaranteed Obligations may be released in accordance with this Agreement all without the necessity of any reservation of rights against the Guarantor and without notice to or further assent by the Guarantor, which will remain bound hereunder, notwithstanding any such renewal, extension, modification, acceleration, compromise, amendment, supplement, termination, sale, exchange, waiver, surrender, pledge or release. The Guarantor waives diligence, presentment, protest, demand for payment and notice of default or non-payment to or upon the Guarantor with respect to the Guaranteed Obligations.
- (2) Any modification, extension, renewal, waiver, surrender, release, settlement, discharge or arrangement of the Guaranteed Obligations or the liability of the Guarantor or any other party upon or for any part thereof, or any collateral security or guarantee therefor or right of set-off or compensation with respect thereto pursuant to Section 2.10(1) shall, as between the Agent and the Guarantor, be deemed to have been given or made upon the express condition that it shall become and be wholly void and of no effect if the assurance, security or payment on the faith of which it was made or given shall at any time thereafter be rescinded or avoided as aforesaid, to the intent so that the Agent shall become and be entitled at any time after any such rescission or avoidance to exercise all or any of the rights conferred upon the Agent hereunder and of all other rights which by virtue and as a consequence of this guarantee the Agent would have been entitled to exercise but for such release, settlement, discharge or arrangement.

Section 2.11 Agent's Records

The records of the Agent shall be prima facie evidence of the amount of the Guaranteed Obligations and of the balance of the Guarantor's liabilities and obligations hereunder at any time and from time to time, whether the Guarantor is in default and whether any demand has been made.

Section 2.12 Secured Parties not Obligated

Nothing herein contained shall in any way obligate the Agent or any Lender to grant, continue, renew, extend time for payment of or accept anything which constitutes or would constitute Guaranteed Obligations.

ARTICLE 3- SECURITY INTEREST

Section 3.1 Grant of Security

As general and continuing security for the payment and performance by the Guarantor of the Guaranteed Obligations under this Agreement, the Guarantor hereby assigns, mortgages, pledges, charges and grants a security interest in, as and by way of a first, fixed and specific mortgage, pledge, charge and security interest, to and in favour of the Agent, for the benefit of the Secured Parties in accordance with the terms hereof, all of the present and future legal, beneficial and equitable right, title, estate and interest of the Guarantor, whether now owned or hereafter acquired, in and to, and all benefit and advantage accruing to the Guarantor or to be derived by the Guarantor from (such assignment, mortgage, pledge, charge and security interest, collectively, the “**Security Interest**”):

- (a) all Pledged Securities, together with any renewals thereof, substitutions therefor and additions thereto and all certificates and instruments evidencing or representing the Pledged Securities;
- (b) subject to Section 3.5(1), any and all distributions and dividends, as and when declared, whether in cash, specie, kind or stock, received or receivable upon or in respect of any Pledged Securities and all interest payments, money or other property payable or paid on account of any return or repayment of capital in respect of any Pledged Securities or otherwise distributed in respect thereof or which shall in any way be charged to, or payable or paid out of, the capital of the Borrower in respect thereof;
- (c) subject to Section 3.5(1), any and all other property that may at any time be received or receivable by or otherwise distributed to or acquired by the Guarantor in any manner in respect of, or in substitution for, or in addition to, or in exchange for, or on account of, any of the foregoing, including any shares, units or other securities resulting from the subdivision, consolidation, change, conversion or reclassification of any of the Pledged Securities or the reorganization or amalgamation of the Borrower with any other body corporate or the occurrence of any event which results in the substitution or exchange of the Pledged Securities; and
- (d) subject to Section 3.5(1), all proceeds of the property or interests therein described in paragraphs (a) to (c) above, including all present and future property in any form derived directly or indirectly from any dealing with such property or interests or the proceeds therefrom and any personal property received when such property or interest therein or proceeds are sold, exchanged, collected or otherwise disposed of.

The foregoing property is collectively referred to as the “**Collateral**”.

Section 3.2 Delivery of Pledged Securities

All certificates, instruments and other documents representing or evidencing the Pledged Securities, duly endorsed in blank for transfer and accompanied by stock powers or powers of attorney duly

executed in blank, substantially in the form of the stock power/power of attorney attached as Schedule Section 3.2, shall forthwith be delivered to and remain in the custody of the Agent or its nominee. If at any time or from time to time after the date of this Agreement the Guarantor shall be entitled to receive or shall receive any Equity Securities of the Borrower (for whatsoever reason, including by purchase, stock dividend, share distribution or other distribution or as a result of any reclassification, increase or reduction of capital or any reorganization or otherwise in addition to or in substitution or exchange for those described in Schedule Section 1.2(5)), the Guarantor shall forthwith (and in any event within three Business Days) after the Guarantor acquires or obtains such Equity Securities deposit such Equity Securities with the Agent and deliver to the Agent certificates, instruments or other documents representing such Equity Securities, duly endorsed in blank for transfer and accompanied by a power of attorney/stock power, substantially in the form of the stock power/power of attorney attached as Schedule Section 3.2, in respect of each such certificate duly executed in blank by the Guarantor, and will at the same time deliver to the Agent a certificate (which shall constitute a supplement to Schedule Section 1.2(5)) executed by the Guarantor describing such Equity Securities and confirming that such securities have been duly delivered to the Agent and are subject to the Security Interest. The Guarantor shall forthwith cause the Borrower to mark on its register that the Pledged Securities have been delivered to the Agent as security for the benefit of the Secured Parties. Upon the occurrence of an Event of Default, all Pledged Securities may, at the option of the Agent, be registered in the name of the Agent or its nominee.

Section 3.3 Rights and Duties of the Agent

- (1) The Agent shall have and be entitled to exercise all such powers hereunder as are specifically delegated to the Agent by the terms hereof, together with such powers as are incidental thereto. The Agent may execute any of its duties hereunder by or through its officers or employees and shall be entitled to retain counsel and to act in reliance upon the advice of such counsel concerning all matters pertaining to its duties hereunder.
- (2) In the event that the Collateral is in the possession of the Agent, the Agent and any nominee on its behalf shall only be bound to exercise in the holding of the Collateral the same degree of care as it would exercise with respect to similar property of its own of similar value.
- (3) Subject to Section 3.3(2), the Agent shall not be (i) liable or accountable for any failure to collect, realize or obtain payment in respect of the Collateral, (ii) bound to institute proceedings for the purpose of collecting, enforcing, realizing or obtaining payment of the Collateral or for the purpose of preserving any rights of any Persons in respect of the Collateral, (iii) responsible for any loss occasioned by any sale or other dealing with the Collateral or by the retention of or failure to sell or otherwise deal with the Collateral, or (iv) bound to protect the Collateral from depreciating in value or becoming worthless.
- (4) Neither the Agent, the Lenders nor any nominee acting on its or their behalf, nor any director, officer or employee of the Agent, any Lender or any such nominee, shall be liable for any action taken or omitted to be taken by it hereunder or in connection herewith, except for its own gross negligence or wilful misconduct.

Section 3.4 Attachment of Security Interest

The Guarantor and the Agent hereby acknowledge that (i) value has been given, (ii) the Guarantor has rights in the Collateral or the power to transfer rights in the Collateral and, to the extent that the Guarantor does not acquire rights or interests in any of the Collateral until after the execution and delivery of this Agreement, the Security Interest created hereby shall attach to such Collateral at the time the Guarantor acquires rights or interests therein, (iii) the Guarantor has not agreed to postpone the time of attachment of the Security Interest, and (iv) this Agreement constitutes a security agreement as that term is defined in the PPSA.

Section 3.5 Distributions

- (1) So long as no Event of Default has occurred and is continuing:
 - (a) the Guarantor shall be entitled to receive any and all cash distributions or interest payments on the Pledged Securities which it is otherwise entitled to receive to the extent not in violation of the Credit Agreement and the other Loan Documents and to the extent consistent with the Financial Model; and
 - (b) if the Pledged Securities shall have been registered in the name of the Agent or its nominee, the Agent shall execute and deliver (or cause to be executed and delivered) to the Guarantor all such distribution orders and other instruments as the Guarantor may reasonably request for the purpose of enabling the Guarantor to receive the distributions, dividends or other payments which the Guarantor is authorized to receive pursuant to Section 3.5(1)(a).
- (2) The Agent shall be entitled to receive directly, and to retain as part of the Collateral:
 - (a) all other or additional Equity Securities or property (other than cash properly paid in accordance with Section 3.5(1)(a)) paid or distributed in respect of the Pledged Securities;
 - (b) all other additional Equity Securities or property (including cash) paid or distributed in respect of the Pledged Securities by way of share split, spin off, split up, reclassification, combination of shares or similar arrangement; and
 - (c) all other or additional Equity Securities or property which may be paid in respect of the Collateral by reason of any consolidation, merger, exchange of shares, conveyance of assets, liquidation or similar corporate reorganization or other disposition of Collateral.
- (3) Upon the occurrence and during the continuation of an Event of Default, all rights of the Guarantor pursuant to Section 3.5(1)(a) shall cease and the Agent shall have the sole and exclusive right and authority to receive and retain all distributions and interest payments (including those which the Guarantor would otherwise be authorized to retain under Section 3.5(1)(a)). Any and all money and other property paid over to or received by the Agent pursuant to the provisions of this Section 3.5(3) will be applied on account of the Guaranteed Obligations in accordance with the Credit Agreement.

- (4) The Agent shall not be liable for any loss or damage suffered or incurred by the Guarantor as a result of any document or information received by the Agent or its nominee not being passed on or communicated to the Guarantor as a result of non-receipt by the Guarantor of any cash, cash equivalent, property, securities, interest or other distribution.

Section 3.6 Voting Rights

Subject to the terms of any other agreement, until the occurrence of an Event of Default which is continuing, the Guarantor shall be entitled to exercise, in a manner not prejudicial to the interests of the Agent or the Lenders, all voting power from time to time exercisable by it in respect of the Collateral and give consents, waivers and ratifications in respect thereof; provided that no vote shall be cast or consent, waiver or ratification given or action taken which would violate or be inconsistent with the Credit Agreement, this Agreement or any other Loan Document relating to the Guaranteed Obligations or which would, by reason of any recapitalization, reclassification or similar action, have the effect of reducing the value of the Collateral as security for the Guaranteed Obligations or imposing any new restriction on the transferability of any of the Collateral. Upon the occurrence of an Event of Default which is continuing (and for as long as it is continuing), all rights of the Guarantor under this Section 3.6 shall cease immediately. The Guarantor hereby grants an irrevocable proxy to the Agent to vote, to execute and deliver written consents and otherwise act with respect to the Pledged Securities upon the occurrence of an Event of Default which is continuing. Upon the occurrence of an Event of Default and while it continues, the Guarantor shall be prohibited from exercising its voting rights with respect to the Pledged Securities and thereupon all such rights of the Guarantor to vote and give consents, waivers and ratifications shall cease immediately.

ARTICLE 4 - REPRESENTATIONS AND WARRANTIES

Section 4.1 Representations and Warranties of the Guarantor

The Guarantor represents and warrants to the Agent as follows:

- (a) the Guarantor's legal name is set forth on the signature page hereto;
- (b) the Guarantor is and will be the sole registered and beneficial owner of the Collateral, free and clear of any adverse claim or Lien other than the Security Interest, and none of the Collateral is held by the Guarantor in a trust capacity;
- (c) the Security Interest in Collateral with respect to which a security interest may be perfected by filing pursuant to the PPSA has been perfected as a security interest in favour of the Agent for the benefit of the Secured Parties and all action by the Guarantor necessary to protect and perfect such Security Interest on each item of the Collateral has been duly taken;
- (d) upon receipt by the Agent of the Pledged Securities, the Agent has obtained control of the Pledged Securities;

- (e) no Person other than the Agent has control or has the right to obtain control of the Pledged Securities;
- (f) the Guarantor's jurisdiction of incorporation, chief executive office, principal place of business, registered office according to its constating documents, corporate offices and the locations of all of its books and records concerning the Collateral are set forth on Schedule 4.1(f) hereto;
- (g) all Equity Securities forming part of the Collateral are and will continue to be, and all replacement or additional Equity Securities forming part of the Collateral will be, duly issued, fully paid and non-assessable;
- (h) the Guarantor is a corporation duly incorporated, organized and validly existing under the laws of the Province of Ontario and has the requisite corporate power and capacity to guarantee the Guaranteed Obligations and to grant the Security Interest in the Collateral as provided in this Agreement;
- (i) there are no existing shareholder agreements, voting agreements, voting trusts, trust deeds, irrevocable proxies or any other similar agreements or instruments made in relation to any of the Collateral and the Guarantor has not performed any act or executed any other instrument which might prevent the Agent or any of the Lenders from enforcing the terms and conditions of this Agreement or which would limit the Agent or any of the Lenders in any such enforcement;
- (j) the Borrower has recorded on its books and records that the Collateral is subject to the Security Interest in favour of the Agent;
- (k) the execution, delivery and performance by the Guarantor of this Agreement: (i) are within the powers of the Guarantor; (ii) have been duly authorized by all necessary corporate or shareholder action with respect to the Guarantor; (iii) do not conflict with, result in a breach or violation of, or constitute a default under (A) the constating documents or any shareholders' agreement of the Guarantor, (B) any Applicable Law, or (C) any other document to which the Guarantor is a party or by which the Guarantor is bound; (iv) 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; (v) do not and will not result in the creation of any Lien, except as set out herein, upon any of the assets or properties of the Guarantor under any agreement or other document; and (vi) other than the consent of the directors of the Guarantor and of the Borrower, does not and will not require the Consent of any Governmental Authority or any other Person;
- (l) this Agreement has been duly executed and delivered by, and constitutes a legal, valid and binding obligation of, the Guarantor, enforceable in accordance with its terms, subject to (i) applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting creditors' rights generally, (ii) the fact that specific performance and injunctive relief may only be given at the discretion of the courts, and (iii) the equitable or statutory powers of the courts to stay proceedings before them and to stay the execution of judgments;

- (m) no litigation, investigation, or proceeding of or before any Governmental Authority, arbitrator, court or administrative agency is in progress or, to the Guarantor's knowledge, pending or threatened against the Guarantor or against its properties, assets or revenues, including the Collateral, which (i) challenges the Guarantor's right, power, or competence to enter into or perform any of its obligations under this Agreement or the validity or enforceability of this Agreement or any action taken hereunder, or (ii) whether or not determined adversely, could reasonably be expected to have a Material Adverse Effect on the business or operations of the Guarantor.

The representations and warranties set forth in this Section 4.1 shall survive the execution and delivery of this Agreement.

ARTICLE 5 - COVENANTS

Section 5.1 Covenants of the Guarantor

The Guarantor covenants and agrees with the Agent, for the benefit of the Secured Parties, as set forth in this Section 5.1 from and after the date of this Agreement and until the Termination Date.

- (1) The Guarantor will neither sell, lease, transfer or otherwise dispose of the Collateral, nor will it create, incur, assume, cause or permit any Lien upon or in respect of any of the Collateral, except for the Security Interest.
- (2) The Guarantor shall defend the title to the Collateral and the Security Interest granted to the Agent in and to the Collateral against the claim of any Person and will assist in maintaining and preserving the Security Interest.
- (3) The Guarantor shall not, with respect to any Collateral, enter into any shareholder agreements, voting agreements, voting trusts, trust deeds, irrevocable proxies or any other similar agreements or instruments.
- (4) The Guarantor shall promptly execute and deliver to the Agent such further documents, instruments and assurances and take or cause to be taken such further action as the Agent from time to time may reasonably request in order to carry out the intent and purpose of this Agreement and to establish and protect the rights and remedies created or intended to be created in favour of the Agent.

ARTICLE 6- REMEDIES

Section 6.1 Remedies

- (1) If an Event of Default has occurred and is continuing, the Security Interest shall become immediately enforceable and the Agent may in its discretion protect and/or enforce its rights under this Agreement by such appropriate private or judicial proceedings as the Agent shall deem most effectual to protect and enforce such rights. Without limiting the generality of the foregoing, if an Event of Default has occurred and is continuing, the Agent may exercise one or more of the following powers:

- (a) appoint a Receiver, as agent for the Guarantor with full power of attorney as set out in Section 7.9, to exercise all rights and remedies available to the Agent hereunder, remove or replace such Receiver from time to time or institute proceedings in any court of competent jurisdiction for the appointment of a Receiver for the Collateral, and in respect thereof:
- (i) such Receiver shall be vested with the rights and remedies which could have been exercised by the Agent in respect of the Guarantor or the Collateral and such other powers and discretions as are granted in the instrument of appointment and any instrument or instruments supplemental thereto;
 - (ii) the identity of the Receiver, any replacement thereof and any remuneration thereof shall be within the sole and unfettered discretion of the Agent;
 - (iii) such Receiver shall act as agent for the Agent for the purposes of taking possession of the Collateral, but otherwise and for all other purposes as agent for the Guarantor;
 - (iv) the Guarantor agrees to ratify and confirm all actions of the Receiver acting as agent for the Guarantor, and to release and indemnify the Receiver in respect of all such actions;
 - (v) neither the Agent nor any Lender, in appointing or refraining from appointing any Receiver, shall incur any liability to the Receiver, the Guarantor or otherwise, and shall not be responsible for any actions or failure to act on the part of such Receiver (including any misconduct, negligence or gross negligence of such Receiver);
- (b) give notice of the Security Interest to any Person obligated to pay any indebtedness or liability comprising part of the Collateral and direct such Person to make all payments on account of any such Indebtedness or liability to the Agent, and give or withhold all consents, waivers and ratifications in respect of any or all thereof and otherwise act with respect thereto as though it were the absolute owner thereof; the Guarantor acknowledges that any payments received by the Guarantor from such Persons after notification of the Security Interest to such Persons after the occurrence of an Event of Default shall be received and held by the Guarantor in trust for the Secured Parties and shall be forthwith turned over to the Agent upon request;
- (c) demand, commence, continue or defend any judicial or administrative proceedings for the purpose of protecting, seizing, collecting, realizing or obtaining possession or payment of the Collateral, and give valid and effectual receipts and discharges therefor and compromise or give time for the payment or performance thereof, and generally enforce any rights of the Guarantor in respect of the Collateral, in any manner permitted by Applicable Law but subject to the terms of the Project Agreement and the Lenders' Remedies Agreement;
- (d) transfer all or any part of the Pledged Securities into the name of the Agent or its nominee;

- (e) vote any or all of the Pledged Securities (whether or not transferred to the Agent or its nominee) and give or withhold all consents, waivers and ratifications in respect thereof and otherwise act with respect thereto as though it were the absolute owner thereof;
 - (f) exercise any and all rights of conversion, exchange, subscription or any other rights, privileges or options pertaining to any or all of the Pledged Securities as if it were the absolute owner thereof, and participate in any recapitalization, reclassification, reorganization, consolidation, redemption, merger or liquidation of the Borrower, and in connection therewith may deposit or surrender control of the Collateral, accept money or other property in exchange for the Collateral, and take such action as it deems proper in connection therewith, and any other money or property received in exchange for the Collateral shall be held by the Agent thereafter as part of the Collateral pursuant to the provisions hereof;
 - (g) commence an action or proceeding to enforce the right of the Secured Parties to require the Guarantor to carry out any covenant or agreement with the Secured Parties and to perform its duties under the Loan Documents and the Material Project Documents;
 - (h) exercise its rights under Section 7.9;
 - (i) commence an action to enjoin any acts or things which may be unlawful or in violation of the rights of any one or more Secured Parties; and
 - (j) pursue any other remedy or proceeding authorized or permitted by law or equity in respect of the Collateral.
- (2) Neither the Agent nor any Lender shall be obliged to exhaust its recourses against the Guarantor or any other Person or against any other security it may hold in respect of the Guaranteed Obligations before realizing upon or otherwise dealing with the Collateral in such manner as the Agent may consider desirable.

Section 6.2 Rights and Remedies under PPSA

In addition to those rights granted herein and in any other agreement now or hereafter in effect between the Guarantor, the Agent and any Lender, and in addition to any other rights any Secured Party may have at law or in equity, the Agent shall have, both before and after the occurrence of any Event of Default that is continuing, all rights and remedies of a secured party under the PPSA. However, the Agent shall not be liable or accountable for any failure to exercise its remedies, take possession of, collect, enforce, realize, sell, lease, license or otherwise dispose of Collateral or to institute any proceedings for such purposes. Furthermore, neither the Agent nor any Lender shall have any obligation to take any steps to preserve rights against prior parties to any instrument or chattel paper, whether Collateral or proceeds and whether or not in the Agent's or any Lender's possession, and shall not be liable or accountable for failure to do so. The taking of any action or proceeding or refraining from doing so, or any other dealings with any other security for the

Guaranteed Obligations secured by this Agreement, shall not release or affect the Collateral or the Security Interest.

Section 6.3 Costs

The Guarantor shall pay all costs, charges and expenses reasonably incurred by the Agent, any Lender or any Receiver appointed by or at the request of the Agent, whether directly or for services rendered (including reasonable legal and auditors' costs and expenses and Receiver remuneration), in realizing, collecting, selling, transferring delivering or obtaining payment on the Collateral or any part thereof, or in connection with the administration or amendment of this Agreement or incidental to the care, safe keeping or otherwise of any and all of the Collateral, and the Agent may deduct the amount of such sums from any proceeds of the Collateral but, for greater certainty, shall not have recourse to the assets of the Guarantor other than the Collateral.

Section 6.4 Sale

- (1) The Agent will give the Guarantor such notice, if any, of the date, time and place of any public sale or of the date after which any private disposition of Collateral is to be made as may be required by the PPSA.
- (2) Without prejudice to the ability of the Agent or its agent or a Receiver to dispose of the Collateral in any manner which is commercially reasonable, the Guarantor acknowledges that a disposition of such Collateral by the Agent or such agent or Receiver which takes place substantially in accordance with the following provisions shall be deemed to be commercially reasonable:
 - (a) Collateral may be disposed of whether or not the Agent or such agent or Receiver has taken possession thereof;
 - (b) Collateral may be disposed of in whole or in part;
 - (c) the Collateral may be disposed of by public auction, public tender or private contract, with or without advertising and without any other formality;
 - (d) the Agent may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for the sale, and such sale may, subject to Applicable Law, without further notice be made at any time or place to which the same may be so adjourned;
 - (e) any purchaser or lessee of the Collateral may be a customer of the Agent or any Lender;
 - (f) a disposition of the Collateral may be on such terms and conditions as to credit or otherwise as the Agent, in its sole discretion, may deem advantageous;
 - (g) the Agent may establish an upset or reserve bid or price in respect of the Collateral;

- (h) the Agent and any Lender may buy in, rescind or vary any contract for the disposition of Collateral, again without being obligated to account or be answerable for any gain or loss occasioned thereby.
- (3) The Guarantor recognizes that the Agent may be unable to effect a public sale of any or all of the Pledged Securities by reason of certain prohibitions contained in the *Securities Act* (Ontario) (the "**Securities Act**") and other applicable securities laws and may be compelled to resort to one or more private sales thereof to a restricted group of purchasers who will be obliged to agree, among other things, to acquire such securities for their own account for investment and not with a view to the distribution or resale thereof. The Guarantor acknowledges and agrees that any such private sale may result in prices and other terms less favourable to the seller than if such sale were a public sale and, notwithstanding such circumstances, agrees that any such private sale shall be deemed to have been made in a commercially reasonable manner. The Agent shall not be under any obligation to delay a sale of any of the Pledged Securities for the period of time necessary to permit the issuer of such securities to register such securities for public sale under the *Securities Act*, or under other applicable securities laws, even if the issuer would agree to do so.
- (4) No Person dealing with the Agent or its agent or a Receiver shall be required (i) to determine whether the Security Interest has become enforceable, (ii) to determine whether the powers which the Agent or such agent or Receiver is purporting to exercise have become exercisable, (iii) to determine whether any money remains due to the Agent or any Lender by the Guarantor or other Persons, (iv) to determine the necessity or expediency of the stipulations and conditions subject to which any sale, lease, licence or other disposition shall be made, (v) to determine the propriety or regularity of any sale or of any other dealing by the Agent or such agent or Receiver with the Collateral, or (vi) to see to the application of any money paid to the Agent or such agent or Receiver.

Section 6.5 Application of Proceeds

After payment of expenses, the balance of any proceeds received by the Agent in or in connection with realizing, collecting, selling, transferring, delivering or obtaining payment of the Collateral or any part thereof shall be applied on account of the Guaranteed Obligations in accordance with the Credit Agreement.

Section 6.6 Waiver by the Guarantor

To the maximum extent permitted by Applicable Law, the Guarantor waives all claims, damages and demands against the Agent or any Lender or any Receiver appointed by or at the request of the Agent arising out of the repossession, retention or sale of the Collateral except such as arise solely out of the gross negligence or wilful misconduct of (as the case may be) the Agent, such Lender or such Receiver as finally determined by a court of competent jurisdiction.

ARTICLE 7 - MISCELLANEOUS

Section 7.1 Extensions, etc.

The Agent and Lenders may grant time, renewals, extensions, indulgences, releases and discharges to, take security from and give the same and any or all existing Collateral up to, abstain from taking security from or from perfecting Collateral of, cease or refrain from giving credit or making loans or advances to, accept compositions from, compound, compromise, settle, grant releases and discharges and otherwise deal with, the Borrower and others and with all Collateral as the Agent or (as the case may be) the Lenders may see fit, and, subject to the Credit Agreement, may apply all monies at any time received from the Borrower or others or from Collateral upon such part of the Guaranteed Obligations as the Agent deems best and change any such application in whole or in part from time to time as the Agent may see fit, the whole without in any way limiting the rights of the Agent under this Agreement, and no loss of or in respect of or resulting from the enforcement of any Collateral received by the Agent from the Borrower or others, whether occasioned by the fault or negligence of the Agent or otherwise, shall in any way limit the rights of the Agent under this Agreement.

Section 7.2 No Waiver; Rights and Remedies Cumulative

No delay or omission by the Agent in exercising any right or remedy hereunder or by the Agent or any Lender with respect to any Guaranteed Obligations shall operate as a waiver thereof or of any other right or remedy, and no single or partial exercise thereof shall preclude any other or further exercise thereof or the exercise of any other right or remedy. Furthermore, the Agent or any Lender may remedy any Event of Default by the Guarantor hereunder or with respect to any Guaranteed Obligations in any reasonable manner without waiving the Event of Default remedied and without waiving any other prior or subsequent Event of Default by the Guarantor.

Section 7.3 Assignment and Enurement

This Agreement will enure to the benefit of and be binding upon the successors and permitted assigns of the parties hereto. The Guarantor shall not assign, delegate or transfer all or any part of its rights or obligations hereunder without the prior written consent of the Agent, which consent may be withheld by the Agent in its sole discretion. The Agent shall be permitted to assign its rights and obligations hereunder to any successor administrative agent appointed in accordance with the relevant provisions of the Credit Agreement.

Section 7.4 Amendment

No modification, variation or amendment of any provision of this Agreement shall be made except by a written agreement executed by the parties hereto, and no waiver of any provision hereof shall be effective unless in writing.

Section 7.5 Notices

- (1) Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in Section 7.5(2)), all notices and other communications

provided for herein shall be in writing and shall be delivered by hand or overnight courier service 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 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 7.5(2) shall be effective as provided in Section 7.5(2).

- (2) Each party hereto 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 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 acknowledgment); 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.
- (3) Any party hereto may change its address or telecopier number for notices and other communications hereunder by notice to the other parties hereto.

Section 7.6 Remedies Cumulative

This Agreement and the security afforded hereby is in addition to and not in substitution for any other security now or hereafter held by the Agent or any Lender and is intended to be a continuing security agreement and shall remain in full force and effect until all Guaranteed Obligations and any extensions or renewals thereof together with interest accruing thereon shall be paid in full. All rights and remedies of the Agent granted or recognized in this Agreement are cumulative and may be exercised at any time and from time to time independently or in combination.

Section 7.7 Reinstatement

This Agreement shall remain in full force and effect and continue to be effective should any petition be filed by or against the Guarantor for liquidation or reorganization, should the Guarantor become insolvent or make an assignment for the benefit of creditors or should a receiver or trustee be appointed for all or any significant part of the Guarantor's assets, and shall continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Guaranteed Obligations, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Guaranteed Obligations, whether as a "voidable preference", "fraudulent conveyance" or otherwise, all as though such payment or performance had not been made. If any payment, or any part thereof, is rescinded, reduced, restored

or returned, the Guaranteed Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

Section 7.8 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.

Section 7.9 Powers of Attorney

- (1) Subject to Section 7.9(2), the Guarantor hereby appoints the Agent, or a Receiver appointed by the Agent as the agent of the Guarantor, as the Guarantor's attorney, with full power of substitution, in the name and on behalf of the Guarantor, to execute, deliver and do all such acts, deeds, leases, documents, transfers, demands, conveyances, assignments, contracts, assurances, consents, financing statements and things as the Guarantor has herein agreed to execute, deliver and do as may be reasonably required by the Agent to give effect to this Agreement or in the exercise of any rights, powers or remedies hereby or thereby conferred on the Agent, and generally to use the name of the Guarantor in the exercise of all or any of the rights, powers or remedies hereby or thereby conferred on the Agent.
- (2) The Agent shall only exercise its rights pursuant to Section 7.9(1) after the occurrence of and during the continuance of an Event of Default, except that the Agent may exercise its rights under Section 7.9(1) from the date of this Agreement with respect to preparation and filing of financing statements or mortgages and such other documents and instruments as may be required to register or give notice of or perfect or preserve the Security Interest.
- (3) The appointment in Section 7.9(1) is coupled with an interest and shall not be revoked by the insolvency, bankruptcy, dissolution, liquidation or other termination of the existence of the Guarantor or for any other reason. All acts of the attorney are ratified and approved by the Guarantor, and the attorney shall not be liable to the Guarantor or any other Person for any act, failure to act or any other matter or thing, except for its own gross negligence or wilful misconduct.

Section 7.10 Termination of This Agreement

Subject to Section 7.7, this Agreement and the Security Interest granted hereunder shall terminate upon full and irrevocable payment and satisfaction of the Guaranteed Obligations and all obligations of the Agent and the Lenders under the Credit Agreement and the other Loan Documents having terminated (the "**Termination Date**"). As soon as practical after such termination, any Collateral then in the custody of the Agent or its nominee shall be delivered to the Guarantor with all certificates being duly endorsed in blank for transfer or accompanied by a power of attorney/stock power in respect of each such certificate duly executed in blank by the Agent.

Section 7.11 Governing Law and Jurisdiction

This Agreement is governed by, and is to be construed and interpreted in accordance with, the laws of the Province of Ontario and the laws of Canada applicable in the Province of Ontario. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the Province of Ontario. Each party waives any right it has to object to an action being brought in those courts, including by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

Section 7.12 Counterparts; Delivery by Fax

This Agreement and any amendment, variation, supplement, restatement, renewal, replacement or termination of any provision of this Agreement may be executed and delivered in any number of counterparts, each of which when executed and delivered is an original but all of which taken together constitute one and the same instrument. Any party may deliver an executed copy of this Agreement by fax but that party shall immediately deliver to the other parties an originally executed copy of this Agreement.

Section 7.13 No Deemed Subordination

No reference to Permitted Liens in this Agreement or any other Loan Document, or any statement or provision as to the acceptability of any Permitted Lien or any other Lien or the permitted priority thereof, shall in any way constitute or be construed so as to provide for a subordination of any rights of the Agent or the Lenders hereunder or arising under any other Loan Documents in favour of any holder of such Permitted Lien or any Lien ranking in priority to such Permitted Liens.

Section 7.14 Benefit of Secured Parties

All Liens granted or contemplated hereby shall be for the benefit of the Agent and the Lenders, and all proceeds or payments realized from Collateral in accordance herewith shall be applied to the Guaranteed Obligations in accordance with the terms of the Credit Agreement and the other Loan Documents.

Section 7.15 Receipt of Agreement

The Guarantor hereby acknowledges receipt of a copy of the Credit Agreement, this Agreement and the other Loan Documents and all of the provisions therein contained and consents to and approves the same.

[THIS SPACE INTENTIONALLY LEFT BLANK]

S-1

The parties have executed this Agreement as of the date first written above.

407 Basaltic Road
Concord, Ontario L4K 4W8

Attention: John Aquino, Vice President
Facsimile No: (416) 667-8462

**BONDFIELD CONSTRUCTION COMPANY
LIMITED**

By: 
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Bank of Montreal
Corporate Finance Division
100 King Street West
1 First Canadian Place, 11th Floor
Toronto, Ontario
M5X 1A1

BANK OF MONTREAL, in its capacity as
Administrative Agent for and on behalf of the
Lenders

By: 

Name: James Di Giacomo
Title: Managing Director
Corporate Finance Underwriting
and Syndications

By:

Name:
Title:

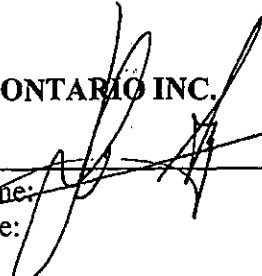
Attn.: James Di Giacomo, Managing
Director, Underwriting and Syndications
Corporate Finance Division
Facsimile No.: (416) 360-7168

Acknowledged and agreed to as of the date hereof.

407 Basaltic Road
Concord, Ontario L4K 4W8

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

2442931 ONTARIO INC.

By: 
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Schedule Section 1.2(5) – Pledged Securities

Corporation	Type of Pledged Equity Securities	Number of Pledged Equity Securities	Percentage of Total Outstanding Equity Securities	Certificate No.
2442931 Ontario Inc.	Common Shares	1	100%	C-1

Schedule Section 3.2 – Stock Power/Power of Attorney

PART A

FOR VALUE RECEIVED, **Bondfield Construction Company Limited** (the "Corporation") hereby sells, assigns and transfers unto _____ (the "Holder") _____ in the capital of [●] (the "Project Co") standing in its name on the books of Project Co represented by Certificate No. _____, herewith, and irrevocably constitutes and appoints the Holder as its attorney to transfer such stock on the books of Project Co with full power of substitution in the premises.

This Power of Attorney is being delivered by the Corporation pursuant to a limited recourse guarantee and security agreement dated as of [●] _____, 2014 between the Corporation and National Bank of Canada.

EXECUTED this _____ day of _____, 20_____.

**BONDFIELD CONSTRUCTION COMPANY
LIMITED**

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

The undersigned acknowledges and consents to the foregoing:

2442931 ONTARIO INC.

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

THIS IS EXHIBIT "H" TO
THE AFFIDAVIT OF EDEN ORBACH
SWORN BEFORE ME THIS: 17th
DAY OF DECEMBER, 2018.

Aneese Tamm

A Commissioner etc.

RUN NUMBER : 348
RUN DATE : 2018/12/14
ID : 20181214165742.38

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 1
(5651)

THIS IS TO CERTIFY THAT A SEARCH HAS BEEN MADE IN THE RECORDS OF THE CENTRAL OFFICE
OF THE PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM IN RESPECT OF THE FOLLOWING:

TYPE OF SEARCH : BUSINESS DEBTOR

SEARCH CONDUCTED ON : 2442931 ONTARIO INC.

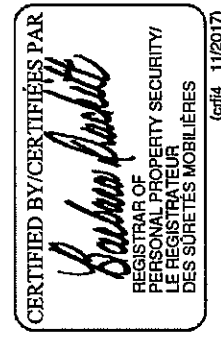
FILE CURRENCY : 13DEC 2018

ENQUIRY NUMBER 20181214165742.38 CONTAINS 3 PAGE(S), 1 FAMILY(IES).

THE SEARCH RESULTS MAY INDICATE THAT THERE ARE SOME REGISTRATIONS WHICH SET OUT A BUSINESS DEBTOR NAME
WHICH IS SIMILAR TO THE NAME IN WHICH YOUR ENQUIRY WAS MADE. IF YOU DETERMINE THAT THERE ARE OTHER
SIMILAR BUSINESS DEBTOR NAMES, YOU MAY REQUEST THAT ADDITIONAL ENQUIRIES BE MADE AGAINST THOSE NAMES.

CHAITONS LLP (ADP) - ANTOINETTE DE PINTO
5000 YONGE STREET, 10TH FLOOR
TORONTO ON M2N 7E9

CONTINUED 2



PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : 2442931 ONTARIO INC.
FILE CURRENCY : 13DEC 2018

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

FILE NUMBER
702960597

CATION PAGE TOTAL MOTOR VEHICLE REGISTRATION REGISTERED REGISTRATION
FILING NO. OF PAGES SCHEDULE NUMBER UNDER PERIOD
001 1 20150114 1200 1902 5831 P PPSA 07

DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME ONTARIO CORPORATION NO.
2442931 ONTARIO INC. 20150114 1200 1902 5831 P PPSA 07 ON L4K 4W8

DEBTOR NAME BUSINESS NAME ADDRESS
407 BASALTIC ROAD CONCORD

DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME ONTARIO CORPORATION NO.
ADDRESS ONTARIO CORPORATION NO.

SECURED PARTY / LIEN CLAIMANT ADDRESS BANK OF MONTREAL, AS ADMINISTRATIVE AGENT
11TH FLOOR, 100 KING STREET WEST TORONTO ON M5X 1A1

COLLATERAL CLASSIFICATION AMOUNT DATE OF MATURITY OR MATURITY DATE
CONSUMER MOTOR VEHICLE INCLUDED X
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GENERAL COLLATERAL DESCRIPTION

REGISTERING AGENCY APEX REGISTRY INFORMATION SERVICES

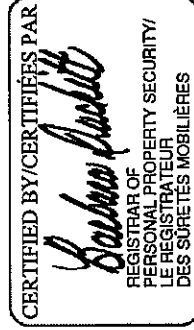
ADDRESS 7969 SEE SEA PLACE

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*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY ***

CONTINUED ... 3



RUN NUMBER : 348
RUN DATE : 2018/12/14
ID : 20181214165742.38

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

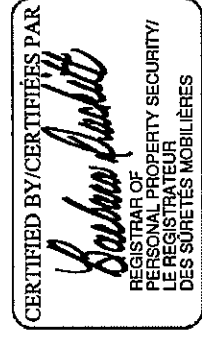
REPORT : PSSR060
PAGE : 3
(5653)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : 2442931 ONTARIO INC.
FILE CURRENCY : 13DEC 2018

INFORMATION RELATING TO THE REGISTRATIONS LISTED BELOW IS ATTACHED HERETO.

FILE NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER
702960597	20150114	1200	1902 5831

1 REGISTRATION(S) ARE REPORTED IN THIS ENQUIRY RESPONSE.



1449



THIS IS EXHIBIT "I" TO
THE AFFIDAVIT OF EDEN ORBACH
SWORN BEFORE ME THIS 17th
DAY OF DECEMBER, 2018.



A Commissioner etc.

PUBLIC PRIVATE PARTNERSHIP PERFORMANCE BOND

With Attached Multiple Obligee Rider and Credit Downgrade Rider

Bond No: 6343517

Bond Amount: \$ 156,325,362.60

Bondfield Construction Company Limited as Principal, ("**Principal**"), and Zurich INSURANCE Company Ltd, a corporation created and existing under the laws of Switzerland having a place of business in Canada and duly authorized to transact the business of Suretyship in the Province of Ontario, Canada as Surety, ("**Surety**"), are bound unto 2442931 Ontario Inc. as Obligee, ("**Obligee**"), in the amount of \$156,325,362.60 lawful money of Canada (the "**Bond Amount**", as further defined below), for the payment of which sum the Principal and the Surety jointly and severally bind themselves, their heirs, executors, administrators, successors and assigns.

WHEREAS,

- (a) The Principal has entered into a written contract with the Obligee (the "**Design and Construction Contract**") dated the 27th day of January in the year 2015 for the design and construction of St. Michael's Hospital (the "**Project**");
- (b) The Surety has agreed to enter into this Public Private Partnership Performance Bond ("**Bond**") to guarantee the performance of all of the obligations of the Principal under the Design and Construction Contract, subject to the Excluded Liabilities (as defined below) and all other terms and conditions herein (the "**Bonded Obligations**");
- (c) The Principal and the Surety have agreed that a maximum of fourteen million, two hundred and eleven thousand, three hundred and ninety six dollars and sixty cents (\$14,211,396.60) of the Bond Amount (the "**Advance Payment**", as more fully defined below) will be available to the Obligee upon demand and receipt of the Obligee's Advance Payment Demand (as defined below) which shall include the Obligee's certification of the Principal's liability for Liquidated Damages (as defined in the Design and Construction Contract), and with the balance of the Bond Amount to remain available pursuant and subject to the terms and conditions herein.

Now, the condition of this obligation is such that if the Principal shall promptly and faithfully perform the Bonded Obligations of the Design and Construction Contract then this Bond shall be null and void; otherwise it shall remain in full force subject to the terms hereof.

Advance Payment

1. The Surety and Principal agree that the Surety will make an Advance Payment(s) to the Obligee for Liquidated Damages, up to an aggregate maximum of fourteen million, two hundred and eleven thousand, three hundred and ninety six dollars and sixty cents (\$14,211,396.60) of the Bond Amount (the "**Advance Payment Maximum**"), 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 Date (as defined below) and includes:
 - 1.1 (a) The Obligee's written declaration of the Principal's default in performance of the Bonded Obligations and consequent liability for Liquidated Damages arising from such default in performance of the Bonded Obligations (the "**Advance Payment Declaration of Default**"); and
 - 1.1 (b) The Obligee's certification, executed by two authorized signing officers of the Obligee, that the Principal is thus liable for Liquidated Damages in the amount set out in the Advance Payment Demand.

1.2. The Advance Payment Demand shall be accepted by the Principal and the Surety as conclusive evidence that the amount of the Advance Payment Demand is payable to the Obligee; and all payments shall be made free and clear without deduction, setoff or withholding unless and to the extent required by law.

1.3 The Advance Payment(s) made by the Surety can be made in increments up to the Advance Payment Maximum specified above, and the sum of the Advance Payment(s) shall reduce the Advance Payment Maximum and the Bond Amount accordingly such that the Surety's remaining obligations under the Bond shall be limited to the balance of the Advance Payment Maximum with respect to Advance Payments, and the Bond Amount with respect to the Surety's aggregate maximum liability. There can be no Advance Payment Demand from any of the Obligees after the date that is thirty days following Substantial Completion of the Design and Construction Contract).

1.4 The Surety will make the Advance Payment upon compliance by the Obligee with this section 1, notwithstanding any other then current dispute between the Surety and the Obligee or the Principal related to provisions of this Bond apart from section 1.

Performance Obligation

2. Whenever the Principal shall be and is declared by the Obligee to be in default in the performance of the Bonded Obligations under the Design and Construction Contract, ("**Performance Obligation Declaration of Default**") and the Obligee, not being in Material Default under the Design and Construction Contract including the agreement to pay the balance of the Design and Construction Contract price (herein defined as the total amount payable by the Obligee to the Principal under the Design and Construction Contract less the amount properly paid by the Obligee to the Principal in accordance with the terms of the Design and Construction Contract, the "Balance of the Bonded Design and Construction Contract Price"), the Surety shall within twenty-one (21) days of the Surety's receipt of the Performance Obligation Declaration of Default, elect one of the following four options:

2.1 Arrange to remedy the default where such default is capable of remedy; or

2.2. Complete the Bonded Obligations in accordance with the Design and Construction Contract through its agents or through independent contractors; or

2.3 Obtain a bid or bids for submission to the Obligee for completing the Bonded Obligations and upon determination by the Surety and the Obligee, acting reasonably, of the lowest responsible bidder, arrange for a contract between such bidder and the Obligee and make available as work progresses sufficient funds to pay to complete such Bonded Obligations in accordance with the terms and conditions of the Design and Construction Contract and to pay Obligee's expenses incurred as a result of the Principal's default, relating directly to the performance of said Bonded Obligations, less the Balance of the Bonded Design and Construction Contract Price; but not exceeding the remaining Bond Amount; or

2.4 Pay the Obligee the lesser of (a) the remaining balance of the Bond Amount (subject to the limitation in Section 10); or (b) the Obligee's reasonable estimate of the cost to complete the Bonded Obligations under the Design and Construction Contract in accordance with its terms and conditions, less the Balance of the Bonded Design and Construction Contract Price.

Waiver

3. 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 to the Design and Construction Contract, the taking or receiving of security between the Principal and the Oblige, the extension of time or by the exercise by the Oblige of any of the rights or powers reserved to it under the Design and Construction Contract, or by its forbearance to exercise any such rights or powers, provided that foregoing is provided for in, or reasonably contemplated and permitted under the terms of the Design and Construction Contract and that the Oblige has promptly given notice to the Surety of any variation that results, individually or when aggregated with other variations, in an increase to the contract price under the Design and Construction Contract in excess of twenty-five per cent (25%) of the original contract price under the Design and Construction Contract.

Expiry Date

4. This Bond shall cease to have effect and be terminated and the Surety shall be released and discharged except in respect of any outstanding suits or actions, upon the expiration of twenty-four months which shall begin on the earlier of: (a) the date of substantial completion of the Bonded Obligations of the Design and Construction Contract or (b) the date of the Performance Obligation Declaration of Default (the "Expiry Date").
5. NOT USED

Excluded Liabilities

6. This Bond shall not respond to nor shall the Surety under this Bond be liable for any sums payable by the Principal to the Oblige in respect of claims relating to any of the following (the "Excluded Liabilities"):
- (i) Financing obligations of the Oblige under any and all credit or loan agreements, and, for greater certainty, any debt obligations under any loan agreement or any obligations under any hedging agreements or to the hedge providers, credit enhancements, funding arrangements, the fixing of interest rates or for any other variable rate or variable cost of financing;
 - (ii) Liabilities of the Principal under any other collateral or ancillary agreements or in respect of any obligation to procure the entry into any ancillary or collateral agreements by any third parties;
 - (iii) Liabilities of the Principal to pay or provide any indemnity in respect of sums due following a failure to procure or the non-availability of any insurance contemplated by the Design and Construction Contract;
 - (iv) Liabilities of the Principal arising from any credit downgrade or rating revision of any person or entity including, but not limited to, the Surety (except, for greater certainty, with respect to the Advance Payment, as otherwise set out in the Credit Downgrade Rider attached hereto).

Liquidated Damages under the Design and Construction Contract and the obligation of the Principal to post the Warranty Letter of Credit (as defined in the Design and Construction Contract) pursuant to and in accordance with Section 11.16A of the Design and Construction Contract shall not be Excluded Liabilities; provided that, if the nature of the default by the Principal under the Design and Construction Contract is a failure to deliver the Warranty Letter of Credit pursuant to and in accordance with Section 11.16A of the Design and Construction Contract, then the Surety will

(provided that the Performance Obligation Declaration of Default is received by the Surety at least sixty (60) days prior to "Substantial Completion" under the Project Agreement (as defined in the Design and Construction Contract)), either (i) by the "Substantial Completion Date" under the Project Agreement, issue a warranty bond in an amount and in a form acceptable to SMH (as defined in the Design and Construction Contract) in satisfaction of the Principal's obligation to deliver the Warranty Letter of Credit, or (ii) twenty-five (25) days after SMH makes the "Substantial Completion Payment" under the Project Agreement, pay to the Obligees the amount withheld from the "Substantial Completion Payment" under the Project Agreement by SMH up to a maximum of the amount of the Warranty Letter of Credit that the Principal has failed to deliver.

Surety Office

7. Surety's Office for notice and service: ZURICH INSURANCE COMPANY LTD FIRST CANADIAN PLACE, 100 KING STREET WEST, SUITE 5500, TORONTO, ON M5X 1C9

Suit Limitation

8. It is a condition of this Bond that any suit or action under this Bond must be commenced before the Expiry Date.

No Third Party Beneficiaries

9. No right of action shall accrue on this Bond, to or for the use of, any person or corporation other than the Obligees named herein, or the heirs, executors, administrators, successors of the Obligees and the parties to the Multiple Obligees Rider and their respective successors and assigns.

Reduction of Bond Amount and Advance Payment Maximum Amount

10. The Bond Amount shall be reduced to \$147,661,655.10 and the Advance Payment Maximum reduced to \$5,547,689.10 upon execution by the Obligees and the applicable parties to the Multiple Obligees Rider of a Step-Down Rider in the form attached as Rider 1 hereto (the "Step-Down Rider"). It is a condition of this Bond that, upon execution of the Step-Down Rider by the Obligees and the applicable parties to the Multiple Obligees Rider, the Surety shall promptly execute and deliver the Step-Down Rider. Following execution of the Step-Down Rider, all references to the Bond Amount herein shall be deemed to be referenced to the reduced Bond Amount set out in this section 10 and all references to the Advance Payment Maximum shall be deemed to be references to the reduced Advance Payment Maximum set out in this Section 10, and the executed Step-Down Rider shall form a part of this Bond.

Aggregate Liability

11. For the purpose of greater certainty, in no event shall the Surety be liable in the aggregate for a greater sum than the Bond Amount, which is further limited as follows: in no event shall the Surety be liable for an Advance Payment for a greater sum than the Advance Payment Maximum, and in no event shall the Surety be liable for a Performance Obligation (other than the Advance Payment) for a greater sum than the Bond Amount less the Advance Payment Maximum.

Choice of Law

12. This Bond shall be governed and construed in accordance with the laws of Ontario and the laws of Canada applicable thereto and shall be treated, in all respects, as a contract entered into in the Province of Ontario without regard to conflict of laws principles.

Counterparts

13. This Bond may be executed in counterparts, all of which when taken together shall constitute the Bond.

IN WITNESS WHEREOF, the Principal and the Surety have signed this Bond dated as of January 27, in the year 2015

SIGNED AND DELIVERED:

BONDFIELD CONSTRUCTION COMPANY LIMITED

By:

Signature

Name of person signing on behalf of Principal

ZURICH INSURANCE COMPANY LTD

By: Karen Ramsey
Signature

KAREN RAMSEY, ATTORNEY-IN-FACT
Name of person signing on behalf of Surety

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



Bond Number: 6343517

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.

**RIDER NO. 1 TO PUBLIC PRIVATE PARTNERSHIP
PERFORMANCE BOND**

BOND AMOUNT STEP-DOWN RIDER

TO BE ATTACHED TO AND FORM A PART OF
BOND NO. 6343517

TO BE ATTACHED TO AND FORM PART OF THE PUBLIC PRIVATE PARTNERSHIP PERFORMANCE BOND NO. 6343517 dated January 27, 2015 (the "**Bond**"), issued by **ZURICH INSURANCE COMPANY LTD**, as Surety (the "**Surety**"), on behalf of Bondfield Construction Company Limited, as Principal (the "**Principal**"), and in favour of 2442931 Ontario Inc., St. Michael's Hospital and Bank of Montreal, as Obligees, (the "**Obligees**").

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. Effective [**Step-Down Date**] [**NTD: Insert date upon which the Agent has received the Tower Interim Completion Payment**] the Bond Amount shall be and is hereby reduced from \$156,325,362.60 to \$147,661,655.10 and the Advance Payment Maximum shall be and is hereby reduced from \$14,211,396.60 to \$5,547,689.10.
2. Effective [**Step-Down Date**] [**NTD: Insert date upon which the Agent has received the Tower Interim Completion Payment**] the past, present and future aggregate liability of the Surety with respect to the Bond Amount is reduced to \$147,661,655.10, and the past, present and future aggregate liability of the Surety in respect of the Advance Payment is reduced to \$5,547,689.10.
3. Capitalized terms used in this Step-Down Rider without definition shall have the respective meanings attributed to them in the Bond and the Design and Construction Contract.
4. All of the terms, conditions and provisions of the Bond including the Multiple Obligee Rider and Credit Downgrade Rider are hereby incorporated herein by reference as if fully set forth herein.
5. In the event of any ambiguity, conflict or inconsistency, the Bond and this Step-Down Rider shall prevail over the Design and Construction Contract and/or any other project documents.
6. This Step-Down Rider may be executed in counterpart, all of which when taken together shall constitute the Step-Down Rider.

[signature pages follow]

IN WITNESS WHEREOF, the Principal, Surety and applicable Obligees have signed and sealed this Step-Down Rider dated this _____ day of _____ 20__.

SIGNED, SEALED AND DELIVERED in the presence of:

Contractor/Principal:
BONDFIELD
COMPANY LIMITED

CONSTRUCTION

Obligee:
2442931 ONTARIO INC.

By: _____

[Signature]

Name and Title of Person signing

By: _____

[Signature]

Name and Title of Person signing

Surety:
ZURICH INSURANCE COMPANY LTD

By: _____

[Signature]

Name and Title of Person signing

Lender/ Co-Obligee:
BANK OF MONTREAL

By: _____

[Signature]

Name and Title of Person signing

By: _____

[Signature]

Name and Title of Person signing

**RIDER NO. 2 TO PUBLIC PRIVATE PARTNERSHIP
PERFORMANCE BOND**

CREDIT DOWNGRADE RIDER

TO BE ATTACHED TO AND FORM PART OF
BOND NO. 6343517

TO BE ATTACHED TO AND FORM PART OF THE PUBLIC PRIVATE PARTNERSHIP PERFORMANCE BOND NO. 6343517 dated January 27, 2015 (the "**Bond**") concurrently with the execution of this Credit Downgrade 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 **2442931 ONTARIO INC.**, as Obligee (hereinafter called the "**Obligee**").

WHEREAS the Surety been requested to provide the Bond for the above referenced Construction Contract; and

WHEREAS the Parties have asked that the Surety acknowledge possible rights of the Obligee(s) as to an Advance Payment under the Bond if the Surety's credit rating is downgraded in accordance with the terms of this Rider; and

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. In the event that the Surety's Standard & Poors Long Term Insurer Financial Strength Rating is downgraded to an A- or lower or the Moody's Investors Service Long Term Insurance Financial Strength Rating is downgraded to an A3 or lower then, pursuant to the terms of the Design and Construction Contract, the downgrade will be a default under said Design and Construction Contract, thereby giving the Obligee the right to make a demand upon the Principal for a replacement letter of credit in the maximum amount of the Advance Payment under the Bond within five days; and, if the letter of credit in said amount is not provided, the Obligee may make demand upon the Surety for an immediate draw on the Bond in an amount equal to the Advance Payment (as defined in the Bond), and the Surety will accept an Advance Payment Demand for the whole of the Advance Payment (without any requirement to deliver an Advance Payment Declaration of Default or any certification that the Principal is liable for Liquidated Damages notwithstanding Section 1.1(a) and Section 1.1(b) of the Bond) and the Surety will pay the Advance Payment to the Obligee in accordance with the Bond.
2. Capitalized terms used in this Credit Downgrade Rider without definition shall have the respective meanings attributed to them in the Bond and the Design and Construction Contract.

**RIDER NO. 2 TO PUBLIC PRIVATE PARTNERSHIP
PERFORMANCE BOND**

CREDIT DOWNGRADE RIDER

TO BE ATTACHED TO AND FORM PART OF
BOND NO. 6343517

3. All of the terms, conditions and provisions of the Bond including the Multiple Obligee Rider attached thereto are hereby incorporated herein by reference as if fully set forth herein.
4. In the event of any ambiguity, conflict or inconsistency, the Bond and this Credit Downgrade Rider shall prevail over the Design and Construction Contract and the other Project Documents.
5. Nothing herein shall alter or affect the amount of the aggregate liability of the Surety with respect to the Bond Amount, or the sub-limits of liability of the Surety with respect to the Advance Payment and with respect to the Performance Obligation other than the Advance Payment, all as described in the Bond.
6. This Credit Downgrade Rider may be executed in counterpart, all of which when taken together shall constitute the Credit Downgrade Rider.

[signature page follows]

IN WITNESS WHEREOF, the Principal and the Surety have signed and sealed this Credit Downgrade Rider dated this 27 day of January, 2015.

SIGNED, SEALED AND DELIVERED in the presence of:

Principal:
BONDFIELD CONSTRUCTION COMPANY
LIMITED

By: _____

[Signature]

Name and Title of Person signing

Surety:
ZURICH INSURANCE COMPANY LTD

By: Karen Ramsey

[Signature]

KAREN RAMSEY, ATTORNEY-IN-FACT
Name and Title of Person signing

**RIDER NO. 3 TO PUBLIC PRIVATE PARTNERSHIP
PERFORMANCE BOND**

MULTIPLE OBLIGEE RIDER

TO BE ATTACHED TO AND FORM A PART OF
BOND NO. 6343517

TO BE ATTACHED TO AND FORM PART OF THE PUBLIC PRIVATE PARTNERSHIP PERFORMANCE BOND NO. 6343517 dated January 27, 2015 (the "**Bond**") concurrently with the execution of this Multiple Obligee Rider, issued by **ZURICH INSURANCE COMPANY LTD**, as Surety (the "**Surety**"), on behalf of Bondfield Construction Company Limited, as Principal (the "**Principal**"), and in favour of 2442931 Ontario Inc., as Obligee, hereinafter called the "**Obligee**".

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 St. Michael's Hospital and Bank of Montreal in their respective capacities as assignees of the Design and Construction Contract, as Additional Named Obligees, which Additional Named Obligees (hereinafter may be referred to simply as "Obligee(s)") or either of them, 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, as though such Additional Named Obligees were named as an Obligee in the Bond.
2. Capitalized terms used in this Multiple Obligee Rider without definition shall have the respective meanings attributed to them in the Bond and the Design and Construction Contract.
3. If there is an event of default of the Principal in the performance of the Bonded Obligations under the Design and Construction Contract (a "**Bonded Obligations Event of Default**") and Bank of Montreal or St. Michael's Hospital makes a claim under the Bond other than in respect of the Advance Payment, Bank of Montreal or St. Michael's Hospital, as the case may be, shall make available to the Surety in accordance with the terms of the Design and Construction Contract the Balance of the Bonded Design and Construction Contract Price. Bank of Montreal and St. Michael's Hospital shall have no obligations under this paragraph in respect of a claim for all or part of the Advance Payment.
4. All of the terms, conditions and provisions of the Bond are hereby incorporated herein by reference as if fully set forth herein.
5. No alteration or material change in the Design and Construction Contract or any conduct of the Principal, Obligee or Bank of Montreal, prior to the Principal being declared in default, shall prejudice the rights or interest of St. Michael's Hospital

**RIDER NO. 3 TO PUBLIC PRIVATE PARTNERSHIP
PERFORMANCE BOND**

MULTIPLE OBLIGEE RIDER

TO BE ATTACHED TO AND FORM A PART OF
BOND NO. 6343517

under the Bond or this Multiple Obligee Rider provided that St. Michael's Hospital has not caused such alteration or material change without the prior written consent of the Surety.

6. The Obligee, 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 St. Michael's Hospital, acting reasonably, and the Surety shall provide reasonable notice to St. Michael's Hospital and the Lender prior to remedying any default, settling, waiving, reducing or otherwise compromising any claim or making any payment under the Bond (other than an Advance Payment) and provided in respect of demands or claims under the Bond other than Advance Payment Demands that the Surety shall not be preclude from tendering upon the Obligee(s) performance pursuant to one of the four numbered options in the Bond.
7. 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); provided that such acknowledgement shall in no way limit or otherwise abrogate the Surety's rights under the Bond or this Multiple Obligee Rider.
8. St. Michael's Hospital acknowledges and agrees that (i) the provisions of Section 1 of the Bond are solely for the benefit of 2442931 Ontario Inc. and Bank of Montreal, (ii) St. Michael's Hospital shall have no right to make any Advance Payment Demands and (iii) the portion of the Bond Amount equal to the Advance Payment shall not otherwise be available to St. Michael's Hospital in respect of any demand or claim by St. Michael's Hospital under the Bond. The Parties to this Multiple Obligee Rider agree that the Bond Amount and the Advance Payment Maximum may, by execution of a Step-Down Rider by the Obligee, Principal, Bank of Montreal and the Surety only, be reduced as set out in Section 10 of the Bond, without requirement for any execution of the Step-Down Rider by St. Michael's Hospital or any further consent or approval of St. Michael's Hospital, provided, for greater certainty, that any reduction in any amount in respect of the Bond or other modification to the Bond other than as expressly set out in Section 10 of the Bond and the Step-Down Rider would require a written amendment to the Bond signed by all parties to this Multiple Obligee Rider.
9. In the event of any ambiguity, conflict or inconsistency, the Bond and this Multiple Obligee Rider shall prevail over the Design and Construction Contract and/or any other project documents.

**RIDER NO. 3 TO PUBLIC PRIVATE PARTNERSHIP
PERFORMANCE BOND**

MULTIPLE OBLIGEE RIDER

TO BE ATTACHED TO AND FORM A PART OF
BOND NO. 6343517

10. Nothing herein shall alter or affect the aggregate liability of the Surety with respect to the Bond Amount, or the sub-limits of liability of the Surety with respect to the Advance Payment and with respect to the Performance Obligation other than the Advance Payment, all as described in the Bond.

[signature page follows]

IN WITNESS WHEREOF, the Principal, Surety, Obligee, Owner and Lender have signed and sealed this Multiple Obligee Rider dated this 27 day of January, 2015.

SIGNED, SEALED AND DELIVERED in the presence of:

Contractor/Principal:
BONDFIELD CONSTRUCTION
COMPANY LIMITED

By: 

[Signature]

Name and Title of Person signing

Surety:
ZURICH INSURANCE COMPANY LTD

By: Karen Ramsey

[Signature]

KAREN RAMSEY, ATTORNEY-IN-FACT

Name and Title of Person signing

Obligee:
2442931 ONTARIO INC.

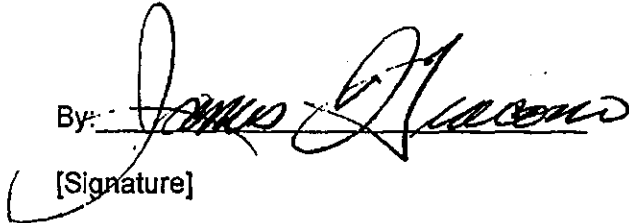
By: _____

[Signature]

Name and Title of Person signing

Lender/ Co-Obligee:
THE BANK OF MONTREAL, AS AGENT

By: _____



[Signature]

Name and Title of Person signing

By: _____

[Signature]

Name and Title of Person signing

Owner/ Co-Obligee:
ST. MICHAEL'S HOSPITAL

By: Tom C. O'Neill

[Signature]

TOM O'NEILL

CHAIR OF THE BOARD OF DIRECTORS

Name and Title of Person signing

By: Robert Howard

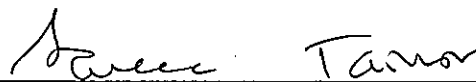
[Signature]

ROBERT HOWARD

PRESIDENT + CHIEF EXECUTIVE OFFICER

Name and Title of Person signing

THIS IS EXHIBIT "J" TO
THE AFFIDAVIT OF EDEN ORBACH
SWORN BEFORE ME THIS 17th
DAY OF DECEMBER, 2018.



A Commissioner etc.

LABOUR AND MATERIAL PAYMENT BOND

NOTE: This Bond is issued simultaneously with a Performance Bond and Multiple Obligee Rider and is subject to the terms and conditions of the Labour and Material Payment Bond Multiple Obligee Rider attached hereto

Bond No. 6343517

Bond Amount: \$142,113,966.00

BONDFIELD CONSTRUCTION COMPANY LIMITED as Principal (hereinafter called the "Principal"), and **ZURICH INSURANCE COMPANY LTD** a corporation created and existing under the laws of Canada and duly authorized to transact the business of Suretyship in Canada as Surety, (hereinafter called the "Surety") are subject to the conditions hereinafter contained, held and firmly bound unto **2442931 ONTARIO INC.**, as Trustee (hereinafter called the "Obligee"), for the use and benefit of the Claimants, their and each of their heirs, executors, administrators, successors and assigns, in the amount of ONE HUNDRED AND FORTY TWO MILLION, ONE HUNDRED AND THIRTEEN THOUSAND, NINE HUNDRED AND SIXTY SIX DOLLARS (\$142,113,966.00) of lawful money of Canada for the payment of which sum well and truly to be made, the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a written contract entitled Design and Construction Contract with Obligee dated January 27, 2015 for the St. Michael's Hospital 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 Design and 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 Design and Construction Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if the Principal shall make payment to all Claimants for all labour and material used or reasonably required for use in the performance of the Design and Construction Contract, then this obligation shall be null and void; and otherwise it shall remain in full force and effect, subject, however, to the following conditions:

1. A Claimant for the purpose of this Bond is defined as one having a direct contract with the Principal for labour, material, or both, used or reasonably required for use in the performance of the Design and Construction Contract, labour and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment directly applicable to the Design and Construction Contract provided that a person, firm or corporation who rents equipment to the Principal to be used in the performance of the Design and Construction Contract under a contract which provides that all or any part of the rent is to be applied towards the purchase price thereof, shall only be a Claimant to the extent of the prevailing industrial rental value of such equipment for the period during which the equipment was used in the performance of the Design and Construction Contract. The prevailing industrial rental value of equipment shall be determined, insofar as it is practical to do so, in accordance with and in the

manner provided for in the latest revised edition of the publication of the Canadian Construction Association titled "Rental Rates on Construction Equipment" published prior to the period during which the equipment was used in the performance of the Design and Construction Contract.

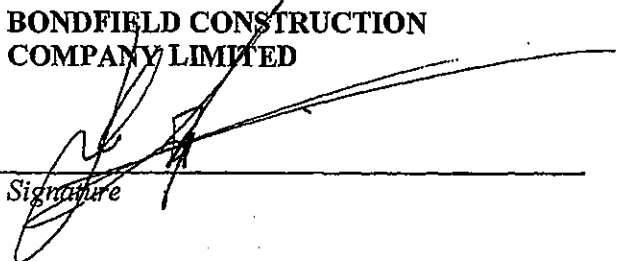
2. The Principal and the Surety hereby jointly and severally agree with the Oblige, as Trustee, that every Claimant who has not been paid as provided for under the terms of his or her contract with the Principal, before the expiration of a period of ninety (90) days after the date on which the last of such Claimant's work or labour was done or performed or materials were furnished by such Claimant, may as a beneficiary of the trust herein provided for, sue on this Bond, prosecute the suit to final judgment for such sum or sums as may be justly due to such Claimant under the terms of his or her contract with the Principal and have execution thereon. Provided that the Oblige is not obliged to do or take any act, action or proceeding against the Surety on behalf of the Claimants, or any of them, to enforce the provisions of this Bond. If any act, action or proceeding is taken either in the name of the Oblige or by joining the Oblige as a party to such proceeding, then such act, action or proceeding, shall be taken on the understanding and basis that the Claimants or any of them, who take such act, action or proceeding shall indemnify and save harmless the Oblige against all costs, charges and expenses or liabilities incurred thereon and any loss or damage resulting to the Oblige by reason thereof. Provided still further that, subject to the foregoing terms and conditions, the Claimants, or any of them may use the name of the Oblige to sue on and enforce the provisions of this Bond.
3. It is a condition precedent to the liability of the Surety under this Bond that such Claimant shall have given written notice as hereinafter set forth to each of the Principal, the Surety and the Oblige, stating with substantial accuracy the amount claimed, and that such Claimant shall have brought suit or action in accordance with this Bond, as set out in sub-clauses 3(b) and 3(c) below. Accordingly, no suit or action shall be commenced hereunder by any Claimant:
 - (a) unless such Claimant shall have given written notice within the time limits hereinafter set forth to each of the Principal, the Surety and the Oblige, stating with substantial accuracy the amount claimed. Such notice shall be served by mailing the same by registered mail to the Principal, the Surety and the Oblige, at any place where an office is regularly maintained for the transaction of business by such persons or served in any manner in which legal process may be served in the Province or other part of Canada in which the subject matter of the Design and Construction Contract is located. Such notice shall be given:
 - (i) in respect of any claim for the amount or any portion thereof, required to be held back from the Claimant by the Principal, under either the terms of the Claimant's contract with the Principal, or under the construction lien legislation applicable to the Claimant's contract with the Principal, whichever is greater, within one hundred and twenty (120) days after such Claimant should have been paid in full under the Claimant's contract with the Principal;

- (ii) in respect of any claim other than for the holdback, or portion thereof, referred to above, within one hundred and twenty (120) days after the date upon which such Claimant did, or performed, the last of the work or labour or furnished the last of the materials for which such claim is made under the Claimant's contract with the Principal;
 - (b) after the expiration of one (1) year following the date on which the Principal ceased work on the Design and Construction Contract, including work performed under the guarantees provided in the Design and Construction Contract;
 - (c) other than in a Court of competent jurisdiction in the Province or District of Canada in which the subject matter of the Design and Construction Contract, or any part thereof, is situated and not elsewhere, and the parties hereto agree to submit to the jurisdiction of such Court.
- 4. The Surety agrees not to take advantage of Article 1959 of the Civil Code of the Province of Quebec in the event that, by an act or an omission of a Claimant, the Surety can no longer be subrogated in the rights, hypothecs and privileges of said Claimant.
- 5. Any material change in the Design and Construction Contract between the Principal and the Obligee shall not prejudice the rights or interest of any Claimant under this Bond, who is not instrumental in bringing about or has not caused such change.
- 6. The amount of this Bond shall be reduced by and to the extent of any payment or payments made in good faith and in accordance with the provisions hereof, inclusive of the payment by the Surety of construction liens which may be filed of record against the subject matter of the Design and Construction Contract, whether or not claim for the amount of such lien be presented under and against this Bond.
- 7. The Surety shall not be liable for a greater sum than the specified penalty of this Bond.
- 8. This Bond may be executed in counterpart, all of which when taken together shall constitute the Labour and Material Payment Bond.

IN WITNESS WHEREOF, the Principal and the Surety have signed and sealed this Bond this 27 day of January, 2015.

SIGNED, SEALED AND DELIVERED in the presence of:

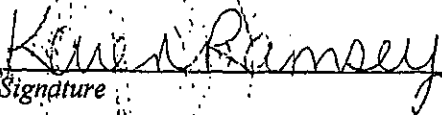
**BONDFIELD CONSTRUCTION
COMPANY LIMITED**



Signature

Name of person signing

ZURICH INSURANCE COMPANY LTD


Signature

KAREN RAMSEY, ATTORNEY-IN-FACT
Name of person signing

THIS IS EXHIBIT "K" TO
THE AFFIDAVIT OF EDEN ORBACH
SWORN BEFORE ME THIS 17th
DAY OF DECEMBER, 2018.

Aarec Tamm

A Commissioner etc.

DELIVERED BY COURIER

November 16, 2018

Zurich Insurance Company Ltd.
First Canadian Place
100 King Street West, Suite 5500
Toronto, ON
M5X 1C9

Dear Sirs:

Re: St. Michael's Hospital Redevelopment Project
Public Private Partnership Performance Bond No: 6343517
dated January 27, 2015 in the amount of \$156,325,362.60 (the "P3 Bond")

We refer to the P3 Bond, terms used in this letter without definition having the meaning set forth in the P3 Bond. The undersigned Bank of Montreal is sending this notice under the P3 Bond in its capacity as an Additional Named Obligee in accordance with Rider No. 3 to the P3 Bond, being a Multiple Obligee Rider attached to and forming part of the P3 Bond.

We hereby:

1. declare that the Principal is in default in performance of the Bonded Obligations under the Design and Construction Contract, and that this notice is a Performance Obligation Declaration of Default; and
2. request that the Surety, within twenty-one (21) days of the Surety's receipt of this letter, elect one of the four options respectively set out in sections 2.1, 2.2, 2.3 and 2.4 of the P3 Bond.

This letter is executed by an authorized signing officer of the undersigned.

Yours very truly,

Bank of Montreal

Per:



Eden Orbach
Senior Manager

THIS IS EXHIBIT "L" TO
THE AFFIDAVIT OF EDEN ORBACH
SWORN BEFORE ME THIS 17th
DAY OF DECEMBER, 2018.

James Turner

A Commissioner etc.

Antoinette De Pinto

From: Harvey G. Chaiton
Sent: December-17-18 1:03 PM
To: Antoinette De Pinto
Subject: Fwd: Zurich - Bondfield - SMH
Attachments: image002.jpg; ATT00001.htm; St. Michael's Hospital - Performance Bond Demand.pdf; ATT00002.htm; TOR01 -#7694252-v1-SMH - Completion Contract.DOCX; ATT00003.htm; TOR01 -#7694254-v1-SMH Mitigation Funding Agreement.DOCX; ATT00004.htm

Sent from my iPhone

Harvey G. Chaiton
Partner | Chaitons LLP | Tel: 416.218.1129

Begin forwarded message:

From: "MacLellan, James W." <JMACLELLAN@blg.com>
Date: November 22, 2018 at 3:25:12 PM EST
To: "Harvey G. Chaiton" <Harvey@chaitons.com>
Subject: FW: Zurich - Bondfield - SMH

Harvey

Further to our discussion this morning, Zurich has received your client's letter dated November 16, 2018 purporting to make a claim under the Performance Bond for SMH project. We are instructed not to debate the contents of the letter although as discussed it is not a proper claim under the performance bond but to pursue a completion arrangement consistent with the terms of the performance bond.

The performance bond guarantees performance of the construction contract and the party making the claim under the performance bond (if it is not project co) has to insert step into the construction contract in order to enforce the remedies in the construction contract including calling on the performance bond. Please confirm that this has taken place.

Assuming that your client is now the contracting party under the construction contract and the party in a position to make the claim under the performance bond, we have attached the agreements necessary to put in place a completion contractor. We would ask for your comments on the two agreements and confirmation that your client will make the Balance of the Bonded Design and Construction Contract Price for the purpose of completion. Zurich has for some time been ready to make arrangements for the completion of the construction contract and we await the finalization of the completion documents so that [REDACTED] can begin the completion work.

Thanks

James

THIS IS EXHIBIT "M" TO
THE AFFIDAVIT OF EDEN ORBACH
SWORN BEFORE ME THIS 17th
DAY OF DECEMBER, 2018.

Ameec Tahir

A Commissioner etc.

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

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PAGE 1 OF 12
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ON 2018/12/14 AT 16:51:14

21098-0100 (LT)

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

PROPERTY DESCRIPTION: LT 56 E/S VICTORIA ST, 55 E/S VICTORIA ST, 54 E/S VICTORIA ST, 53 E/S VICTORIA ST, 52 E/S VICTORIA ST, 51 E/S VICTORIA ST, 50 E/S VICTORIA ST, 49 E/S VICTORIA ST, 48 E/S VICTORIA ST PL 22A TORONTO; UNNUMBERED LT AKA LT 8 N/S QUEEN ST FORMERLY LOT ST PL 22A TORONTO; UNNUMBERED LT AKA LT 7 N/S QUEEN ST FORMERLY LOT ST PL 22A TORONTO; UNNUMBERED LT AKA LT 6 N/S QUEEN ST FORMERLY LOT ST PL 22A TORONTO; UNNUMBERED LT AKA LT 5 N/S QUEEN ST FORMERLY LOT ST PL 22A TORONTO; UNNUMBERED LT AKA LT 4 N/S QUEEN ST FORMERLY LOT ST PL 22A TORONTO; UNNUMBERED LT AKA LT 3 N/S QUEEN ST FORMERLY LOT ST PL 22A TORONTO; UNNUMBERED LT AKA LT 2 N/S QUEEN ST FORMERLY LOT ST PL 22A TORONTO; UNNUMBERED LT AKA LT 1 N/S QUEEN ST FORMERLY LOT ST PL 22A TORONTO; UNNUMBERED LT AKA LT 10 W/S BOND ST, 9 W/S BOND ST, 8 W/S BOND ST, 7 W/S BOND ST, 6 W/S BOND ST, 5 W/S BOND ST, 4 W/S BOND ST, 3 W/S BOND ST, 2 W/S BOND ST, 1 W/S BOND ST, 10 W/S BOND ST, 10 W/S BOND ST PL 22A TORONTO; PT UNNAMED LANE PL 22A TORONTO B/W VICTORIA ST & BOND ST, 5 OF SHUTER ST, CLOSED BY EPI20456 & EP3407 AS IN EPI22030 & EPI0533; CITY OF TORONTO

PROPERTY REMARKS:
ESTATE/QUALIFIER:
FEE SIMPLE
LT CONVERSION QUALIFIED

RECENTLY:
FIRST CONVERSION FROM BOOK
CAPACITY SHARE

OWNERS' NAMES:
PROVIDENCE ST. JOSEPH'S AND ST. MICHAEL'S
HEALTHCARE

EIN CREATION DATE:
2003/09/22

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHRD
** PRINTOUT	INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 2003/09/19 **					
**SUBJECT,	ON FIRST REGISTRATION UNDER THE LAND TITLES ACT, TO					
**	SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPH 11, PARAGRAPH 14, PROVINCIAL SUCCESSION DUTIES *					
**	AND ESCHEATS OR FORFEITURE TO THE CROWN.					
**	THE RIGHTS OF ANY PERSON WHO WOULD, BUT FOR THE LAND TITLES ACT, BE ENTITLED TO THE LAND OR ANY PART OF					
**	IT THROUGH LENGTH OF ADVERSE POSSESSION, PRESCRIPTION, MISDESCRIPTION OR BOUNDARIES SETTLED BY					
**	CONVENTION.					
**	ANY LEASE TO WHICH THE SUBSECTION 70(2) OF THE REGISTRY ACT APPLIES.					
**DATE OF	CONVERSION TO LAND TITLES: 2003/09/22 **					
NE11798	1884/11/24	TRANSFER	*** COMPLETELY DELETED ***		THE SISTERS OF ST. JOSEPH FOR THE DIOCESE OF TORONTO IN UPPER CANADA	
OP4555	1893/10/10	TRANSFER	*** COMPLETELY DELETED ***		THE SISTERS OF ST. JOSEPH FOR THE DIOCESE OF TORONTO IN UPPER CANADA	
OS6253	1893/10/18	TRANSFER	*** COMPLETELY DELETED ***		THE SISTERS OF ST. JOSEPH FOR THE DIOCESE OF TORONTO IN UPPER CANADA	
OS11499	1897/09/24	TRANSFER	*** COMPLETELY DELETED ***		THE SISTERS OF ST. JOSEPH FOR THE DIOCESE OF TORONTO IN UPPER CANADA	

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PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

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* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
OR9436	1898/10/28	TRANSFER		*** COMPLETELY DELETED ***	THE SISTERS OF ST. JOSEPH FOR THE DIOCESE OF TORONTO IN UPPER CANADA	
OR18361	1901/07/27	TRANSFER		*** COMPLETELY DELETED ***	THE SISTERS OF ST. JOSEPH FOR THE DIOCESE OF TORONTO IN UPPER CANADA	
OR20394	1902/02/01	TRANSFER		*** COMPLETELY DELETED ***	THE SISTERS OF ST. JOSEPH FOR THE DIOCESE OF TORONTO IN UPPER CANADA	
OR20462	1902/02/10	TRANSFER		*** COMPLETELY DELETED ***	THE SISTERS OF ST. JOSEPH FOR THE DIOCESE OF TORONTO IN UPPER CANADA	
OR22103	1902/07/04	TRANSFER		*** COMPLETELY DELETED ***	THE SISTERS OF ST. JOSEPH FOR THE DIOCESE OF TORONTO IN UPPER CANADA	
OR22339	1902/08/07	TRANSFER		*** COMPLETELY DELETED ***	THE SISTERS OF ST. JOSEPH FOR THE DIOCESE OF TORONTO IN UPPER CANADA	
OT5639	1902/12/11	TRANSFER		*** COMPLETELY DELETED ***	THE SISTERS OF ST. JOSEPH, FOR THE DIOCESE OF TORONTO IN UPPER CANADA	
OR23151	1903/03/16	TRANSFER		*** COMPLETELY DELETED ***	THE SISTERS OF ST. JOSEPH FOR THE DIOCESE OF TORONTO IN UPPER CANADA	
OR24485	1903/08/22	TRANSFER		*** COMPLETELY DELETED ***	THE SISTERS OF ST. JOSEPH, FOR THE DIOCESE OF TORONTO IN UPPER CANADA	
OP21975	1905/12/02	TRANSFER		*** COMPLETELY DELETED ***	THE SISTERS OF ST. JOSEPH FOR THE DIOCESE OF TORONTO IN UPPER CANADA	

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ON 2018/12/14 AT 16:51:14

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
OT8877	1906/06/14	TRANSFER		*** COMPLETELY DELETED ***	THE SISTERS OF ST. JOSEPH FOR THE DIOCESE OF TORONTO IN UPPER CANADA	
OT13471	1907/08/27	TRANSFER		*** COMPLETELY DELETED ***	THE SISTERS OF ST. JOSEPH FOR THE DIOCESE OF TORONTO IN UPPER CANADA	
OP36771	1910/03/24	TRANSFER		*** COMPLETELY DELETED ***	THE SISTERS OF ST. JOSEPH FOR THE DIOCESE OF TORONTO IN UPPER CANADA	
OM13780	1914/03/27	TRANSFER		*** COMPLETELY DELETED ***	THE SISTERS OF SAINT JOSEPH FOR THE DIOCESE OF TORONTO IN UPPER CANADA	
OP90584	1923/04/23	TRANSFER		*** COMPLETELY DELETED ***	THE SISTERS OF ST. JOSEPH FOR THE DIOCESE OF TORONTO IN UPPER CANADA	
OP90585	1923/04/23	TRANSFER		*** COMPLETELY DELETED ***	THE SISTERS OF ST. JOSEPH FOR THE DIOCESE OF TORONTO IN UPPER CANADA	
EP2482	1924/03/14	TRANSFER		*** COMPLETELY DELETED ***	THE SISTERS OF ST. JOSEPH FOR THE DIOCESE OF TORONTO IN UPPER CANADA	
EP3144	1924/05/29	TRANSFER		*** COMPLETELY DELETED ***	THE SISTERS OF ST. JOSEPH FOR THE DIOCESE OF TORONTO IN UPPER CANADA	
EP10045	1926/08/17	TRANSFER		*** COMPLETELY DELETED ***	THE SISTERS OF ST. JOSEPH FOR THE DIOCESE OF TORONTO IN UPPER CANADA	
EP10533	1926/10/15	TRANSFER		*** COMPLETELY DELETED ***	THE SISTERS OF ST. JOSEPH FOR THE DIOCESE OF TORONTO IN UPPER CANADA	
EP52982	1945/06/05	TRANSFER		*** COMPLETELY DELETED ***	THE SISTERS OF ST. JOSEPH FOR THE DIOCESE OF TORONTO IN UPPER CANADA	

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHRD
EP66779	1949/05/03	TRANSFER		*** COMPLETELY DELETED ***	THE SISTERS OF ST. JOSEPH FOR THE DIOCESE OF TORONTO IN UPPER CANADA	
EP116375	1960/09/30	TRANSFER		*** COMPLETELY DELETED ***	THE SISTERS OF ST. JOSEPH FOR THE DIOCESE OF TORONTO IN UPPER CANADA	
EP117215	1960/12/28	TRANSFER		*** COMPLETELY DELETED ***	THE SISTERS OF ST. JOSEPH FOR THE DIOCESE OF TORONTO IN UPPER CANADA	
EP117729	1961/02/28	TRANSFER		*** COMPLETELY DELETED ***	THE SISTERS OF ST. JOSEPH FOR THE DIOCESE OF TORONTO IN UPPER CANADA	
EP122030	1962/09/07	TRANSFER		*** COMPLETELY DELETED ***	THE SISTERS OF ST. JOSEPH FOR THE DIOCESE OF TORONTO IN UPPER CANADA	
ES61005	1966/09/01	TRANSFER		*** COMPLETELY DELETED ***	THE SISTERS OF ST. JOSEPH FOR THE DIOCESE OF TORONTO IN UPPER CANADA	
EP134970	1966/12/23	TRANSFER		*** COMPLETELY DELETED ***	THE SISTERS OF ST. JOSEPH FOR THE DIOCESE OF TORONTO IN UPPER CANADA	
63BA1090	1977/10/03	PLAN BOUNDARIES ACT				C
		REMARKS: CT257508				
CT310267	1978/08/04	AGREEMENT				C
CT549393	1982/09/08	AGREEMENT				C
		REMARKS: AMENDING, CT310267				
AT304843	2003/10/10	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** VERSATECH MECHANICAL LTD.	THE CORPORATION OF THE CITY OF TORONTO	C
AT329909	2003/11/07	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** SAMPLE-GOODER ROOFING LIMITED		C

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
AT341593	2003/11/24	DIS CONSTRUCT LIEN REMARKS: RE: A1304843		*** COMPLETELY DELETED ***	VERSATECH MECHANICAL LTD.	
AT367085	2003/12/18	DIS CONSTRUCT LIEN REMARKS: RE: A1329909		*** COMPLETELY DELETED ***	SEMPL-GOODER ROOFING LIMITED	
AT992277	2005/11/29	LR'S ORDER REMARKS: AMEND THE THUMBNAILED DESCRIPTION		LAND REGISTRAR		C
AT1055905	2006/02/06	APL CH NAME OWNER		*** COMPLETELY DELETED *** THE SISTERS OF ST. JOSEPH FOR THE DIOCESE OF TORONTO IN UPPER CANADA THE SISTERS OF ST. JOSEPH, FOR THE DIOCESE OF TORONTO IN UPPER CANADA THE SISTERS OF SAINT JOSEPH FOR THE DIOCESE OF TORONTO IN UPPER CANADA REMARKS: LT591297, EP66018, EP72878, A292088, NE11798, OP4555, OS6253, OS11499, OR9436, OR18361, OR20394, OR20462, OR22103, OT5639, OR24485, OR21575, OR2877, OR13471, OP36771, OP90584, OP90585, EE2482, EE3144, EP10045, EP10533, EP52982, EP66779, EP116375, EP117215, EP117729, EP122030, ES61005,	THE SISTERS OF ST. JOSEPH, FOR THE DIOCESE OF TORONTO, IN UPPER CANADA	
AT1057439	2006/02/07	TRANSFER	\$20,000,000	THE SISTERS OF ST. JOSEPH, FOR THE DIOCESE OF TORONTO, IN UPPER CANADA	ST. MICHAEL'S HOSPITAL	C
AT1057440	2006/02/07	CHARGE REMARKS: PLANNING ACT STATEMENTS	\$14,000,000	ST. MICHAEL'S HOSPITAL	THE SISTERS OF ST. JOSEPH, FOR THE DIOCESE OF TORONTO, IN UPPER CANADA	C
AT1057441	2006/02/07	CHARGE	\$21,000,000	ST. MICHAEL'S HOSPITAL	THE SISTERS OF ST. JOSEPH, FOR THE DIOCESE OF TORONTO, IN UPPER CANADA	C
AT1077276	2006/03/01	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** REGAL DOOR & HARDWARE CO., A DIVISION OF REGAL DOOR & TRIM (CANADA) LTD.		
AT1078127	2006/03/02	LR'S ORDER REMARKS: AMENDS LAND REGISTRARS ORDER AT992277, BY-LAW		LAND REGISTRAR SHOULD BE "EP3407"		
AT1095423	2006/03/27	APL AMEND ORDER REMARKS: AT107276 VACATED		*** COMPLETELY DELETED *** ONTARIO SUPERIOR COURT OF JUSTICE	CLOKE-KIRBY CONSTRUCTION LIMITED	C

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
AT1946512	2008/11/07	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** KRYTIUK SPECIALTY CONTRACTING INC.		
AT1953508	2008/11/19	DIS CONSTRUCT LIEN		*** COMPLETELY DELETED ***	KRYTIUK SPECIALTY CONTRACTING INC.	C
	REMARKS: RE: AT1946512					
AT2420898	2010/06/23	NOTICE		ST. MICHAELS HOSPITAL	THE SISTERS OF ST. JOSEPH, FOR THE DIOCESE OF TORONTO, IN UPPER CANADA	C
	REMARKS: AT1057440					
AT2420899	2010/06/23	NOTICE		ST. MICHAELS HOSPITAL	THE SISTERS OF ST. JOSEPH, FOR THE DIOCESE OF TORONTO, IN UPPER CANADA	C
	REMARKS: AT1057441					
AT2445023	2010/07/13	NOTICE		CITY OF TORONTO		C
	REMARKS: THIS NOTICE IS FOR A INDETERMINATE PERIOD.					
AT2445024	2010/07/13	NOTICE		CITY OF TORONTO		C
	REMARKS: THIS NOTICE IS FOR A INDETERMINATE PERIOD.					
AT2679790	2011/05/02	NOTICE		ST. MICHAEL'S HOSPITAL	THE SISTERS OF ST. JOSEPH, FOR THE DIOCESE OF TORONTO, IN UPPER CANADA	C
	REMARKS: AT1057440					
AT2679791	2011/05/02	NOTICE		ST. MICHAEL'S HOSPITAL	THE SISTERS OF ST. JOSEPH, FOR THE DIOCESE OF TORONTO, IN UPPER CANADA	C
	REMARKS: AT1057441					
AT2694691	2011/05/18	NOTICE		CITY OF TORONTO		C
AT2714120	2011/06/07	NOTICE	\$2	CITY OF TORONTO		C
AT2957674	2012/03/01	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** PRO INSUL LIMITED	ST. MICHAEL'S HOSPITAL	C
AT2964755	2012/03/12	APL AMEND ORDER		*** COMPLETELY DELETED *** ONTARIO SUPERIOR COURT OF JUSTICE	GEO. A. KELSON COMPANY LIMITED	
	REMARKS: DELETE AT2957674					
AT3240658	2013/02/20	APL AMEND ORDER		*** COMPLETELY DELETED *** ONTARIO SUPERIOR COURT OF JUSTICE	PRO INSUL LIMITED	
	REMARKS: AT2957674					

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PAGE 7 OF 12

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ON 2018/12/14 AT 16:51:14

21098-0100 (LT)

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
AT4129270	2016/01/26	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** MONALT ENVIRONMENTAL INC.		
AT4130851	2016/01/28	APL AMEND ORDER		*** COMPLETELY DELETED *** ONTARIO SUPERIOR COURT OF JUSTICE	2442931 ONTARIO INC.	
AT4179221	2016/03/31	NOTICE	\$2	CITY OF TORONTO	ST. MICHAEL'S HOSPITAL	C
AT4220668	2016/05/17	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** EMCO CORPORATION		
AT4228471	2016/05/27	APL DEL CONST LIEN		*** COMPLETELY DELETED *** EMCO CORPORATION		
REMARKS: AT4220668.						
AT4372367	2016/10/14	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** TORO ROAD DEVELOPMENTS INC. AVRTIGHT INVESTMENTS INC. LOADED DICE INVESTMENTS INC. BAD BOY INVESTMENTS INC. ROMPER INVESTMENTS INC. PEREGRINE CONSTRUCTION INC. BIG SNIPE HOLDINGS INC.		
AT4378487	2016/10/21	APL DEL CONST LIEN		*** COMPLETELY DELETED *** BONDFIELD CONSTRUCTION COMPANY LIMITED		
REMARKS: AT4372367.						
AT4444185	2016/12/28	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** TRANE CANADA ULC		
AT4470313	2017/01/25	APL DEL CONST LIEN		*** COMPLETELY DELETED *** TRANE CANADA ULC		
REMARKS: AT4444185.						
AT4563088	2017/05/10	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** WILSONART CANADA ULC		
AT4571085	2017/05/17	APL DEL CONST LIEN		*** COMPLETELY DELETED *** WILSONART CANADA ULC		
REMARKS: AT4563088.						

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PAGE 8 OF 12
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21098-0100 (LT)

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
AT4643382	2017/08/01	APL CH NAME OWNER		ST. MICHAEL'S HOSPITAL	PROVIDENCE ST. JOSEPH'S AND ST. MICHAEL'S HEALTHCARE	C
AT4698779	2017/10/04	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** M.S.E. DRILLING & GROUTING INC.		
AT4699711	2017/10/05	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** EMCO CORPORATION		
AT4705076	2017/10/13	APL DEL CONST LIEN		*** COMPLETELY DELETED *** BONDFIELD CONSTRUCTION COMPANY LIMITED		
		REMARKS: AT4699711.				
AT4705089	2017/10/13	APL DEL CONST LIEN		*** COMPLETELY DELETED *** BONDFIELD CONSTRUCTION COMPANY LIMITED		
		REMARKS: AT4698779.				
AT4721540	2017/10/31	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** PRIME FIRE PROTECTION INC.		
AT4726493	2017/11/06	APL DEL CONST LIEN		*** COMPLETELY DELETED *** BONDFIELD CONSTRUCTION COMPANY LIMITED		
		REMARKS: AT4721540.				
AT4730202	2017/11/10	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** MITCHELL, GREG		
AT4733147	2017/11/15	APL DEL CONST LIEN		*** COMPLETELY DELETED *** MITCHELL, GREG		
		REMARKS: AT4730202.				
AT4784664	2018/01/19	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** BLACK & McDONALD LIMITED		
AT4791770	2018/01/30	APL DEL CONST LIEN		*** COMPLETELY DELETED *** BLACK & McDONALD LIMITED		
		REMARKS: AT4784664.				
AT4814943	2018/03/05	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** C.J. DUGUID FLOORING (ONTARIO) LIMITED		
AT4815588	2018/03/06	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** ASSA ABLOY ENTRANCE SYSTEMS CANADA INC.		

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
AT4820137	2018/03/13	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** B.W. HAGGART CRANE RENTALS LTD.		
AT4822639	2018/03/16	APL DEL CONST LIEN		*** COMPLETELY DELETED *** B.W. HAGGART CRANE RENTALS LTD.		
	REMARKS: AT4820137.					
AT4826774	2018/03/22	CERTIFICATE		*** COMPLETELY DELETED *** ASSA ABLOY ENTRANCE SYSTEMS CANADA INC.		
	REMARKS: AT4815588					
AT4828619	2018/03/26	APL DEL CONST LIEN		*** COMPLETELY DELETED *** ASSA ABLOY ENTRANCE SYSTEMS CANADA INC.		
	REMARKS: AT4815588.					
AT4839463	2018/04/10	APL DEL CONST LIEN		*** COMPLETELY DELETED *** C.J. DUGUID FLOORING (ONTARIO) LIMITED		
	REMARKS: AT4814943.					
AT4840142	2018/04/11	CONSTRUCTION LIEN	\$321,287	GEO. A KELSON COMPANY LIMITED		C
AT4842158	2018/04/13	CONSTRUCTION LIEN	\$140,725	TORO ROAD DEVELOPMENTS INC. AYRTIGHT INVESTMENTS INC. LOADED DICE INVESTMENTS INC. BAD BOY INVESTMENTS INC. ROMPER INVESTMENTS INC. PEREGRINE CONSTRUCTION INC. BIG SNIPE HOLDINGS INC. MAREL CONTRACTORS		C
AT4843372	2018/04/17	CONSTRUCTION LIEN	\$260,582	CROWN SECURITY SERVICES INC.		C
AT4849102	2018/04/25	CERTIFICATE		TORO ROAD DEVELOPMENTS INC. AYRTIGHT INVESTMENTS INC. LOADED DICE INVESTMENTS INC. BAD BOY INVESTMENTS INC. ROMPER INVESTMENTS INC. PEREGRINE CONSTRUCTION INC. BIG SNIPE HOLDINGS INC. MAREL CONTRACTORS		C
	REMARKS: AT4842158					
AT4849918	2018/04/26	CONSTRUCTION LIEN	\$177,384	VENTEX INC.		C

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
AT4872075	2018/05/28	CERTIFICATE		CROWN SECURITY SERVICES INC.	BONDFIELD CONSTRUCTION COMPANY LIMITED	C
		REMARKS: CERTIFICATE OF ACTION AT4843372			PROVIDENCE ST. JOSEPH'S AND ST. MICHAEL'S HEALTHCARE	
AT4883241	2018/06/11	CONSTRUCTION LIEN	\$68,432	ASSA ABLOY ENTRANCE SYSTEMS CANADA INC.		C
AT4887083	2018/06/15	CERTIFICATE		GEO. A KELSON COMPANY LIMITED		C
		REMARKS: CERTIFICATE OF ACTION - AT4840142				
AT4895532	2018/06/27	CERTIFICATE		ASSA ABLOY ENTRANCE SYSTEMS CANADA INC.		C
		REMARKS: AT4883241		VENTEX INC.		C
AT4903149	2018/07/05	CERTIFICATE		MMW GROUP LIMITED		C
		REMARKS: CERTIFICATE OF ACTION AT4849918		WSP CANADA GROUP LIMITED		C
AT4907015	2018/07/11	CONSTRUCTION LIEN	\$2,260,000	CLASS 1 INC.		C
AT4909793	2018/07/16	CONSTRUCTION LIEN	\$240,716	POLLARD ENTERPRISES LTD.		C
AT4921134	2018/07/27	CONSTRUCTION LIEN	\$231,545	CLASS 1 INC.		C
AT4923502	2018/07/30	CERTIFICATE		SAFWAY SERVICES CANADA, ULC		C
		REMARKS: AT4909793		CLASS 1 INC.		C
AT4931447	2018/08/09	CONSTRUCTION LIEN	\$154,536	SAFWAY SERVICES CANADA, ULC		C
AT4937978	2018/08/17	CONSTRUCTION LIEN	\$331,287	CLASS 1 INC.		C
AT4944375	2018/08/27	CERTIFICATE		SAFWAY SERVICES CANADA, ULC		C
		REMARKS: AT4931447		STONHARD (STONHARD DIVISION, RPM CANADA)		C
AT4944446	2018/08/27	CONSTRUCTION LIEN	\$228,903	*** COMPLETELY DELETED ***		C
AT4945529	2018/08/28	CONSTRUCTION LIEN		GULDMANN CARE-LIFT SOLUTIONS, ULC		C
AT4947136	2018/08/30	CONSTRUCTION LIEN		*** COMPLETELY DELETED ***		C
				SCHINDLER ELEVATOR CORPORATION		C
AT4952201	2018/09/06	CONSTRUCTION LIEN		*** COMPLETELY DELETED ***		C
				ONTARIO ACOUSTIC SUPPLY INC.		C

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* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

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AT4952331	2018/09/06	CONSTRUCTION LIEN	\$629,094	MODERN ELEVATOR INNOVATIONS INC.		C
AT4952904	2018/09/07	CERTIFICATE		POLLARD ENTERPRISES LTD.		C
	REMARKS: AT4921134					
AT4954799	2018/09/11	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** ADVANCED PRESENTATION PRODUCTS INC.		
AT4961928	2018/09/19	CONSTRUCTION LIEN	\$134,404	G & P CONSTRUCTION CLEANERS INC.		C
AT4962128	2018/09/19	CERTIFICATE		CLASS 1 INC.		C
	REMARKS: AT4937978					
AT4963363	2018/09/20	CONSTRUCTION LIEN	\$1,314,902	HONEYWELL LIMITED		C
AT4964630	2018/09/21	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** SWISSLOG HEALTHCARE		
AT4966377	2018/09/25	CONSTRUCTION LIEN	\$271,578	TORONTO INSULATION SYSTEMS LTD.		C
AT4966673	2018/09/25	CONSTRUCTION LIEN	\$155,448	SWISSLOG HEALTHCARE		C
AT4966679	2018/09/25	APL DEL CONST LIEN		*** COMPLETELY DELETED *** SWISSLOG HEALTHCARE		
	REMARKS: AT4964630.					
AT4967833	2018/09/26	CONSTRUCTION LIEN	\$108,122	OAKDALE DRYWALL & ACCOUSTICS LTD.		C
AT4973301	2018/10/02	CERTIFICATE		MM GROUP LIMITED NSP CANADA GROUP LIMITED		C
	REMARKS: AT4907015					
AT4977982	2018/10/09	CERTIFICATE		STONHARD (STONHARD DIVISION, RPM CANADA)		C
	REMARKS: AT4944446					
AT4982324	2018/10/16	APL DEL CONST LIEN		*** COMPLETELY DELETED *** GULDMANN CARE-LIFT SOLUTIONS, ULC		
	REMARKS: AT4945529.					
AT4983576	2018/10/17	CERTIFICATE		*** COMPLETELY DELETED *** ONTARIO ACOUSTIC SUPPLY INC.		
	REMARKS: AT4952201				ONTARIO SUPERIOR COURT OF JUSTICE	

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
AT4984789	2018/10/18	APL DEL CONST LIEN REMARKS: AT4947136.		*** COMPLETELY DELETED *** SCHINDLER ELEVATOR CORPORATION		
AT4986432	2018/10/22	APL DEL CONST LIEN REMARKS: AT4954799.		*** COMPLETELY DELETED *** ADVANCED PRESENTATION PRODUCTS INC.		
AT4986616	2018/10/22	APL DEL CONST LIEN REMARKS: AT4952201.		*** COMPLETELY DELETED *** ONTARIO ACOUSTIC SUPPLY INC.		
AT4991733	2018/10/26	CONSTRUCTION LIEN	\$149,052	TOTAL CONTRACT GLAZING INC.	BONDFIELD CONSTRUCTION COMPANY LIMITED	C
AT4994108	2018/10/30	CERTIFICATE		G & P CONSTRUCTION CLEANERS INC.		
AT4995596	2018/11/01	CERTIFICATE		TORONTO INSULATION SYSTEMS LTD.		
AT5005559	2018/11/13	CERTIFICATE		OAKDALE DRYWALL & ACOUSTICS LTD.	ONTARIO SUPERIOR COURT OF JUSTICE	
AT5015426	2018/11/23	NOTICE OF LEASE	\$2	PROVIDENCE ST. JOSEPH'S AND ST. MICHAEL'S HEALTHCARE	ROGERS COMMUNICATIONS INC.	
AT5020055	2018/11/30	APL DEL CONST LIEN REMARKS: AT4991733.		TOTAL CONTRACT GLAZING INC.		
AT5021677	2018/11/30	APL DEL CONST LIEN REMARKS: AT4966673.		SWISSILOG HEALTHCARE		
AT5023559	2018/12/04	APL DEL CONST LIEN REMARKS: AT484372.		CROWN SECURITY SERVICES INC.		
AT5028674	2018/12/10	APL DEL CONST LIEN REMARKS: AT494446.		STONHARD (STONHARD DIVISION, REV CANADA)		
AT5029563	2018/12/11	APL DEL CONST LIEN REMARKS: AT4899918.		VENTEX INC.		
AT5034154	2018/12/14	APL DEL CONST LIEN REMARKS: AT4937978.		CLASS 1 INC.		
AT5034160	2018/12/14	APL DEL CONST LIEN REMARKS: AT4904793.		CLASS 1 INC.		

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THIS IS EXHIBIT "N" TO
THE AFFIDAVIT OF EDEN ORBACH
SWORN BEFORE ME THIS 17th
DAY OF DECEMBER, 2018.

James Tarr
A Commissioner etc.

**OUR SHARED
PURPOSE**

PROVIDENCE
Healthcare

**ST
JOSEPH'S**
HEALTH CENTRE TORONTO

St. Michael's
Inspired Care.
Inspiring Science.

Bank of Montreal
Corporate Finance Division
1 First Canadian Place, 11th Floor
Toronto, ON M5X 1A1

VIA: REGISTERED MAIL & FACSIMILE: (416) 360-7168

November 2nd 2018

**Attention: James Di Giacomo, Managing Director, Underwriting and Syndications
Corporate Finance Division, Lenders Agent**

Dear Mr. Di Giacomo:

RE: Project Agreement (the "Project Agreement") dated January 27, 2015 between 2442931 Ontario Inc. ("Project Co"), a wholly owned subsidiary of Bondfield Construction Company ("Bondfield") and St. Michael's Hospital, now Providence St. Joseph's and St. Michael's Healthcare ("SMH") in respect of the St. Michael's Hospital Redevelopment Project (the "Project").


AND RE: Default Notice pursuant the Lenders' Direct Agreement dated January 27, 2015 (the "LDA")

Any capitalized term not defined in this letter shall have the meaning given to it in the LDA.

SMH hereby notifies the Lenders' Agent that Project Co Events of Default have occurred and are continuing. Enclosed are copies of the Notices of Default issued to Project Co detailing the Project Co Events of Default.

This letter serves as the Default Notice pursuant to section 7(b)(i) of the LDA, upon the delivery of which the Notice Period commences.

Sincerely,



Michael Keen
Interim Vice President, Chief Planning and Redevelopment Officer
PROVIDENCE, ST. JOSEPH'S AND ST. MICHAEL'S HEALTHCARE

OUR SHARED
PURPOSE

PROVIDENCE
Healthcare

ST
JOSEPH'S
HEALTH CENTRE TORONTO

St. Michael's
Inspired Care.
Inspiring Science.

cc:

Bank of Montreal
Corporate Finance Division
1 First Canadian Place, 11th Floor
Toronto, ON M5X 1A1
Paul Findlay, Senior Manager Bank of Montreal

2442931 Ontario Inc.
Attn: Steven Aquino
C/o Bondfield Construction Company Limited
407 Basaltic Road
Concord, ON L4K 4W8

Infrastructure Ontario
Attn: Bruce Gray
777 Bay Street, Suite 900
Toronto, ON M5G 2C8

McCarthy Tetrault
Attn: Julie K. Parla
Suite 5300
TD Bank Tower
Box 48, 66 Wellington Street West
Toronto ON M5K 1E6

St. Michael's Hospital
Attn: Tim Rutledge
30 Bond St.
M5B 1W8

**OUR SHARED
PURPOSE**

PROVIDENCE
Healthcare

**ST
JOSEPH'S**
HEALTH CENTRE TORONTO

St. Michael's
Inspired Care.
Inspiring Science.

**2442931 Ontario Inc.
407 Basaltic Road
Concord, ON L4K 4W8
Fax No. (416) 667-8462
Delivered by Facsimile**

Attention: John Aquino, President

Dear John:

RE: Project Agreement (the "Project Agreement") dated January 27, 2015 between 2442931 Ontario Inc. ("Project Co"), a wholly owned subsidiary of Bondfield Construction Company ("Bondfield") and St. Michael's Hospital, now Providence St. Joseph's and St. Michael's Healthcare ("SMH") in respect of the St. Michael's Hospital Redevelopment Project (the "Project").

Any capitalized term not defined in this letter shall have the meaning given to it in the Project Agreement.

This letter serves as a written notice to Project Co that:

1. In failing to achieve Tower Interim Completion by November 27, 2017, the Scheduled Tower Interim Completion Date, Project Co has committed a breach of its obligations under Section 34.1(a)(vi) of the Project Agreement which has or will have a material adverse effect on the performance of the SMH operations and/or SMH Activities. Further, having agreed on a reasonable plan and schedule for remedying such breach, which plan was set out in the Tower Interim Completion Agreement between Project Co and SMH dated as of December 5, 2017, Project Co has failed to perform its obligations and achieve all elements of such plan in accordance with its terms; and
2. Project Co has committed a breach of its obligations under Section 34.1(a)(x) of the Project Agreement by failing to remove a number of Encumbrances filed against the Site, which Encumbrances arose due to the actions and omissions of Project Co or a Project Co Party, within 45 days of the earlier of (A) registration of such Encumbrances against title to the Site and (B) the date on which Project Co or a Project Co Party knew, or ought to have known, of the existence of such Encumbrances. Please see the attached PIN search which lists all Encumbrances currently filed against title to the Site and the dates such Encumbrances were filed.

**OUR SHARED
PURPOSE**

PROVIDENCE
Healthcare

**ST
JOSEPH'S**
HEALTH CENTRE TORONTO

St. Michael's
Inspired Care.
Inspiring Science.

Accordingly, a Project Co Event of Default has occurred pursuant to each of Sections 34.1(a)(vi) and 34.1(a)(x), respectively, of the Project Agreement.

Project Co is hereby instructed to correct the above noted Project Co Events of Default immediately.

Nothing herein shall prejudice any other right or remedy SMH may have under the Project Agreement or at law, and all such rights and remedies are expressly reserved by SMH.

Please contact the undersigned if you wish to discuss this notice.

Sincerely,

**PROVIDENCE ST. JOSEPH'S AND ST. MICHAEL'S
HEALTHCARE**

Per:

Name:


Michael Keen

Title:

Interim Vice-President, Chief Planning &
Redevelopment Officer

cc: Tim Rutledge – Providence St. Joseph's and St. Michael's Healthcare
Tom Parker – Providence St. Joseph's and St. Michael's Healthcare
Michael Mendonca
Julie Parla – McCarthy Tetrault LLP
Gordon Willcocks – McCarthy Tetrault LLP
Bruce Gray – Ontario Infrastructure and Lands Corporation

THIS IS EXHIBIT "O" TO
THE AFFIDAVIT OF EDEN ORBACH
SWORN BEFORE ME THIS 17th
DAY OF DECEMBER, 2018.

Jacques Taur

A Commissioner etc.

5000 YONGE STREET, 10TH FLOOR, TORONTO, CANADA M2N 7E9
www.chaitons.com



REPLY TO: HARVEY G. CHAITON
FILE NO.: 42849
DIRECT: 416-218-1129
FAX: 416-218-1849
EMAIL: harvey@chaitons.com

December 5, 2018

VIA EMAIL AND COURIER

PERSONAL & CONFIDENTIAL

2442931 Ontario Inc.
407 Basaltic Road
Concord, ON L4K 4W8

Attention: Steven Aquino, President

Re: Credit Agreement made as of January 27, 2015 (the "Credit Agreement") among 2442931 Ontario Inc. (the "Borrower"), Bank of Montreal as Administrative Agent and the Lenders

Dear Mr. Aquino,

We are lawyers for Bank of Montreal in its capacity as Administrative Agent.

We refer to the Credit Agreement. Capitalized terms not defined herein shall have the meaning given to such terms in the Credit Agreement.

The Administrative Agent had previously provided you with written notice of various Events of Default which have occurred and are continuing under the Credit Agreement.

In addition, by letter dated November 2, 2018, SMH provided notice to the Administrative Agent that Project Co Events of Default have occurred and are continuing. The delivery of a Project Co Default Notice constitutes a further Event of Default under the Credit Agreement.

Upon the occurrence of an Event of Default which is continuing, upon notice to the Borrower, the Administrative Agent may terminate any further borrowings under the Loans and 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 under the Credit Agreement to be immediately due and payable.

On behalf of the Lenders, the Administrative Agent hereby declares all principal, interest, fees and other amounts payable by the Borrower under the Credit Agreement to be immediately due and payable. As of December 4, 2018, the amount payable is \$230,642,104.52 calculated as follows:

**Partially Revolving Facility
Fixed Rate Option (No. 362619930104)**

Principal:	\$173,274,150.00
Accrued interest:	\$58,865.74
per diem interest:	\$14,716.43



**Partially Revolving Facility
Fixed Rate Option (No. 362619930105)**

Principal:	\$57,289,626.00
Interest:	\$19,462.78
per diem interest:	\$4,865.69

Unless the total amount owing as aforesaid together with additional interest, fees and other amounts payable by the Borrower are immediately paid in full, the Administrative Agent shall take such steps as it deems necessary or desirable to recover payment of the Borrower's indebtedness which may include the enforcement of the Loan Documents and the appointment of a receiver.

We also hereby give you notice that the Lenders' obligations to provide the Loans is terminated. No further borrowings under the Loans will be permitted except in the sole and unfettered discretion of the Administrative Agent and the Lenders.

Enclosed please find the Administrative Agent's Notice of Intention to Enforce Security which is served upon the Borrower pursuant to section 244(1) of the *Bankruptcy and Insolvency Act*.

The Administrative Agent, on behalf of the Lenders, reserves all rights and remedies available to the Administrative Agent and the Lenders under the Credit Agreement and other Loan Documents, at law or otherwise.

Yours truly,
CHAITONS LLP

A handwritten signature in black ink, appearing to read "Harvey G. Chaiton".

Harvey G. Chaiton
PARTNER

HGC/ad
Encl.

cc: Bank of Montreal, as Administrative Agent
St. Michael's Hospital
Bondfield Construction Company Limited

NOTICE OF INTENTION TO ENFORCE SECURITY
(given pursuant to section 244 of the *Bankruptcy and Insolvency Act*)


TO: 2442931 Ontario Inc. (the "Debtor"), an insolvent person,

Take notice that:

1. All capitalized terms not otherwise defined herein, shall have the meanings given to them in the Credit Agreement dated January 27, 2015 between the Debtor, the Bank of Montreal, as Administrative Agent, and the Lenders (the "Credit Agreement") or the General Security Agreement dated January 27, 2015 granted by the Debtor to the Administrative Agent (the "GSA").
2. The Administrative Agent, on behalf of the Secured Parties, intends to enforce the security on all of the Collateral.
3. The security that is to be enforced is, *inter alia*, in the form of the GSA granted by the Debtor to and in favour of the Administrative Agent, for the benefit of the Secured Parties and all other Loan Documents (the "Security").
4. The total amount of indebtedness secured by the Security as at December 4, 2018 is \$230,642,104.52, plus costs.
5. The Administrative Agent and the Secured Parties will not have the right to enforce the Security until after the expiry of the 10 day period following the sending of this notice, unless the Debtor consents to an earlier enforcement.

DATED at Toronto this 5th day of December, 2018.

Bank of Montreal, as Administrative Agent
by its lawyers, Chaitons LLP

Per: 

Harvey Chaiton

THIS IS EXHIBIT "P" TO
THE AFFIDAVIT OF EDEN ORBACH
SWORN BEFORE ME THIS 17th
DAY OF DECEMBER, 2018.

Janece Tamm

A Commissioner etc.

5000 YONGE STREET, 10TH FLOOR, TORONTO, CANADA M2N 7E9
www.chaitons.com



REPLY TO: HARVEY G. CHAITON
FILE NO.: 42849
DIRECT: 416-218-1129
FAX: 416-218-1849
EMAIL: harvey@chaitons.com

December 5, 2018

VIA EMAIL AND COURIER

PERSONAL & CONFIDENTIAL

Bondfield Construction Company Limited
407 Basaltic Road
Concord, ON L4K 4W8

Attention: Steven Aquino, President

Re: Credit Agreement made as of January 27, 2015 (the "Credit Agreement") among 2442931 Ontario Inc. (the "Borrower"), Bank of Montreal as Administrative Agent and the Lenders

Re: Limited Recourse Guarantee and Security Agreement (the "Guarantee") made as of January 27, 2015 among Bondfield Construction Company Limited (the "Contractor"), Bank of Montreal as Administrative Agent for the Lenders and 2442931 Ontario Inc. (the "Borrower")

Dear Mr. Aquino,

We are lawyers for Bank of Montreal in its capacity as Administrative Agent.

We refer to the Guarantee. Capitalized terms not otherwise defined herein shall have the meaning assigned to such terms in the Credit Agreement or the Guarantee.

Please find enclosed a copy of our letter to the Borrower dated December 5, 2018, demanding payment of its indebtedness to the Administrative Agent and the Lenders. Payment of the indebtedness was unconditionally guaranteed by the Contractor pursuant to the Guarantee.

On behalf of the Administrative Agent, we hereby formally demand immediate payment of the sum of \$230,642,104.52 together with additional interest, fees and other amounts payable by the Borrower under the Credit Agreement.

Yours truly,
CHAITONS LLP

A handwritten signature in black ink, appearing to read "Harvey G. Chaiton", is written over the typed name and title.

Harvey G. Chaiton
PARTNER

HGC/ad
Encl.

cc: Bank of Montreal, as Administrative Agent

5000 YONGE STREET, 10TH FLOOR, TORONTO, CANADA M2N 7E9
www.chaitons.com



REPLY TO: HARVEY G. CHAITON
FILE NO.: 42849
DIRECT: 416-218-1129
FAX: 416-218-1849
EMAIL: harvey@chaitons.com

December 5, 2018

VIA EMAIL AND COURIER

PERSONAL & CONFIDENTIAL

2442931 Ontario Inc.
407 Basaltic Road
Concord, ON L4K 4W8

Attention: Steven Aquino, President

**Re: Credit Agreement made as of January 27, 2015 (the "Credit Agreement") among
2442931 Ontario Inc. (the "Borrower"), Bank of Montreal as Administrative Agent
and the Lenders**

Dear Mr. Aquino,

We are lawyers for Bank of Montreal in its capacity as Administrative Agent.

We refer to the Credit Agreement. Capitalized terms not defined herein shall have the meaning given to such terms in the Credit Agreement.

The Administrative Agent had previously provided you with written notice of various Events of Default which have occurred and are continuing under the Credit Agreement.

In addition, by letter dated November 2, 2018, SMH provided notice to the Administrative Agent that Project Co Events of Default have occurred and are continuing. The delivery of a Project Co Default Notice constitutes a further Event of Default under the Credit Agreement.

Upon the occurrence of an Event of Default which is continuing, upon notice to the Borrower, the Administrative Agent may terminate any further borrowings under the Loans and 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 under the Credit Agreement to be immediately due and payable.

On behalf of the Lenders, the Administrative Agent hereby declares all principal, interest, fees and other amounts payable by the Borrower under the Credit Agreement to be immediately due and payable. As of December 4, 2018, the amount payable is \$230,642,104.52 calculated as follows:

**Partially Revolving Facility
Fixed Rate Option (No. 362619930104)**

Principal:	\$173,274,150.00
Accrued interest:	\$58,865.74
per diem interest:	\$14,716.43



**Partially Revolving Facility
Fixed Rate Option (No. 362619930105)**

Principal:	\$57,289,626.00
Interest:	\$19,462.78
per diem interest:	\$4,865.69

Unless the total amount owing as aforesaid together with additional interest, fees and other amounts payable by the Borrower are immediately paid in full, the Administrative Agent shall take such steps as it deems necessary or desirable to recover payment of the Borrower's indebtedness which may include the enforcement of the Loan Documents and the appointment of a receiver.

We also hereby give you notice that the Lenders' obligations to provide the Loans is terminated. No further borrowings under the Loans will be permitted except in the sole and unfettered discretion of the Administrative Agent and the Lenders.

Enclosed please find the Administrative Agent's Notice of Intention to Enforce Security which is served upon the Borrower pursuant to section 244(1) of the *Bankruptcy and Insolvency Act*.

The Administrative Agent, on behalf of the Lenders, reserves all rights and remedies available to the Administrative Agent and the Lenders under the Credit Agreement and other Loan Documents, at law or otherwise.

Yours truly,
CHAITONS LLP

 A handwritten signature in black ink, appearing to read "Harvey G. Chaiton".

Harvey G. Chaiton
PARTNER

HGC/ad
Encl.

cc: Bank of Montreal, as Administrative Agent
St. Michael's Hospital
Bondfield Construction Company Limited

NOTICE OF INTENTION TO ENFORCE SECURITY
(given pursuant to section 244 of the *Bankruptcy and Insolvency Act*)


TO: 2442931 Ontario Inc. (the "Debtor"), an insolvent person,

Take notice that:

1. All capitalized terms not otherwise defined herein, shall have the meanings given to them in the Credit Agreement dated January 27, 2015 between the Debtor, the Bank of Montreal, as Administrative Agent, and the Lenders (the "Credit Agreement") or the General Security Agreement dated January 27, 2015 granted by the Debtor to the Administrative Agent (the "GSA").
2. The Administrative Agent, on behalf of the Secured Parties, intends to enforce the security on all of the Collateral.
3. The security that is to be enforced is, *inter alia*, in the form of the GSA granted by the Debtor to and in favour of the Administrative Agent, for the benefit of the Secured Parties and all other Loan Documents (the "Security").
4. The total amount of indebtedness secured by the Security as at December 4, 2018 is \$230,642,104.52, plus costs.
5. The Administrative Agent and the Secured Parties will not have the right to enforce the Security until after the expiry of the 10 day period following the sending of this notice, unless the Debtor consents to an earlier enforcement.

DATED at Toronto this 5th day of December, 2018.

Bank of Montreal, as Administrative Agent
by its lawyers, Chaitons LLP

Per: 
Harvey Chaiton

TAB 3

Court File No. CV-18-00610995-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.)	FRIDAY, THE 21ST
)	
JUSTICE HAINEY)	DAY OF DECEMBER, 2018

**IN THE MATTER OF THE RECEIVERSHIP OF
2442931 ONTARIO INC.**

BANK OF MONTREAL, AS ADMINISTRATIVE AGENT

Applicant

- and -

2442931 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 2442931 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 17, 2018 and the Exhibits thereto (collectively, the "Affidavit") and on hearing the submissions of counsel for each of the Applicant, A&M, St. Michael's Hospital ("SMH"), 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 and in consultation with SMH and IO, to enter into any agreements for and on behalf of the Debtor or cease to perform any contracts of the Debtor;

- (c) engage consultants, contractors, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (d) to settle, extend or compromise any indebtedness owing to the Debtor except in respect of the Performance Bond and the L&M Bond;
- (e) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (f) 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 SMH 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 "B" to the Affidavit or the Project Agreement attached as Exhibit "C" 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 purpose 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 (statutory or otherwise), 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 the 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 (statutory or otherwise), 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/SMH>’.

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 cause 3© 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 8 of the agreement dated January 27, 2015 between SMH, the Applicant and the Debtor (the “**Lender’s Direct Agreement**”); 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 the Order shall (i) affect the Debtor’s ability to perform its obligations under the Project Agreement or the agreement between the Debtor and Bondfield dated January 27, 2015 (the “**Design and Construction Contract**”) or (ii) alter, amend or otherwise affect the liability of the Surety to any Person pursuant to Performance Bond No. 6343517 (the “**Performance Bond**”) or Labour and Material Payment Bond No. 6343517 (the “**L&M Bond**”) 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.

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.

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 2442931 ONTARIO INC. (the "**Debtor**") 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 21st day of December, 2018 (the "**Order**") made in an action having Court file number CV-18-00610995-00CL, 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

Per: _____
Name:
Title:

TAB 4

Revised: January 21, 2014
s.243(1) BIA (National Receiver) and s. 101 CJA (Ontario) Receiver

Court File No. CV-18-00610995-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.) WEEKDAYFRIDAY, THE #21ST
)
JUSTICE HAINES) DAY OF MONTHDECEMBER, 20YR2018

PLAINTIFF¹

Plaintiff

IN THE MATTER OF THE RECEIVERSHIP OF
2442931 ONTARIO INC.

BANK OF MONTREAL, AS ADMINISTRATIVE AGENT

Applicant

- and -

DEFENDANT

Defendant

2442931 ONTARIO INC.

Respondent

ORDER
(appointing Receiver)

¹ ~~The Model Order Subcommittee notes that a receivership proceeding may be commenced by action or by application. This model order is drafted on the basis that the receivership proceeding is commenced by way of an action.~~

THIS MOTION APPLICATION made by the Plaintiff 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 [RECEIVER'S NAME] Alvarez & Marsal Canada Inc. ("A&M") as receiver ~~and manager~~ (in such capacities capacity, the "Receiver") without security, of all of the assets, undertakings and properties of [DEBTOR'S NAME] 2442931 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 [NAME] Eden Orbach sworn [DATE] December 17, 2018 and the Exhibits thereto (collectively, the "Affidavit") and on hearing the submissions of counsel for [NAMES], ~~no one appearing for [NAME] although duly served as appears from the affidavit of service of [NAME] sworn [DATE]~~ each of the Applicant, A&M, St. Michael's Hospital ("SMH"), Infrastructure Ontario ("IO"), Zurich Insurance Company Ltd. (the "Surety"), and the Debtor, and on reading the consent of [RECEIVER'S NAME] A&M to act as the Receiver,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Motion Application and the Motion Application is hereby abridged and validated³ so that this motion 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, [RECEIVER'S NAME] 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

² Section 243(1) of the BIA provides that the Court may appoint a receiver "on application by a secured creditor".

³ ~~If service is effected in a manner other than as authorized by the Ontario Rules of Civil Procedure, an order validating irregular service is required pursuant to Rule 16.08 of the Rules of Civil Procedure and may be granted in appropriate circumstances.~~

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 take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;~~ 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) ~~to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;~~
- (b) (e) ~~to manage, operate, and carry on the business~~ with the consent of the Debtor, including the powers Applicant and in consultation with SMH and IO, to enter into any agreements, incur any obligations in the ordinary course of business, ~~cease to carry on all or any part of the business, for and on behalf of the Debtor~~ or cease to perform any contracts of the Debtor; (d) ~~to~~
- (c) engage consultants, contractors, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the

exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;

- ~~(e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;~~
- ~~(f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;~~
- (d) ~~(g)~~ to settle, extend or compromise any indebtedness owing to the Debtor except in respect of the Performance Bond and the L&M Bond;
- (e) ~~(h)~~ to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- ~~(i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings.⁴ The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;~~
- ~~(j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and~~

⁴ This model order does not include specific authority permitting the Receiver to either file an assignment in bankruptcy on behalf of the Debtor, or to consent to the making of a bankruptcy order against the Debtor. A bankruptcy may have the effect of altering the priorities among creditors, and therefore the specific authority of the Court should be sought if the Receiver wishes to take one of these steps.

- 5 -

~~negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;~~

~~(k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business;~~

~~(i) without the approval of this Court in respect of any transaction not exceeding \$_____, provided that the aggregate consideration for all such transactions does not exceed \$_____; and~~

~~(ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;~~

~~and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, [or section 31 of the Ontario *Mortgages Act*, as the case may be,]⁵ shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.~~

~~(l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;~~

~~(m) 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 Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;~~

~~(n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;~~

⁵ If the Receiver will be dealing with assets in other provinces, consider adding references to applicable statutes in other provinces. If this is done, those statutes must be reviewed to ensure that the Receiver is exempt from or can be [Doc#4357301v1](#)

- ~~(o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;~~
- ~~(p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;~~
- ~~(q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and~~
- (f) ~~(r)~~ 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, and ~~(iii)(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.

~~exempted from such notice periods, and further that the Ontario Court has the jurisdiction to grant such an exemption:~~

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.

~~7. THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.~~

NO PROCEEDINGS AGAINST THE RECEIVER

7. ~~8.~~-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. ~~9.~~-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. ~~10.~~-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 Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or 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, or (iv) prevent the registration of a claim for lien; or (v) prevent SMH from asserting set-off rights against the Debtor arising under the Project Agreement, if any.

NO INTERFERENCE WITH THE RECEIVER

10. ~~11.~~-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. ~~12.~~ 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 Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court Debtor.

RECEIVER TO HOLD FUNDS

~~13.~~ THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

12. ~~14.~~ THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as and not of the Receiver, on the Debtor's behalf, may terminate the employment of such employees. 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, other than such amounts as the Receiver may specifically agree in

~~writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.~~

~~PIPEDA 15. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.~~

LIMITATION ON ENVIRONMENTAL LIABILITIES

~~13. 16. 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. ~~17.~~ 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, ~~or in respect of its~~ 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 "B" to the Affidavit or the *Project Agreement* attached as Exhibit "C" 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 purpose of the BIA, the *Wage Earner Protection Program Act*, the *Construction Act* (Ontario) or any other applicable legislation.

RECEIVER'S ACCOUNTS

15. ~~18.~~ 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 (statutory or otherwise), 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.⁶

16. ~~19.~~ 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

⁶ ~~Note that subsection 243(6) of the BIA provides that the Court may not make such an order "unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations".~~

counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

17. ~~20.~~ 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. ~~21.~~ 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, including interim expenditures; and (b) open one or more new accounts to hold any amounts borrowed pursuant to the 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 (statutory or otherwise), 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. ~~22.~~ 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. ~~23.~~ 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. 24.—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. 25.—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/e-service-protocol/>~~<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/SMH>'.

23. 26.—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 cause 3© of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

GENERAL

24. ~~27.~~ 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. ~~28.~~ THIS COURT ORDERS that nothing in this Order shall ~~prevent the Receiver from acting as a trustee in bankruptcy of the Debtor;~~

- (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 8 of the agreement dated January 27, 2015 between SMH, the Applicant and the Debtor (the "Lender's Direct Agreement"); 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 the Order shall (i) affect the Debtor's ability to perform its obligations under the Project Agreement or the agreement between the Debtor and Bondfield dated January 27, 2015 (the "**Design and Construction Contract**") or (ii) alter, amend or otherwise affect the liability of the Surety to any Person pursuant to Performance Bond No. 6343517 (the "**Performance Bond**") or Labour and Material Payment Bond No. 6343517 (the "**L&M Bond**") 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.

28. ~~29.~~ 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. ~~30.~~ 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. ~~31.~~ THIS COURT ORDERS that the PlaintiffApplicant shall have its costs of this ~~motion~~application, up to and including entry and service of this Order, provided for by the terms of the PlaintiffApplicant's security or, if not so provided by the PlaintiffApplicant's security, then on a substantial indemnity basis to be paid ~~by the Receiver~~ from the Debtor's estate with such priority and at such time as this Court may determine.

31. ~~32.~~ 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.

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that ~~[RECEIVER'S NAME]~~ 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 ~~[DEBTOR'S NAME]~~ 2442931 ONTARIO INC. (the "**Debtor**") 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 21st day of _____, 20-December, 2018 (the "**Order**") made in an action having Court file number CL-_____CV-18-00610995-00CL, 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__.

~~[RECEIVER'S NAME]~~ ALVAREZ & MARSAL
CANADA INC., solely in its capacity as
Receiver of the Property, ~~and not in its personal~~
~~capacity~~

Per: _____

Name:

Title:

Document comparison by Workshare Compare on December-18-18 11:12:16 AM

Input:	
Document 1 ID	PowerDocs://DOCS/3030415/1
Description	DOCS-#3030415-v1-Model_Receivership_Order_(2014)
Document 2 ID	PowerDocs://DOCS/4357301/1
Description	DOCS-#4357301-v1-SMH_Receivership_Order
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	119
Deletions	125
Moved from	5
Moved to	5
Style change	0
Format changed	0
Total changes	254

TAB 5

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF THE RECEIVERSHIP OF
2442931 ONTARIO INC.**

BETWEEN:

BANK OF MONTREAL, AS ADMINISTRATIVE AGENT

Applicant

- and -

2442931 ONTARIO INC.

Respondent

CONSENT

Alvarez & Marsal Canada Inc. hereby consents to act as receiver (the "Receiver") over the assets, undertakings and properties of the above noted Respondent on the terms of the proposed Appointment Order (as may be amended, restated or modified from time to time), substantially in the form filed in the above proceeding.

DATED at Toronto, this 17 day of December, 2018

ALVAREZ & MARSAL CANADA INC.
(solely in its capacity as proposed Receiver,
and not in its personal or corporate capacity)



Name: Stephen Ferguson
Title: Senior Vice President

IN THE MATTER OF THE RECEIVERSHIP OF 2442931 ONTARIO INC.

BANK OF MONTREAL, AS ADMINISTRATIVE AGENT

2442931 ONTARIO INC.

Applicant

and

Respondent

Court File No. 18-CV-00610995-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceedings commenced at TORONTO

**APPLICATION RECORD
(APPOINTMENT OF A RECEIVER
RETURNABLE DECEMBER 21, 2018)**

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**Lawyers for the Applicant, Bank of Montreal,
as Administrative Agent**