

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

MARSHALLZEHR GROUP INC.

Applicant

- and -

LA PUE INTERNATIONAL INC.

Respondent

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c.B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c.C.43, AS AMENDED

**MOTION RECORD
(Returnable March 7, 2025)**

January 14, 2025

CHAITONS LLP
5000 Yonge Street, 10th Floor
Toronto, Ontario M2N 7E9

Maya Poliak (LSO No. 54100A)
Tel: (416) 218-1161
E-mail: maya@chaitons.com

Laura Culleton (LSO No. 82428R)
Tel: (416) 218-1128
E-mail: laurac@chaitons.com

Lawyers for MarshallZehr Group Inc.

TO: SERVICE LIST

INDEX

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

MARSHALLZEHR GROUP INC.

Applicant

- and -

LA PUE INTERNATIONAL INC.

Respondent

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c.B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c.C.43, AS AMENDED

INDEX

Tab	Document
1.	Notice of Motion
2.	Affidavit of Cecil Hayes, sworn January 14, 2025
A	Commitment Letter dated November 15, 2021
B	Parcel Search dated November 19, 2021
C	Commitment Letter dated September 24, 2020
D	Maple Mortgage and Marquez Mortgage
E	Discharge Statements for Maple Mortgage and Marquez Mortgage each dated November 16, 2021
F	Application Consolidation Parcels
G	Trust Advance Statement dated December 1, 2021
H	First Amendment dated June 27, 2022
I	Trust Advance Statement dated June 30, 2022

J	Second Amendment Letter dated November 30, 2022
K	Charge/Mortgage dated December 1, 2021
L	Parcel Register dated December 10, 2024
M	Priority Agreement dated November 30, 2021
N	Postponement of Interest dated December 1, 2021
O	Matcon Construction Lien dated February 22, 2023
P	Matcon Construction Lien dated July 4, 2023
Q	Matcon Construction Lien dated November 29, 2023
R	Kada Group Constructions Liens dated March 15, 2023 and March 31, 2023
S	Buttcon Construction Lien dated March 17, 2023
T	Buttcon's Statement of Claim
U	Galbraith Construction Lien dated May 26, 2023
V	Astro's Construction Lien
W	Astro's Statement of Claim
X	Statement of Defence and Counterclaim of the Debtor and Buttcon
Y	Reply and Defence to Counterclaim
Z	Order dated November 29, 2022
AA	Contract of Buttcon, dated April 2022

TAB 1

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

MARSHALLZEHR GROUP INC.

Applicant

- and -

LA PUE INTERNATIONAL INC.

Respondent

NOTICE OF MOTION

MARSHALLZEHR GROUP INC. (“**MarshallZehr**”) will make a motion to a judge presiding over the Superior Court of Justice, Commercial List (the “**Court**”) at 10:00 a.m. on March 7, 2025, or as soon after that time as the motion can be heard.

THE PROPOSED METHOD OF HEARING:

- In writing under subrule 37.12.1 (1) because it is (insert one of on consent, unopposed or made without notice);
- In writing as an opposed motion under subrule 37.12.1 (4);
- In person;
- By telephone conference;
- BY VIDEO CONFERENCE.**

THE MOTION IS FOR:

1. An order:
 - (a) declaring that the MZ Charge (as defined below) constitutes a prior mortgage pursuant to section 78(3) of the *Construction Act*;
 - (b) declaring that the MZ Charge has full priority over all construction liens registered against the Property (as defined below); and
 - (c) such further and other relief that counsel may request and this Honourable Court may consider just.

THE GROUNDS FOR THE MOTION ARE:

Background

2. La Pue International Inc. (the “**Debtor**”) is the registered owner of the land municipally known as 5528 Ferry Street, Niagara Falls, Ontario (the “**Property**”).
3. Pursuant to a commitment letter dated November 15, 2021 (the “**Commitment Letter**”), MarshallZehr agreed to provide a loan in the maximum principal amount of \$12,000,000 to the Debtor (the “**Loan**”) for the stated purpose of refinancing existing mortgages registered against the Property.
4. As at the time that the Loan was made, the following mortgages were registered against the Property:

- (a) a mortgage in the principal amount of \$8,000,000 registered on February 25, 2020 in favour of in favour of Maple Corp. Investments, Riverside Humber Corp., Freemac Tile & Granite Incorporated, Fredy Rossi, 1620375 Ontario Limited, 2205633 Ontario Limited, CBB Holdings Inc., 672510 Ontario Limited and Dominic Serricchi (the “**Maple Mortgage**”); and
 - (b) a mortgage in favour of C.P.M.C. Marquez Holdings Inc (“**Marquez**”) in the principal amount of \$3,000,000 registered on October 1, 2020 (the “**Marquez Mortgage**”, and together with the Maple Mortgage, the “**Prior Mortgages**”).
5. The Marquez Mortgage was granted as security for a loan made to the Debtor for the express purpose of refinancing prior mortgages against the Property.
 6. On December 1, 2021, MarshallZehr advanced \$12,000,000 under the Loan. After payment of legal fees, mortgage fees, title insurance and interest reserve, the balance of the \$12,000,000 being \$11,096,500 was paid to discharge the Prior Mortgages.
 7. Pursuant to a letter dated June 27, 2022 (the “**First Amendment**”), MarshallZehr agreed to increase the Loan amount by \$375,000 to \$12,375,000 for the sole purpose of funding a shortfall in financing costs (the “**Second Advance**”). The Second Advance was advanced on June 30, 2022 to fund lender fees and the unpaid balance of the interest reserve for the Loan.
 8. At the time of each advance, the appraised value of the Property was substantially higher than the Loan amount.

9. Pursuant to a letter dated November 30, 2022 (the “**Second Amendment**”), MarshallZehr increased the loan amount by \$5,625,000 (the “**Third Advance**”) to \$18,000,000 and extended the maturity date from January 1, 2023 to April 1, 2023.

10. The Third Advance was conditional upon the Debtor satisfying all of the conditions set out in the Second Amendment. The Debtor did not satisfy the required conditions and accordingly, the Third Advance was never made.

11. As security for the Loan, the Debtor granted, among other things, a Charge/Mortgage in the principal amount of \$13.8 million registered on title to the Property on December 1, 2021 (the “**MZ Charge**”).

Other Charges Against the Property

12. A parcel register for the Property discloses, in order of registration, the following charges and liens registered on title to the Property:

- (a) a Charge/Mortgage in the principal amount of \$12,000,000 in favour of Sovereign General Insurance Company (“**SGIC**”) registered on October 2, 2020, as amended by the Notice (the “**SGIC Charge**”)¹;
- (b) the MZ Charge;
- (c) a Construction Lien in the amount of \$3,673,337 in favour of HC Matcon Inc. (“**Matcon**”) registered on February 22, 2023;

¹ The SGIC Charge was subordinated and postponed to the MZ Charge.

- (d) a Construction Lien in the amount of \$841,498 in favour of Kada Group Inc. (“**Kada**”) registered on March 15, 2023;
- (e) a Construction Lien in the amount of \$8,205,941 in favour of Buttcon Limited (“**Buttcon**”) registered on March 17, 2023;
- (f) a Construction Lien in the amount of \$123,734 in favour of Kada registered on March 31, 2023;
- (g) a Construction Lien in the amount of \$23,278 in favour of TT Galbraith Electric Ltd. (“**Galbraith**”) registered on May 26, 2023;
- (h) a Construction Lien registered by Matcon on July 4, 2023 in the amount of \$43,630; and
- (i) a Construction Lien in the amount of \$254,023 registered by Matcon on November 29, 2023.

Matcon

13. Matcon registered three liens against the Property totalling \$3,970,990.03 representing amounts claimed as owing in respect of labour, material and equipment for shoring and caissons supplied to the Property between June 15, 2022 and October 19, 2023.

Kada Group

14. Kada registered two construction liens against the Property totalling \$965,232.59 representing amounts claimed as owing in respect of site services and earthworks supplied to the Property between July 1, 2022 and January 31, 2023.

Buttcon

15. Buttcon was the general contractor retained by the Debtor.

16. On March 17, 2023, Buttcon registered a construction lien in the amount of \$8,205,941.87, representing the amount claimed as owing in respect of construction manager services, labour and materials supplied to the Property from April 6, 2020 to March 17, 2023.

Galbraith

17. On May 26, 2023, Galbraith registered a construction lien in the amount of \$23,278, representing the amount claimed as owing in respect of labour and materials supplied to the Property from October 28, 2022 to April 13, 2023.

Astro

18. In addition to the liens registered against title, on August 15, 2022, Astro Excavating Inc. (“**Astro**”) commenced a proceeding against Buttcon, the Debtor, SGIC and MarshallZehr, and on July 13, 2022, registered a construction lien in the amount of \$494,853.95 representing the amount claimed as owing for services and materials supplied from November 29, 2021 to July 6, 2022.

19. Pursuant to an order dated November 29, 2022, Astro’s lien was vacated upon Buttcon posting security with the Court by way of a lien bond.

Sale of the Property

20. On October 19, 2023, pursuant to an Order of this Court, KSV Restructuring Inc. was appointed as Receiver over the property and assets of the Debtor, including the Property.

21. On January 7, 2025, this Court granted an order approving the sale of the Property and an interim distribution of net proceeds from the sale of the Property to MarshallZehr less \$1.4 million which has been set aside by the Receiver to satisfy claims by lien holders for deficiency in the holdback.

22. It is not anticipated that there will not be sufficient funds to repay the amounts owing to MarshallZehr in full and to satisfy all of the deficiency in the holdback.

The MZ Charge has Priority Over the Lien Claims

23. Section 78(3) of the *Construction Act*² governs priorities between lien claimants and prior mortgages. Section 78(3) provides as follows:

(3) Subject to subsection (2), and without limiting the effect of subsection (4), all conveyances, mortgages or other agreements affecting the owner's interest in the premises that were registered prior to the time when the first lien arose in respect of an improvement have priority over the liens arising from the improvement to the extent of the lesser of,

(a) the actual value of the premises at the time when the first lien arose; and

(b) the total of all amounts that prior to that time were,

(i) advanced in the case of a mortgage, and

(ii) advanced or secured in the case of a conveyance or other agreement.

24. The MZ Charge constitutes a prior mortgage under section 78(3) and, as a consequence, has full priority over the lien claims, for the following reasons:

² R.S.O. 1990, c. C.30 (the “*Act*”)

- (a) the funds advanced by MarshallZehr and secured by its mortgage were used to refinance the Prior Mortgages;
- (b) the Prior Mortgages were prior mortgages under 78(3) of the *Construction Act*; and
- (c) a mortgagee that pays off prior mortgages is entitled to be subrogated to the prior mortgagees priority position;

Other

- 1. Sections 1, 14, 15, 22 and 78 of the *Act*;
- 2. Rules 2.01, 2.03, 3.02, 16 and 37 of the *Rules of Civil Procedure* (Ontario); and
- 3. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE MOTION:

- 1. Affidavit of Cecil Hayes sworn January 14, 2025 and the exhibits thereto; and
- 2. Such further and other material as counsel may advise and this Honourable Court may permit.

January 14, 2025

CHAITONS LLP
5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

Maya Poliak
Tel: (416) 218-1161
Email: maya@chaitons.com

David Im
Tel: (416) 218-1124
Email: dim@chaitons.com

**Lawyers for the Applicant, MarshallZehr
Group Inc.**

MARSHALLZEHR GROUP INC.
Applicant

-and-

LA PUE INTERNATIONAL INC.
Respondent

Court File No. CV-23-00700695-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF MOTION

CHAITONS LLP

5000 Yonge Street, 10th Floor
Toronto, Ontario M2N 7E9

Maya Poliak (LSO No. 54100A)

Tel: (416) 218-1161

Email: maya@chaitons.com

David Im (LSO No. 89765G)

Tel: (416) 218-1124

Email: dim@chaitons.com

Lawyers for the Applicant

TAB 2

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

MARSHALLZEHR GROUP INC.

Applicant

- and -

LA PUE INTERNATIONAL INC.

Respondent

AFFIDAVIT OF CECIL HAYES
(sworn January 14, 2025)

I, **CECIL HAYES**, of the City of Waterloo, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am the President of the Applicant, MarshallZehr Group Inc. ("**MarshallZehr**"). The facts in this affidavit are within my personal knowledge or determined from the face of the documents attached as exhibits and from information and advice provided to me by others. When matters set out below are based upon information and advice from others, I believe same to be true.

2. This affidavit is sworn in support of MarshallZehr's motion for a declaration that the MZ Mortgage (as defined below):

- (a) constitutes a prior mortgage pursuant to section 78(3) of the *Construction Act*, R.S.O. c. 1990, c. C.30; and

- (b) has full priority over all construction liens registered against the Property (as defined below)

THE DEBTOR

3. La Pue International Inc. (the “**Debtor**”) is the registered owner of the land municipally known as 5528 Ferry Street, Niagara Falls, Ontario (the “**Property**”). The Debtor acquired the Property on April 20, 2018 for the purpose of constructing three mid-rise buildings thereon consisting of one mixed-use, one hotel and one residential building under the name the “Stanley District” (the “**Project**”).

MARSHALLZEHR LOAN TO THE DEBTOR

4. MarshallZehr is an Ontario corporation that syndicates construction and development financing to commercial borrowers. The financing is sourced from institutional and private lenders. MarshallZehr is also a licensed mortgage brokerage and mortgage administrator.

The Loan

5. Pursuant to a commitment letter dated November 15, 2021 (the “**Commitment Letter**”), MarshallZehr agreed to provide a loan in the maximum principal amount of \$12,000,000 to the Debtor (the “**Loan**”) for the stated purpose of refinancing existing mortgages registered against the Property. A copy of the Commitment Letter is attached hereto and marked as **Exhibit “A”**.

6. At the time that the Loan was made, the following mortgages were registered against the Property:

- (a) a mortgage in the principal amount of \$8,000,000 registered on February 25, 2020 in favour of Maple Corp. Investments, Riverside Humber Corp., Freemac Tile &

Granite Incorporated, Fredy Rossi, 1620375 Ontario Limited, 2205633 Ontario Limited, CBB Holdings Inc., 672510 Ontario Limited and Dominic Serricchi (the “**Maple Mortgage**”); and

- (b) a mortgage in the principal amount of \$3,000,000 registered on October 1, 2020 in favour of C.P.M.C. Marquez Holdings Inc (“**Marquez**”) (the “**Marquez Mortgage**”, and together with the Maple Mortgage, the “**Prior Mortgages**”).

Attached hereto as **Exhibit “B”** is a copy of the parcel search for the Property dated November 19, 2021.

7. I have reviewed the Commitment Letter dated September 24, 2020 issued by Marquez, a copy of which is attached hereto as **Exhibit “C”** and understand that the Marquez Mortgage was granted as security for a loan made to the Debtor for the express purpose of refinancing predecessor mortgages registered against the Property.¹

8. Copies of the above referenced mortgages are attached hereto collectively, as **Exhibit “D”**. Both mortgages were administered by Trilend Inc. (“**Trilend**”) Attached hereto collectively as **Exhibit “E”** are the mortgage discharge statements each dated November 16, 2021 issued by Trilend as administrator of these mortgages.

9. On December 1, 2021, MarshallZehr advanced \$12,000,000 under the Loan. Attached hereto as **Exhibit “G”** is a copy of the Trust Advance Statement for the first \$12 million advance which discloses that after payment of legal fees, mortgage fees, title insurance and interest reserve,

¹ The Commitment Letter refers to 4 addresses that collectively were consolidated to form the Property. Attached hereto as **Exhibit “F”** is a copy of the Application Consolidation Parcels registered against the Property.

the entirety of the balance of the \$12,000,000 being \$11,096,500, was paid to discharge the Prior Mortgages.

10. Pursuant to a letter dated June 27, 2022 (the “**First Amendment**”), MarshallZehr agreed to increase the Loan amount by \$375,000 to \$12,375,000 to fund unpaid balance of lender fees and interest reserve. A copy of the First Amendment is attached hereto and marked as **Exhibit “H”**. On June 30, 2022, MarshallZehr advanced \$375,000 to fund financing costs (the “**Second Advance**”). Attached hereto as **Exhibit “I”** is a copy of the Trust Advance Statement dated June 30, 2022, which discloses that the Second Advance was advanced to fund lender fees and interest reserve top up on the Loan.

11. Attached hereto as **Confidential Appendix “1”** to my affidavit is a copy of the Appraisal dated November 23, 2021 prepared by Colliers International and provided by the Debtor to MarshallZehr in support of the Debtor’s loan request. MarshallZehr seeks to file the Appraisal on confidential basis until the sale of the Property has closed.

12. Pursuant to a letter dated November 30, 2022 (the “**Second Amendment**”), MarshallZehr increased the loan amount by \$5,625,000 (the “**Third Advance**”) to \$18,000,000 and extended the maturity date from January 1, 2023 to April 1, 2023. The November Amendment also included one three-month extension option in favour of MarshallZehr, provided the Debtor was not in default of any of its obligations under the Commitment Letter. A copy of the November Amendment is attached hereto and marked as **Exhibit “J”**.

13. The Third Advance was conditional upon the Debtor satisfying all of the conditions set out at page 4 of the November Amendment. The Debtor did not satisfy the required conditions prior to April 1, 2023 when the Loan matured. Accordingly, the Third Advance was never made.

Security

14. As security for the Loan, the Debtor granted, among other things: a Charge/Mortgage in the principal amount of \$13.8 million registered on title to the Property on December 1, 2021 as Instrument No. SN703091 (the “**MZ Charge**”), a copy of which is attached hereto and marked as **Exhibit “K”**.

OTHER CHARGES AGAINST THE PROPERTY

15. I am advised by the Lender’s legal counsel, Chaitons LLP (“**Chaitons**”), that a parcel register search dated December 10, 2024 for the Property discloses the following registrations against the Property listed in order of registration:

- (a) a Charge/Mortgage in the principal amount of \$12,000,000 in favour of Sovereign General Insurance Company (“**SGIC**”) registered on October 2, 2020, as amended (the “**SGIC Charge**”)²;
- (b) the MZ charge;
- (c) a Construction Lien in the amount of \$3,673,337 in favour of HC Matcon Inc. (“**Matcon**”) registered on February 22, 2023;
- (d) a Construction Lien in the amount of \$841,498 in favour of Kada Group Inc. (“**Kada Group**”) registered on March 15, 2023;
- (e) a Construction Lien in the amount of \$8,205,941 in favour of Buttcon Limited (“**Buttcon Limited**”) registered on March 17, 2023;
- (f) a Construction Lien in the amount of \$123,734 in favour of Kada Group registered on March 31, 2023;
- (g) a Certificate of Action registered by Matcon on May 1, 2023;
- (h) a Construction Lien in the amount of \$23,278 in favour of TT Galbraith Electric Ltd. (“**Galbraith**”) registered on May 26, 2023;
- (i) a Certificate of Action registered on June 12, 2023 by Buttcon Limited;

² Pursuant to the Notice registered as Instrument No. SN658896 on January 26, 2021, the principal balance of the SGIC Charge was increased from \$2 million to \$12 million.

- (j) a Certificate of Action registered on June 21, 2023 by Kada Group;
 - (k) a Construction Lien registered by Matcon on July 4, 2023 in the amount of \$43,630;
 - (l) a Certificate of Action registered on July 14, 2023 by Matcon;
 - (m) a Construction Lien in the amount of \$254,023 registered by Matcon on November 29, 2023; and
 - (n) a Certificate of Action registered on December 19, 2023 by Matcon.
16. Attached to this Affidavit as **Exhibit "L"** is a copy of the parcel register search for the Property prepared on December 10, 2024.

SGIC

17. The SGIC Charge secures deposit insurance. Pursuant to a Priority Agreement dated November 30, 2021 between MarshallZehr and SGIC (the "**Priority Agreement**"), SGIC agreed that the SGIC Charge and all other security granted to SGIC by the Debtor was subordinate to the MZ Charge and all other security granted to MarshallZehr by the Debtor. A copy of the Priority Agreement is attached hereto and marked as **Exhibit "M"**.

18. A Postponement of Interest was registered on title to the Property on December 1, 2021 as Instrument No. SN703098, in connection with the Priority Agreement, a copy of which is attached hereto and marked as **Exhibit "N"**.

Construction Liens

Matcon

19. On February 22, 2023, Matcon registered a construction lien as Instrument No. SN758055 in the amount \$3,673,337.03, representing the amount claimed as owing in respect of labour, material and equipment for shoring and caissons supplied to the Property from June 15, 2022 to

February 6, 2023. A copy of Matcon's lien registered on February 22, 2023 is attached hereto as **Exhibit "O"**.

20. On July 4, 2023, Matcon registered a construction lien as Instrument No. SN771564 in the amount of \$43,630, representing the amount claimed as owing in respect of labour, material and equipment for shoring and caissons supplied to the Property from June 15, 2022 to June 6, 2023. A copy of Matcon's lien registered on July 4, 2023 is attached hereto as **Exhibit "P"**.

21. On November 29, 2023, Matcon registered a construction lien as Instrument No. SN787037 in the amount of \$254,023, representing the amount claimed as owing in respect of labour, material and equipment for shoring and caissons supplied to the Property from June 15, 2022 to October 19, 2023. A copy of Matcon's lien registered on November 29, 2023 is attached hereto as **Exhibit "Q"**.

Kada Group

22. On March 15, 2023 and on March 31, 2023, Kada Group registered two construction liens: (i) Instrument Nos. SN759949 in the amount of \$841,498.31, representing the amount claimed as owing in respect of site services and earthworks supplied to the Property from July 1, 2022 to January 31, 2023; and (ii) Instrument No. SN761643 in the amount of \$123,734.28, representing the amount claimed as owing in respect of site services and earthworks supplied to the Property from July 1, 2022 to January 31, 2023. Copies of Kada Group's liens are collectively attached hereto as **Exhibit "R"**.

Buttcon Limited

23. Buttcon Limited was the general contractor retained by the Debtor.

24. On March 17, 2023, Buttcon Limited registered a construction lien as Instrument No. SN760306 in the amount of \$8,205,941.87, representing the amount claimed as owing in respect of construction manager services, labour and materials supplied to the Property supplied from April 6, 2020 to March 17, 2023. Attached hereto as **Exhibits “S” and “T”**, respectively, are a copy of Buttcon’s construction lien and a copy of Buttcon’s Statement of Claim.

Galbraith

25. On May 26, 2023, Galbraith registered a construction lien as Instrument No. SN767364 in the amount of \$23,278, representing the amount claimed as owing in respect of labour and materials supplied to the Property from October 28, 2022 to April 13, 2023. A copy of Galbraith’s construction lien is attached hereto as **Exhibit “U”**.

Astro

26. In addition to the liens registered against title, on August 15, 2022 Astro Excavating Inc. (“**Astro**”) commenced a construction lien action against Buttcon, the Debtor, SGIC and MarshallZehr and registered a construction lien as Instrument No. SN738509 against the Property on July 13, 2022 for services and materials supplied from November 29, 2021 to July 6, 2022 in the amount of \$494,853.95.

27. Attached hereto as **Exhibits “V” to “Y”** are copies of:

- (a) Astro’s construction lien;
- (b) Astro’s statement of claim;
- (c) Statement of Defence and Counterclaim of the Debtor and Buttcon; and

(d) Reply and Defence to Counterclaim.

28. Pursuant to an order dated November 29, 2022, Astro's lien was vacated upon Buttcon posting security with the Court by way of Lien Bond. A copy of the November 29 Order is attached hereto as **Exhibit "Z"**.

The MZ Mortgage has priority over the lien claims

29. Based on my review of the registered liens and Astro's statement of claim, it appears that no liens arose before the registration of the Maple Mortgage in February 2020, refinanced by MarshallZehr. The only lien claimant that claims that their lien arose in 2020 is Buttcon who, in its lien claim, states that its contract was entered into in April 2020. A copy of Buttcon's contract is attached hereto as **Exhibit "AA"**.

30. The Marquez Mortgage was registered on October 1, 2020. The stated purpose of Marquez's loan was to refinance previous mortgages, which, based on my review of the parcel search for the Property, which were registered in April and May 2019.

31. I have reviewed Buttcon's contract and the Debtor's and Buttcon's Statement of Defence and Counterclaim and note that it appears that all of the work performed by Buttcon prior to the registration of the Marquez mortgage was pre-constructions off-site, administrative and tendering work.

SALE OF THE PROPERTY


32. On October 19, 2023, pursuant to an Order of this Court on an application by MarshallZehr, KSV Restructuring Inc. was appointed as Receiver over the property and assets of the Debtor,

including the Property. On January 7, 2025, this Court granted an order approving the sale of the Property and an interim distribution of net proceeds from the sale of the Property to MarshallZehr less \$1.4 million which has been set aside by the Receiver to satisfy claims by lien holders for any deficiency in the holdback.

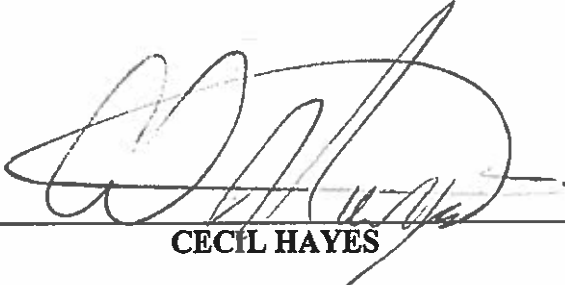
33. It is anticipated that there will not be sufficient funds to repay the amounts owing to MarshallZehr in full and to satisfy all of the deficiency in the holdback.

34. This affidavit is sworn in support of MarshallZehr's motion for a declaration that the MZ Charge has priority over the lien claims.

SWORN BEFORE ME over ^{14th} videoconference on this ~~13th~~ day of January 2025. The affiant was located in the City of Waterloo in the Province of Ontario and the commissioner was located in the City of Toronto, in the Province of Ontario, Canada. This affidavit was commissioned remotely in accordance O. Reg. 431/20, Administering Oath or Declaration Remotely



~~Maya Potiak~~ DAND IM
Commissioner for Taking Affidavits
(or as may be) LSO # 897656



CECIL HAYES

***THIS IS EXHIBIT "A" TO THE
AFFIDAVIT OF CECIL HAYES
SWORN BEFORE ME THIS 14TH
DAY OF JANUARY, 2025***

A handwritten signature in black ink, consisting of a large, stylized 'D' followed by a smaller 'J' and a horizontal line extending to the right.

A Commissioner Etc.



November 15, 2021

Attention: Pawel Fugiel

La Pue International Inc.
6158 Allendale Ave.
Niagara Falls, ON

Dear Pawel Fugiel

Re: Land Refinancing for 5528 Ferry Street, Niagara Falls, ON

Project Name: The Stanley District Lands – MZGI 424 (the "Project")

This commitment letter confirms that MarshallZehr Group Inc. (the "Lender") is prepared to provide financing (the "Loan") for the Project conditional on the terms and conditions contained in this letter agreement (the "Commitment").

I. LOAN

Borrower: La Pue International Inc. (the "Borrower")

Guarantors: Pawel Fugiel, together with such other related parties as the Lender may deem advisable (the "Guarantors").

Obligors: Means, collectively, the Borrower and the Guarantors and the "Obligor(s)" means any one of them.

Lender: MarshallZehr Group Inc. (the "Lender") and/or such other assignee or lenders as MarshallZehr Group Inc. may arrange to participate in the Loan.

Project: Those lands and premises described municipally as 5528 Ferry Street, Niagara Falls, ON, and legally as: LOTS 46, 51, 52, 61, 62, 63, 64 & 65, PLAN 273; VILLAGE OF NIAGARA FALLS; NIAGARA FALLS; PART LOTS 43, 44, 45, PLAN 273; VILLAGE OF NIAGARA FALLS; AS IN R0712797, NIAGARA FALLS; LOTS 48, 49, & 50, PLAN 273, & PART LOT 47, PLAN 273; NIAGARA FALLS, SURFACE ONLY AS IN R0718049; NIAGARA FALLS.

Loan Amount: \$12,000,000 (the "Loan").



Purpose: 1st Mortgage for Land Refinancing.

The Lender understands the 1st Mortgage financing will be used for the purposes of refinancing the subject lands. Monies will further fund an Interest Reserve and Fees contemplated herein, as well as provide working capital to the Borrower.

The Lender further understands that the Project is to consist of the future development of three buildings. Building A will be a 7-storey mixed-use building, consisting of 65 residential units, and commercial space located on the ground floor. Building C will be a 30-storey condominium with approximately 435 residential suites. The underground parking will consist of 301 parking stalls. Building B will be 6 stories and 148 units. Furthermore, the Lender understands that the Borrower intends achieve Site Plan Approval for Phase 1, which will consist of Building C within the term of this loan.

**Sources and
Uses of Funds:**

Uses

Land Costs	\$	11,432,000
Development Charges	\$	659,000
Hard Costs	\$	748,000
Soft Costs	\$	2,514,000
Sales & Administrative Costs	\$	2,450,000
Financing Costs	\$	1,410,000
3rd Party Broker Fee	\$	30,000
Total Uses	\$	19,244,000

Sources

1st Mortgage - Land	\$	12,000,000
Deferred Costs	\$	570,000
Borrower Equity	\$	6,674,000
Total Sources	\$	19,244,000

**Syndication
of the Loan:**

It is the Lender's intention to syndicate all or a portion of the Loan with other lenders on terms and conditions satisfactory to the Lender. All obligations of the Lender are conditional on successful syndication by the Lender. This Commitment shall be null and void if the Lender is unable to syndicate the Loan, and all fees, less the Good Faith Deposit together with any due-diligence and legal costs incurred by the Lender, shall be returned to the Borrower. The Lender shall notify the Borrower in writing once all Initial Funding Conditions have been met. Upon receipt of notification that the Initial Funding Conditions have been met, the Lender shall, within 15 business days, notify the Borrower that the Loan has been successfully syndicated. If the Lender is unable to provide the Borrower written confirmation that the Loan has been successfully syndicated within this time, it will be the sole option of the Borrower to terminate this agreement, in which case this Commitment will be null and void and all fees, less the Good Faith Deposit together with any due-diligence and legal costs incurred by the Lender, shall be returned to the Borrower.



Initial Advance and Draw:

The first advance and draw (the “Initial Advance” and “Draw 1”, respectively) is anticipated to be in the principal amount of \$12,000,000 and advanced upon satisfaction of the conditions contained herein and accompanied by the applicable Notices (see Appendix A, B, C and D). The Initial Advance and Draw is expected to be advanced as follows:

Existing Mortgage(s)	\$	11,000,000
Interest Reserve	\$	570,000
Working Capital	\$	130,000
Lender Fee Amount	\$	240,000
3rd Party Broker Fee	\$	30,000
Legal Amount	\$	25,000
Admin Amount	\$	5,000
Initial Advance Amount	\$	12,000,000

Lender Advances:

A Lender Advance is defined as the transfer of funds from the participating Lender(s) to MarshallZehr’s Trust account. Interest shall become payable on these funds from the date of the deposit of the funds into the MarshallZehr Trust account, regardless of whether the funds are used in the project immediately, or later returned to the Lender without ever having been drawn by the Borrower.

Borrower Draws:

A Borrower Draw is defined as the request of funds from MarshallZehr’s Trust account to fund the Project bank account or to be directly applied against project expenses.

Term: Thirteen (13) months (commencing from the Interest Adjustment Date or IAD). Interest from the date of the Initial Advance to the IAD shall be deducted by the Lender from the Initial Advance.

Interest Rate: Prime + 7.05% per annum (Floor Rate: 9.50%)

Interest shall accrue commencing on the date of the Initial Advance, calculated daily (365 days/year), compounded and payable monthly with interest only payments made from the Interest Reserve. Once the Interest Reserve has been fully utilized, interest payments will come from the Borrower and/or the Guarantor’s own resources. Prime shall be defined as the Bank of Montreal Prime Rate of Interest. For the purpose of determining the interest rate used in the interest calculation, the Bank of Montreal Prime Business Rate on the first day of each month will be used as the Prime Rate for that entire month.

**Wrap Up
Period:**

The final month of the Term shall be the beginning of the Wrap Up Period, and bear interest at twice the Interest Rate, and if there are multiple Facilities or Tranches, calculated, compounded and payable in the same manner as prior to entering the Wrap Up Period for each applicable Facility or Tranche.

**Interest
Adjustment
Date:**

The "Interest Adjustment Date" or "IAD" shall be the 1st of the month following the Initial Advance.

**Standby
Interest:**

In the event that the Loan has not been fully advanced by November 30, 2021 (the "Advance Date") or for any reason other than a default by the Lender, interest will commence on the Advance Date established herein for the Initial Advance or a Draw 1 as the case may be, in the form of standby interest ("Standby Interest") on any unadvanced portion of the Loan or the Initial Advance as the case may be and will become due and payable on the date the Initial Advance is advanced or upon the termination of this Commitment Letter without any advances having been made.

Standby Interest shall be calculated from the date of the expected advance as mentioned herein to the IAD and shall be payable at the time of the advance and deducted from the advance.

Advance**Deductions:**

At the time of a Lender Advance, the Lender may at its sole discretion, deduct an amount equal to the applicable interest for such advance for the balance of the term of the Loan as an interest reserve (the "Interest Reserve").

Six (6) Month Interest Reserve Amount: \$570,000

The Interest Reserve shall be held in the Lender's trust account and be used to service the interest payments on the outstanding balance of the Loan. Any funds held in the Lender's trust account from an advance are considered to be and shall be deemed to be principal advanced to the Borrower and interest shall accrue on those funds as if they had been paid directly to the Borrower.

Cancellation: The Lender may on demand require immediate payment of all amounts outstanding or accrued in connection with this Commitment. The Lender may at any time, for any reason and without notice, cancel the undrawn portion of the Loan.

Anniversary**Date:**

The anniversary date is defined as one year from the Interest Adjustment Date (IAD). The Lender may request compliance deliverables based on anniversary dates of the mortgage, or as the lender deems necessary in their sole discretion.

**Time and
Place of
Payments:**

Payments are to be made to the Lender at its offices at 206-465 Phillip Street,



Waterloo, Ontario no later than 1:00 p.m. on the date scheduled for payment. Payments made after such time shall be treated as having been received on the next business day. Payments made after the date scheduled for payment must be made by certified cheque or bank draft. Whenever any payment is due on a day that is not a business day, then such payment will be due on the next business day, and interest will accrue to such business day. Any NSF Cheques will incur a fee of \$500.

Principal

Payments: There shall be no regularly scheduled principal repayments and the entire outstanding principal amount shall become due and payable at maturity.

Partial

Discharges: Provided that the Borrower is not in default, the Lender shall provide partial discharges of Project units on the closing of a unit sale transaction provided the Borrower pays the Lender Net Sales Proceeds of each sale. Net Sales Proceeds is defined as the sale price of the unit less deductions for deposits (used in the Project's financing) and any payments on account of principal required to be made to a permitted prior lender, if any, to obtain a partial discharge of its security, normal sales commissions, and legal costs. The Borrower will pay the Lender an administration fee of \$250 and its solicitor's reasonable legal fees in respect of the preparation of the discharge for each partial discharge requested by the Borrower. In the Event of Default, the Lender shall not be obligated to provide partial discharges. The Net Sale Proceeds shall be dispersed as follows:

- a) Repayment of all accrued and unpaid interest;
- b) Repayment of the outstanding MZ 1st Mortgage principal balance

Prepayment: Subject to any partial discharge provisions, the mortgage may be prepaid in whole or in part at any time or times on the following terms:

- a) At least 60 days prior written notice is given to the Lender in the form provided in Appendix E – Repayment Notice
- b) No pre-payment shall be in an amount of less than \$100,000 without consent of the Lender
- c) The Borrower shall pay the Lender an administration fee of \$500 and its solicitor's reasonable legal fees in respect to the discharge or repayment



Fees: The Borrower shall pay the following Lender fees to the transaction mortgage broker, MarshallZehr Group Inc.:

Good Faith

Deposit: \$30,000 (Received), non-refundable if Borrower fails to proceed based on the terms of this Commitment Letter as determined by the Lender in its sole and unfettered discretion and such deposit shall be deemed to be fully earned by the Lender for its work and efforts in preparation of this Commitment Letter in addition to any other rights and/or remedies which the Lender has against the Borrower hereunder, at law or otherwise. The Borrower shall also be responsible for the Lender's legal and other professional fees and out of pocket expenses if the Borrower fails to proceed with the Loan. Such expenses shall include, without limitation, accrued interest on the loan (or portion thereof), from time to time, from and including the date upon which funds were requisitioned from the Lender, regardless of whether same are actually advanced, subject to the Borrower's satisfaction of all pre-funding conditions pursuant to this Commitment. This fee is accepted upon signing of the Commitment Letter and is payable to "MarshallZehr Group Inc. in Trust". The Good Faith Deposit will be credited to the Borrower against the Lender Fee payable on closing.

Lender Fee: \$240,000, the Lender Fee, shall be earned by the Lender upon notification of successful syndication. The Lender Fee less the Good Faith Deposit shall be deducted from the Initial Advance. Failing an Initial Advance, these funds are due and payable by the Borrower.

Admin

Fee: An additional fee of \$5,000 payable to MarshallZehr Group Inc. will be paid by the Borrower at closing of the Initial Advance in order to set up the administration files and complete all regulatory documentation.

Draw Fee: The Borrower agrees to pay \$250 to the Lender as an administrative fee (the "Draw Fee") in conjunction with each request for a Borrower Draw (the "Draw Request").

Final Discharge

Fee: The Borrower will pay the Lender an administration fee of \$500 and its solicitor's reasonable legal fees in respect of the preparation of the final discharge of this mortgage.

Expenses: All reasonable expenses of the Lender and the Borrower shall be paid by the Borrower including (but not limited to), the cost of any third-party reports and all legal costs regardless of whether the Borrower proceeds with the transaction and any costs of recovery of unpaid amounts should that be necessary. Upon request the Lender shall provide an estimate of the legal fees to be incurred by the Lender.



Regardless, the Borrower is responsible for all reasonable legal fees incurred by the Lender.

**Subordinate
Financing:**

No additional financing will be permitted without the prior written consent of the Lender and in the event of a default under this restriction, the entire principal, interest, fees and all other amounts under the Commitment and security issued pursuant thereto shall become immediately due and payable.

Should additional subordinate financing be placed by the Borrower on the consent of the Lender, such consent will be conditional upon the secondary lender entering into a postponement, subordination and standstill agreement that requires the secondary lender to issue zero dollar discharges to the Lender and Borrower within 2 business days of being requested and requires complete cooperation in executing all postponements and consents as may be required to advance the development of the Project. Any discharge greater than zero shall require prior consent from the Lender. Failure to comply shall be considered a default by the Borrower.

**Right of
First
Refusal:**

The Borrower shall grant to the Lender:

- a) a right of first opportunity (the "Right of First Opportunity") and
- b) a right of first refusal ("Right of First Refusal") (collectively, the "Further Financing Rights"),

with respect to providing any further financing required for the Project, including without limitation arranging replacement or additional financing for the Project as contemplated herein, and financing for any further development of the Project or of any improvements thereon (any such financing being referred to herein as "Further Financing").

With respect to the Right of First Opportunity: prior to consulting with any other lender with respect to any Further Financing, the Borrower shall provide to the Lender in writing a request for such Further Financing with all information necessary for the Lender to process the request and the Lender shall have a period of sixty (60) days after receipt of same (the "Opportunity Period") to provide to the Borrower a mortgage commitment letter to provide the Further Financing. The Borrower hereby undertakes not to communicate with any other lender with respect to provision of the Further Financing during the Opportunity Period, and to fully cooperate with the Lender in good faith during the Opportunity Period to provide such further information as the Lender may require in pursuit of its Right of First Opportunity.

With respect to the Right of First Refusal: upon receipt by the Borrower of any written offer of financing received from any other party, including but not limited to term sheets, mortgage commitments, and funding agreements (the "Third-Party Funding Offer"), the terms of which the Borrower is prepared to accept, the Borrower shall provide to the Lender a copy of the Third-Party Funding Offer and all information relevant to it. Upon receipt of same, the Lender shall have a period of fourteen (14)



days (the "Matching Period") to provide a mortgage commitment letter to the Borrower containing financing terms that are substantially the same or better as the Third-Party Funding Offer (the "Matching Offer"). The Borrower hereby undertakes, in the event that the Lender submits to the Borrower a Matching Offer within the Matching Period, to accept the Matching Offer and forthwith provide to the Lender such information and execute such documentation as is reasonably required by it in connection with that acceptance. In the event that the Lender fails to deliver to the Borrower a Matching Offer within the Matching Period, the Borrower shall be at liberty to accept the Third-Party Funding Offer. The Borrower hereby undertakes to fully cooperate with the Lender in good faith during the Matching Period to provide such information as the Lender may require in pursuit of its Right of First Refusal.

In order to secure the Lender's Further Financing Rights, the Borrower hereby authorizes the Lender and its solicitors to register on title to the Project a notice pursuant to Section 118 of the Land Titles Act restricting the Borrower from further charging the Project except upon the consent of the Lender.

**Maximum
Rate of
Return:**

The parties agree that notwithstanding any agreement to the contrary, no interest on the credit advanced will be payable in excess of that permitted by the laws of Canada. If the effective annual rate of interest calculated in accordance with generally accepted actuarial practices and principles would exceed sixty (60) percent (or such other rate as the Parliament of Canada may deem from time to time as The Criminal Rate) on the credit advance, then (1) the amount of any fees, bonus, commissions or like charges payable in connection therewith will be reduced to the extent necessary to eliminate such excess; (2) any remaining excess that has been paid will be credited toward prepayment of the credit advanced; and (3) any overpayment that may remain after such crediting will be returned forthwith upon demand. In this paragraph the terms "interest", "Criminal Rate" and "credit advanced" have the meaning ascribed to them in Section 347 of The Criminal Code; and "credit advanced" has the same meaning as "Loan" referred to elsewhere in this Commitment.

**Administration
Fee Payable
on Default:**

In the event of a default by the Borrower or any Guarantor in their respective obligations under this Commitment, Loan or Security that is not cured within the timeframes set out herein, the Lender shall, notwithstanding anything contained herein to the contrary, be entitled to receive in addition to all other fees, charges and disbursements, an administration and management fee in the amount of \$5,000.00 for each month or part thereof that the Borrower and/or any Guarantor is in default of its obligations under the Commitment, Loan or Security. The said sum or sums are agreed to be liquidated damages to cover the Lender's administration and management costs and are not intended nor shall they be construed as a penalty. All such sums payable to the Lender shall be a charge upon the Project and its assets and interest shall accrue thereon as if they were Loan principal.



II. TERMS AND CONDITIONS

The Loan terms and conditions shall be such terms and conditions as the Lender may from time to time require and shall include, but not be limited to the following:

2.1 Initial Funding Conditions

The Lender shall not be required to advance any funds prior to the Borrower having fulfilled to the Lender's satisfaction the following conditions:

- a) All the Security and ancillary loan agreements and documents and opinions shall have been executed and delivered to the Lender or its solicitors and registered where and as required. Please refer to Section III. SECURITY TO BE DELIVERED for a complete listing.
- b) The Lender shall have satisfied itself with the financial performance and condition of the Borrower and each of the Guarantors in the Lender's sole discretion. Each of the Obligors shall provide within ten (10) business days of the date of execution of this Commitment, at a minimum, the following deliverables:
 - i. Corporate Obligor(s) shall provide externally accountant prepared annual financial statements (Review Engagement or Notice to Reader) for the two most recently ended fiscal years.
 - ii. Corporate Obligors shall provide Corporate Notice of Assessments for its two most recently ended fiscal years.
 - iii. Personal Obligors shall provide Notices of Assessment received from the Canada Revenue Agency for their two most recently ended taxation years, with respect to their income tax filings.
 - iv. Personal Obligors shall provide the Lender's form of Personal Net Worth Statement with supporting documentation.
 - v. All Obligors shall complete the Lender's form of Mortgage Application. To facilitate the Lender's due diligence regarding the creditworthiness of the Obligors, each of the Obligors shall authorize the Lender to conduct credit checks and authorize each of the financial institutions with which the Obligors deal to release any and all information reasonably required and requested by the Lender to adequately assess the credit worthiness of each respectively.
- c) The Borrower shall deliver to the Lender within five (5) business days of the acceptance of this Commitment for the Lender's satisfactory review and acceptance the following:
 - i. A copy of the Purchase and Sale Agreement (and any subsequent amendments or side letters related thereto) and statement of adjustments for the purchase by the Borrower of the Project Lands confirming a purchase price of not less than \$4,350,000.
 - ii. A soils-test/geotechnical report (load bearing capacity) by a professional engineer as is acceptable to the Lender that the proposed construction and site improvements of the Project are feasible under existing soil conditions, together with evidence that the construction specifications for the Project provide for construction in compliance with such conditions and with the recommendations, if any, which may be contained in such soils-test/geotechnical report. Such geotechnical report must be addressed to the Lender or be accompanied by a Reliance letter from the engineer to the Lender and shall confirm that the Lender can rely upon such report for lending purposes.
 - iii. An appraisal, satisfactory to the Lender, of the Project confirming a fair market value of the land 'as-is', in the minimum amount of \$17,803,000 inclusive of HST to be prepared at the Borrower's expense and paid in advance by a Lender approved appraiser. Such



- appraisal report must be addressed to the Lender or be accompanied by a Reliance letter from the appraiser to the Lender and shall confirm that the Lender can rely upon such appraisal for lending purposes.
- iv. A satisfactory Phase 1 Environmental Site Assessment Report (and further Environmental Site Assessment Reports, Environmental Remediation Plans or a Record of Site Condition, if necessary) conducted and prepared by a consultant approved by the Lender together with a transmittal letter from the consultant permitting the Lender to rely on the Assessment Report (and the subsequent environmental reports, if any). If deemed necessary by the Lender in their sole discretion, these reports and the Project will be reviewed by a separate environmental professional engaged by the Lender at the Borrower's expense and the Borrower will provide an appropriate Emergency Response Plan for the Project and related activities.
 - v. A survey of the Project by an Ontario licensed land surveyor showing the relationship of the lands to public thoroughfares for access purposes; and indicating no encroachments, easements or rights of way, save and except those that do not encroach or hinder the Borrower's ability to construct the project in accordance with the proposed site plan which the Lender may specifically accept. If no survey is available at the time of the Initial Advance, the Lender in its sole discretion may rely upon the title
 - vi. MZG or a related party may post two MZG signs (on each main street).
 - vii. Satisfactory proof of \$6,673,000 in invested capital in the Project and means to cover any potential closing costs, if required.
 - viii. A Project budget prepared by the Lender's Quantity Surveyor satisfactory to the Lender. The Lender and its Quantity Surveyor, in their sole discretion, shall be satisfied
 - a) that the budgeted hard and soft Project costs (including financing and contingency costs) shall be sufficient to complete the Project as planned;
 - b) all sources and uses of cash are acceptable;
 - c) the terms of the contract with the general contractor/project manager are satisfactory.
 - ix. A detailed planning letter from a third-party planner outlining the time to complete the various stages and phases of the Project, acceptable to the Lender.
 - x. Copy of the most recent Disclosure Statement and attachments as required by the Condominium Act, 1998 to be provided to prospective unit purchasers.
 - xi. Borrower's Tarion Warranty application and confirmation a Tarion Warranty certificate for the Project will be issued within 30 days of posting the required security deposit.
 - xii. The Borrower shall have pre-sold residential units in Building C, with firm and binding purchase and sale agreements including satisfactory deposits, sufficient to generate \$178,000,000 of gross revenue (including parking, and locker) and \$26,000,000 of deposits contracted for use in the project. Each purchase and sale agreement shall be on terms and with purchasers acceptable to the Lender:
 - a) The Lender reserves the right to disregard agreements with purchasers buying for investment or who are directly or indirectly related to the Borrower or Guarantors (non-arms-length purchasers).
 - b) All residential units shall be subject to purchaser deposits at 15% of purchase price, no late or deferred deposit payment schedules will be allowable.
 - xiii. Discharge Statement from Current 1st Mortgagee(s) confirming the outstanding principal balance does not exceed \$11,130,000 and is in good standing.
- d) The initial Loan to Value ratio at the time of the Initial Advance, as determined in the Lender's



sole discretion, shall not be greater than 70%. For the purpose of calculating the Loan to Value ratio in the absence of current market values;

- i. The Loan amount shall include all debt obligations including all senior ranking and unapproved subordinate debt and outstanding Project accounts payable.
 - ii. Value shall be calculated by utilizing the Appraised Value at the time of the Initial Advance as per the Appraisal provided per the initial transaction underwriting unless otherwise agreed to by the Lender. In the case of unsold lots, the value shall be calculated as per the methodology used by the Appraisal. For units under construction, the Appraised Value shall be the Estimated Value of the unit upon completion less the cost to complete including financing costs as per the methodology used by the Appraisal less the expected profit margin.
- e) The initial Loan to Cost ratio at the time of the Initial Advance, as determined in the Lender's sole discretion, shall not be greater than 70%. For the purpose of calculating the Loan to Cost ratio in the absence of current market values;
- i. The Loan amount shall include all debt obligations including senior ranking and unapproved subordinate debt and outstanding Project accounts payable.
 - ii. Cost shall be determined by utilizing the Net Cost to Date per the Lender approved Quantity Surveyor's report unless otherwise adjusted and agreed to by the Lender.
- f) Confirmation satisfactory to the Lender that all property taxes for the Project are current and have been paid.
- g) Applicable Notices in the forms provided in Appendix A, B, C and D.
- h) Anti-Money Laundering Compliance documentation to be completed; Agent Examination of Identification Form will be provided to the Borrower's lawyer with the closing documents. (to be completed by the Borrower and each Guarantor, the identification of all authorized signatories as outlined on the Director's Resolution, to a maximum of three must be obtained).
- i) Evidence of the existence, details and signing authorities related to a separate Project specific bank account through which all Project related transactions will flow.
- j) Such other matters as the Lender may deem appropriate and necessary to satisfy itself of the Project's viability, the Borrower's creditworthiness and the ability of the Borrower and Guarantors to fulfil their obligations herein.

(this space intentionally left blank)



III. SECURITY TO BE DELIVERED

The Borrower shall deliver the following security (the "Security") duly registered where applicable and all in the form and on the terms acceptable to the Lender's solicitors:

- a) **Mortgage** – A 1st mortgage in the amount of \$13,800,000 on The Stanley District Lands – MZGI 424 Project and property plus any accrued contingent payments. The mortgage will be registered at the Wrap Up rate of interest, being two times the rate of Prime + 14.10%.
- b) **GSA** – General Security Agreement over all of the assets and undertaking of the Borrower and each Guarantor, if any.
- c) **General Assignment of all leases and rents with respect to this project.**
- d) **Guarantees** – Unlimited joint and several guarantees from each of the guarantors.
- e) **Environmental** – An Environmental Undertaking and Indemnity and Checklist from the Borrower in such form as the Lender shall require.
- f) **Security Opinion** – A favourable Letter of Opinion from the Lender's solicitor confirming the validity and enforceability of the Lender's security.
- g) **Insurance** – Proof of appropriate Insurance and an assignment of insurance satisfactory to an insurance professional engaged on behalf of the Lender. In addition, a certificate of insurance showing the Lender as additional insured and loss payee on any required insurance, and Commercial Liability coverage of not less than the amount deemed appropriate by the Lender's Insurance Consultant.
- h) **Title Insurance** – Satisfactory title insurance.
- i) **Taxes** – Borrower provides satisfactory proof that taxes are current.
- j) **Postponement** – Postponement, Subrogation and Assignment from the shareholders of the Borrower (and such other creditors as the Lender may require upon completion of its due diligence) of all indebtedness owed by and claims against the Borrower to and by the shareholders to the indebtedness and claims of the Lender.
- k) **General Assignment** – General Assignment and Reliance letters from the authors of all project plans, specifications, drawings and permits, all architectural, engineering, general contractor and construction contracts and copies of all third party purchase and sale agreements and deposits for individual units sold together with any other rights, interests and obligations of any kind respecting the Project and reasonably necessary for the completion of the Project as contemplated by the Lender on a default by the Borrower.
- l) **Preauthorized Payment** – If required by the Lender such preauthorized payment documentation necessary to authorize the Lender to debit directly from the Borrower's account amounts due under the Commitment and Loan.
- m) **Deficiency Agreement** – Joint and Several Deficiency Agreement executed by the Borrower and the Guarantors agreeing to fund costs not included or in excess of forecasted expenditure.
- n) **Assignment of Purchaser Deposits** – Such assignments of purchaser's deposits as the Lender and its solicitor's may reasonably require provided, the Borrower shall be permitted to inject the deposit funds into the Project in respect of direct Project construction costs.
- o) **Assignment of Cash Security** - An assignment and pledge of all securities posted in relation to the subject property, including, but not limited to, cash security posted (i) directly with Tarion, (ii) directly with the city/town/municipality, and/or (iii) posted with a financial institution as security for letters of credit for the project. The Borrower is to provide a direction to the party holding the cash security (i.e. Tarion, City/Municipality, Financial Institution, etc.) directing all releases/reductions in the cash security to the Lender.
- p) **Further Security** – Such further security, guarantors and ancillary documents and agreements



as the Lender or its solicitors may, acting reasonably, deem necessary to adequately secure the Loan obligations and complete and perfect the Security.

(this space intentionally left blank)



IV. BORROWERS COVENANTS

The Borrower and, where applicable, each of the Guarantors covenants as follows and a breach of any covenant shall be a default under the terms of the Security:

4.1 Affirmative Covenants

So long as any amount under the Loan is outstanding or available, the Borrower covenants and agrees with the Lender that unless the Lender otherwise consents in writing:

- a) **Punctual Payment** – The Borrower shall duly and punctually pay the principal of all Advances made to it under the Loan, all interest thereon and all fees and other amounts required to be paid by the Borrower hereunder in the manner specified hereunder.
- b) **Corporate Existence and Conduct of Business** – The Borrower shall, and the Borrower shall cause the Guarantors to, maintain their respective corporate existences in good standing and do or cause to be done all things necessary to keep in full force and effect all properties, rights, franchises, licences and qualifications to carry on business in any jurisdiction in which it or they carry on business and each of the Borrowers shall, and the Borrower shall cause the Guarantors to, maintain all of its or their respective properties and assets consistent with industry standards.
- c) **Compliance with Legislation** – The Borrower shall do or cause to be done, and the Borrower shall cause the Guarantors to do or cause to be done, all acts necessary or desirable to comply with all material Applicable Laws, including, without limitation, all Requirements of Environmental Law and to preserve and keep in full force and effect all franchises, licences, rights, privileges and permits necessary to enable each of the Obligor to operate and conduct their respective businesses in accordance with standard industry practice and to advise the Lender of any anticipated changes, loss or sale of such franchises, licences, rights, privileges and permits.
- d) **Material Litigation** – The Borrower shall promptly give written notice to the Lender of any litigation, proceeding or dispute affecting it or any of the other Obligor if the result might, in such Borrower's bona fide opinion, have a Material Adverse Effect on the financial condition or operations of any of the Obligor or any of its Subsidiaries and from time to time furnish to the Lender all reasonable information requested by the Lender concerning the status of any such litigation, proceeding or dispute.
- e) **Financial Statements and Other Information** – The Borrower shall deliver, or cause to be delivered, to the Lender:
 - i. **Annual Financial Statements of the Borrower** – as soon as available and, in any event, within ninety (90) days after the end of each of its fiscal years, copies of the Borrower's externally professional accountant prepared audited (Notice to Reader or Review Engagement) financial statements are required. Statements on a consolidated basis in each case consisting of the balance sheet, statement of profit and loss and surplus and statement of changes in financial condition for each such year, together with the notes thereto, all prepared in accordance with Generally Accepted Accounting Principles ("GAAP") consistently applied;
 - ii. **Annual 'As Is' Appraisal Report** – as soon as available and, in any event within thirty days (30) prior to the one-year anniversary of the previous 'As Is' appraisal report, a refreshed 'As Is' appraisal report is to be submitted to the Lender. The report shall be prepared by a member of the Appraisal Institute of Canada and prepared in accordance with the Canadian Uniform Standards of Professional Appraisal Practice.



- The effective date of the appraisal shall be at or up to 60 days after the date of inspection and the estimated value cannot depend on assumptions not in existence at the effective date of appraisal. Such appraisal report must be addressed to the Lender or be accompanied by a Reliance letter from the appraiser to the Lender and shall confirm that the Lender can rely upon such appraisal for lending purposes;
- iii. **Annual Project Budget** - as soon as available, and in any event, within ninety (90) days prior to the end of the Borrower fiscal year, a Project Budget for the following two fiscal years shall be provided to the Lender;
 - iv. **Annual Personal Net Worth Statement** – Personal Obligors shall provide to the Lender, an updated personal net worth statement with supporting documentation on an annual basis;
 - v. **Annual Personal Notice of Assessment** – Personal Obligors shall provide to the Lender, their respective Notice of Assessments within 60 days of their personal tax deadlines, for the most recently ended taxation year;
 - vi. **Annual Corporate Notice of Assessment** – Corporate Obligors shall provide to the Lender, their respective Notice of Assessments within 60 days of their corporate tax deadlines, for the most recently ended taxation year;
 - vii. **Quarterly Financial Statements of the Borrower** – as soon as available and, in any event within thirty (30) days after the end of each of its first, second and third Fiscal Quarters, copies of the Borrower's internally prepared quarterly financial statements on a consolidated basis, in each case consisting of the balance sheet, statement of profit and loss and surplus and statement of changes in financial condition for each such period all in reasonable detail and stating in comparative form the figures for the corresponding date and period in the previous fiscal year prepared and certified by its Chief Executive Officer or Chief Financial Officer, without personal liability;
 - viii. **Quarterly Compliance Certificates** – as soon as available, and in any event, within thirty (30) days of the end of each Fiscal Quarter, a Loan Compliance Certificate as provided in Appendix B of this agreement are to be provided to the Lender;
 - ix. **Quarterly Property Taxes** - The Borrower shall ensure that all property taxes and any other taxes applicable to the Project have been paid when due except if such taxes are permitted encumbrances. On each tax installment date, the Borrower will provide to the Lender proof of payment;
 - x. **Insurance** – 30 days prior to the insurance expiry date(s), the Borrower will provide to the Lender, a certificate of insurance and policy from its insurance broker indicating that all insurance required by the Lender is adequate and still in effect. Refer to Section 4.1 h) for further details;
 - xi. **Other** – The Lender may reasonably request such other financial information, reporting, certificates, projections of income and cash flow, and any information affecting the financial condition of the Project, the Property Interest, or the Obligor's business. This list is not exhaustive and the Lender may also reasonably request such other qualitative information including expected pre-sales, expected closings and associated timing, closed transactions, and editorial updates including project status, and photos showing progress at a reporting frequency prescribed at the time of request. Should such a request be made please refer to Appendix F.
- f) **Rights of Inspection** – At any reasonable time and from time to time upon reasonable prior notice, the Borrower shall permit and cause each of the other Obligors to permit, the Lender or any representative(s) thereof, at the expense and risk of the Borrower, to examine and make



copies of and abstracts from the records and its physical and computer books of account with respect to the Project and the Property Interests and to visit and inspect the Project and to discuss the affairs, finances and accounts of it with any of its officers, senior employees or managers (but not tenants, if applicable).

g) **Project Specific** – The Borrower shall:

- i. comply in all relevant aspects with the provisions of the Construction Lien Act;
- ii. as and when requested by the Lender, provide to the Lender complete bank records relating to all holdbacks including cancelled cheques, bank statements and completion certificates as the Lender may reasonably require;
- iii. grant to the Lender the right and authority for the Lender to obtain all information relative to the holdback account(s) from the financial institution(s) where the holdback(s) is/are retained;
- iv. provide a covenant that the Borrower will supply to the Lender a statutory declaration in conjunction with each advance under the mortgage, confirming the status of the holdback account(s) as at the date of the statutory declaration;
- v. substantially complete the Project in accordance with Lender approved plans, specifications, project budget and construction schedule, pay its taxes, protect its properties by contest of adverse claims, maintain required insurance, perform its obligations under contracts and agreements, obtain all necessary approvals for construction and use of the Project, comply with all governmental rules and regulations, permit reasonable inspections, by the Lender and its agents of the Project and all records pertaining to the Project. It is agreed that the Lender shall retain the services of a quantity surveyor to monitor the Project at the expense of the Borrower and the Borrower covenants to assist and cooperate with such surveyor.
- vi. shall make and ensure that all payments due to the architect, general contractor, all contractors, sub-contractors and all other suppliers of materials and services of any kind to the Project are made when and as they become due in compliance with the terms of their respective contracts and the provisions of the Construction Lien Act.
- vii. shall ensure that no liens are registered against the Project or its assets and will immediately move to have same vacated if registered.
- viii. shall authorize the Lender to approve all professional services involved in the Project. Such professional reports and services include but are not limited to, appraisals, environmental, geotechnical, planning, architects, quantity surveyors, auditors, and Borrower's solicitor.
- ix. shall, at the request of the Lender, provide a percentage completion report on a weekly basis detailing the percentage completion of various tasks necessary to complete the Project subject to this financing. If unable to provide, the Lender may engage a third party to complete the onsite reporting requirements at the Borrower's expense.

h) **Insurance**

- i. The Borrower shall maintain or shall cause to be maintained appropriate insurance coverage as agreed with the Lender or any Insurance consultant engaged by the Lender to assess the required coverage during the Project. The following shall be provided with respect to insurance on the Project:
 - a) Proof of appropriate Commercial Liability Insurance and an assignment of insurance. A certificate of insurance showing the Lender as additional insured and loss payee, and coverage of not less than the amount deemed adequate by the Lender's Insurance Consultant.



- b) Builders' all risks property insurance in connection with the Project, including rental loss insurance (if applicable) with responsible and reputable insurance companies in such amounts equal to 100% of replacement value
 - c) If applicable, boiler and pressure vessel insurance including rental loss, for such amount as may be acceptable to the Lender, all with such deductibles as are customary in the case of businesses of established reputation engaged in the same or similar businesses and in any event as are acceptable to the Lender. The Lender shall be added as an additional insured to the liability policies.
 - d) Other insurance as the Lender's Insurance Consultant may deem necessary given the nature of the Project. The amount of coverage required shall be reasonably determined by the Lender's Insurance Consultant.
- ii. All such insurance policies shall:
- a) name the Lender as a mortgagee thereunder as its interest may appear;
 - b) name MarshallZehr Group Inc. as additional insured and loss payee;
 - c) have attached the Insurance Bureau of Canada standard mortgage clause;
 - d) provide that no cancellation, termination or adverse amendment thereof shall take effect unless the insurer concerned has given the Lender not less than thirty (30) days prior written notice of such proposed action;
 - e) provide that proceeds of all insurance for physical damage and rental losses shall be payable to the Lender or as it may direct; and
 - f) otherwise be in such form as the Lender shall reasonably require.
- iii. So long as no Event of Default has occurred and is continuing, the proceeds of all insurance relating to physical damage and rental losses shall be, with the approval of the Lender:
- a) applied in reduction of amounts outstanding hereunder; or
 - b) released to the Borrower subject to compliance with such conditions as the Lender may require.
- iv. If an Event of Default has occurred or is continuing, the proceeds of all insurance relating to physical damage and rental losses shall be payable to the Lender to be applied by it in reduction of the amounts outstanding hereunder.
- v. The proceeds of all insurance held by the Lender shall, unless and until the same are applied or released to the Borrower as aforesaid, constitute continuing collateral security for the Borrower's obligations and liabilities in respect of amounts outstanding hereunder. The Lender shall place such funds in an interest-bearing account and interest thereon shall accrue to the benefit of the Borrower.
- vi. In the event that the Lender shall not be obligated hereunder to apply the proceeds of insurance to pay for the cost of repairing the damage or destruction to or replacement of the property in respect of which the insurance is payable and the Lender elects to apply the proceeds of insurance to amounts owing by the Borrower hereunder, each of the Borrower (on its own behalf and on behalf of each of the Guarantors), hereby irrevocably waives any and all statutory provisions which may require that proceeds of insurance be used to restore or rebuild the Property.
- vii. The Borrower shall deliver or cause to be delivered to the Lender, certificates of insurance signed by the insurers, or other evidence satisfactory to the Lender, acting reasonably, of the insurance coverage required hereunder, including certificates of renewal as soon as they are available.



- viii. **Insurance Consultant:** The Borrower acknowledges that all policies of insurance shall be subject to review and approval by an **insurance consultant** acting on behalf of the Lender and the Borrower agrees to pay for the consultant's fees in connection with such review upon registration of the mortgage and for each insurance renewal throughout the term of the mortgage.
- i) **Notices** – The Borrower shall promptly give notice to the Lender of:
- a) any fire or other casualty or any notice of expropriation, action or proceeding materially affecting any Project;
 - b) all claims, proceedings, suits, actions or litigation in respect of any Obligor or the Project (whether or not any such claim, proceeding, suit, action or litigation is covered by insurance) which, if determined adversely, could have a Material Adverse Effect; the occurrence of any Default or Event of Default;
 - c) any other matter or event that has a Material Adverse Effect.
- j) **Use of Advances** - The Borrower shall use all Advances made to it for the specific purposes set out in the Loan.
- k) **Payment of Taxes, etc.** - The Borrower shall, and the Borrower shall cause each of the Guarantors to, from time to time:
- i. pay or cause to be paid all rents, Taxes, rates, levies or assessments, ordinary or extraordinary, governmental fees or dues, lawfully levied, assessed or imposed upon any Obligor or any of the assets of any Obligor, as and when the same become due and payable;
 - ii. withhold, deduct and collect all Taxes required to be withheld, deducted and collected by it, and remit such Taxes to the appropriate Governmental Authority at the time and in the manner required; and
 - iii. pay and discharge all obligations incidental to any trust imposed upon it, by statute which, if unpaid, might become an encumbrance upon any of the Properties,
- except when and so long as any such rents, Taxes, rates, levies, assessments, fees, dues or obligations constitute a permitted encumbrance and the validity thereof is in good faith being contested by such Obligor.
- l) **Material Documents, Leases and Permitted Encumbrances** - The Borrower shall ensure that all material documents and permitted encumbrances are kept in good standing in all material respects and will advise the Lender forthwith after being so notified of a material breach or alleged material breach of any material documents or permitted encumbrances. It will ensure that it does not default under any major lease related to any Property and will advise the Lender forthwith after being so notified of a material breach of any major lease.
- m) **New Material Documents** – The Borrower will promptly advise the Lender if any Obligor enters into any agreement which could reasonably be expected to be a material document and shall provide a copy of such agreement to the Lender.
- n) **Security** – The Borrower shall, and the Borrower shall cause each of the Guarantors to, provide the Security contemplated hereunder, perfected to the satisfaction of the Lender.
- o) **Environmental Law** – The Borrower shall, and the Borrower shall cause each of the Guarantors to, with respect to each Project:
- i. notify the Lender promptly of any event or occurrence that will, or is likely to, give rise to an inquiry or investigation, or any legal proceeding, relating to, or a violation of, the Requirements of Environmental Law;
 - ii. provide the Lender, on request, such information, certificates or statutory declarations, and shall conduct such environmental audits or site assessments, as may be



- reasonably necessary to ensure the compliance with all Requirements of Environmental Law; and
- iii. execute, and cause each of the Guarantors to execute, all consents, authorizations and directions to appropriate Governmental Authorities that are required to permit the inspections mandated by law of each of the Properties or the property and the release to the Lender, or its representatives, of information relating to the assets or undertakings of each Obligor. The Borrower hereby irrevocably constitutes and appoints, and the Borrower shall cause each Guarantor to irrevocably constitute and appoint, the Lender the true and lawful attorney of the such Borrower or such Guarantor, as the case may be, with full power of substitution, to execute any of the foregoing consents, authorizations and directions; provided however that such power of attorney shall only be exercised during the continuance of an Event of Default.
- p) **Maintain Security** – The Borrower will fully and effectually maintain and keep the Security valid and effective at all times during the continuance of this Agreement, and it will not permit or suffer the registration of any debt, lien, privilege or encumbrance whatsoever other than permitted encumbrances and the Security (including the Existing Security), whether of workmen, builders, contractors, engineers, architects or suppliers of material, on or in respect of any Property (except such liens which only affect or purport to affect a tenant's interest in the Property), provided that the registration of any construction lien or privilege shall not be deemed to be a breach of this covenant if the Borrower shall contest same and shall if the Lender so requires, give security to the satisfaction of the Lender for the due payment of the amount claimed in respect thereof and provided further that nothing herein will require the Borrower to renew or amend financing statements filed under personal property security statutes.
- q) **Operation and Repair** – Except as otherwise permitted herein, the Borrower will ensure the diligent management and operation of each of the Properties and repair and keep in repair and good order and condition, or cause to be so repaired and kept in repair and good order and condition, all buildings, structures, plant, machinery and equipment used in or in connection with each of the Properties and which are necessary in connection with the efficient operation of such business and undertaking up to a modern standard of usage and, subject to the provisions of this Agreement, renew and replace, or cause to be renewed or replaced all and any of the same which may be worn, dilapidated, unserviceable, inconvenient or destroyed, even by a fortuitous event, fire or other cause, and at all reasonable times allow, and cause the Guarantors to allow, the Lender or its representative access to each of the Properties in order to review the state and condition the same are in.
- r) **Payment of Preferred Claims** – The Borrower shall, and the Borrower shall cause each of the Guarantors to, from time to time pay or cause to be paid, all amounts related to taxes, wages, workers' compensation obligations, government royalties or pension fund obligations and any other amount which may result in an encumbrance against the assets of any Obligor arising under Applicable Law.
- s) **Maintain and Operate** – The Borrower will diligently maintain, use and operate or will cause to be maintained, used and operated the Property Interest and the Project, in a proper and efficient manner so as to preserve and protect the Property Interest and each of the Properties.
- t) **Lease Attornment** – Subject to the requirements, if any, within any leases for the Lender to execute and deliver non-disturbance agreements, the Borrower agrees, at the written request of the Lender, to use all reasonable commercial efforts to obtain from the tenants under such leases and deliver to the Lender such instruments of attornment, postponement or



subordination as the tenants under such leases are required to provide and as the Lender may reasonably request in a form acceptable to the Lender, acting reasonably, and which is otherwise consistent with the terms of such leases.

- u) **Expropriation** – Any awards or payments received by an Obligor for expropriation of any Project Lands, or any part thereof, which are, in respect of any single payment or award, equal to or greater than \$1,000 shall, unless the Lender otherwise agrees, be forthwith paid to the Lender to repay amounts outstanding up to the amount outstanding hereunder at such time.

(this space intentionally left blank)



4.2 Financial Covenants

So long as any amount payable hereunder is outstanding or the Loan is available hereunder, the Borrower covenants and agrees with the Lenders that, unless the Lender otherwise consents in writing:

- a) **Project Net Equity** – The Borrower and Guarantors must have and maintain throughout the term of the loan a minimum combined net equity in the Project equal to \$6,643,000.
 - i. For the purposes of this paragraph net equity shall be equal to the sum of the cost of the raw land as determined by the Lender (to a maximum value of \$11,432,000 plus the cost of the Project completed to date (exclusive of land value) as determined by the Lender's quantity surveyor, net of all payables, purchaser deposits paid into the Project, construction holdbacks, unsubordinated Project financing, amounts advanced by the Lender and all Recoveries (Recoveries being defined as all recaptured Project expenses including, HST, previously funded by the construction lender or the proceeds of the Loan herein).
- b) **Project Loan to Value Ratio (LTV)** – The Borrower shall, at all times, maintain an LTV Ratio of less than 70.0%; notwithstanding the foregoing, for the purposes of calculating this ratio each Fiscal Quarter as required pursuant to the compliance certificate contemplated in Section 4.1(e)(iv). LTV shall be calculated in accordance with the parameters defined in Section 2.1;
- c) **Project Loan to Cost Ratio (LTC)** – The Borrower shall, at all times, maintain an LTC Ratio of less than 70.0%; notwithstanding the foregoing, for the purposes of calculating this ratio each Fiscal Quarter as required pursuant to the compliance certificate contemplated in Section 4.1(e)(iv). LTC shall be calculated in accordance with the parameters defined in Section 2.1;
- d) **Maximum Borrowing** – The Borrower shall ensure that outstanding Advances under the Commitment Letter do not exceed the most current calculation of the Maximum Total Amount Available (Loan Amount less estimated costs to complete). The Loan Amount is the total credit approved as outlined in Section I.

(this space intentionally left blank)



4.3 Negative Covenants

So long as any amount payable hereunder is outstanding or the Loan Facilities are available hereunder, each of the Borrower (with respect to itself and each of the other Obligor(s)) covenants and agrees with the Lender that, unless the Lender otherwise consents in writing:

- a) **Sale of Guarantors** – The Borrower shall not, and shall cause every other Person with an ownership interest in a Guarantor (other than the Borrower) not to, sell, transfer, assign, convey or otherwise dispose of its ownership interest in any of the Guarantors (other than the Borrower) to any Person except another Affiliate of the Borrower (but only if such Guarantor remains a direct or indirect wholly-owned Subsidiary of the Borrower) or except with the prior written consent of the Lenders, such consent not to be unreasonably withheld or delayed.
- b) **No Merger, Amalgamation, Etc.** – Except as otherwise permitted hereunder, no Obligor shall enter into any transaction whereby all or substantially all of its undertaking, property and assets would become the property of any other Person (whether by way of reconstruction, reorganization, recapitalization, consolidation, amalgamation, merger, transfer, sale or otherwise).
- c) **No Sale, etc. of Property Interest** – No Obligor shall sell, transfer, assign or otherwise dispose of all or any portion of any Property Interest except pursuant to a permitted encumbrance.
- d) **No Dissolution** – No Obligor shall liquidate, dissolve or wind-up or take any steps or proceedings in connection therewith, provided, however, that a Guarantor (other than the Borrower) may enter into a transaction designed to wind-up or dissolve such Guarantor into the Borrower, but not without the Lender's consent, such consent not to be unreasonably withheld or delayed; the parties agree that the Lender's consent will not have been unreasonably withheld if, in the Lender's sole discretion, the Lenders' credit risk or the Security will be adversely affected by the proposed transaction.
- e) **Non-Arm's Length Transactions** – No Obligor shall enter into any contract relating in any manner to the Property Interest with an Affiliate (e.g. any related entity with a related ownership interest held directly or indirectly) for the sale, purchase, lease or other dealing in any property other than at a consideration which is no more than the fair market value of such property or other than at a fair market rental as regards leased property.
- f) **Negative Pledge** – Except for permitted encumbrances, no Obligor shall create, issue, incur, assume or permit to exist any mortgage, charge, lien or other encumbrance on the Property Interest other than permitted encumbrances.
- g) **No Changes to Material Document** – No Obligor shall amend, surrender or terminate any material document without the prior written consent of the Lender which consent is not to be unreasonably withheld or delayed.
- h) **No Changes to Major Leases** – No Obligor shall terminate or accept a surrender of, or agree to any material amendment to, any major lease without the consent of the Lender which consent is not to be unreasonably withheld or delayed. For the sake of clarification, amendments related to the term, rent or premises to be rented shall be considered material.
- i) **Dealing with Leases** – None of the Obligor(s) shall enter into any leases or amend, renew, terminate, forfeit or cancel any leases unless:
 - i. such leases, amendments, renewals, terminations, forfeitures or cancellations are made on arm's length terms and in good faith; and
 - ii. such leases, amendments, renewals, terminations, forfeitures or cancellations reflect good business practice.



- j) **Concerning Leases Generally** – Except in the ordinary course of business and provided such action is prudent in the circumstances, none of the Obligor shall accept or require payment of rent or other moneys payable by a tenant under any lease that would result in more than three months of such rent or other moneys being prepaid under such lease other than:
- i. prepaid rent or deposits on account of rent which represent the portion of the cost of construction of the relevant demised premises which exceeds the portion of such cost which was used as the basis for determining the basic rental otherwise payable under such lease; or
 - ii. amounts representing a bona fide pre-calculation of any amount (which is required to be paid under such lease) in addition to basic rent, including amounts payable with respect to taxes and maintenance of the applicable Property and overage and percentage rents; or
 - iii. lease surrender payments made by the tenant under such lease; and
 - iv. except for any renewals or extensions of existing leases pursuant to the terms thereof, each of the Obligor shall not hereafter enter or purport to enter into or suffer to exist any lease in respect of any Project except if the Security shall have priority over such lease and such lease shall provide that such lease is subordinated to the Security and contain a covenant of the tenant thereunder obligating such tenant if and whenever required by the Lender to attorn to and become the tenant of the Lenders or any purchaser from the Lenders in the event of an exercise by the Lenders of their remedies under the Documents, for the then unexpired residue of the term of, and upon all of the terms and conditions of such lease.
- k) **No Waiver** – Except as otherwise provided pursuant to Section 5, no Obligor shall waive, or agree to waive, any failure of any party to any permitted encumbrance, material document or lease to perform any material obligation thereunder or suffer or permit anything allowing any party thereto to terminate any such agreement or consent to any assignment thereof by any party thereto unless the same is in the ordinary course of business, is in accordance with good business practice and the same would not have a Material Adverse Effect.
- l) **Ground Leases** – No Obligor will agree with the landlords under any of the ground leases to terminate, forfeit, cancel, alter, amend or modify any ground lease or provide a surrender of any ground lease prior to the end of the term of such ground lease unless such surrender occurs concurrently with the acquisition of the freehold interest in the applicable Property and the applicable Obligor concurrently provides a mortgage of such freehold interest to the Lender together with such legal opinions and other documents and agreements as the Lender may reasonably require in connection therewith. No Obligor shall exercise any right of termination it may have under any ground lease.
- m) **Freehold Interest in the Property** – Unless the Lender otherwise expressly consents in writing, which consent shall not be unreasonably withheld or delayed, the freehold estate in the Property and the leasehold estate demised by the ground leases, respectively, shall not merge but shall always remain, respectively, separate and distinct notwithstanding the union of such estates either in the respective landlords or, any Obligor.
- n) **Name Change** – No Obligor shall change its name without first giving notice to the Lender of its new name and the date when such new name is to become effective.
- o) **Change of Chief Executive Office** – No Obligor shall change its chief executive office or the location of the offices where it keeps its records respecting receivables and rents or move any of the inventory, securities or equipment from the present locations thereof without prior written notice to the Lender.



V. DEFAULT PROVISIONS

The content of this default provisions section shall be subject to the restrictions of any priority agreement(s) between the Lender and any other permitted encumbrance holders.

5.1 Events of Default

The occurrence of any one or more of the following events (each such event being herein referred to as an “Event of Default”) shall constitute an Event of Default under this Agreement:

- a) **Payment of Principal** – if the Borrower defaults in the payment of the principal of any Advance under any Credit Facility when due and payable, without any requirement by the Lender to provide notice of the same;
- b) **Payment of Interest and Fees** – if the Borrower defaults in the payment of:
 - i. any interest (including, if applicable, default interest) due on any Advance under this Commitment;
 - ii. any fee with respect to this Commitment, including Lender Fee, etc.
 - iii. any other amount not specifically referred to herein payable by the Borrower to the Mortgage Administrator or the Lenders (or any of them) hereunder when due and payable; and such default continues for three (3) Business Days after notice of such default has been given by the Lender to the Borrower;
- c) **Covenants or Obligations** – if any Obligor neglects to observe or perform any covenant or obligation contained in any Document on its part to be observed or performed (other than a covenant or condition whose breach or default in performance is specifically dealt with elsewhere in this Section 5.0) and, such Obligor shall fail (in the case of those defaults which can be rectified by such Obligor) to remedy such default within a period of thirty (30) days after the giving of notice, unless the Lender (having regard to the subject matter of the default) shall have agreed to a longer period and, in such event, within the period agreed to by the Lender;
- d) **Cross Default** – if a default or an Event of Default as defined in any indenture or instrument evidencing, or under which, any indebtedness for borrowed money of any Obligor or of any Associate (as that term is defined in the Business Corporations Act R.S.O. 1990) of any Obligor has occurred and is continuing; provided, however, that if such default or Event of Default under such indenture or instrument shall be remedied or cured by such Obligor or Associate of such Obligor or be waived by the holders of such indebtedness before any judgment or decree for the payment of the money due shall have been obtained or entered, then the Event of Default hereunder by reason thereof shall be deemed likewise to have been thereupon remedied, cured or waived without further action on the part of the Lender;
- e) **Priority Encumbrance Cross Default** – if an Event of Default as defined in any indenture or instrument which is an encumbrance on any Property in priority to the Security shall have occurred and be continuing and all applicable cure periods have expired;
- f) **Bankruptcy or Insolvency Order** – if a decree or order of a court of competent jurisdiction is entered adjudging any Obligor a bankrupt or insolvent, or approving as properly filed a petition seeking the winding-up of such Obligor, under the Companies’ Creditors Arrangement Act (Canada), the Bankruptcy and Insolvency Act (Canada) or the Winding Up and Restructuring Act (Canada) or any other bankruptcy, insolvency or analogous laws or issuing sequestration or process of execution against, or against any substantial part of the assets of any Obligor or material subsidiary or ordering the winding up or liquidation of its affairs, and any such decree or order continues unstayed and in effect for a period of ten (10) business days;



- g) **Insolvency** – if any Obligor becomes insolvent, makes any assignment in bankruptcy or makes any other assignment for the benefit of creditors, makes any proposal under the Bankruptcy and Insolvency Act (Canada) or any comparable law, seeks relief under the Companies' Creditors Arrangement Act (Canada), the Winding Up and Restructuring Act (Canada) or any other bankruptcy, insolvency or analogous law, is adjudged bankrupt, files a petition or proposal to take advantage of any act of insolvency;
- h) **Trustee or Receiver Appointed** – if any proceedings are commenced against, or steps are taken by, any Obligor for the appointment of a trustee, receiver, receiver and manager, interim receiver, custodian, sequestrator or other Person with similar powers of such Obligor or of all or any substantial portion of its assets, or seeking any reorganization, arrangement, composition or readjustment under any applicable bankruptcy, insolvency, moratorium, reorganization or other similar law affecting creditors' rights and in the case of any such proceedings commenced against such Obligor, such proceedings are not stayed or dismissed within ten (10) days after the commencement thereof;
- i) **Material Provision or Agreement Null and Void** – if any material provision of this Agreement or of any material document ceases to be in full force and effect (other than through the normal expiration of the stated term of such material document pursuant to the terms thereof) or is declared null and void or invalid or any breach or default shall occur under any material document that has a Material Adverse Effect and such breach or default is not remedied within ten Business Days of such occurrence or such longer or shorter cure period as may be allowed the applicable Obligor pursuant to the terms of such material document;
- j) **Judgements** – if a judgment or decree for payment of money due in an amount of \$5,000 or more (in any single instance or in the aggregate for all such judgments and decrees against each of the Obligors) shall have been obtained or entered against any Obligor (except in the case of any such judgment or decree in respect of which recourse is limited to property which is not subject to the Security hereunder) and such judgment or decree shall not have been, and remain, vacated, discharged or stayed pending appeal within the applicable appeal period;
- k) **Incorrect Representation or Warranty** – if any representation or warranty made or deemed to be made by any Obligor in any Document or in any certificate or other document at any time delivered in connection with this Agreement to the Lender shall prove to have been incorrect or misleading in any material respect on and as of the date thereof and with respect to any such incorrect or misleading representation or warranty that is capable of being cured, such incorrectness or misleading aspect continues for a period of ten (10) Business Days or more;
- l) **Invalid Security** – if any of the Security shall cease to be a valid and perfected first priority security interest as against third parties subject only to permitted encumbrances and such state continues for more than two business (2) days;
- m) **Material Adverse Effect** – if the Lender determines, in their sole discretion acting reasonably, that there has been a material change in the business, assets, properties, liabilities, operations, condition (financial or otherwise) of the Obligors, individually, or its subsidiaries taken as a whole or the ability to perform its obligations under the Commitment;
- n) **Creditor Seized Property** – if the property of any Obligor or a part thereof which is, in the opinion of the Lender, a substantial portion thereof, is seized or otherwise attached by creditors pursuant to any legal process, the enforcement of a secured claim or otherwise or if a distress, execution or any similar process is levied or enforced against any Obligor and the same is not released, bonded, satisfied, discharged, vacated or stayed within the shorter of a period of thirty (30) days or such shorter period as would permit any Property or any part thereof to be sold thereunder;



- o) **Dissolution, Liquidation or Wind-Up Proceedings** – if proceedings are commenced for the dissolution, liquidation or winding-up of any Obligor, or for the suspension of the operations of any Obligor, unless such proceedings are stayed or dismissed within thirty (30) days of the commencement thereof;
- p) **Assignment, Disposition or Conveyance** – if any Obligor makes or agrees to make an assignment, disposition or conveyance, whether by sale or otherwise, of all its assets (or a material portion thereof) in bulk;
- q) **Default Under Permitted Encumbrance or Material Document** – if there is a default by any Obligor under any permitted encumbrance, or material document in respect of the Project and such default has a Material Adverse Effect and is not rectified within five business days; or
- r) **Financial Covenant Default** – if there is a default by the Borrower of any of the Financial Covenants outlined in Section 4.2;
- s) **Merger or Amalgamation** – if any transaction occurs (whether by reconstruction, reorganization, consolidation, amalgamation, merger, transfer, sale or otherwise) whereby all or substantially all of an Obligor’s undertaking, property and assets, or any interest therein becomes the property of any other person, or in the case of any amalgamation, of the continuing company resulting therefrom, or if any Obligor is dissolved; or
- t) **Environmental** – if any Obligor violates or breaches any Requirements of Environmental Law applicable to the Project (or, in the case of the Guarantor, applicable to all or any material part of its property and assets) or if any Obligor violates or breaches any other Applicable Law and such breach or violation of Applicable Law has or could reasonably be expected to have a Material Adverse Effect and continues for the shorter of a period of 30 days or 10 business days less than any such period as would permit the property in question to escheat to the Crown or be sold or otherwise forfeited; or

For greater certainty, none of the foregoing events shall constitute an Event of Default hereunder if the default is cured or remedied within the time limited therefor pursuant to the applicable provision of this Section 5.1.

(this space intentionally left blank)



5.2 Acceleration and Demand

Upon the occurrence of any Event of Default that has not been cured within the timelines set out herein, the Lender by written notice to the Borrower (an "Acceleration Notice") shall be entitled to:

- a) declare the Loan and the right of the Borrower to apply for further Advances to be terminated;
- b) declare all Obligations (whether matured or unmatured, drawn or undrawn) of the Borrower to the Lender (including, without limitation, the all unpaid fees whether or not deemed earned) to be immediately due and payable (or to be due and payable at such later time as may be stated in such notice) without further demand, presentation, protest or other notice of any kind, all of which are expressly waived by Borrower;
- c) upon the occurrence of an Event of Default specified in Section 5.1(a), the Loan shall automatically terminate and all Obligations specified in Section I shall automatically become due and payable, in each case without any requirement that notice be given to the Borrower;
- d) Immediately upon the occurrence of an Event of Default specified in Section 5.1 or at the time stated in an Acceleration Notice, the Borrower shall pay to the Lender all amounts owing or payable in respect of all Obligations of such Borrower specified in Section I, failing which all rights and remedies of the Lender under the Documents, at law, in equity or otherwise shall thereupon become enforceable and shall be enforced by the Lender.

(this space intentionally left blank)



5.3 Appointment of Receiver

- a) Upon any default under this Commitment or the Security, that is not cured within the time frames set out herein, the Lender may proceed to realize the security hereby constituted and to enforce its rights by entry; or by the appointment by instrument in writing of a receiver or receivers of the subject matter of such security or any part thereof and such receiver or receivers may be any person or persons, whether an officer or officers or employee or employees of the Lender or not, and the Lender may remove any receiver or receivers so appointed and appoint another or others in his or their instead; or by proceedings in any court of competent jurisdiction for the appointment of a receiver or receivers or for sale of the Project or any part thereof; or by any other action, suit, remedy or proceeding authorized or permitted hereby or by law or by equity; and may file such proofs of claim and other documents as may be necessary or advisable in order to have its claim lodged in any bankruptcy, winding-up or other judicial proceedings relative to the Borrower. Any such receiver or receivers so appointed shall have power to take possession of the Project or any part thereof and to carry on the business of the Borrower, and to borrow money required for the maintenance, preservation or protection of the Project or any part thereof, and to further charge the Project in priority to the security constituted by this Commitment as security for money so borrowed, and to sell, lease or otherwise dispose of the whole or any part of the Project on such terms and conditions and in such manner as he shall determine. In exercising any powers, any such receiver or receivers shall act as agent or agents for the Borrower and the Lender shall not be responsible for his or their actions.
- b) In addition, the Lender may enter upon the applicable premises and lease or sell the whole or any part or parts of the Project. The Borrower agrees that it will be commercially reasonable to sell such part of the Project:
 - i. as a whole or in various units;
 - ii. by a public sale or call for tenders by advertising such sale; and
 - iii. by private sale.
- c) Any such sale shall be on such terms and conditions as to credit or otherwise and as to upset or reserve bid or price as to the Lender in its sole discretion may seem advantageous and such sale may take place whether or not the Lender has taken possession of such property and assets.
- d) No remedy for the realization of the security hereof or for the enforcement of the rights of the Lender shall be exclusive of or dependent on any other such remedy, but any one or more of such remedies may from time to time be exercised independently or in combination. The term "receiver" as used in this letter includes a receiver and manager.

(this space intentionally left blank)



5.4 Application of Payments Following Demand and Acceleration

Except as otherwise agreed to by the Lender in its' sole discretion, any sum received by the Lender at any time after the delivery of an Acceleration Notice or the occurrence of an Event of Default specified in Section 5.1 which the Lender is obliged to apply in or towards the satisfaction of sums due from the Borrower under any Document shall be applied by the Lender in accordance with amounts owed to the Lender by the Borrower in respect of each category of amounts set forth below, each such application to be made in the following order with the balance remaining after application in respect of each category to be applied to the next succeeding category:

- a) in or towards payment of any expenses and fees then due and payable to the Lender hereunder and owing by the Borrower (including, without limitation, in the case of the Borrower, any such fees and expenses owing whether or not deferred or contingent);
- b) in respect of amounts due and payable by such Borrower to the Lenders by way of interest and fees (including, without limitation, in the case of the Borrower, any such interest and fees owing whether or not deferred or contingent);
- c) in respect of any other amount (other than Advances) not hereinbefore referred to in this Section 5.4 which are then due and payable by the Borrower hereunder such Borrower under any Document (including, without limitation, in the case of the Borrower, any such other amounts owing whether deferred or contingent);
- d) in or towards repayment to the Lender of the Principal Advances to such Borrower then outstanding hereunder; and
- e) any remaining amounts to be released to the Borrower or as required by the loan.

For certainty, unless otherwise agreed by the Lender, all amounts owing by the Borrower in each of the above-noted categories (whether directly or indirectly by virtue of Guarantees) shall, within each category, rank *pari passu* and be applied *pro rata* to the Obligations owing by the Borrower within such category based on the respective outstanding amounts.

5.5 Remedies Cumulative

For greater certainty, it is expressly understood and agreed that the rights and remedies of the Lender under the Documents are cumulative and are in addition to and not in substitution for any rights or remedies provided by law; any single or partial exercise by the Lender of any right or remedy for a default or breach of any term, covenant, condition or agreement therein contained shall not be deemed to be a waiver of or to alter, affect or prejudice any other right or remedy or other rights or remedies to which the Lender may be lawfully entitled for the same default or breach, and any waiver by the Lender of the strict observance, performance or compliance with any term, covenant, condition or agreement therein contained, and any indulgence granted thereby, shall be deemed not to be a waiver of any subsequent default. The Lender may, to the extent permitted by Applicable Law, bring suit at law, in equity or otherwise for any available relief or purpose including but not limited to:

- 1) the specific performance of any covenant or agreement contained in the Documents;
- 2) enjoining a violation of any of the terms of the Documents;
- 3) aiding in the exercise of any power granted by the Documents or by law; or
- 4) obtaining and recovering judgment for any and all amounts due in respect of the Advances or amounts otherwise due hereunder or under the Documents.

To the extent permitted by applicable law, Borrower hereby waives any rights now or hereafter conferred by statute or otherwise which may limit or modify any of the Lender's rights or remedies under the Documents.



5.6 Set-Off

In addition to any rights now or hereafter granted under Applicable Law and not by way of limitation of any such rights, the Lender is authorized at any time after the delivery of an Acceleration Notice or the occurrence of an Event of Default specified in Section 5.1 which has not theretofore been waived or rescinded by the Lender and from time to time thereafter without notice to Borrower or to any other person, any such notice being expressly waived by the Borrower, to set-off and to appropriate and to apply any and all deposits (general and special) and any other indebtedness at any time held by or owing to the Lender for the account of the Borrower against and on account of the obligations and liabilities of the such Borrower to the Lender or such Lender under this Agreement, including, without limitation, contingent or deferred obligations of the Lenders.

5.7 Cash Collateral Accounts

Upon delivery of an Acceleration Notice or the occurrence of an Event of Default specified in Section 5.1 and in addition to any other rights or remedies of the Lenders hereunder, the Lender shall thereafter be entitled to deposit and retain in an account to be maintained by the Lender, and which for the purposes hereof shall be considered to be the Lender's account and not the Borrower's account bearing interest for the Borrower at the rates of interest of the Lender as may be applicable in respect of other deposits of similar amounts for similar terms, amounts which are received by the Lender from the Borrower to the extent that and for so long as such amounts either may be required to satisfy any Obligations of such Borrower or are actually used to satisfy any such Obligations; provided that if such amounts are no longer required or not so used, the Lender shall forthwith return the same together with interest accrued thereon to the Borrower.

5.8 Lender May Perform Covenants

If the Borrower shall fail to perform any covenant on its part herein contained, the Lender may, upon prior notice to the Borrower, perform any of the said covenants capable of being performed by the Lender and, if any such covenant requires the payment or expenditure of money, it may make such payment or expenditure with its own funds and shall be entitled to reimbursement of any such expenditure. All amounts so paid by the Lender hereunder shall be repaid by the Borrower on demand and therefore shall bear interest at the rate set forth in Section I from the date paid by the Lender hereunder to and including the date such amounts are repaid in full by the Borrower.

(this space intentionally left blank)



VI. GENERAL PROVISIONS

- a) The Lender shall have no obligation to advance funds unless and until all of the above terms and conditions have been deemed by the Lender to be complete, true and otherwise in all respects satisfactory, in the Lender's sole discretion.
- b) No term or requirement of this Commitment may be waived or varied orally or by any course of conduct of the Borrower or anyone acting on his behalf or by any officer, employee or agent of the Lender. Any alteration or amendment to this Commitment must be in writing and signed by a duly authorized officer of the Lender and accepted by the Borrower and Guarantor.
- c) The Lenders solicitors shall be:
 - Chaitons LLP
 - 5000 Yonge Street, 10th Floor
 - Toronto, ON M2N7E9
 - Attention: Robert Miller
- d) The Borrower's solicitor shall be:
 - Keyser Mason Ball, LLP
 - 3 Robert Speck Pkwy #900,
 - Mississauga, ON L4Z 2G5
 - Attention: David Di Gregorio

The Borrower shall bear any and all reasonable legal costs of the Lender.

- e) Time is of the essence in this Commitment.
- f) The Borrower and Guarantors agree that if any one or more of the provisions contained in this Commitment shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of the Lender, not affect any or all other provisions of this Commitment and this Commitment shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- g) The waiver by the Lender of any breach or default by the Borrower of any provisions contained herein shall not be construed as a waiver of any other or subsequent breach or default by the Borrower. In addition, any failure by the Lender to exercise any rights or remedies hereunder or under the Security shall not constitute a waiver thereof.
- h) The representations, warranties, covenants and obligations herein set out shall not merge or be extinguished by the execution or registration of the Security but shall survive until all obligations under this Commitment and the Security have been duly performed and the Loan, interest thereon and any other moneys payable to the Lender are repaid in full. In the event of any inconsistency or conflict between any of the provisions of the Commitment and any provision or provisions of the Security, the Lender shall choose which provisions that will prevail.
- i) Notwithstanding the registration of the Security or the advancement of funds, the terms of this Commitment Letter shall not merge with the delivery and/or registration of the Security and shall remain in full force and effect. Any default under the terms of this Commitment Letter shall be deemed a default under the Security and any default under the terms of the Security shall be deemed a default under the terms hereof. In the event of a conflict between the terms of the Security and the terms of this Commitment Letter, the Commitment Letter shall govern.
- j) This Agreement may be simultaneously executed in several counterparts, each of which when



so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument. A facsimile or electronic copy of an executed counterpart shall be deemed to be an original.


If you are in agreement with the above terms, please indicate such agreement by signing and forwarding to the undersigned a copy of this letter agreement together with the \$30,000 Good Faith Deposit (Received) payable to MarshallZehr Group Inc. in Trust. The execution of this letter does not obligate the Lender to advance any of the agreed funds unless all of the conditions to such advances have been satisfied to the satisfaction of the Lender and its solicitors.

By signing this Commitment Letter, pertaining to The Stanley District Lands – MZGI 424, the Borrowers and Guarantors agree that the Lender may obtain credit and other financially related information about the Borrower(s) and the Guarantor(s), including reports from other credit grantors, consumer reporting agencies and credit bureau.

Unless this Commitment Letter is accepted by the Borrower and all required Guarantors within five (5) business days of the date hereof by delivery of a fully executed copy to the Lender, along with the Good Faith Deposit, then, at the Lender's sole option, the Commitment shall be terminated.

This Commitment Letter is not binding until it has been approved and signed back by an Officer of the Lender, MarshallZehr Group Inc.

Yours truly,

DocuSigned by:

6697E6642B774AE...



Financing Efficiency = Opportunity

Cecil Hayes CIM
Chief Operating Officer

T 519 342 1000 X 233
C 519 590 3810

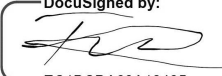
marshallzehr.com | email



Acknowledged and agreed at Oakville this 15th day of November, 2021.

Borrower:

La Pue International Inc.

DocuSigned by:

Per: _____
EC1BCDA69A18485...

Name:

Title:

I have authority to bind the corporation

The following parties execute this Commitment letter in their capacities as guarantors only.

Witness:

DocuSigned by:


EC1BCDA69A18485... I/s
Pawel Fugiel



Lender:

I HEREBY accept the terms and conditions as stated herein.

DATED at Waterloo, this 15th day of November, 2021.

MarshallZehr Group Inc. "in Trust"

Per:  _____
C7AE499691764A8...

Gregory Zehr
CEO & Co-Founder
"I/We have the authority to bind the Corporation"

The Stanley District Lands – MZGI 424



APPENDIX A – OFFICERS’ CERTIFICATE & STATUTORY DECLARATION

(This document may be updated from time to time and confirms the Obligor(s) are in full compliance with the terms of the Commitment Letter. It further provides details on how funds provided will be used and details on any amounts the could rank in priority to the security registered to secure this Loan).

[Date of Letter]

[Borrower]

[Borrower Address]

MarshallZehr Group Inc.
206-465 Phillip St
Waterloo ON N2L 6C7
Attention: [MZ Contact]

Re: Officers’ Certificate for [Project Name] [Funding # or Quarterly Update]

I/we, [Officer #1] of [Borrower], being respectively the [Officer #1 Title] of [Borrower] in my capacity as an officer of [Borrower] and not in my personal capacity, do hereby certify that:

1. This Certificate is being delivered pursuant to Section [2.1 for Initial Funding, 2.2 for Borrower Draws or 4.1 for Quarterly Certificates] of the Commitment dated as of [DAY] day of [MONTH, YEAR] made among [Borrower] and MarshallZehr Group Inc. (“MZG”).
2. To the best of our knowledge and belief, no Event of Default exists as of the date of this Certificate.
3. The representations and warranties contained in Section 4.1 of the Commitment are true and correct as though made on the date hereof, except for those changes to the representations and warranties which have been disclosed to and accepted by the Lenders pursuant to Section 4.1 and any representation and warranty which is stated to be made as of a certain date.
4. We hereby confirm that the Financial Covenants set out in Section 4.2 of the Loan Agreement are in full compliance as of the date of execution of this Certificate.
5. We hereby acknowledge that we have personal knowledge of the fact that all accounts for labour, subcontracts, products, services, and construction machinery and equipment which have been incurred directly by the Borrower in performance of the work required to complete the Project, and for which the Borrower(s) and/or Owner(s) of the Borrower(s) might in any way be held responsible, have been paid in full as required by the Commitment up to and including the latest progress payment received, being on the [DAY] day of [MONTH], [YEAR], except for
 - a. Holdback monies properly retained amounting to [\$.]
 - b. Payments deferred by agreement amounting to [\$.], or
 - c. Amounts withheld by reason of legitimate dispute which have been identified to the party or parties, from whom payment has been withheld amounting to [\$.].

IN WITNESS WHEREOF I/we, the undersigned, have signed this Certificate as of the [DAY] day of [MONTH], [YEAR]



[Name of Borrower]

Per: _____

Name:

Title:

I have authority to bind the corporation



APPENDIX B – COMPLIANCE CERTIFICATE

(This document may be updated from time to time and confirms full compliance with the terms contained within the Commitment Letter and provides details of the calculations confirming same)

[Date of Letter]

[Borrower]

[Borrower Address]

MarshallZehr Group Inc.
206-465 Phillip St
Waterloo ON N2L 6C7
Attention: [MZ Contact]

Re: Compliance Certificate for [Project Name] [Funding #1 or Quarterly Update]

The undersigned, [Borrower], refers to the Commitment Letter dated as of [MONTH] [DAY], [YEAR] (as amended, supplemented, replaced or restated from time to time, the "Commitment", the terms defined therein being used herein as therein defined) among the Obligors and the Lender party thereto.

I/we, [Officer #1] of [Borrower], being respectively the [Officer #1 Title] of [Borrower] in my capacity as an officer of [Borrower] and not in my personal capacity, do hereby certify that:

1. This Compliance Certificate is delivered pursuant to Section [2.1 for Initial Funding or 4.1 for Quarterly Certificates] of the Loan Agreement for [Funding #1 dated [DAY] [MONTH], [YEAR] (the "Initial Funding Period") or the Financial Fiscal Quarter/Year ending on [DAY] [MONTH], [YEAR] (the "Fiscal Period")].
2. I am familiar with and have examined the provisions of the Commitment.
3. The financial statements most recently delivered pursuant to Section 4.1 of the Commitment present fairly the financial position, results of operations and changes in financial position of the persons specified therein in accordance with GAAP (subject to normal year-end adjustments and the absence of any required notes to such financial statements).
4. As of the date hereof, [Borrower] is not in breach of any of the covenants contained in Sections 4 and 5 of the Commitment, and no default or Event of Default has occurred and is continuing as at the date hereof.
5. As of [DAY] [MONTH], [YEAR], the [Initial Funding or Fiscal Period]:

a. Total Net Project Costs to Date:	[\$•]	
b. Estimated Cost to Complete Project (incl. lien holdback):	[\$•]	
c. Total Advanced Loan ([incl. current/previous funding #]):	[\$•]	[\$•]
d. Estimated Current Project Value:	[\$•]	
e. Last Appraised Value as of [MONTH] [DAY], [YEAR]:		[\$•]



6. The Financial Covenants outlined in Section 4.2 of the Commitment have been calculated below as of the [Initial Funding or Fiscal Period]:

<u>FINANCIAL COVENANTS:</u> Guideline only, refer to Commitment for Covenants that are required.	<u>CALCULATIONS:</u> Guideline only, refer to Commitment on how to calculate Covenants and update accordingly.	<u>AMOUNT:</u>
Project Net Equity	Project Costs to Date (a) Less Advanced Loan (c)	\$
Maximum Borrowing	Loan Amount Less Costs to Complete (b)	\$
Estimated Loan to Value Ratio	Loan Advanced to Date (c) Divided by Estimated Current Value (d)	%
Estimated Loan to Cost Ratio	Loan Advanced to Date (c) Divided by Project Costs to Date (a)	%

IN WITNESS WHEREOF I/we, the undersigned, have signed this Certificate as of the [DAY] day of [MONTH], [YEAR]

[Name of Borrower]

Per: _____

Name:

Title:

I have authority to bind the corporation



APPENDIX C – REQUEST FOR LENDER ADVANCE NOTICE

(This document may be updated from time to time and is used to request funds from the Lender(s) that will be advanced to the Mortgage Administrator and start interest charges to the Borrower).

[Date of Letter]
[Borrower]
[Borrower Address]

MarshallZehr Group Inc.
206-465 Phillip St
Waterloo ON N2L 6C7
Attention: [MZ Contact]

Re: Request for Advance of Funds for [Project Name] Funding Number [#]

I hereby formally request the advance of CAD [Advance Amount] from the Commitment dated [Commitment Date] (the “Commitment”) and secured against the lands described as [Municipal Address] and legally known as [Legal Address] as well as all other security issued pursuant to the Commitment (the “Security”).

I hereby acknowledge according to the Commitment Letter that the Borrower must give at least [#] day’s written notice of an advance, and wish to receive acknowledgement from MarshallZehr as to the date of the advance. I understand and acknowledge that the interest will begin on the date of the advance regardless of if funds are released or held in Trust by MarshallZehr.

Furthermore, a Borrower Draw will not be processed until such time as all the conditions related to the Draw are met, as outlined in Section 2.2, and the Borrower has provided the applicable form and Notices as provided in Appendix D.

The Borrower acknowledges that a failure to comply with the covenants and conditions of the Commitment letter represents a default on behalf of the Borrower, and grants the Lender the right to pursue whatever remedy it deems most appropriate, at the expense of the Borrower, with no further notice.

[Name of Borrower]

Per: _____

Name:

Title:

I have authority to bind the corporation



APPENDIX D – BORROWER DRAW NOTICE

(This document may be updated from time to time and is required for funds to be delivered to the Borrower from funds held by the Mortgage Administrator in accordance with the terms of the Commitment Letter)

[Date of Letter]

[Borrower]

[Borrower Address]

MarshallZehr Group Inc.
206-465 Phillip St
Waterloo ON N2L 6C7
Attention: [MZ Contact]

Re: Request for Draw of Funds for [Project Name] Funding Number [#]

I hereby formally request the advance of CAD [Advance Amount] from the Commitment dated [Commitment Date] (the “Commitment”) and secured with the instrument registered as [Instrument Number], and secured against the lands described as [Municipal Address] and legally known as [Legal Address] as well as other security issued pursuant to the Commitment (the “Security”).

I hereby acknowledge according to the Commitment Letter that the Borrower must give at least [#] day’s written notice of an advance, and wish to receive acknowledgement from MarshallZehr as to the date of the advance.

I hereby certify, represent and warrant that all conditions and covenants of the Commitment and Security are met, and that the Borrower and the guarantors have not violated any of the conditions or covenants of the Commitment or Security. Specifically, the Borrower and Guarantors certify, represent and warrant:

- There are no liens on the Property
- No subordinate financing has been placed on the Property without prior written consent
- No party has committed any waste on the Property
- At this time Property taxes are current
- There have been no sales or purchases of shares, or payments of dividends from the Borrower to any party without prior written consent of the Lender
- The owner of the Borrower has not changed
- The Borrower where applicable is in compliance with the Construction Lien Act, and there are no Liens on the Property
- The Borrower has informed the Lender of all changes to the Project schedule and the budget

The hereby gives you notice pursuant to Section 2.2 of the Commitment Letter that the undersigned hereby requests a Draw under the Commitment Letter, and, in that connection sets forth below the information relating to such Draw as required by:

- a. The date of the Draw, being a Business Day, is [•].
- b. The aggregate amount of the Draw is [\$.].





The undersigned hereby certifies and confirms that on the date of this Notice and the date of the corresponding Draw, and immediately after giving effect thereto and to the application of any proceeds therefrom, the representations and warranties contained in Section 4 of the Commitment Letter are true and correct on and as of each such date, all as though made on and as of each such date, except for those changes to the representations and warranties which have been disclosed to and accepted by the Lenders pursuant to Section 4. Any representation and warranty which is stated to be made as of a certain date shall confirm:

- a. no event or condition has occurred and is continuing, or would result from such Borrowing or giving effect to this Borrowing Notice, which constitutes a default or an Event of Default; and
- b. such Borrowing, or otherwise giving effect to this Borrowing Notice, will not violate any Applicable Law now in effect.

The undersigned further confirms and certifies to each Lender that the proceeds of the proposed Borrowing will be used solely for the purposes permitted by the Credit Agreement.

The Borrower acknowledges that a failure to comply with the covenants and conditions of the Commitment letter represents a default on behalf of the Borrower, and grants the Lender the right to pursue whatever remedy it deems most appropriate, at the expense of the Borrower, with no further notice.

Borrower:

[Name of Borrower]

Per: _____

Name:

Title:

I have authority to bind the corporation



APPENDIX E – REPAYMENT NOTICE

(This document may be updated from time to time and is to be provided in advance of any repayment in accordance with the terms of the Commitment Letter)

[DATE]

Borrower:

[Borrower Name]

[Borrower Address]

Lender:

MarshallZehr Group Inc.

206-465 Phillip St

Waterloo ON N2L 6C7

Attention: [MZ Contact]

Re: Notice of Repayment for [PROJECT NAME]

I hereby formally inform MarshallZehr Group Inc. of the repayment of the [PROJECT NAME] Loan as per the Commitment Letter dated [DATE], and as further amended [DATE] and per the renewal dated [DATE]. This repayment is inclusive of all principal, interest and fees.

I hereby acknowledge the Borrower must provide 60 days’ written notice of repayment as per the Commitment Letter. With this notice, we would request a Discharge Statement contemplating the stated repayment date.

The maturity date on this Loan is [DATE], (however or and) the anticipated date of repayment will be [DATE].

I hereby acknowledge according to the Commitment Letter that the Borrower must pay the Lender an administration fee of \$500.00 and its solicitor’s reasonable legal fees in respect to the preparation of the discharge or repayment.

Borrower:

[Borrower Name]

Per: _____

Name: [Name]

Title: [Title]

I have authority to bind the corporation



APPENDIX F – PROJECT OPERATING REPORT

(This document may be updated from time to time and is to be provided upon request by the Borrower to the Lender providing detail on the items outlined below)

(Borrower/Developer letterhead)

[Date of Letter]

[Borrower]

[Borrower Address]

MarshallZehr Group Inc.
206-465 Phillip St
Waterloo ON N2L 6C7
Attention: [MZ Contact]

Re: Compliance Project Operating Report for [Project Name]

[Project Magnitude – Total Units/Acres/Construction Costs/ Expected Gross Receipts]

[Sales Activity - Pre-Sales Order Book/Homes under Construction/Closed, Expected Closings & Closing Schedule]

[Project Completion Status – Status of Approvals, Completion Schedule, Cost to Date, Expected Costs to Complete/Budget]

[Current Project Debt and Description of Debt and related Liens]

[Estimated Current Project Value]

[Project Site Pictures]

***THIS IS EXHIBIT "B" TO THE
AFFIDAVIT OF CECIL HAYES
SWORN BEFORE ME THIS 14TH
DAY OF JANUARY, 2025***

A handwritten signature in black ink, appearing to be the initials 'D' and 'J' with a flourish.

A Commissioner Etc.



PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

LAND
REGISTRY
OFFICE #59

64349-0257 (LT)

PAGE 1 OF 4
PREPARED FOR Wingchiu
ON 2021/11/19 AT 15:16:59

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

PROPERTY DESCRIPTION: LOTS 46, 51, 52, 61, 62, 63, 64 & 65, PLAN 273; VILLAGE OF NIAGARA FALLS; NIAGARA FALLS; PART LOTS 43, 44, 45, PLAN 273; VILLAGE OF NIAGARA FALLS; AS IN R0712797, NIAGARA FALLS; LOTS 48, 49, & 50, PLAN 273, & PART LOT 47, PLAN 273; NIAGARA FALLS, SURFACE ONLY AS IN R0718049; NIAGARA FALLS.

PROPERTY REMARKS:

ESTATE/QUALIFIER:
FEE SIMPLE
LT CONVERSION QUALIFIED

RECENTLY:
CONSOLIDATION FROM 64349-0181, 64349-0200, 64349-0202, 64349-0203, 64349-0204, 64349-0205,
64349-0214, 64349-0215

PIN CREATION DATE:
2020/01/14

OWNERS' NAMES
LA PUE INTERNATIONAL INC.

CAPACITY SHARE
ROWN

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 2020/01/14 **						
**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: 1999/09/20 **						
SN549654	2018/04/20	TRANSFER	\$2,100,000	MALMER HOLDINGS LTD.	LA PUE INTERNATIONAL INC.	C
REMARKS: PLANNING ACT STATEMENTS.						
SN549655	2018/04/20	TRANSFER	\$250,000	NIACAN LTD.	LA PUE INTERNATIONAL INC.	C
REMARKS: PLANNING ACT STATEMENTS.						
SN549656	2018/04/20	TRANSFER	\$2,000,000	2075790 ONTARIO INC.	LA PUE INTERNATIONAL INC.	C
REMARKS: PLANNING ACT STATEMENTS.						
SN586064	2019/04/17	CHARGE		*** DELETED AGAINST THIS PROPERTY *** LA PUE INTERNATIONAL INC.	HILLMOUNT CAPITAL INC.	
SN586065	2019/04/17	NO ASSGN RENT GEN		*** DELETED AGAINST THIS PROPERTY *** LA PUE INTERNATIONAL INC.	HILLMOUNT CAPITAL INC.	
REMARKS: SN586064.						
SN590165	2019/05/30	CHARGE		*** DELETED AGAINST THIS PROPERTY *** LA PUE INTERNATIONAL INC.	CTG SOLUTIONS INC.	

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
SN613492	2019/12/12	APL CONSOLIDATE		LA PUE INTERNATIONAL INC.		C
SN616664	2020/01/15	TRANSFER OF CHARGE		*** COMPLETELY DELETED *** HILLMOUNT CAPITAL INC.	HILLMOUNT CAPITAL MORTGAGE HOLDINGS INC.	
		REMARKS: SN586064				
SN619980	2020/02/14	NO ASSGN RENT GEN		*** COMPLETELY DELETED *** HILLMOUNT CAPITAL INC.	HILLMOUNT CAPITAL MORTGAGE HOLDINGS INC.	
		REMARKS: SN586064.				
SN620981	2020/02/25	CHARGE	\$8,000,000	LA PUE INTERNATIONAL INC.	MAPLE CORP INVESTMENTS RIVERSIDE HUMBER CORP. FREEMAC TILE & GRANITE INCORPORATED ROSSI, FREDY 1620375 ONTARIO LIMITED 2205633 ONTARIO LIMITED CBB HOLDINGS INC. 672510 ONTARIO LIMITED SERICCHI, DOMINIC	C
SN620982	2020/02/25	NO ASSGN RENT GEN		LA PUE INTERNATIONAL INC.	MAPLE CORP INVESTMENTS RIVERSIDE HUMBER CORP. FREEMAC TILE & GRANITE INCORPORATED ROSSI, FREDY 1620375 ONTARIO LIMITED 2205633 ONTARIO LIMITED CBB HOLDINGS INC. 672510 ONTARIO LIMITED SERICCHI, DOMINIC	C
		REMARKS: SN620981.				
SN621017	2020/02/25	DISCH OF CHARGE		*** COMPLETELY DELETED *** HILLMOUNT CAPITAL MORTGAGE HOLDINGS INC.		
		REMARKS: SN586064.				
SN621028	2020/02/25	DISCH OF CHARGE		*** COMPLETELY DELETED *** CTG SOLUTIONS INC.		
		REMARKS: SN590165.				
SN625230	2020/04/02	NO APL ABSOLUTE		LA PUE INTERNATIONAL INC.		C
SN629148	2020/05/14	NOTICE		THE CORPORATION OF THE CITY OF NIAGARA FALLS		C

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
REMARKS: AGREEMENT						
SN629238	2020/05/14	POSTPONEMENT		MAPLE CORP INVESTMENTS RIVERSIDE HUMBER CORP. FREEMAC TILE & GRANITE INCORPORATED ROSSI, FREDY 1620375 ONTARIO LIMITED 2205633 ONTARIO LIMITED CBB HOLDINGS INC. 672510 ONTARIO LIMITED SERICCHI, DOMINIC	THE CORPORATION OF THE CITY OF NIAGARA FALLS	C
REMARKS: SN620981 TO SN629148						
SN642462	2020/09/18	NOTICE		THE CORPORATION OF THE CITY OF NIAGARA FALLS		C
REMARKS: SITE PLAN AGREEMENT						
SN643628	2020/09/28	APL DEPOSIT PLAN		*** COMPLETELY DELETED ***		
59r16793	2020/10/01	PLAN REFERENCE				C
REMARKS: SN643628.						
SN644351	2020/10/01	CHARGE	\$3,000,000	LA PUE INTERNATIONAL INC.	C.P.M.C. MARQUEZ HOLDINGS INC.	C
SN644352	2020/10/01	NO ASSGN RENT GEN		LA PUE INTERNATIONAL INC.	C.P.M.C. MARQUEZ HOLDINGS INC.	C
REMARKS: SN644351.						
SN644659	2020/10/02	CHARGE	\$2,000,000	LA PUE INTERNATIONAL INC.	THE SOVEREIGN GENERAL INSURANCE COMPANY	C
SN658896	2021/01/26	NOTICE	\$1	LA PUE INTERNATIONAL INC.	THE SOVEREIGN GENERAL INSURANCE COMPANY	C
REMARKS: SN644659						
SN664157	2021/03/05	NOTICE	\$2	LA PUE INTERNATIONAL INC.	MAPLE CORP INVESTMENTS RIVERSIDE HUMBER CORP. FREEMAC TILE & GRANITE INCORPORATED ROSSI, FREDY 1620375 ONTARIO LIMITED 2205633 ONTARIO LIMITED CBB HOLDINGS INC. 672510 ONTARIO LIMITED SERICCHI, DOMINIC	C
REMARKS: RE SN620981						

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.



PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

LAND
REGISTRY
OFFICE #59

64349-0257 (LT)

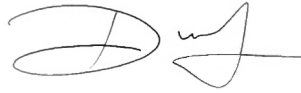
PAGE 4 OF 4
PREPARED FOR Wingchiu
ON 2021/11/19 AT 15:16:59

* 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
SN664158	2021/03/05	NOTICE REMARKS: AMENDING SN644351	\$2	LA PUE INTERNATIONAL INC.	C.P.M.C MARQUEZ HOLDINGS INC.	C
SN666113	2021/03/22	BYLAW DEEM PLNP REMARKS: BY-LAW 2020-04 TO DEEM LOTS NOT TO BE REGISTERED ON PART LOTS 43, 44, 45 AND 47 AND LOTS 46, 48-52 AND 61-65 , ON PLAN 273 FOR THE PURPOSE OF SUBSECTION 50(4) OF THE PLANNING ACT.		THE CORPORATION OF THE CITY OF NIAGARA FALLS		C
SN666891	2021/03/26	NOTICE		THE CORPORATION OF THE CITY OF NIAGARA FALLS		C

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

***THIS IS EXHIBIT "C" TO THE
AFFIDAVIT OF CECIL HAYES
SWORN BEFORE ME THIS 14TH
DAY OF JANUARY, 2025***

A handwritten signature in black ink, appearing to be the initials 'D' and 'J' with a flourish, positioned above a horizontal line.

A Commissioner Etc.



TRILEND

RESIDENTIAL • COMMERCIAL • DEVELOPMENT

Commitment Letter

September 24, 2020

RE: Refinance of 551 Ferry Street, Niagara Falls ON, L2G 1R7 and 5536 Ferry Street, Niagara Falls ON, L2G 1S4 and 5916 Allendale Avenue, Niagara Falls ON L2G 3Z3 and 5943 Stanley Ave., Niagara Falls ON, L2G 3Y2

Please be advised that the Lender is prepared to provide to the Borrower financing on the security of the Real Property in accordance with the following terms and conditions.

Subject to the discovery of undisclosed information relevant to this mortgage loan, TriLend Inc. and/or its assigns ("the Lender") is pleased to provide a conditional mortgage commitment loan offer, subject to, but not limited to conditions contained herein.

This document is a conditional Mortgage Commitment Letter, conditional on areas of concern to the Lender/Mortgagee arising during the finalization of this loan, being resolved to the satisfaction of the Lender/Mortgagee. The Mortgagee has the absolute discretion to withdraw from this conditional commitment at any time prior to funding with no penalty or recourse by the Mortgagor (s) / Guarantor (s) against the Mortgagee

Borrower: La Pue International Inc.

Guarantor: Pawel Fugiel

Lender: TriLend Inc. and its investors

Address: 551 Ferry Street, Niagara Falls ON (subject property)
5536 Ferry Street, Niagara Falls ON (subject property)
5916 Allendale Avenue, Niagara Falls ON (subject property)
5943 Stanley Ave., Niagara Falls ON (subject property)

Amount: \$3,000,000.00

Amortization: Not Applicable, interest only mortgage


Purpose of Loan: Refinance of the subject property

To provide funding for the refinance relating to the Real Property secured by a second (2nd) mortgage

Availability:

Available by way of a single advance of \$3,000,000.00 following completion of legal security in

TriLend Inc.
8830 Jane St., Vaughan, ON L4K 2M9
FSCO Brokerage #12788 FSCO Administrator #12832
CONFIDENTIAL 2020

Initials: 

support of this loan. It is anticipated that the closing will take place on or about October 1, 2020.

Term:

The loan shall be due on March 1, 2021. The Lender at its unfettered discretion may renew the mortgage for an additional 12-month term subject to a renewal fee. Any and all brokerage and legal fees associated with such renewal shall be borne by the borrower.

Interest Rate:

Twelve percent (12.00%) per annum, calculated monthly and payable interest only monthly. In this case, \$180,000.00 will be deducted from advance and will represent 6 month's payments.

The Borrower may prepay all or any part of the principal amount outstanding herein at any time upon providing the lesser of one and half (1.5) months' interest bonus, or the balance of interest, to the Lender.

The Guarantor jointly and severally unconditionally guarantees payment to the Lender of all monies hereby secured and does further agree to postpone to and in favour of the Lender all present and future debts and liabilities direct or indirect, absolute or contingent, now or at any time hereafter due or owing from the Borrower to the Guarantor.

Conditions:

i) Title to the Real Property to be satisfactory to the Lender and its solicitors in their absolute discretion;

ii) The Borrower shall provide an up to date survey of the Real Property by no later than the closing date;

iii) The Borrower shall provide its solicitor's opinion letter that all of the security documentation required hereunder has been properly authorized and executed and all of the obligations of the Borrower and the Guarantors are valid, binding and enforceable and further that all documents were executed in the office of the Borrower's solicitor and all of the parties are who they purport to be;

iv) The Borrower to provide all corporate certificates and documentation in support of the loan as may be required by the Lender's solicitors;

v) The Lender is to receive no adverse financial information with respect to the Borrower or any the Guarantors prior to closing or thereafter;

vi) The Borrower shall provide to the Lender evidence that, as of the closing date, the Real Property will comply with all provincial regulations and there will be no outstanding work orders affecting the Real Property; and

vii) The Borrower and Guarantor are to execute *all* of the security documentation provided for herein including the Lender's standard charge terms and any other documentation required by the Lender or its solicitors to further secure the repayment of the indebtedness.

viii) The Borrower is to provide the following, all of which must be satisfactory to the Lender, prior to advance of funds:

1. Verification that borrower, and guarantor if applicable, do not owe CRA taxes (personally or corporately) or HST
2. Verification of ability to pay
3. Current original appraisal addressed to TriLend Inc. reflecting a value of no less than \$20,000,000.00. TriLend Inc. will order all appraisals unless otherwise agreed or a satisfactory appraisal is already completed. If a satisfactory appraisal exists, TriLend Inc. requires a letter of transmittal addressed to "Trilend Inc. & its investors"
4. An invoice will be issued to the borrower for the full cost of the appraisal plus any applicable administration fees
5. Confirmation that TriLend Inc's first mortgage does not exceed \$8,000,000.00 and is up to date for the subject property (551 Ferry Street, 5536 Ferry Street, 5916 Allendale Avenue, and 5943 Stanley Ave., Niagara Falls ON, L2G 3Y2)
6. Satisfactory interview with the Borrower(s)/Guarantor(s) to be conducted at a mutually convenient time. (if requested)
7. A deposit of \$30,000.00.00 is due upon acceptance of this commitment. The deposit is refundable under the following provisions:
In the event that the loan transaction is not completed through no fault of the Lender, the Borrower agrees to pay on demand the Lender's legal fees and disbursements as well as forfeit the deposit (\$30,000.00).
In the event that the loan transaction is not completed through no fault of the Borrower the Lender agrees to refund the deposit (\$30,000.00) minus any reasonable expenses incurred.
8. Satisfactory Phase I / Phase II Environment report and Geotechnical report
9. Planning review to the satisfaction of TriLend Inc. to be conducted by a TriLend approved planning consultant, at the borrower's expense.
10. Identification for all borrowers, scanned not faxed, front and back and clearly presented
11. Letter of direction for the Broker fee (if applicable)
12. Proof of fire insurance
13. Client's Solicitor details
14. SIGNED Disclosure to borrower, Amortization Schedule, and Consent Form to be provided by Broker prior to Solicitor Instruction
15. Broker to provide a satisfactory investor/lender disclosure for signature prior to close addressed to 'TriLend Inc. and its Investors'
16. All documentation is to be to the complete satisfaction of TriLend Inc. and its Solicitor.
17. This Commitment Letter may be executed in counterparts and all such counterparts shall for all purposes constitute one agreement binding all of the parties hereto, notwithstanding that all parties are not signatory to the same counterpart.
18. Title insurance at the expense of the Borrower;
19. The Borrower(s) and/or Guarantor(s) to have Independent Legal Representation
20. Borrower(s) and/or Guarantor(s) hereby acknowledge and direct TriLend Inc. or its designates to obtain all required information from third parties to facilitate the closing of this loan.

ix) Any other reasonable documentation or security requested by TriLend Inc. not specified in this commitment.

Security:

The liability and indebtedness of the Borrower under the Loan and this Commitment shall be evidenced, governed and secured, as the case may be, by the following documents (the "**Security Documents**") completed in form and manner satisfactory to the Lender and its solicitors:

- i) 2nd mortgage against the Real Property in the amount of \$3,000,000.00
- ii) Second position General Assignment of Rents pledging the rental income of the Real Property as additional security for the repayment of the mortgage indebtedness; (if applicable)
- iii) General Security Agreement in favour of the Lender registered under the Personal Property Security Act providing a first position floating charge over the assets of the Borrower; (if applicable)
- iv) Assignment of Insurance with 2nd Loss Payable to the Lender;
- v) All supporting certificates, opinions and other documentation as the Lender or its solicitors may reasonably require.

Events of Default:

All of the standard Lender events of default shall be deemed included in the security documentation including but not limited to the following:

- a) the Borrower ceasing to carry on all or a substantial part of its business;
- b) the winding up, liquidation, bankruptcy, assignment into bankruptcy, or receivership of the Borrower or the levying of distress against the Borrower;
- c) re-organization, amalgamation, or transfer of ownership of the Borrower or the Real Property without the prior written consent of the Lender;
- d) failure of the Borrower to maintain adequate insurance coverage against the Real Property including but not limited to insurance for the renovation work to be performed;
- e) failure of the Borrower to repair the Real Property or any other assets secured under this commitment following notice from the Borrower;
- f) failure of the Borrower to keep the Real Property free of environmental contaminants;
- g) failure of the Borrower to pay real property taxes as they fall due; or

- h) failure of the Borrower to obtain any municipal approval required for the purchaser's intended development.
- i) Trilend Inc. shall charge a three (3) month bonus upon any event default including but not limited to non-renewal of the mortgage

The occurrence of any event of default under any security document referred to in this commitment letter shall be an event of default under all other security documents referred to herein.

Insurance:

The Borrower shall provide proof of insurance by a copy of the insurance policy or a certificate thereof confirmed by the insuring company, satisfactory to the Lender and subject to review by the Lender's insurance consultant. This letter of insurance must specifically provide for the insurance of the premises during the Borrower's intended renovation period.

Financial Statements:

If requested by the Lender, the Borrower is to provide financial statements within 120 days of its fiscal year end.

Income and Operating Statements:

If requested by the Lender, the Borrower is to provide annual income and operating statements for the Real Property and annual financial statements for the Guarantors.

Corporate Documentation:

The Borrower will provide such corporate documentation in support of the loan as may be required by the Lender's solicitors as they relate to this project.

Zoning:

The Borrower shall provide evidence satisfactory to the Lender to confirm that the Real Property complies with all applicable zoning and building by-laws.

Expropriation:

The Borrower shall acknowledge that the proceeds of any expropriation of all or any part of the Real Property shall be paid to the Lender at the option of the Lender subject to the rights of the first mortgage holder.

Access to Real Property:

The Lender shall have access to the Real Property at any time during the loan term with no less than 48 hours written notice to the borrower.

Representations:

The Borrower and the Guarantor represent and warrant that all statements made hereunder are

completely accurate and in the event of any discrepancy, at the option of the Lender, this commitment letter shall become null and void.

Solicitors:

Our solicitors for the purpose of this mortgage transaction are Schneider Ruggiero Spencer Milburn LLP, or such other solicitors as the Lender may designate.

Fees:

By executing this commitment letter, the Borrower and the Guarantor unconditionally undertake to pay all fees and expenses (including legal fees) incurred or to be incurred in connection with this loan whether or not the loan is completed, and any funds are ever advanced hereunder.

The Borrower shall pay a Lender Fee of \$90,000.00. Said fee shall be deemed to have been fully earned by the Lender upon acceptance of this commitment letter. The borrower hereby irrevocably directs the Lenders solicitor to pay from the closing proceeds, any outstanding balance of the subject fees. In the event that the loan transaction is not completed through no fault of the Lender, the Borrower agrees to pay on demand the full amount of the Lender Fee.

Independent Legal Advice:

The Borrower and the Guarantor acknowledge and agree that they have received independent legal advice prior to executing this Commitment and confirm that they have not looked to the Lender or the Lender's solicitor for any legal advice in connection with this transaction.

The Lender shall appoint a solicitor of its choosing. Any and all legal fees plus disbursement associated with the loan closing, ongoing monitoring, and repayment and discharge of this loan shall be borne by the Borrower.

Acceptance:

The Borrower and the Guarantor must execute this commitment prior to 5:00 p.m. on September 24, 2020 or at the option of the Lender, the commitment shall become null and void and of no further force or effect.

Cancellation:

This commitment, once accepted, shall expire on October 5, 2020 and unless an advance of loan proceeds is made on or before that date, the commitment may be cancelled at Lender's option.

Survival of Representations and Warranties:

The representations, warranties, covenants and obligations herein set out shall not merge upon the execution and registration of the security documents and the advance of mortgage monies hereunder but shall survive until all obligations under this commitment, the mortgage as registered and any other security document executed in accordance herewith have been fully performed and all amounts outstanding to the Lender hereunder have been paid in full.

Costs:

The Borrower and the Guarantor shall be unconditionally responsible to pay all costs including but not limited to legal, appraisal, insurance consultants, environmental inspections, and any other costs incurred or to be incurred by the Lender in connection with this loan.

Authorization:

The Borrower for good and valuable consideration authorizes the Lender to accept telecopier communications on behalf of the Borrower as full and sufficient authority to act in accordance with communications as received by the Lender from the Borrower.

The Borrower shall be bound by all such telecopier communications from itself in the same manner and extent as if such communications were originally handwritten and signed by the Borrower and the Borrower shall hold the Lender at all times fully indemnified from all claims and demands in respect of all such instructions, in the event such telex, and telecopier communications, were made without authority or otherwise.

Neither anything contained herein nor the execution and registration of any security documents shall obligate the Lender to advance any monies hereunder. In addition, the advance of part or parts of the monies herein shall not obligate the Lender to advance any unadvanced portion thereof.

Yours very truly,

Cinzia Sorrenti
TriLend Inc.

Acknowledgement

We hereby acknowledge the terms and conditions set out above and understand and agree that this Commitment Letter is subject to Lender Due Diligence. Until such a time that the Lender formally acknowledges, in writing to the Borrower that the Lender is satisfied with the outcome of its due diligence, the Lender reserves the right to amend, change, or decline this Loan. All parties hereto shall hold in strict confidence and shall not make any disclosure to any third party any of the terms and conditions of this Commitment letter.

If you are in agreement with the above terms, please indicate such agreement by signing and forwarding to us a copy of the Commitment Letter together with a \$30,000.00 Cheque made payable to TRILEND INC. as partial payment of the Lender fee. The Lender Fee shall be deemed to be fully earned upon acceptance of this Commitment Letter.

We the undersigned do hereby accept the loan and terms above and authorize you to instruct your solicitors to prepare the necessary documentation. We hereby submit with this signed Commitment a cheque in the amount of \$30,000.00 payable to TriLend Inc In the event that the loan is advanced in accordance with the terms of this Commitment, the \$30,000.00 will be credited to the Borrower at the time of the first advance. In the event that the Borrower defaults in performing the Borrower's obligations herein contained, the said sum shall be forfeited by the Borrower to the Lender as liquidated damages and not as a penalty.

The Borrower and Guarantor acknowledge and agree that in consideration of the Lender furnishing this Commitment and providing the funding as contemplated hereunder, the Borrower

TriLend Inc.
8830 Jane St., Vaughan, ON L4K 2M9
FSCO Brokerage #12788 FSCO Administrator #12832
CONFIDENTIAL 2020

Initials: PF

and the Guarantor shall pay the following fees at the times and in the amounts as follows:

- a) lender fee to TriLend Inc. in the amount of 3.00% of the loan amount herein;
- b) legal fees to Schneider Ruggiero Spencer Milburn LLP, inclusive of disbursements, plus HST for preparation of the mortgage commitment and legal fees for the preparation and registration of security to secure this loan transaction

DATED this 25 day of September, 2020.

LA PUE INTERNATIONAL INC.

Per: 

Name: Pawel Fugiel

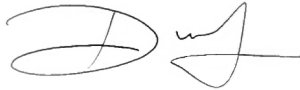
Title:

I have the authority to bind the corporation

Per: 

Name: Pawel Fugiel (Guarantor)

***THIS IS EXHIBIT "D" TO THE
AFFIDAVIT OF CECIL HAYES
SWORN BEFORE ME THIS 14TH
DAY OF JANUARY, 2025***

A handwritten signature in black ink, appearing to be 'D J', written over a horizontal line.

A Commissioner Etc.

Properties

PIN 64349 - 0257 LT *Interest/Estate* Fee Simple
Description LOTS 46, 51, 52, 61, 62, 63, 64 & 65, PLAN 273; VILLAGE OF NIAGARA FALLS;
 NIAGARA FALLS;PART LOTS 43, 44, 45, PLAN 273; VILLAGE OF NIAGARA FALLS; AS
 IN RO712797, NIAGARA FALLS;LOTS 48, 49,& 50, PLAN 273, & PART LOT 47, PLAN
 273; NIAGARA FALLS, SURFACE ONLY AS IN RO718049; NIAGARA FALLS.
Address NIAGARA FALLS

Chargor(s)

The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.

Name LA PUE INTERNATIONAL INC.
Address for Service 6158 Allendale Avenue
 Niagara Falls, ON
 L2G 0A5

I, Pawel Fugiel, have the authority to bind the corporation.

This document is not authorized under Power of Attorney by this party.

Chargee(s)*Capacity**Share*

Name C.P.M.C. MARQUEZ HOLDINGS INC.
Address for Service 8830 Jane Street
 Vaughan ON
 L4K 2M9

Statements

Schedule: See Schedules

Provisions

Principal \$3,000,000.00 *Currency* CDN
Calculation Period INTEREST ONLY PAYMENTS
Balance Due Date 2021/03/01
Interest Rate 12.0% per annum
Payments
Interest Adjustment Date 2020 10 01
Payment Date see Additional Provisions
First Payment Date 2020 11 01
Last Payment Date 2021 03 01
Standard Charge Terms 200033
Insurance Amount Full insurable value
Guarantor PAWEL FUGIEL

Additional Provisions

On the advance date, the Chargee shall hold back the sum of \$150,000.00 representing interest payable to term.

Signed By

Davide Joseph Di Iulio 1000-120 Adelaide St. W. acting for Signed 2020 10 01
 Toronto Chargor(s)
 M5H 3V1

Tel 416-363-2211

Fax 416-363-0645

I have the authority to sign and register the document on behalf of the Chargor(s).

Submitted By

Schneider Ruggiero Spencer Milburn LLP 1000-120 Adelaide St. W. 2020 10 01
 Toronto
 M5H 3V1

Tel 416-363-2211

Submitted By

Fax 416-363-0645

Fees/Taxes/Payment

Statutory Registration Fee	\$65.05
Total Paid	\$65.05

File Number

Chargor Client File Number : 42123



Schedule A

Administration Fees:

The mortgagor shall pay to the Mortgagee an Administration Fee of \$500.00 for each occurrence of any of the following events.

- Late payment.
- Cheque dishonored for any reason.
- Failure to provide proof of payment of Realty taxes.
- Failure to provide proof of payment of Insurance coverage on an annual basis.
- Failure to provide post-dated cheques.
- Failure to notify mortgagee of registration on lien by the Condominium Corporation for common maintenance arrears.
- Failure to notify mortgagee of registration of lien with CRA arrears.
- Requests for any mortgage information statements.
- Dealing with any default insurance notices.

Late Payment

In Event the loan is not repaid at the time or times provided herein, the Chargee will not be required to accept payment of the principal monies without first receiving three (3) months interest bonus in advance of the principal monies.

Additionally

There will be a \$2,000.00 (two thousand dollar) Administration fee payable to TriLend Inc. if any mortgages on the property fall into more than sixty (60) days arrears. Such administration fees will be added to the principal amount outstanding if the mortgage arrears are not paid within 5 days of demand of payment for the same. In the event of a further occurrence as set out herein, the penalty shall increase by a further sum of \$50.00 and this shall be on a cumulative basis.

There will be a \$2,000.00 (two thousand dollar) Administration fee payable to TriLend Inc. if insurance on the property is cancelled and not reinstated five (5) days prior to the cancellation date.

There will also be a \$2,000.00 (two thousand dollar) Administration fee payable to TriLend Inc. if property taxes fall into arrears greater than one (1) year and are not paid within thirty (30) days of the mortgagee's request to pay said arrears.

TriLend Inc.
8830 Jane St., Vaughan, ON L4K 2M9
(905) 851-5565 Funds@trilend.com
FSCO Broker #12788 FSCO Administrator # 12832
CONFIDENTIAL 2020



Upon renewal of any mortgage term a minimal renewal fee equal to the lender fee charged at time of original lending. If a signed Renewal is not received within thirty (30) days after maturity or if the mortgagee does not receive written notification within thirty (30) days after maturity that the mortgagor intends not to renew, then the mortgage is considered automatically renewed and the renewal fee is payable regardless of receiving a signed Renewal.

A \$500.00 fee will be payable for any mortgage statement for discharge purposes, not including the mortgagee's solicitor discharge fee.

Disposition of the Mortgage Lands

Provided that if the mortgagor sells, transfers, conveys or otherwise disposes of the subject property, or any interest therein, then all amounts, whether principal interest or otherwise that may be owing hereunder, including administration fees and bonuses, shall be immediately due and payable at the sole option of the mortgagee.

Post Dated Cheques

The mortgagor agrees to provide to TriLend Inc. a series of twelve (12) post-dated cheques on or before the closing date of the mortgage and further series of post-dated cheques on or before each anniversary date / renewal of the within mortgage. Failure to provide such cheques shall constitute a default under the mortgage at the sole option of the mortgagee.

Discharge

Provided that when a discharge of this mortgage is required, then unless otherwise stated on the discharge statement, the Mortgagee's Solicitor will prepare the Discharge Statement for execution by the Mortgagee, the cost of which will be the mortgagor's expense.

Time of Payment

Any payment that is received at the Mortgagee's office after 1:00 pm Eastern Standard Time on any date shall be deemed, for the purpose of calculation of interest, to have been made on the next business day.



Default of Encumbrances

Default under any terms or covenants contained in any encumbrances registered in priority or subsequent to this Mortgage shall constitute default under the herein Mortgage at the sole option of TriLend.

Principal Residence

In the event that the subject property is not used as the principal residence of the mortgagor, then all amounts, whether principal, interest or otherwise that may owed, hereunder, including Administration fees and bonuses, shall be immediately due and payable at the sole option of TriLend.

Encumbrances

Provided further that by signing this document, you are agreeing that the Mortgagor(s) shall not give cause for prior registered charge mortgage of Land(s) registered on the property described herein to be transferred or assigned to a third party, and if such should occur, this mortgage shall deem to be immediately in default with all monies to become due and payable in full with all penalties and costs forthwith unless expressly approved in writing between the Mortgagor(s) and the Mortgagee(s).
Provided further that by signing this document, the Mortgagor(s) also agree to keep the lands described herein free and clear of all encumbrances, Liens, Mortgages, Security Interests and other financing agreements of any kind subordinate to our interests in the property unless expressly approved in writing between the Mortgagor(s) and TriLend Inc.

Bankruptcy and Insolvency Act

The Chargor/Guarantor represents and warrants that she/he is not an "undischarged bankrupt" as defined in the *Bankruptcy and Insolvency Act*, in the event that the Chargor/Guarantor is an "Undischarged Bankrupt", then all the amounts, whether principal, interest or otherwise that may be owing hereunder including administration fees and bonuses together with a one (1) month interest payment thereon shall be immediately due and payable at the sole option of the Charge.

Prepayment Provisions

Provided that the Chargor,, when not in default hereunder, shall have the privilege of prepaying all or any part of the principal sum hereby secured upon payment of three months interest by way of bonus.



Servicing Fee

In the event that TriLend Inc. called upon to pay any payment in order to protect its security position, including but not limited to the payment of realty taxes, insurance premiums, condominium common expenses, principal, interest or costs under a prior mortgage, it is agreed that such payment shall bear interest at eighteen (18%) per cent per annum, calculated and compounded monthly and that there shall be a service charge of not less than \$300.00 for making such payment or payments.

Rental Assignments

On all mortgages, where the subject property is non-owner occupied, an Assignment of Rents and Leases are to be provided. In the event the Lender or its agent invokes the Rent Assignment, a service charge in the sum of TWO HUNDRED DOLLARS (\$200.00) per each month, will be added to the mortgage and payable to Lender.

Additional Fees

The Chargor/Mortgagor agrees that should TriLend Inc. issue either a Notice of sale or Statement of Claims, TriLend, at its option, shall be entitled to charge an additional fee equivalent to three (3) months interest. The chargor/ Mortgagor agree that should the mortgage not be renewed or discharged on the maturity date that TriLend, at its option shall be entitled to charge an additional fee equivalent to three (3) months interest.

Alterations

The Chargor will not make or permit to be made, any structural alterations or additions to the land or to the building or structure thereon or change or permit to be changed the use of the premises without written consent of the Lender.

Severability of any Invalid Provisions

In the event that any covenant term or provision contained in the charge is held to be invalid, illegal or unenforceable in whole or in part then, the validity, legality and enforceability of the remaining covenants, provisions and terms shall continue in full force and effect. All covenants, provisions and terms hereof are declared to be separate and distinct covenants, provisions or terms as the case may be.




TRILEND

Maintenance Fee

TriLend shall be entitled to a fee of \$100.00 per day for administering the maintenance and security of any property in its possession.

Chargor


(Signature)

Date

20 September 2020

Chargor

Fuziel Power
(Print Name)

SCHEDULE TO THE ATTACHED CHARGE/MORTGAGE

RECITALS

The Lender has agreed to make a loan in favour of the Borrower upon the terms and conditions more particularly contained herein.

The Borrower is the registered owner of the lands and premises described in the electronic Charge to which this schedule is attached.

This Charge is given by the Borrower to the Lender as continuing security for the repayment by the Borrower to the Lender of such loan and the performance by the Borrower of its obligations as more particularly described herein.

ARTICLE 1 - DEFINITIONS

1.1 For the purposes of this Charge the following definitions will apply:

"Applicable Laws" means, at any time, in respect of any Person, property, transaction, event or other matter, as applicable, all then current laws, rules, statutes, regulations, treaties, orders, judgments and decrees and all official directives, rules, guidelines, orders, policies, decisions and other requirements of any Governmental Authority (whether or not having the force of law) (collectively, the "Law") relating or applicable to such Person, property, transaction, event or other matter and shall also include any interpretation of the Law or any part of the Law by any Person having jurisdiction over it or charged with its administration or interpretation;

"Applicable Rate" means the interest rate set out in the electronic Charge to which this schedule is attached or, in the alternative, the interest rate set out in the Commitment;

"Bills" has the meaning ascribed thereto in Section 10.1(a);

"Borrower" means the party identified as "Chargor" set out in the electronic Charge to which this schedule is attached and its successors and assigns;

"Business Day" means a day on which the Lender is open for business but specifically excluding Saturdays, Sundays or statutory holidays pursuant to the laws of Canada or the Province of Ontario and "Business Days" means more than one Business Day;

"Charge" means this charge/mortgage of land and all instruments supplemental hereto or in amendment, renewal, extension, restatement, replacement or confirmation hereof;

"Charged Premises" means, collectively, the Lands and the Improvements;

"Commitment" means the letter of commitment between the Borrower and the Lender, as the same has been or may be amended, restated, supplemented, renewed, extended or superseded from time to time;

"Environmental Approvals" has the meaning ascribed to it in Section 12.1 hereof;

"Environmental Laws" or "Environmental Law" has the meaning ascribed to them in Section 12.1 hereof;

"Event of Default" has the meaning ascribed thereto in Section 18.1 hereof;

"Event of Insolvency" means the occurrence of any one of the following events:

- (a) If the Borrower, or the Guarantor(s), shall, other than as expressly permitted hereby:
 - (i) be wound up, dissolved or liquidated, whether pursuant to the provisions of the laws of the Province of Ontario or the federal laws of Canada applicable therein, or any other law or otherwise, or becomes subject to the provisions of the *Winding-Up and Restructuring Act* (Canada), or has its existence terminated or has any resolution passed therefor; or
 - (ii) makes a general assignment for the benefit of its creditors or files a proposal or a notice of intention to make a proposal under the *Bankruptcy and Insolvency Act* (Canada), shall otherwise acknowledge its insolvency or shall be declared or become bankrupt or insolvent; or
 - (iii) proposes a compromise or arrangement or otherwise brings proceedings under or becomes subject to the provisions of the *Companies' Creditors Arrangement Act* (Canada) or shall file any petition or answer seeking any re-organization, arrangement, composition, re-adjustment, liquidation, dissolution or any other relief for itself under, or in any way takes the benefit of, the *Bankruptcy and Insolvency Act* (Canada) or any other present or future law relative to bankruptcy, insolvency or other relief for debtors or for or against the benefit of creditors; or
 - (iv) be unable, by reason of insolvency or similar circumstances, to pay its trade creditors generally, within one hundred and twenty (120) days of the rendering of trade accounts or admit its inability to pay its debts or perform its obligations as they become due; or
- (b) If a court of competent jurisdiction shall enter an order, judgment or decree against the Borrower in respect of any re-organization, arrangement, composition, re-adjustment, liquidation, dissolution, winding-up, termination of existence, declaration of bankruptcy or insolvency, or similar relief under any present or future law relative to bankruptcy, insolvency or other relief for debtors or for or against the benefit of creditors, or the Borrower shall acquiesce in the entry of such order, judgment or decree, unless the Borrower is also proceeding forthwith to diligently and in good faith contest the same and, provided that none of the Charged Premises, the Charge or the Security, the value of the Charged Premises or the operation thereof, are adversely affected and there is no prejudice to the Lender in the Lender's reasonable opinion, and such order, judgement or decree is vacated or permanently stayed within fifteen (15) days of its making; or
- (c) If any trustee in bankruptcy, receiver, receiver and manager, monitor or liquidator or any other officer with similar powers shall

be appointed for the Charged Premises or any portion thereof, or for the Borrower or the Guarantor(s), or for all or any substantial part of its assets or its interest in the Charged Premises with the consent or acquiescence of the Borrower; or

- (d) If, other than as expressly permitted hereby, an encumbrancer or the holder of any lien or charge or any other creditor takes possession of the Charged Premises or the Borrower's interest in the Charged Premises, or any part thereof, or if a distress, execution, garnishment or any similar process is levied or enforced upon or against the same;

"Governmental Authority" means any federal, provincial, territorial or municipal government and any executive, judicial, regulatory or administrative functions of, or pertaining to, government (including, without limitation, all boards, commissions, agencies, departments and ministries);

"Guarantor(s)" means any Person from time to time guaranteeing the Indebtedness;

"Hazardous Substance" has the meaning ascribed to it in Section 12.1 hereof;

"Improvements" means the buildings, erections, structures, fixed machinery, fixed equipment, plant, and improvements now located on the Lands and all appurtenances pertaining thereto, together with all other buildings, structures, fixtures and improvements hereafter located from time to time in, on or under the Lands and all personal property, equipment and chattels now or hereafter affixed to the Lands or to such buildings, erections, structures, fixed machinery, fixed equipment, plant, and improvements owned by the Borrower;

"Indebtedness" means, collectively, the Principal Sum, any debts, liabilities, obligations, covenants and duties owing by the Borrower to the Lender of any kind or nature, present or future and arising under, pursuant to or in connection with this Charge, the Security or any other document delivered pursuant to or in connection herewith or therewith, whether or not evidenced by any note, guarantee or other instrument, whether or not for the payment of money, whether arising by reason of an extension of credit, loan, guarantee, indemnification, or in any other manner, whether direct or indirect (including those acquired by assignment), absolute or contingent, due or to become due, now existing or hereafter arising and however acquired and in all cases arising under, pursuant to or in connection with this Charge, the Security or any other document delivered pursuant to or in connection herewith or therewith. The term includes, without limitation, all interest, yield maintenance, charges, expenses, fees, including all processing and commitment fees and all legal fees and disbursements (in each case whether or not allowed), and any other sum chargeable to the Borrower under, pursuant to or in connection with this Charge, the Security or any other document delivered pursuant to or in connection herewith or therewith;

"Inspections" has the meaning ascribed to it in Section 12.1 hereof;

"Interest Adjustment Date" means the interest adjustment date set by the Lender for the purposes of setting a payment schedule;

"Lands" means the lands and premises described in the electronic Charge to which this schedule is attached, including all tenements, hereditaments and appurtenances belonging or in any way appertaining thereto, and the reversion or reversions, remainder and remainders, rents, issues and profits therefrom, and all the estate, right, title, interest, property claim and demand whatsoever of the Borrower of, in and to the same and of, in and to every part thereof;

"Lease Benefits" means the benefit of all covenants and obligations of tenants, licencees or occupants contained in any of the Leases, including, without limitation, all rights and benefits of any guarantees thereof, the right to demand, sue for, collect, recover and receive all Rents, to enforce the landlord's rights under any Lease and generally any collateral advantage or benefit to be derived from the Leases or any of them;

"Lease Rights" means, collectively, the Leases, the Rents and the Lease Benefits;

"Leases" means all present and future leases, subleases, licences, agreements to lease, agreements to sublease, options to lease or sublease, rights of renewal or other agreements by which the Borrower, or any predecessor or successor in title thereto, has granted or will grant the right to use or occupy all or part or parts of the Charged Premises, including all agreements collateral thereto, but which, for the purpose of this definition does not include the Property Lease, and "Lease" means any one of them;

"Lender" means the party identified as "Chargee" in the electronic Charge to which this schedule is attached, and its successors and assigns;

"Loan" means the loan extended or to be extended by the Lender to the Borrower in the principal amount set out in the electronic Charge to which this schedule is attached and secured by this Charge and other security given to the Lender by the Borrower and the Guarantor(s), if any;

"Major Tenant Leases" means any agreements to lease, offers to lease or leases, subleases or occupancy agreements in respect of premises situate on the Charged Premises and which are determined by the Lender in its discretion to be material to the Charged Premises and the extension and maintenance of the Loan;

"Maturity Date" means, subject to early maturity by reason of the occurrence of an Event of Default and the acceleration of repayment at the option of the Lender, the balance due date set out in the electronic Charge to which this schedule is attached;

"Permitted Encumbrances" means the items more particularly set out in Schedule 'A' hereto together with such other encumbrances, liens and interests affecting the Charged Premises which are acceptable to the Lender in its sole discretion. If no Schedule 'A' is attached hereto, there are no permitted encumbrances;

"Person" means any natural person, sole proprietorship, partnership, syndicate, trust, joint venture, Governmental Authority or any incorporated or unincorporated or entity or association of any nature;

"Principal" or "Principal Sum" means the principal amount of the Loan owing from time to time by the Borrower to the Lender;

"Rents" means all rents, issues and profits now due or to become due under or derived from the Leases;

"Security" means, collectively, all other or additional security, other than this Charge, given by the Borrower or others to the Lender as security for the Loan;

"Taxes" means for each year during the term of this Charge all real property taxes, business taxes, rates, duties, charges, assessments, impositions, taxes, levies and charges for local improvements or otherwise, imposed upon or assessed against the Charged Premises or any part or parts thereof by any Governmental Authority including, without limitation, school boards, and paid or payable by the Borrower or any tenant of the Charged Premises, but shall not include franchise, capital levy or transfer tax or any income, excess profits or revenue tax or any other tax or impost of a personal nature charged or levied upon the Borrower or any tenant of the Charged Premises. If the system of real property taxation or business shall be altered or varied and any new tax shall be levied or imposed on all or any portion of the Charged Premises or the revenues therefrom in substitution for, or in addition to, taxes presently levied or imposed, then any such new tax or levy shall be deemed to be and shall be included herein; and

"Term" means the term of this Charge and being a period which expires on the Maturity Date.

ARTICLE 2 - CHARGING PROVISIONS

- 2.1 Now therefore witnesseth that the Borrower, being the registered owner of a freehold estate in fee simple in possession of the Lands, in consideration of the Loan advanced or to be advanced by the Lender to the Borrower or for its benefit, and as security for the repayment of all Indebtedness and the performance of the obligations of the Borrower hereunder, does hereby grant, mortgage, charge and create a security interest in, to and in favour of the Lender all of its estate, right, title and interest in and to the Charged Premises and covenants and agrees to and with the Lender as hereinafter provided.
- 2.2 The last day of any term reserved by any lease or sublease, verbal or written, or any agreement therefor, now held or hereafter acquired by the Borrower, as lessee, and forming part of the Charged Premises is hereby excepted out of the mortgage, charge, assignment and security interest hereby created or granted or any instrument in implementations hereof, and the same shall be deemed to be a charge by way of sublease. As further security for the payment of the Indebtedness, the Borrower agrees that it will stand possessed of the reversion of such last day of the term and shall hold it in trust for the Lender for the purpose of this Charge and to assign and dispose thereof, without cost or expense to the Lender, in such manner as the Lender shall by notice in writing, for such purpose, direct. Upon any sale, assignment, sublease or other disposition of such leasehold interest or any part thereof, the Lender, for the purpose of vesting the aforesaid one day residue of such term or renewal thereof in any purchaser, assignee, sublessee or other acquirer thereof, shall be entitled by deed or writing to appoint such party or parties as a new trustee or trustees of the aforesaid residue of any such term or renewal thereof in the place of the Borrower and to vest the same accordingly in the new trustee or trustees so appointed freed and discharged from any obligation respecting the same.

ARTICLE 3 - REPAYMENT AND INTEREST

- 3.1 The Borrower covenants to pay to or to the order of the Lender at its offices as set out in Article 23 hereof or at such other address as the Lender may from time to time designate in writing, without set-off, compensation or deduction, and without deduction for bank service or any other charges, the Principal Sum together with all other Indebtedness with interest thereon at the Applicable Rate, as well after as before maturity and both before and after default, demand and judgment. Such interest at the Applicable Rate shall be computed from the date of advance to become due and be paid initially on the Interest Adjustment Date and thereafter to be paid in equal instalments of interest, commencing on the first payment date set out in the Commitment or in the electronic Charge to which this schedule is attached and continuing each month during the Term, to and including the last payment date set out in the Commitment or in the electronic Charge to which this schedule is attached, each such instalment to be in the amount stipulated in the Commitment or in the electronic Charge to which this schedule is attached and the last instalment, in the amount of the then remaining balance of the Principal Sum, other Indebtedness and accrued interest thereon, to be paid on the Maturity Date.
- 3.2 The Borrower acknowledges and agrees that monthly instalments for interest described in Section 3.1 together with all payments for Taxes as set out in Section 10.1 hereof must pass through a single bank account on which the Borrower will have provided post-dated cheques (as required by the Lender) or have pre-authorized the Lender to withdraw the monthly payments under this Charge plus any Taxes payable in respect of the Charged Premises if not otherwise paid by the Borrower. In addition, the Borrower must maintain at all times in such account a minimum balance equal to the sum of the monthly payment of principal, interest and Taxes (as such Taxes become due).
- 3.3 It is hereby agreed that if default should occur in payment of any sum due at the time appointed for payment thereof as herein provided, compound interest at the Applicable Rate shall be payable on the sum in arrears from time to time, as well after as before maturity, and if interest as compounded is not paid within one (1) month from the time of default, a rest shall be made, and compound interest at the Applicable Rate shall be payable on the aggregate then due, as well after as before maturity, both before and after default, demand and judgement and so on from time to time and all such interest and compound interest shall be a charge on the Charged Premises.
- 3.4 All interest in arrears shall be treated (as to payment of interest thereon) as Principal and shall bear compound interest, as well after as before maturity, default and judgement as provided in Section 3.3 hereof.
- 3.5 The Borrower will pay interest, including interest on overdue interest, at the Applicable Rate on any arrears of instalments of interest, and any payment by the Borrower shall be applied by the Lender first on account of interest and then on account of principal.
- 3.6 All payments of principal and interest pursuant to Section 3.1 shall be made to and received by the Lender prior to 3:00 p.m. on the date due, failing which such payment shall be deemed received on the next succeeding Business Day provided that in such case, such extension of time shall be included for the purpose of computation for interest; provided further that in the event any payment is due on a day which is not a Business Day, it shall be payable prior to 3:00 p.m. on the next succeeding Business Day and provided such payment is received by such date and such time, then, save in respect of repayment of the Indebtedness at the Maturity Date where interest shall be charged for extensions to the next succeeding Business Day, interest shall not be charged for such extension.

ARTICLE 4 - CRIMINAL RATE OF INTEREST

- 4.1 Notwithstanding any other provisions of this Charge, in no event shall the aggregate "interest" (as defined in Section 347 of the Criminal Code, (Canada), as the same shall be amended, replaced or re-enacted from time to time) payable to the Lender under this Charge exceed the effective annual rate of interest on the "credit advances" (as defined in that section) under this Charge lawfully permitted under that section and, if any payment, collection or demand pursuant to this Charge in respect of "interest" (as defined in that section) is determined to be contrary to the provisions of that section, such payment, collection, or demand shall be deemed to have been made by mutual mistake of the Lender and the Borrower and the amount of such payment or collection in excess of that lawfully permitted shall be refunded by the Lender to the Borrower.

ARTICLE 5 - INTEREST ACT (CANADA)

- 5.1 For the purposes of this Charge, whenever interest is payable or stated not on the basis of a yearly rate, such rate of interest may be determined by multiplying the Applicable Rate by a fraction the numerator of which is the actual number of days in the calendar year in which the same is to be ascertained and the denominator of which is the number of days in the period for which such rate is determined to be payable.
- 5.2 All calculations of interest or fees under this Charge are to be made on the basis of the stated rates set out herein and not on any basis which gives effect to the principle of deemed re-investment.

ARTICLE 6 - PREPAYMENT

- 6.1 Subject to prepayment provisions provided for in the Commitment, if any, or early maturity by reason of the acceleration of the repayment of the Indebtedness at the option of the Lender upon the occurrence of an Event of Default, the Borrower shall not be entitled to prepay all or any portion of the Principal under this Charge prior to the Maturity Date.

ARTICLE 7 - NO OBLIGATION TO ADVANCE

- 7.1 The Borrower acknowledges and agrees that the Lender is not bound to make any advance of any of the Principal Sum or any unadvanced portion thereof by reason of the registration of this Charge in any place or registry office or the advance of any part of the said Principal Sum, it being acknowledged by the Borrower that any advance hereunder is subject, inter alia, to: (i) the representations and warranties contained herein being true and correct as of the date of any advance of the Loan; (ii) no default having occurred hereunder, under any of the Security or under the Commitment; and (iii) the conditions precedent contained in the Commitment having been satisfied.
- 7.2 In the event this Charge is registered and either no advance whatsoever is made hereunder by the Lender or the Borrower's ability to draw down funds is terminated by the Lender before any funds are advanced, the Lender will, at the expense of the Borrower and upon payment of all monies, costs, fees and disbursements then due to the Lender, promptly upon request by the Borrower execute and deliver to the Borrower, or any agent thereof, registrable discharges of this Charge and of the Security, for use in every registry office where they or notices thereof have been recorded or filed; provided that the Borrower acknowledges that this Section 7.2 shall be of no effect once any advance of the funds is made hereunder by the Lender.

ARTICLE 8 - REPRESENTATIONS AND WARRANTIES

- 8.1 The Borrower represents and warrants in favour of the Lender, acknowledging that the Lender is relying on such representations and warranties in extending the Loan:
- (a) The Borrower is a corporation duly organized, validly subsisting and in good standing under the laws of its incorporating jurisdiction and has all necessary corporate power and authority to enter into this Charge and the Security and to perform or cause to be performed its obligations contained herein and therein, to own and operate the Charged Premises and to carry on its business pertaining thereto as presently carried on;
- (b) There are no provisions in the articles or bylaws of the Borrower or any unanimous shareholders agreement of or with respect to the Borrower or to which the Borrower is a party which restrict, limit or regulate in any way the powers of the Borrower to borrow on credit or to issue, sell or pledge any of the property or assets now or hereafter owned by it to secure its debt obligations, save and except any provisions which have been complied with. No steps or proceedings have been taken or are pending to amend or supersede the articles or bylaws of the Borrower in a manner which would impair or limit the Borrower's ability to perform its obligations hereunder or under the Security;
- (c) The Borrower has taken all necessary corporate action to authorize the execution and delivery of this Charge and the Security, and performance of the provisions of each in accordance with its terms;
- (d) The authorization, creation, execution or delivery of this Charge or the Security or the Borrower's performance of its obligations hereunder or thereunder does not require any approval or consent of any Governmental Authority having jurisdiction nor will any such action be in conflict with or contravene any of the Borrower's articles, bylaws, unanimous shareholders agreement, if any, or resolutions of directors or shareholders, or the provisions of any indenture, instrument, agreement or undertaking to which the Borrower is a party or by which it or its properties or assets are bound, or result in the creation, imposition or crystallization of any hypothec, title retention, charge, pledge, lien, encumbrance or security interest of any kind upon any of its property or assets subject to the Charge or security interest created thereby or by the Security other than in accordance with the provisions of this Charge and the Security. This Charge and the Security when executed and delivered will constitute valid and legally binding obligations of the Borrower, enforceable against it in accordance with its terms;
- (e) There is not now pending or, to the best of the Borrower's knowledge or belief after due inquiry, threatened against the Borrower, any litigation, action, suit, investigation or other proceeding by or before any court, tribunal or other competent Governmental Authority which would materially adversely affect the present or prospective ability of the Borrower to perform its obligations under this Charge or the Security, as the case may be, or which calls into question the validity or enforceability of this Charge or the Security;
- (f) No Event of Insolvency has occurred or is threatened or pending;

- (g) The Borrower is the registered owner of and has a good and marketable title in fee simple to the Lands, and, unless otherwise disclosed to the Lender in writing, is the legal and beneficial owner of the Charged Premises, free and clear of all security interests, charges, liens and other encumbrances whatsoever except for the Permitted Encumbrances, which Permitted Encumbrances are in good standing;
 - (h) The Borrower has the right to charge the Charged Premises to the Lender;
 - (i) The Borrower has not received any notice of or threat of a lien under the *Construction Lien Act* (Ontario), as amended, against the Charged Premises nor has any lien been registered against the Charged Premises in respect of labour, materials or services furnished with respect to any improvement thereon which has not been discharged;
 - (j) Unless expressly stipulated in the Commitment, the Charge is not being given with the intention to use the proceeds thereof to finance any alterations, additions or repairs to, or any construction, erection, demolition or installation on the Charged Premises or any structure thereon;
 - (k) Unless expressly stipulated in the Commitment, the Charge is not a building mortgage, within the meaning of the *Construction Lien Act* (Ontario), as amended, and the funds to be advanced by the Lender are not being used to repay a building mortgage;
 - (l) There has been no improvement or materials supplied on or in respect of the Charged Premises in respect of which a construction lien could arise and which has not been completed or abandoned within the forty-five (45) days immediately preceding the date hereof;
 - (m) Except as disclosed to the Lender in writing, the existing and proposed uses, the operation of the Charged Premises and the business conducted thereon comply and, to the best of the Borrower's knowledge and belief, have (including all prior uses) at all times complied with all Applicable Laws, including all Environmental Laws, and the Borrower is not in violation of, and does not violate, by virtue of the ownership, use, maintenance or operation of the Charged Premises or the conduct of any business related thereto, any Applicable Laws, including all Environmental Laws;
 - (n) The Charged Premises may be charged by the Borrower in compliance with the *Planning Act* (Ontario), and no severance of any adjoining lands owned by the Borrower is required;
 - (o) All financial statements and data delivered or presented to the Lender by the Borrower up to and including the date hereof are true and correct in all material respects as at the dates and for the periods indicated and have been prepared in accordance with Canadian generally accepted accounting principles and disclose to the Lender all financial information relevant to the Lender in respect of making the Loan and there is no information, financial or otherwise, which has not been disclosed to the Lender which would be material to the Lender in its decision to advance the Loan, and, without limiting the foregoing, neither the Guarantor(s) nor the Borrower has failed to disclose to the Lender any facts or information material to the making of the Loan;
 - (p) No Event of Default, or an event which with the giving of notice, lapse of time or otherwise, would constitute an Event of Default exists;
 - (q) Each Permitted Encumbrance is in good standing and all obligations and covenants required to be met or complied with thereunder on the part of the Borrower have been complied with and, in respect to any other party thereto to the best of the Borrower's knowledge and belief, have been met or complied with;
 - (r) All Leases entered into as of the date hereof are valid, subsisting and enforceable leases and are in good standing as of the date hereof without right of set-off or abatement;
 - (s) The Borrower is not bound by any indenture, agreement, lease or other instrument, nor is it subject to any trust agreement, charter, by-law, unanimous shareholders agreement or other corporate restriction or any of the Applicable Laws, which materially adversely affects its business operations in respect of the Charged Premises or the performance of its obligations under this Charge or the Security;
 - (t) The Borrower has complied with all Applicable Laws in respect of any residential unit located on the Charged Premises, including in respect of any conversion, demolition, rentals charged or filings or applications to be made and there are no outstanding orders, decisions or directives made or pending which are or would be adverse to the Borrower or the Charged Premises in respect of any residential unit located on the Charged Premises;
 - (u) Each partner of the limited partnership of which the Borrower is the general partner is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada);
 - (v) With respect to each partner of the limited partnership of which the Borrower is a general partner that is a Canadian corporation, either (i) the shares of that corporation do not derive their value, directly or indirectly, primarily from foreign property, all within the meaning of the *Income Tax Act* (Canada) or (ii) the corporation is a corporation described in subsection 206(1.1) of the *Income Tax Act* (Canada), as that provision may be amended from time to time;
 - (w) The Borrower shall not, without the prior written consent of the Lender, execute or deliver any mortgage, charge, lien or other encumbrance of the Lands intended to rank subordinate to this Charge; and
 - (x) The Borrower is not and shall not be during the Term (without the prior written consent of the Lender), a farmer within the meaning of the *Farm Debt Mediation Act* (Canada).
- 8.2 The representations and warranties set out in this Article 8 shall speak as of the date made, survive the execution and delivery of this Charge and the making of any advance hereunder and continue to be true and accurate during the Term of this Charge, notwithstanding any investigations or examinations which may be made by the Lender or the Lender's solicitors and the Lender shall be deemed to have relied on such representations and warranties in making advances under the Loan.
- 8.3 The Borrower shall indemnify and save harmless the Lender from and against all losses, damages, claims and expenses directly

or indirectly incurred or suffered by the Lender resulting from any omission, inaccuracy or misrepresentation of the Borrower herein relating to or concerning the Charged Premises and with respect to all losses, charges, claims and expenses directly or indirectly incurred or suffered by the Lender resulting from or arising in connection with environmental matters relating to, arising from, in connection with or concerning the Charged Premises, whether referred to or contemplated herein or hereby.

ARTICLE 9 – COVENANTS

- 9.1 The Borrower covenants with the Lender that upon the occurrence of an Event of Default, the Lender shall have quiet possession of the Charged Premises, free from any encumbrances, save and except for the Permitted Encumbrances.
- 9.2 The Borrower shall not without the prior written consent of the Lender, which may be withheld in the sole discretion of the Lender permit or suffer to exist any charges, liens, security interests or other encumbrances against the Charged Premises, save and except for the Permitted Encumbrances; and the Borrower shall maintain the Permitted Encumbrances in good standing and provide notice to the Lender forthwith of any default under any of the Permitted Encumbrances.
- 9.3 The Borrower shall not initiate, permit or suffer to exist any Event of Insolvency, in respect of itself or, to the extent that the Loan, this Charge or the Security is affected by the occurrence of any such event, of any related person or corporation, including without limitation, any parent corporation of the Borrower. The Borrower covenants and agrees (i) to provide two Business Days' notice prior to the occurrence of an Event of Insolvency (an "Insolvency Notice"), and agrees that the receipt of an Insolvency Notice by the Lender shall constitute an immediate Event of Default if the Borrower or any Guarantor(s) is an applicant or takes the benefit of such statute or proceeding or if any of these proceedings otherwise affect the rights or entitlements of the Lender under the Loan, this Charge or the Security or the Lender's ability to enforce this Charge or the Security, and (ii) prior to the commencement of any such proceedings, to deliver to the Lender copies of all relevant filing materials, including, without limitation, copies of draft court orders, plans of compromise, proposals and notices of intention, it being intended by the Borrower that the Lender be entitled during the period after receipt of an Insolvency Notice to enforce this Charge and the Security for the purpose of, among other things, taking possession and control of the Charged Premises, in the Lender's sole discretion.
- 9.4 The Borrower shall not, without the prior written consent of the Lender, initiate, join in or consent to any change to or modification in any private restrictive covenant, municipal or other governmental law, rule or regulation, by-law, or any other public or private restrictions, limiting or defining the uses which may be made of the Charged Premises, or any part thereof and which could adversely affect the Charge, the Security, the day-to-day operations of the Charged Premises, the income derived therefrom or the value of the Charged Premises.
- 9.5 The Borrower shall comply in all respects with all covenants, deed restrictions, easements and Applicable Laws which pertain to the ownership, use or operation of the Charged Premises or the performance by the Borrower of its obligations under this Charge and shall ensure that all representations and warranties contained herein continue to be true and accurate at all times during the Term.
- 9.6 The Borrower shall permit the Lender, or cause to be made available to the Lender, access to all records, both written and electronic, pertaining to the Charged Premises and upon request shall make copies of such information for the Lender. For such purposes, the Lender shall have reasonable access to the Charged Premises or such other place as such records are kept upon reasonable prior written notice to the Borrower.
- 9.7 The Borrower shall fulfil on a timely basis any undertaking provided by it to the Lender at the time of the advance of the Loan.
- 9.8 The Borrower covenants to ensure that this Charge will remain a valid and enforceable mortgage of the Charged Premises with first priority subject only to the Permitted Encumbrances and the Borrower will fully and effectively maintain and keep the Security as valid and effective security during the currency hereof.
- 9.9 The Borrower shall promptly give written notice to the Lender of any litigation, proceeding or dispute affecting the Charged Premises if the result thereof might have a material adverse effect on the Charged Premises, the financial condition or operations of the Borrower or any Guarantor(s) or its ability to perform its obligations hereunder and shall, from time to time, furnish to the Lender all reasonable information requested by the Lender concerning the status of such litigation, proceeding or dispute and shall in all such cases diligently and in good faith proceed to defend, settle or otherwise deal with any such litigation, proceeding or dispute in a commercially reasonable manner.
- 9.10 The Borrower shall promptly give notice to the Lender upon becoming aware of and provide particulars in respect of:
- (a) An Event of Default or any event which with the passage of time or giving of notice would constitute an Event of Default;
 - (b) Any default under a Lease;
 - (c) Details of material renovations to the Charged Premises when the Borrower intends to or reasonably anticipates that it will renovate the Charged Premises;
 - (d) Any default under any Permitted Encumbrance;
 - (e) Any notice of expropriation, action or proceeding materially affecting the Charged Premises or the violation of any Applicable Law which may have a material adverse affect on the Charged Premises; and
 - (f) Any matter which may have a material adverse affect upon the Borrower or the Guarantor(s) or Charged Premises or the operations conducted thereon, or the security constituted by this Charge and the Security.
- 9.11 The Borrower covenants at all times:
- (a) to perform or cause to be performed all of the covenants and obligations on the part of lessor contained in the Leases

(except the extent the same have been expressly waived by the other parties to such Leases and except in circumstances where the tenant is in default and the Borrower is acting prudently and in the best interests of the Charged Premises);

- (b) to maintain or cause to be maintained the Lease Rights in good standing and not to do, permit to be done or omit to do anything which may impair the enforceability of the Lease Rights;
 - (c) save for the deposits for the first and last month rentals, not to accept Rents more than one (1) month in advance of the dates when Rents fall due;
 - (d) not to enter into Leases which are not at arm's length unless the terms thereof are at least equal to current market terms;
 - (e) not to enter into Lease which do not constitute Major Tenant Leases (each of which must be approved by the Lender as hereafter provided) unless such leases are substantially on Lender pre-approved standard lease forms and not to enter into Major Tenant Leases without the Lender's approval as hereafter provided;
 - (f) not to or to permit termination, alteration or amendment or waiver of rights or remedies or otherwise take any action with respect to any of the Leases which in the aggregate would create a material reduction in Rents from those payable as of the date hereof, without the prior approval of the Lender;
 - (g) not to further assign, mortgage or pledge or permit the assignment, mortgaging or pledging of any Lease or the rents thereunder, save for assignments by tenants of their tenant's interest in Leases, to the extent permitted under such Leases; and
 - (h) to ensure in respect of all Leases now or hereafter entered into that (i) the tenant thereunder, at the option of the Lender, subordinates its lease to the security of this Charge and attorns to and becomes a tenant of the Lender or any purchaser from the Lender in the event of the exercise of a sale remedy by the Lender, for the unexpired residue of the term and upon the terms and conditions of said lease, provided the Lender will agree to enter into non-disturbance agreements on commercially reasonable terms with all such tenants; and (ii) at the request of the Lender, provide as further security specific assignments of Leases hereinafter entered into.
- 9.12 The Borrower shall not, without the prior written consent of the Lender, acting reasonably and promptly, enter into any agreement or document in respect of the Charged Premises (except for leases in accordance with the terms hereof and the Security) which is material to the ownership, value, operation, or use of the Charged Premises unless the same is in the ordinary course of business.
- 9.13 With respect to any Major Tenant Lease, the Borrower shall not and shall not permit without the prior written consent of the Lender:
- (a) cancel or modify any Major Tenant Lease, release the obligations of any lessee thereunder, accept a surrender of a Major Tenant Lease, accept any prepayment of Rents thereunder or consent to any sublet or assignment by the lessee under any Major Tenant lease (except where the provisions of such Major Tenant Lease require the landlord to do so); or
 - (b) enter into any Major Tenant Lease unless the terms, form and substance of such Major Lease is satisfactory to the Lender, acting reasonably; or
 - (c) to further assign, mortgage, pledge, hypothecate or otherwise deal with any Major Tenant Lease.
- 9.14 The Borrower shall do or cause to be done all things necessary to keep in full force and effect all rights, franchises, licences and qualifications necessary or incidental to perform or cause to be performed its obligations contained in this Charge and the Security and to carry on its business pertaining thereto as presently carried on.
- 9.15 The Borrower shall from time to time to pay or cause to be paid all amounts related to taxes, wages, workers compensation obligations, government royalties, and any other similar amounts relating to the business conducted on the Charged Premises if non-payment thereof may result in an encumbrance (other than a Permitted Encumbrance) against the Charged Premises or any of the assets secured in favour of the Lender by the Security.
- 9.16 The Borrower shall not, without the prior written consent of the Lender, acting reasonably and promptly, cause or permit any change in the status of the Borrower that results in the representations contained in Subparagraph 8.1(u) or Subparagraph 8.1(v) ceasing to be accurate in all material respects.
- 9.17 The Borrower covenants, subject to the rights of reorganization herein contained, to continue as a corporation duly organized, validly subsisting and in good standing under the laws of its incorporating jurisdiction and maintain all necessary corporate power and authority to perform or cause to be performed its obligations contained herein and in the Security, to own and operate the Charged Premises and to carry on its business pertaining thereto as presently carried on.
- 9.18 The Borrower covenants that, unless in respect of a reorganization of the Borrower permitted under Paragraph 18.1(h) or with the consent of the Lender as provided therein, no steps or proceedings will be taken to amend or supersede the articles or bylaws of the Borrower and in any event no steps or proceedings, including any reorganization of the Borrower, will be taken in a manner which would impair or limit the Borrower's or its successor's ability to perform its obligations hereunder or under the Security.
- 9.19 The Borrower will not enter into any indenture, agreement, lease or other instrument, nor become subject to any trust agreement, charter, by-law, unanimous shareholders agreement or other corporate restriction, which materially adversely affects the Charged Premises.

ARTICLE 10 - TAXES/LIENS

10.1

- (a) The Borrower shall pay or cause to be paid, all Taxes together with such other amounts, the failure to pay which would give rise to a lien against the Charged Premises, as and when the same shall fall due and payable (collectively, the "Bills").
- (b) With respect to Taxes at the option of the Lender, the Borrower shall pay to the Lender in equal monthly instalments on the first day of each month in each calendar year during the Term, commencing on the first day of the month next following the Interest Adjustment Date, one-twelfth (1/12) of the annual Taxes (or such amount as may be required in order to pay the Taxes as they become due) as reasonably estimated by the Lender; said payments of Taxes shall be paid to the Lender in addition to the instalments of interest due and payable under this Charge, to be deposited upon receipt and held by the Lender in an interest-bearing account for the payment of Taxes, with interest to accrue thereon to the benefit of the Borrower and to be credited in reduction of the amount required to be paid to the Lender for Taxes. The Lender agrees that upon and subject to receipt of monies for Taxes it will remit such monies to the proper municipal offices in payment of Taxes as required from time to time; provided that if any Event of Default shall occur and be continuing, then the Lender, at its sole option, may apply all or any part of any funds held in such account to any amount due hereunder, whether principal, interest or otherwise. The Borrower shall also pay, or cause to be paid, to the Lender before the due date for the payment of Taxes (or next periodic instalment date therefor, as the case may be) any sums in addition to the aforesaid monthly instalments which may be required in order that out of such sums held in trust or escrow by the Lender and such additional sums, the Lender may pay the whole amount of Taxes assessed thereto, on the due date for payment thereof. Notwithstanding the foregoing provisions of this Paragraph 10.1(b), the Borrower acknowledges that the Lender is under no obligation to collect from the Borrower monthly instalments on account of Taxes. In addition, the Borrower acknowledges its obligation to pay all Taxes when due, whether or not the payment of all Taxes are the responsibilities of tenants and whether or not such tenants have remitted the same to the Borrower.
- (c) The Lender may, after written notice being given to the Borrower, pay all unpaid and due Taxes, and any amounts, the failure to pay which would give rise to a lien and any amounts so paid by the Lender shall become part of the Principal hereby secured and be a charge on the Charged Premises in favour of the Lender and shall be payable forthwith by the Borrower to the Lender with interest at the Applicable Rate until paid.
- (d) If the Charged Premises or any part thereof are sold or forfeited for nonpayment of Taxes while any sum remains unpaid hereunder, the Lender may acquire the title and rights of the purchaser at any sale, or the rights of any other person or corporation becoming entitled on or under any such forfeiture, or the Lender may pay, either in its own name or in the name of the Borrower and on the Borrower's behalf, any and all sums necessary to be paid to redeem such land so sold or forfeited, and to revert such lands in the Borrower, and the Borrower hereby nominates and appoints the Lender as agent to pay such monies on the Borrower's behalf and in the Borrower's name, and any monies so expended by the Lender shall become part of the Principal Sum hereby secured and be a charge on the Charged Premises in favour of the Lender and shall be payable forthwith by the Borrower to the Lender and until so paid shall bear interest at the Applicable Rate or in the alternative, the Lender may purchase the Charged Premises at any tax sale of the same.
- (e) Notwithstanding anything to the contrary herein contained, the Borrower shall have the right to contest or defend any actions brought to recover, or appeal any judgments recovered against it in respect of any Bills, or other like charges, or any construction or other liens levied or registered against the Charged Premises, by appropriate proceedings diligently conducted in good faith, provided that the Borrower shall have first deposited with the Lender, or otherwise provided to the reasonable satisfaction of the Lender, such security as the Lender acting reasonably may require including, without limitation, security for the payment of such Bills, charges or liens and any costs payable in connection therewith, and further provided that the Lender shall have determined, to its reasonable satisfaction, that any such contest, defence or appeal or any delay or nonpayment of such Bills, charges or liens shall not materially prejudice the prior charge or lien of this Charge or the title of the Borrower to the Charged Premises. Should the Lender at any time thereafter determine, in its reasonable discretion, that any such contest, defence or appeal or any delay or nonpayment of such Bills, charges or liens shall materially prejudice the prior charge or lien of this Charge or the title of the Borrower to the Charged Premises, the Lender may realize upon such security for payment as aforesaid and pay such Bills, charges or liens. Upon termination of such proceedings, the Borrower shall promptly pay or cause to be paid the amount of the Bills, charges or liens and any other costs, fees, interest and penalties as are properly payable upon determination of such proceedings and promptly cause any tax notifications, caveats, liens, certificates of or pertaining litigation or any other form of notice or encumbrance in respect thereof to be promptly discharged from the title to the Charged Premises at the sole expense of the Borrower whereupon all such security deposited or otherwise provided to the Lender and any proceeds from the realization thereof not paid on account of Bills as aforesaid, shall be returned and paid to the Borrower.
- (f) The Borrower agrees to and does hereby indemnify the Lender against all claims, demands, costs, damages and expenses which arise in respect of any default, late payment, omission, act or proceeding by the Borrower, under or in respect of this Section 10.1.
- (g) If the Lender comes into and for as long as it is in possession of the Charged Premises, the Lender, in its sole discretion, shall be entitled to and shall enjoy all the rights of the Borrower set out in Paragraph 10.1(d) hereof, to the exclusion of the Borrower.

ARTICLE 11 - INSURANCE

- 11.1 The Borrower will immediately insure, unless already insured, and during the continuance of the Charge keep insured against loss or damage by fire, in such proportions upon each building as may be required by the Lender, the buildings on the land to the amount of not less than their full insurable value on a replacement cost basis in dollars of lawful money of Canada. Such insurance shall be placed with a company approved by the Lender. Buildings shall include all buildings whether now or hereafter erected on the land, and such insurance shall include not only insurance against loss or damage by fire but also insurance against loss or damage by explosion, tempest, tornado, cyclone, lightning and all other extended perils customarily

provided in insurance policies including "all risks" insurance. The covenant to insure shall also include where appropriate or if required by the Lender, boiler, plate glass, rental and public liability insurance in amounts and on terms satisfactory to the Lender. Evidence of continuation of all such insurance having been effected shall be produced to the Lender at least fifteen (15) days before the expiration thereof; otherwise the Lender may provide therefore and charge the premium paid and interest thereon at the rate provided for in the Charge to the Borrower and the same shall be payable forthwith and shall also be a charge upon the land. It is further agreed that the Lender may at any time require any insurance of the buildings to be cancelled and new insurance effected in a company to be named by the Lender and also of his own accord may effect or maintain any insurance herein provided for, and any amount paid by the Lender therefore shall be payable forthwith by the Borrower with interest at the rate provided for in the Charge and shall also be a charge upon the land. Policies of insurance herein required shall provide that loss, if any, shall be payable to the Lender as his interest may appear, subject to the standard form of mortgage clause approved by the Insurance Bureau of Canada which shall be attached to the policy of insurance.

11.2 During any construction on the Charged Property, the Borrower shall maintain:

- (i) Builders' all-risk coverage for 100% of the construction cost with loss payable to the Lender by way of an Insurance Bureau of Canada ("IBC") approved mortgage clause. The policy must cover flood, earthquake, building by-laws, delayed opening, must allow for partial occupancy of the premises and provide for interim loss payments during reconstruction;
- (ii) Wrap-Up Liability coverage in an amount not less than \$10,000,000 per occurrence;
- (iii) Project performance and completion bonds and insurance, including coverage for labour and material bonds; and
- (iv) Professional Liability coverage in an amount not less than \$10,000,000.

ARTICLE 12 - ENVIRONMENTAL

12.1 The following capitalized terms shall have the following respective meanings:

"Environmental Approvals" means all applicable permits, licences, authorizations, consents, directions or approvals required by Governmental Authorities pursuant to the Environmental Laws with respect to the use, occupation, ownership or operation of the Charged Premises;

"Environmental Laws" means all applicable federal, provincial and municipal laws, by-laws, regulations, executive orders, judgments and protocols, relating in whole or in part, to the environment or its protection, and without restricting the generality of the foregoing, includes without limitation, those laws relating to the manufacturing, processing, use, handling, packaging, labelling, sale, storage, recycling, transportation, treatment, destruction, burial or disposal of Hazardous Substances, employee safety, and the emission, discharge, release, deposit, issuance, spraying, dumping, throwing, pouring, spilling, emptying, placing, leaking, seeping, exhausting or abandonment of Hazardous Substances into the atmosphere, air, surface water, ground water, land surface or subsurface strata and, in each such case, as such Environmental Laws may be amended or supplemented from time to time, and "Environmental Law" means any of them;

"Hazardous Substance" means any pollutant, contaminant, waste, hazardous waste, toxic substance or dangerous good which is defined or identified in or the object of any Environmental Law, the presence of which in the environment is in contravention of any Environmental Law; and

"Inspections" means all inspections, evaluations or tests conducted by the Lender or any agent or consultant thereof for the purpose of determining the environmental condition of the Charged Premises, as the Lender may deem appropriate, acting reasonably.

12.2 The Borrower represents and warrants (which representations and warranties shall continue throughout the Term of the Loan) that:

- (a) The condition and use of the Charged Premises is and, to the best of the Borrower's knowledge, any prior use of the same was, in compliance in all material respects with all applicable Environmental Laws;
- (b) The Charged Premises is not subject to any judicial or administrative proceedings alleging violation of any Environmental Laws and there are no outstanding orders or proceedings against the Charged Premises from a Governmental Authority responsible for protecting the environment alleging the violation of any Environmental Laws;
- (c) To the knowledge of the Borrower, the Charged Premises is not the subject of any investigation by Governmental Authorities having jurisdiction evaluating whether any remedial action is needed to respond to a contravention of any Environmental Laws; and
- (d) There is no contingent liability of which the Borrower has knowledge or reasonably should have knowledge in connection with the contravention of any Environmental Laws.

12.3 The Borrower covenants with the Lender:

- (a) If not already provided, to provide to the Lender within ninety (90) days of the execution of this Charge, an environmental audit with respect to the Lands, and if an event shall have occurred after the date of this Charge, which the Lender, acting reasonably, believes may have resulted or may result in material adverse change in the environmental condition of the Charged Premises or any part thereof, to provide such further environmental audits as the Lender may require;
- (b) To provide notice within fifteen (15) days of either having learned of any enactment or promulgation of any Environmental Laws which may result in any material adverse change in the condition, financial or otherwise, of the Charged Premises;

- (c) To defend, indemnify and hold harmless the Lender, its directors, officers, employees, agents and their respective successors and assigns, against any and all loss, cost, expense, claim, liability or alleged liability arising out of any environmental damage occasioned to the Charged Premises contravention of any Environmental Laws;
- (d) To, at all times and at its own expense, conduct its business and maintain the Charged Premises in compliance with all Environmental Laws and Environmental Approvals including causing all tenants of the Charged Premises to comply with the same;
- (e) If the Borrower:
 - (i) receives notice from any Governmental Authority having jurisdiction that violation of any Environmental Law or Environmental Approval has been committed by the Borrower or any tenant with respect to the Charged Premises;
 - (ii) receives notice that any remedial order or other proceeding has been filed against the Borrower or any tenant alleging in respect of the Charged Premises violations of any Environmental Law or requiring the Borrower to take any action in connection with the release of a Hazardous Substance into the environment; or
 - (iii) receives any notice from a Governmental Authority having jurisdiction in respect of the Charged Premises that the Borrower or any tenant may be liable or responsible for costs associated with a nuisance or a response to, or clean up of, a release of a Hazardous Substance into the environment or any damages caused thereby;

to provide to the Lender a copy of such notice within ten (10) days of the Borrower's receipt thereof, and thereafter shall keep the Lender informed in a timely manner of any developments in such matters, and shall provide to the Lender such other information in respect thereto as may be reasonably requested by the Lender from time to time and shall proceed to deal with the same diligently and in good faith in order to bring the Charged Premises into compliance to the extent necessary to comply with Environmental Laws;

- (f) Unless in existence on the Charged Premises on the date of this Charge, not to use, discharge, transport or install in or upon the Charged Premises any material or equipment containing PCBs or permit any tenant of the Charged Premises to do so and, to the extent in existence on the Charged Premises as of the date of this Charge, to maintain the same in compliance with all Environmental Laws;
- (g) To maintain, and to require all occupants of the Charged Premises to maintain in good leak-proof condition all above-ground and underground storage tanks and drums on the Charged Premises;
- (h) Not to install asbestos or permit asbestos to be installed in the Charged Premises. With respect to any asbestos present in the Charged Premises on the date of this Charge, the Borrower shall, at its expense, promptly comply with the requirements of Environmental Laws and Governmental Authorities respecting the use, removal and disposal of asbestos; and
- (i) To obtain or cause its solicitors to obtain copies of all relevant environmental studies or assessments of the Charged Premises which the Borrower or its solicitors or agents have commissioned or which are in the possession or control of the Borrower, as of the date of this Charge and, to the extent any such assessments or studies are required by the Lender from time to time, to promptly provide same to the Lender upon request and hereby authorizes and directs its solicitors, agents and consultants to promptly release same to the Lender.

12.4 Having due regard to the rights of any tenant of the Borrower, the Lender and its employees and agents shall have the right, and are hereby granted permission by the Borrower, to enter the Charged Premises from time to time, and to have access to the Borrowers' relevant documents and records, in order to conduct inspections, to determine compliance with Environmental Laws as the Lender, acting reasonably, may deem appropriate. Inspections shall be:

- (a) at such times and to such extent as may be reasonable in the circumstances on prior notice to the Borrower if the Lender has reasonable grounds for believing that:
 - (i) there are, contrary to Environmental Laws or Environmental Approvals, Hazardous Substances in or upon the Charged Premises which have not been disclosed to and approved by the Lender and appropriate Government Authorities; or
 - (ii) the Borrower is in breach of any environmental representations in this Charge or its covenants in this Article; or
 - (iii) the Borrower is not in compliance with any Environmental Laws or material Environmental Approvals; and
- (b) at any time without prior notice upon the occurrence of an Event of Default which is continuing.

If the Borrower is found not to be in compliance with the Environmental Laws or Environmental Approvals and such failure to comply becomes an Event of Default that is continuing, the Lender may, at its option (but without any obligation to do so) take such actions as are required, acting reasonably, to bring the Charged Premises into compliance, and the costs thereof shall immediately become due and payable to the Lender by the Borrower and shall be secured by the Security.

12.5 The Lender shall not, by virtue of being the chargee under this Charge or the enforcement of its rights contained herein for purposes of the Environmental Laws, be or be deemed to be the owner of, any of the Charged Premises, or to have management, charge, control, occupation or possession of any of the Charged Premises or the businesses of the Borrower, or of any Hazardous Substances located on, upon or within any of the Charged Premises.

12.6 The Borrower hereby covenants and agrees to be responsible for, and to indemnify and hold harmless the Lender and each of its officers, directors, employees, shareholders, all unitholders of any pooled funds under its management and agents and their

respective successors and assigns (in this Section, collectively referred to as the "Indemnified Parties") from and against all claims, demands, liabilities, losses, costs, damages and expenses (including, without limitation, reasonable legal fees and all costs incurred in the investigation, pursuing of any claim, or in any proceeding with respect to, defense and settlement of any item or matter hereinafter set out) that the Indemnified Parties may incur or suffer, directly or indirectly as a result of or in connection with:

- (a) Any inaccuracy in or breach of the Borrower's representations and warranties relating to the environmental matters contained herein;
- (b) The presence of any Hazardous Substance on, upon or within the Charged Premises, or the escape, seepage, leakage, spillage, discharge, emission, release, disposal or transportation away from the Charged Premises of any Hazardous Substance, whether or not there is compliance with all applicable Environmental Laws and Environmental Approvals;
- (c) The imposition of any remedial order affecting the Lands, or any non-compliance with Environmental Laws or Environmental Approvals pertaining to the Charged Premises by any person, including the Borrower, the Lender or any person acting on behalf of the Lender; and
- (d) Any diminution in the value or any loss on the disposition of the Charged Premises arising directly or indirectly as a result of the presence on the Lands of any Hazardous Substance, or as a result of the imposition of any remedial order or the breach by any person of any Environmental Law or Environmental Approval.

This indemnity shall survive the satisfaction and release of this Charge and the Security and the payment and satisfaction of all indebtedness hereunder. The benefit of this indemnity may be assigned by the Lender to any successor or assign of the Lender and the Borrower hereby consents to any such assignment.

ARTICLE 13 - ASSIGNMENT OF RENTS AND LEASES

- 13.1 As further security for the payment of all monies owing and the performance of all obligations to be performed hereunder, the Borrower does, as and by way of security, hereby sell, assign, transfer and set over unto to the Lender all of the Borrower's right, title and interest, both at law and equity, in and to the Lease Rights, to hold and receive the same unto the Borrower with full power and authority to demand, collect, sue for, recover and receive and give receipts for Rents and enforce payments of the same and enforce performance of the obligations of tenants under the Leases, provided, however, that, subject to the terms of this Charge, the Borrower shall have the full right, so long as no Event of Default has occurred and is continuing, to continue to collect Rents, to take or cause to take all actions as it deems necessary with respect to the Lease Rights, acting as a reasonable lessor.
- 13.2 It is expressly acknowledged and agreed by the Borrower that nothing contained in this Charge shall oblige the Lender to assume or perform any obligation of the Borrower to any third party in respect of or arising out of the assigned Lease Rights. The Lender may, however, after the occurrence of an Event of Default and while such Event of Default continues, at its option, assume or perform any such obligation as the Lender considers necessary or desirable to obtain the benefit of the Lease Rights, free of any set-off, reduction or abatement, and any money expended by the Lender in this regard shall form part of or be deemed to form part of the indebtedness secured by this Charge and shall bear interest at the Applicable Rate.

ARTICLE 14 - MANAGEMENT AND REPAIR

- 14.1 The Borrower shall cause the Charged Premises at all times to be professionally maintained, managed and operated and fully and continuously operational during customary business hours, including all uses ancillary or incidental to its operations, at all times, by competent managers and staff of proper background and training, in a first class manner consistent with the management and operation of other properties which are of size, location, use, class, age and type comparable to the Charged Premises, and the Borrower shall obtain the Lender's prior written approval of any manager and any management contract with any manager which may be entered into by the Borrower for the management of the Charged Premises. In addition to any other rights hereunder of the Lender, the Lender shall have the right, acting reasonably, to replace the manager at the expense of the Borrower in the event the management standards are not maintained as required hereunder and the situation is not remedied within thirty (30) days after written notice from the Lender. The Lender acknowledges and approves, as of the date hereof, of the Borrower or a company controlled by the Borrower acting as manager of the Charged Premises provided that the Charged Premises are managed and maintained in accordance with the provisions hereof.
- 14.2 The Borrower shall promptly repair, maintain, restore, replace, rebuild, keep, make good, finish, add to and put in order, or cause to be so done, the Charged Premises, so that the same shall, at all times, be in good condition and repair and to pay or cause to be paid when due all claims for labour performed and materials furnished therefor. The Borrower shall not commit or suffer any waste of the Charged Premises nor take any action that might invalidate or give cause for cancellation of any insurance maintained in respect of the Charged Premises. No building or other property now or hereafter charged by this Charge shall be removed, or demolished or nor shall the structure of any building be materially altered, redeveloped, retrofitted or renovated, without the prior written consent of the Lender, except that the Borrower shall have the right, without such consent, to remove and dispose of, free from the lien or charge of this Charge, such fixed equipment as from time to time may become worn out or obsolete, provided that either (a) simultaneously with or prior to such removal, and if necessary for the operation of the Charged Premises such equipment shall be replaced with other equipment of a quality comparable to that of the replaced equipment and free from any lien, title retention agreement, conditional sale contract, security agreement or other encumbrance, and by such removal and replacement the Borrower shall be deemed to have subjected such fixed equipment to the lien or charge of this Charge, or, (b) any net cash proceeds received from such disposition shall, at the option of the Lender, be paid over promptly to the Lender to be applied in a manner determined by Lender in its sole discretion toward the payment of any amounts owing hereunder or secured hereby. The Borrower shall notify the Lender promptly of any material damage to or defects in any of the Improvements, and thereafter forthwith shall make or cause to be made such repairs thereto as are required to correct any such damage or defects and return the Charged Premises to a state of condition and repair equivalent to the state of condition and repair required by the provisions of this Charge.
- 14.3 The Borrower shall comply with, or cause to be complied with, all statutes including without limitation the provisions of the *Construction Lien Act* (Ontario), ordinances and requirements of any Governmental Authority having jurisdiction with respect to the Charged Premises; the Borrower shall complete and pay for, within a reasonable time, any structure at any time in the

process of construction on the Charged Premises.

- 14.4 The Borrower shall permit the Lender or its authorized agents at all reasonable times to enter upon the Charged Premises and inspect same, and if such inspection reveals that any repairs or like actions are necessary, the Lender may give notice to the Borrower requiring the Borrower to repair, rebuild or reinstate the same, or take such other like action within a reasonable time. Any failure by the Borrower to comply with such notice shall constitute an Event of Default hereunder and the Lender may repair, rebuild or reinstate the Charged Premises at the cost of the Borrower and charge all sums of money determined by the Lender to be properly paid therefor and interest thereon at the Applicable Rate until paid.

ARTICLE 15 - INCREASED COSTS

- 15.1 In the event that as a result of any application of or any change in or enactment of any applicable law, regulation, treaty or official directive after the date hereof (whether or not having the force of law), or in the interpretation of application thereof by any court or by any governmental or other authority or entity charged with the administration thereof which now or hereafter:
- (a) Subjects the Lender to any tax or changes the basis of taxation, or increases any existing tax, on payments of principal, interest or other amounts payable by the Borrower to the Lender under this Charge (except for taxes on the overall net income of the Lender or capital of the Lender imposed by the Government of Canada or any political subdivision thereof or by the jurisdiction in which the principal or lending office of the Lender is located); or
 - (b) Imposes, modifies or deems applicable any special requirements against assets held by, or deposits in or for the account of or any other acquisition of funds by the Lender or imposes on the Lender a requirement to maintain or allocate capital or additional capital in relation to the Loan; or
 - (c) Imposes on the Lender any other condition with respect to this Charge; or
 - (d) Renders any portion of this Charge illegal or unenforceable;

and the result of any of the foregoing is to increase the cost to the Lender, or reduce the amount of principal, interest or other amount received or receivable by the Lender hereunder or its effective return hereunder in respect of making or maintaining the Loan hereunder or to reduce the payments receivable by the Lender in respect of the Loan by an amount which the Lender deems to be material, the Lender shall promptly give written notice thereof to the Borrower setting out in reasonable detail the facts giving rise to and a summary calculation of such increased costs or reduced payments, and the Borrower shall forthwith pay to the Lender upon receipt of such notice that amount which will compensate the Lender for such additional cost or reduction in income (herein referred to as "Additional Compensation"). Upon the Lender having determined that it is entitled to Additional Compensation in accordance with the provisions of this Section, the Lender shall promptly so notify the Borrower. The Borrower shall forthwith pay to the Lender upon receipt of such notice such Additional Compensation calculated on the date of demand. The Lender shall be entitled to be paid such Additional Compensation from time to time to the extent that the provisions of this Section are then applicable notwithstanding that the Lender has previously been paid any Additional Compensation. The Lender shall endeavour to limit the incidence of any such Additional Compensation, including seeking recovery for the account of the Borrower, by appealing any assessment at the expense of the Borrower upon the Borrower's request.

- 15.2 All payments made by the Borrower to the Lender will be made free and clear of all present and future taxes, withholdings or deductions of whatever nature. If these taxes, withholdings or deductions are required by Applicable Law and are made, the Borrower shall, as a separate and independent obligation, pay to the Lender all additional amounts as shall fully indemnify the Lender from any such taxes, withholding or deduction. Provided, however, that the Borrower shall have no obligation to pay any withholding or like tax which may be exigible, incurred or required as a result of the Lender being a non-resident of Canada for the purposes of the *Income Tax Act* (Canada).
- 15.3 If the result of any law, regulation, treaty or official directive or request or any change in or any introduction thereof or change in the interpretation or application thereof or compliance by the Lender with the same (including, without limitation, those relating to taxation, reserve requirements, capital adequacy or other banking or monetary controls) is such that it is or will become (other than as a result of some positive action of the Lender, including any participation or syndication hereof by the Lender) unlawful for the Lender to make, fund or allow to remain outstanding all or part of the Loan, or to carry out all or any of its other obligations under this Charge and/or the Security or receive interest or any fee at the Applicable Rate, then in such case:
- (a) The Lender may give written notice to the Borrower of such law, regulation, treaty or official directive or request (whether or not having the force of law) or such change in or any introduction thereof or change in the interpretation or application thereof or compliance by the Lender with the same (including, without limitation, those relating to taxation, reserve requirements, capital adequacy or other banking or monetary controls) which such notice shall certify that such law, regulation, treaty, official directive or request is generally applicable to all other borrowers from the Lender with any accommodation similar to that herein provided; and
 - (b) The Borrower shall prepay the Indebtedness on such date and to such extent as the Lender shall certify to be necessary to comply with the relevant law or change described above;

provided, however, that should the Loan become unlawful, the Lender, without prejudice to its rights to require repayment and without any obligation on its part, will consider other means of funding the Loan which would not be unlawful, would allow the Lender to carry out its obligations in respect of the Loan and would enable the Lender to receive interest at the Applicable Rate, provided always, notwithstanding the foregoing, the Lender is not obligated to provide alternate funding.

ARTICLE 16 - OBTAINING AND MAINTAINING SECURITY

- 16.1 Regardless of whether such sums are advanced or incurred with the knowledge, consent, concurrence or acquiescence of the Borrower or otherwise and in addition to any other amounts provided for herein or otherwise permitted by Applicable Law to be secured hereby, except as herein otherwise provided, the following are to be secured hereby and shall be a charge on the Charged Premises, together with the interest thereon at the Applicable Rate, and all such monies shall be repayable to the Lender, on demand, except as herein otherwise provided:

- (a) All reasonable and properly chargeable solicitor's, inspector's, valuator's, consultant's, architect's, engineer's, surveyor's and appraiser's fees and out-of-pocket expenses:
 - (i) for drawing and registering this Charge and the Security and financing statements in connection therewith, and attending to advances hereunder;
 - (ii) for examining the Charged Premises and the title thereto up to the date hereof;
 - (iii) for making and maintaining this Charge as a registered charge on the Charged Premises and maintaining the Security (including the registration and filing of renewals);
 - (iv) for the preparation of this Charge, the Security and any related documents and in exercising or enforcing or attempting to enforce or advising the Lender in respect of defaults hereunder or in pursuit of any right, power, remedy or purpose hereunder or subsisting at law;
 - (v) reasonable allowance for the time, work and expenses of the Lender or of any agent of the Lender in connection therewith; and
- (b) All reasonable sums which the Lender may from time to time advance, expend, incur or suffer hereunder:
 - (i) for insurance premiums, Bills, Taxes, rates, or in or toward payment of prior liens, charges, encumbrances or claims charged or to be charged against the Charged Premises;
 - (ii) in maintaining, repairing, restoring or completing construction of the Charged Premise;
 - (iii) in inspecting, leasing, managing or improving the Charged Premises as permitted hereunder, including the price or value of any goods of any sort or description supplied to be used on the Charged Premises as permitted hereunder; and
- (c) Without limiting the generality of any of the foregoing, the then current reasonable fee of the Lender and/or its solicitor for the following matters:
 - (i) executing any cessation or discharge of this Charge, notwithstanding that said cessation or discharge may have been prepared by the Borrower;
 - (ii) entering into an agreement to amend the interest rate or any other provision in the Charge;
 - (iii) handling any dishonored cheque;
 - (iv) preparing an amortization schedule showing the principal and interest components of payments due under this Charge;
 - (v) the cost of completing a Phase I & II Environmental Audit and such other environmental audits as the Lender may require in its discretion;
 - (vi) such other administrative matters as the Lender may perform with regards to the Charge or with regards to any collateral security, as permitted by the Commitment;
 - (vii) the fee charged by the Lender's insurance consultant to review the Borrower's policy of insurance for the subject lands including business interruption insurance if required by the Lender; and
 - (viii) the execution and delivery of any consents, postponements, acknowledgments or any other documents that may be required from the Lender, whether from the Borrower and/or any governmental authorities and/or public/private utilities.

16.2 If any action or proceeding be commenced (except an action to foreclose this Charge or to collect the money that is secured hereby) in which the Lender becomes a party or participant by reason of being the holder of this Charge or the indebtedness secured hereby, all sums paid by the Lender for the expense of so becoming a party or participating (including all reasonable and properly chargeable legal costs) shall, on written notice, be paid by the Borrower, together with interest thereon at the Applicable Rate from the dates of payment of such sums by the Lender, and shall be a lien and charge on the Charged Premises, prior to any right or title to, interest in, or claim upon the Charged Premises subordinate to the lien and charge of this Charge, and shall be deemed to be secured by this Charge, and that in any action or proceeding to foreclose this Charge, or to recover or collect the indebtedness secured hereby, provisions of law respecting the recovery of costs, disbursements and allowances shall prevail unaffected by this covenant.

ARTICLE 17 - CONDEMNATION AWARDS

17.1 The Borrower shall notify the Lender promptly upon it being aware of any and all awards or payments ("Condemnation Award(s)") including interest thereon, and the right to receive the same (save for any portion of any such Condemnation Award paid for remedial purposes and which is actually used for such purpose) which may be made with respect to the Charged Premises, or any part thereof, as a result of:

- (a) Any condemnation, eminent domain, compulsory acquisition, expropriation or like procedures ("Condemnation"), partial or complete, including any sidewalk or lane; or
- (b) The imposition, and enforcement, of any restriction, regulation or condition to meet any building or development guideline for development or restriction of or by any municipality or other competent authority; or

- (c) Any other material injury to or decrease in the value of the Charged Premises by any lawful regulation or any governmental authority having jurisdiction;

(any matter referred to in (a), (b) or (c) above being hereinafter called an "Incident of Expropriation") to the extent of all amounts which may be secured by this Charge at the date of receipt of any such Condemnation Award by the Borrower. Notwithstanding the occurrence of any Incident of Expropriation, the Borrower shall continue to pay interest at the Applicable Rate on the Principal Sum. The Borrower does hereby change, assign, set over as transfer to the Lender, as security for the repayment of all Indebtedness.

- 17.2 Any Condemnation Award received by the Lender shall be held by the Lender as part of the security for the Loan subject to application as provided in this Article 17. Pending such application, such amounts received shall be held and invested by the Lender, acting reasonably. If at any time an Event of Default has occurred and is continuing, the Lender may, at its option, apply such amounts in reduction of the amounts owing hereunder.
- 17.3 Notwithstanding the provisions of Sections 17.1 and 17.2, in the event that any Incident of Expropriation shall occur which, in the reasonable opinion of the Lender, would materially and adversely affect the security of the Charge or any other Security after the application of any Condemnation Award pursuant to Section 17.1 hereof, the Lender may, at its option, declare such Incident of Expropriation to be an Event of Default and be entitled to exercise any and all rights and remedies available to it hereunder at law or in equity.

ARTICLE 18 - EVENTS OF DEFAULT

- 18.1 The whole of the Principal Sum together with interest thereon at the Applicable Rate, interest on overdue interest and any amounts payable pursuant to Article 6, and all other amounts secured hereby shall, at the option of the Lender, subject to Section 18.2 hereof, become due and payable and all powers conferred on the Lender herein and hereby shall become exercisable, in like manner to all intents and purposes as if the time herein mentioned for payment of such Principal monies had fully come and expired, if specifically provided for in this Charge, or if any of the following events shall occur (the occurrence of any such event together with the expiry of the applicable cure period, if any, and any other occurrence specifically provided for herein as an Event of Default being collectively referred to as an "Event of Default"):
- (a) Upon default in payment of any regularly schedule instalment of interest beyond the date such payment is due and payable; or
 - (b) Upon default in payment of the Indebtedness due and owing on the Maturity Date; or
 - (c) Upon default in payment of any Indebtedness (other than an instalment of interest and upon maturity) due hereunder within five (5) Business Days after written notice thereof is provided by the Lender; or
 - (d) Save as otherwise provided for in subparagraphs (a), (b) and (c) hereof or otherwise specifically provided herein, upon any default in the performance of any covenant or obligation of the Borrower hereunder within fifteen (15) days after written notice thereof is provided by the Lender, provided that if such default is curable and the nature of such default is such that the exercise of reasonable diligence of more than fifteen (15) days is required to cure such default, and if such default in the Lender's reasonable discretion does not jeopardize or adversely effect the security interest of the Lender hereunder or adversely affect the Borrower or its ability to perform its obligations hereunder or under the Security or adversely affect the Charged Premises, the Lender will not, for a further sixty (60) days so long as no other Event of Default has occurred, enforce its remedies in respect of such default while and so long as during such time the Borrower is actively continuing to diligently and in good faith cure such default; or
 - (e) If at any time during the Term there is a breach of any representation or warranty contained herein or at any time during the Term if any representation or warranty contained herein is no longer true or accurate or becomes untrue or inaccurate for any reason and provided the same can be rectified, and the same is not rectified within thirty (30) days after written notice thereof is provided by the Lender; or
 - (f) Upon the assignment by the Borrower to any other party of the whole or a part of the rents, income or profits arising from the Charged Premises, without the written consent of the Lender; or
 - (g) The occurrence of an Event of Insolvency; or
 - (h) If without the prior written consent of the Lender, in its sole and absolute discretion:
 - (i) the Borrower transfers, sells, conveys, or otherwise disposes of all or any part of the Charged Premises, or any interest therein (other than by way of Leases), whether legal or beneficial or enters into any transaction or series of transactions where all or any part of the Charged Premises becomes the property of another person, whether through reorganization, amalgamation, merger, consolidation or otherwise, or if there is any change in the legal or beneficial interest, in whole or in part, of the Charged Premises; or
 - (i) If, without the prior written consent of the Lender, in its sole and absolute discretion:
 - (i) there is any change in the Borrower's corporate control or change in the Borrower's effective control existing as of the date of this Charge; or
 - (ii) the Borrower creates, permits or suffers to exist any mortgage, pledge, charge, loan, assignment, hypothecation, security interest or other encumbrance attaching the Charged Premises other than this Charge, the Security and the Permitted Encumbrances; or
 - (j) Upon default by or non-compliance of the Borrower or any Guarantor(s), or any others bound by or acknowledging to be bound by the terms of this Charge, with respect to any of the provisions of the Security or the Permitted Encumbrances; or

- (k) If the Charged Premises are abandoned; or
 - (l) Failure by the Borrower to fulfil, complete or comply with any undertakings delivered by the Borrower to Lender in connection with the Loan in accordance with the terms of such undertakings; or
 - (m) Upon any breach, default, non-observance occurring or being alleged, charged or claimed against the Borrower as lessor under any lease or as sublessor under any sublease of the Charged Premises and the Borrower is not diligently proceeding to rectify any such breach, default, non-observance or non-performance or defend any allegations, charges or claims of the same; or
 - (n) If this Charge, or any of the Security, shall fail to constitute a legal, valid, binding and enforceable first charge, first assignment or first security interest, each enforceable in accordance with its terms, subject only to Permitted Encumbrances; or
 - (o) If in the reasonable opinion of the Lender there occurs an event which has a material adverse effect on the financial condition or operation of the Borrower, the Charged Premises, this Charge, the Security or the ability of the Borrower to pay the Indebtedness or to perform its obligations hereunder or under the Security and which cannot be rectified by the Borrower within a reasonable period of time.
- 18.2 Save as otherwise specifically provided, an Event of Default hereunder or under any Security shall not have occurred or be deemed to have occurred until the expiration of any applicable notice period, if any, called for in this Charge or in such Security within which the Borrower may remedy such default. In any event, if in the opinion of the Lender, an event has occurred which with the passing of time, the giving of notice or otherwise would constitute an Event of Default and as a result of which the Charged Premises or the property assets and undertaking subject to the Security is materially at risk, the Lender may take such action or exercise such remedies as may be appropriate without notice to the Borrower or the expiry of any cure period.

ARTICLE 19 - REMEDIES

- 19.1 If an Event of Default has occurred hereunder and is continuing (or if the Lender exercises its rights pursuant to Section 18.2 hereof before the occurrence of an Event of Default), then at any time thereafter, but subject always to the waiver thereof by the Lender, the Lender may:
- (a) Declare the Indebtedness to be immediately due and payable and proceed to exercise any and all rights hereunder or under the Security or any other rights available to it under any other document or instrument or at law or in equity including without limitation, the drawdown of any letter of credit held by the Lender;
 - (b) Commence legal action to enforce payment of the Indebtedness or performance of the obligations by the Borrower to the Lender;
 - (c) At the expense of the Borrower, when and to such extent as the Lender deems advisable, observe and perform or cause to be observed and performed any covenant, agreement, proviso or stipulation contained herein or in the Security, and the reasonable cost thereof with interest thereon at the Applicable Rate until paid, shall immediately become due from the Borrower to the Lender after demand by the Lender upon the Borrower therefor;
 - (d) Pay or discharge any mortgage, encumbrance, lien, adverse claim or charge that may exist or be threatened against the Charged Premises; in any such case, the amounts so paid together with costs, charges and expenses incurred in connection therewith shall be added to the Principal outstanding and shall bear interest at the Applicable Rate;
 - (e) Send or employ any inspector or agent to inspect and report upon the value, state and condition of the Charged Premises and may employ a lawyer to examine and report upon the title to the same;
 - (f) Immediately take possession of all of the Charged Premises or any part or parts thereof by action or otherwise, with power, among other things, to exclude the Borrower, to enforce the Borrower's rights, to preserve and maintain the Charged Premises, to repair, alter or extend the Charged Premises, to lease the Charged Premises, to complete construction and development of the Charged Premises, to operate and manage the Charged Premises and to collect or receive rents, income and profits of all kinds (including taking proceedings in the name of the Borrower for that purpose) and pay therefrom all reasonable expenses and charges of maintaining, preserving, protecting and operating the Charged Premises (payment of which may be necessary to preserve or protect the Charged Premises), and to enjoy and exercise all powers necessary to the performance of all functions made necessary or advisable by possession, including without limitation, power to advance its own moneys and enter into contracts and undertake obligations for the foregoing purposes upon the security hereof, and all sums advanced or expended shall be added to the Principal outstanding and shall bear interest at the Applicable Rate;
 - (g) On default of payment for at least fifteen (15) days may, on at least thirty-five (35) days' notice, sell and dispose in the Charged Premises with or without entering into possession of the same and with notice to such persons and in such manner and form and within such terms as provided under Part III of the *Mortgages Act* (Ontario), as amended; and all remedies available may be resorted to and all rights, powers and privileges granted or conferred upon the Lender under and by virtue of any statute or by this Charge may be exercised and no want of notice or publication or any other defect, impropriety or irregularity shall invalidate any sale made or purporting to be made in the Charged Premises; and the Lender may sell, transfer and convey any part of the Charged Premises on such terms, including on credit for all or part of the consideration, (provided the Borrower shall not be accountable for any default in respect of the credit), secured by contract or agreement for sale, or charge, or otherwise, as shall appear to the Lender most advantageous and for such prices as can reasonably be obtained therefor in the circumstances; and in the event of sale on credit or part cash and part credit, whether by way of contract for sale or by conveyance or transfer, charge, or otherwise, the Lender is not to be accountable for or charged with any monies until the same shall be actually received in cash or received by a take-back charge; and sales may be made from time to time of parts of the Charged Premises to satisfy interest and leaving the Principal or part thereof to run with interest at the Applicable Rate; and the Lender may make any stipulations as to title or evidences or commencement of title or otherwise as the Lender shall deem proper and may buy or rescind or vary any contract for sale; and on any sale or resale, the Lender shall not be answerable for loss

occasioned thereby; and for any of such purposes the Lender may make and execute all arrangements and assurances that the Lender shall deem advisable or necessary;

- (h) With respect to the Leases:
- (i) to demand, collect and receive the Rents or any part thereof and to give acquittances therefor, and to take from time to time, in the name of the Borrower, any proceeding which may be, in the opinion of the Lender or its counsel, expedient for the purpose of collecting the Rents or for securing the payment thereof or for enforcing any of the Borrower's rights under the Leases;
 - (ii) to compound, compromise or submit to arbitration any dispute which has arisen or may arise in respect to any amount of Rent and any settlement arrived at shall be binding upon the Borrower;
 - (iii) to enter upon the Lands by its officers, agents or employees for the purpose of collecting the Rents; (iv) to receive, enjoy or otherwise avail itself of the Lease Rights; and
 - (v) on behalf of the Borrower to alter, modify, amend or change the terms of Leases; to terminate Leases, to enter into new Leases; to give consents, concessions or waivers of any rights or provisions of Leases; to accept surrenders of Leases; to give consents to assignment of or subletting under Leases;
- (i) With or without taking possession of all or any part of the Charged Premises, sell, lease or otherwise dispose of the whole or any part of the Charged Premises, as agent for the Borrower and not the Lender, and in exercising the foregoing power, the Lender may, in its absolute discretion:
- (i) sell, lease or otherwise dispose of the whole or any part of the Charged Premises by public auction, public tender with notice, or by private contract (in the name of or on behalf of the Borrower) or otherwise, with such notice, advertisement or other formality as is required by law;
 - (ii) make and deliver to the purchaser good and sufficient deeds, assurances and conveyances of the Charged Premises and give receipts for the purchase money, and any such sale once effected shall be a perpetual bar, both at law and in equity, to the Borrower and all those claiming an interest in the Charged Premises by, from, through or under the Borrower making any claim against the purchaser of the Charged Premises;
 - (iii) grant, rescind, vary or complete any contract for sale, lease or options to purchase or lease, or rights of first refusal to purchase or lease the whole or any part of the Charged Premises, for cash or for credit, with or without security being given therefor, and on terms as shall appear to be most advantageous to the Lender (including a term that a commission be payable to the Lender or a related corporation in respect thereof) and if a sale is on credit, the Lender shall not be accountable for any moneys until actually received;
 - (iv) make any stipulation as to title or conveyance or commencement of title;
 - (v) re-sell or re-lease the Charged Premises or any part thereof without being answerable for any loss occasioned thereby; and
 - (vi) make any arrangements or compromises which the Lender shall think expedient in the interest of the Lender and to assent to any modification of this Charge, and to exchange any part or parts of the Charged Premises for any other property suitable for the purposes of the Lender on such terms as the Lender considers expedient, either with or without payment of money for equality or exchange or otherwise;
- (j) Take proceedings in any court of competent jurisdiction for sale or foreclosure of all or any part of the Charged Premises;
- (k) To borrow or raise money on the security of the Charged Premises or any part thereof in priority to this Charge or otherwise, for the purpose of the maintenance, preservation or protection of the Charged Premises or any part thereof or for carrying on all or any part of the business of the Borrower relating to the Charged Premises;
- (l) Take proceedings in any court of competent jurisdiction for the appointment of a receiver (which term as used in this Charge includes a manager and a receiver and manager, and hereafter, the "Receiver") of all or any part of the Charged Premises;
- (m) By instrument in writing appoint, with or without taking possession, any person to be a Receiver of the Charged Premises or of any part thereof and may remove any Receiver so appointed and appoint another in his stead, with all fees and costs related thereto being the Borrower's obligations; and the following shall apply in respect of any such Receiver so appointed:
- (i) the Lender may from time to time fix the remuneration of the Receiver who shall be entitled to deduct that same out of the revenue from the Charged Premises or the proceeds thereof;
 - (ii) the Receiver shall, to the fullest extent permitted by law, be deemed the agent or attorney of the Borrower for all purposes and the Lender shall not be in any way responsible for any actions other than as caused by gross negligence, willful misconduct or fraud, of any Receiver, and the Borrower hereby agrees to indemnify and save harmless the Lender from and against any and all claims, demands, actions, costs, damages, expenses or payments which the Lender may hereafter suffer, incur or be required to pay as a result, in whole or in part, of any action taken by the Receiver or any failure of the Receiver to do any act or thing other than as are caused by gross negligence, willful misconduct or fraud;
 - (iii) the appointment of the Receiver by the Lender shall not incur or create any liability on the part of the Lender to the Receiver in any respect and such appointment or anything which may be done by the Receiver or the removal of the Receiver or the termination of any such Receivership shall not have the effect of constituting

the Lender a mortgagee in possession in respect of the Lands or any part thereof;

- (iv) the Receiver may exercise or pursue any other remedy or proceeding which the Lender is entitled as the holder of the Charge authorized or permitted hereby or by law or in equity in order to enforce the security constituted by this Charge;
- (v) and for the purposes above, the Borrower hereby irrevocably empowers the Receiver so appointed as its attorney to execute deeds, transfers, leases, contracts, agreements or other documents on its behalf and in its place (and the same shall bind the Borrower and have the same effect as if such deeds were executed by the Borrower) and to affix the Borrower's seal, if necessary, or a duplicate thereof to any of the same. On its own account or through a Receiver and whether alone or in conjunction with the exercise of all or any other remedies contemplated hereby, shall have the right, at any time, to notify and direct any account debtor to make all payments whatsoever to the Lender and the Lender shall have the right, at any time, to hold all amounts received from any account debtor and any proceeds as part of the Secured Property; any payments received by the Borrower from and after the security hereby constituted becomes enforceable, shall be held by the Borrower in trust for the Lender in the same medium in which received, shall not be commingled with any assets of the Borrower and shall, at the request of the Lender, be turned over to the Lender not later than the next Business Day following the day of their receipt; and
- (vi) save as to claims for accounting under paragraph (o) below, the Borrower hereby releases and discharges the Lender and the Receiver from every claim of every nature, whether resulting in damages or not, which may arise or be caused to the Borrower by reason or as a result of anything done by the Lender or any successor or assign claiming through or under the Lender or the Receiver under the provisions of this paragraph unless such claim be the direct result of dishonesty or gross neglect;
- (n) The Lender may at any time and from time to time terminate any receivership by notice in writing to the Borrower and to the Receiver;
- (o) The Receiver shall account for all monies received in respect of the Charged Premises or any part thereof, and shall pay, out of such monies received, subject to the further direction of the Lender in its discretion, the following in the order specified:
 - (i) the Receiver's remuneration;
 - (ii) all payments reasonably made or incurred by the Receiver in connection with its receivership;
 - (iii) all payments of interest, Principal and other money which may, from time to time, be or become charged upon the Charged Premises in priority to this Charge, and all Bills, Taxes, insurance premiums and every other proper expenditure reasonably made or incurred by the Receiver in respect to the Charged Premises or any part thereof; and
 - (iv) all payments to the Lender of all interest due or falling due hereunder and the balance to be applied upon Principal due and payable and secured hereby;

and thereafter any surplus remaining in the hands of the Receiver after payments made as aforesaid shall be accountable to the Borrower or other persons entitled thereto; and

- (p) On its own account or through a Receiver and whether alone or in conjunction with the exercise of all or any other remedies contemplated hereby, shall have the right, at any time, to notify and direct any account debtor to make all payments whatsoever to the Lender and the Lender shall have the right, at any time, to hold all amounts received from any account debtor and any proceeds thereof as security for the Indebtedness; any payments received by the Borrower from and after the security hereby constituted becomes enforceable, shall be held by the Borrower in trust for the Lender in the same medium in which received, shall not be commingled with any assets of the Borrower and shall, at the request of the Lender, be turned over to the Lender not later than the next Business Day following the day of their receipt.

ARTICLE 20 - DEFAULT UNDER SECURITY, PARAMOUNTCY DISCHARGE AND RENEWAL

- 20.1 Payments of principal and interest made under and pursuant to the terms of the Security shall constitute payment hereunder and vice versa and default in the payment of principal and interest under the Security shall constitute default hereunder and vice versa. Default in compliance with any of the conditions, covenants, undertakings, provisions and stipulations contained in the Security shall entitle the Lender to exercise all or any of the rights or remedies provided herein and the occurrence of an Event of Default hereunder or in compliance with any of the conditions, covenants, undertakings, provisions and stipulations contained herein shall entitle the Lender to exercise all or any of the rights or remedies provided in the Security. The occurrence of an Event of Default hereunder shall constitute an Event of Default under the Security and vice versa.
- 20.2 The cancellation of or any other dealing with any Security (other than foreclosure thereof) shall not release or affect this Charge, and the taking of this Charge, or the cancellation of or any other dealing with, or proceeding under (other than foreclosure hereunder), this Charge, shall not release or affect any Security:
 - (a) The Lender may at any time and from time to time release any part or parts of the Charged Premises or any other Security or any surety for payment of all or any part of the monies hereby secured or may release the Borrower or any other person from any covenant or other liability to pay the Principal Sum and interest and all other monies secured hereby, or any part thereof, either with or without any consideration therefor, and without being accountable for the value thereof or for any monies except those actually received by the Lender, and without thereby releasing any other part of the Charged Premises, or any other Security or covenants herein contained, it being especially agreed that notwithstanding any such release, the Charged Premises, the Security and the covenants remaining unreleased shall stand charged with the whole of the monies hereby secured;

- (b) In the event that the monies advanced hereunder are applied to payment of any charge or encumbrance, the Lender shall be subrogated to all the rights of and stand in the position of and be entitled to all the equities of the party or parties so paid whether such charge or encumbrance has or has not been discharged; and the decision of the Lender as to the validity or amount of any advance or disbursement made under this Charge or of any claims so paid, shall be final and binding on the Borrower; and
- (c) The Lender shall not be charged with any monies receivable or collectible out of the Charged Premises or otherwise, except those actually received by or on behalf of the Lender and all revenue of the Charged Premises received or collected by the Lender from any source other than payment by the Borrower may, at the option of the Lender, be retained in a separate account to be used in, maintaining, insuring or improving the Charged Premises to the extent required for such purpose, in the opinion of the Lender, acting reasonably, or in payment of Taxes or other liens, charges or encumbrances against the Charged Premises, or applied in reduction of the amounts owing hereunder.
- 20.3 Subject to Section 6.1 hereof, upon payment of all amounts secured by this Charge, the Borrower shall be entitled to receive and the Lender shall provide a discharge of this Charge and the Security within a reasonable period of time after the request therefor. The Lender shall have a reasonable time after such payment within which to prepare and execute such discharge and all reasonable legal and other expenses for the preparation, execution and registration of such discharge and/or documents, as the case may be, shall be borne by the Borrower.
- 20.4 All payments made pursuant to Section 20.3 shall be made to and received by the Lender prior to 1:00 p.m. on the date due or the next succeeding Business Day in the event the date due is not a Business Day; provided such extension of time shall be included for the purposes of computation of interest.

ARTICLE 21 - NO MERGER OR WAIVER OF LENDER'S RIGHTS

- 21.1 It is further understood and agreed that this Charge and the Security shall stand as a continuing security for repayment of the Loan, including, all advances made thereunder together with all interest, damages, costs, charges and expenses which may become due and payable to the Lender in respect of or in connection with the Loan or any portion thereof, notwithstanding any fluctuation or change in the amount, nature or form of the Loan or in the obligations now or hereafter representing the Loan or any portion thereof or in the names of the obligors or any of them.
- 21.2 The rights of the Lender arising under this Charge shall be separate, distinct and cumulative and, except as expressly provided herein, none of them shall be in exclusion of the other and no act of the Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision, anything herein or otherwise to the contrary notwithstanding.
- 21.3 The giving and taking of this Charge shall in no way merge, waive, prejudice, suspend or affect any of the rights or remedies of the Lender under any Security which may be given or which may have been or may hereafter be given in respect of the Principal Sum hereof, interest and other monies secured by this Charge, or any part thereof, or under the Security and all rights and remedies which the Lender now has or may hereafter have against any one or more persons, are hereby preserved.
- 21.4 The taking of a judgment or judgments under any of the covenants or obligations herein or under any Security shall not operate as a merger of the covenants of the Borrower or affect the Lender's right to interest at the Applicable Rate on any monies due or owing to the Lender during the continuance of this Charge, under any of the covenants herein contained or on any judgment to be recovered thereon.
- 21.5 The covenant of the Borrower to pay interest shall not merge in any judgment in respect of any covenant or obligation of the Borrower under this Charge or any Security and such judgment shall bear interest at the Applicable Rate until such judgment and all interest thereon have been paid in full.
- 21.6 Any waiver by the Lender of any default by the Borrower or any omission on the Lender's part in respect of any default by the Borrower shall not extend to or be taken in any manner whatsoever to affect any subsequent default by the Borrower or the rights resulting therefrom.
- 21.7 No extension of time given by the Lender to the Borrower or anyone claiming under the Borrower, shall in any way affect or prejudice the rights of the Lender against the Borrower or any person liable for payment of the monies hereby secured.

ARTICLE 22 - FINANCIAL DATA

- 22.1 The Borrower shall provide or cause to be provided promptly to the Lender full and complete information about the financial condition and operations of the Charged Premises, including a comprehensive rent roll of all space in the Charged Premises, about the financial condition of the Borrower and any Guarantor(s) and such other information which the Lender may reasonably require from time to time, and the Lender shall have the right to examine the books and records of the Borrower relating to the Charged Premises at reasonable times and upon reasonable prior notice.
- 22.2 Without limiting the foregoing, the Borrower covenants and agrees to provide or cause to be provided to the Lender audited financial statements together with operating statements pertaining to the Charged Premises and such other financial information the Lender may reasonably require, (a) in the case of audited financial statements, within ninety (90) days of the end of each fiscal year of the Borrower (or such other time as may reasonably be required by the Lender), and (b) with respect to operating statements for the Charged Premises, within thirty (30) days of the end of each quarter of each calendar year. The audited financial statements are to be prepared by a nationally recognized firm of chartered accountants and shall include a balance sheet, and a detailed statement of income and expenditures and supporting notes and schedules. The operating statements shall contain a certificate by a senior officer of the Borrower as to the contents and preparation thereof, and shall include detailed statements of income, expenditures results of operation and such other matters relating to the operation of the Charged Premises as the Lender may reasonably require. In the event applicable, the Borrower shall provide the Lender with copies of all proxy statements, reports and information circulars that the Borrower makes available to its shareholders and copies of all regular and periodic reports which the Borrower may file with any securities commission or any other Governmental Authority.
- 22.3 The Borrower shall provide or cause to be provided to the Lender, or as the Lender may direct, a comprehensive list of all

current tenants and rentals of space in the Charged Premises during the Term, which list shall disclose, without limitation, the name of each tenant, the duration of its term, renewal options, if any, and the term thereof, the rental being paid, the last date on which rental was paid and whether such tenancy is in good standing. Such list shall contain an endorsement by an officer of the Borrower as to being complete and accurate.

- 22.4 All statements, reports and other documents required to be provided hereunder shall be prepared in a manner acceptable to the Lender, in its reasonable discretion.

ARTICLE 23 - NOTICE

- 23.1 Unless otherwise provided herein, any demand, notice or communication given or required to be given to a party hereunder shall be in writing and shall be personally delivered or given by transmittal by telecopy or facsimile transmission addressed to the respective parties at its address or telecopy or facsimile number set forth below or to such other address or telecopy or facsimile number as such party may designate by notice in writing to the other party hereto:

- (a) If to the Borrower, at the address for service set out in the electronic Charge to which this schedule is attached; and
- (b) If to the Lender, at the address for service set out in the electronic Charge to which this schedule is attached.

Any demand, notice or communication made by or given by personal delivery shall be conclusively deemed to have been made or given on the day of actual delivery thereof, and, if made or given by telecopy or by facsimile, on the first day other than a Saturday, Sunday or a statutory holiday in Ontario, on which Schedule I banks are open for commercial business in Toronto, Ontario, following the transmittal thereof.

ARTICLE 24 - GENERAL

- 24.1 If any provision of this Charge or the application thereof to any circumstances shall be held to be invalid or unenforceable, it shall be deemed severed herefrom and the remaining provisions of this Charge, or the application thereof to other circumstances, shall not be affected thereby and shall be held valid and enforceable to the full extent permitted by law. In particular, and without limiting the generality of the foregoing, to the extent any and all amounts due pursuant to Article 6 hereof may be deemed to be in excess of what is permissible by law, any such excess shall be deemed not to be due under this Charge.
- 24.2 Wherever used in this Charge, unless the context clearly indicates a contrary intent as unless or otherwise specifically provided herein, the word "Borrower" shall mean "Borrower and/or subsequent owner or owners of the Charged Premises", the word "Lender" shall mean "Lender or any subsequent holder or holders of this Charge".
- 24.3 The descriptive headings of the several subparagraphs or paragraphs or sections or articles of this Charge are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.
- 24.4 Wherever the singular number or masculine gender is used in this Charge, the same shall be construed as including the plural and feminine or a body corporate, respectively, and vice versa, where the fact or context so requires; and the successors and assigns of any party executing this Charge are bound by the covenants, agreements stipulations and provisos herein contained. The covenants, agreements stipulations and provisos herein stated shall, except as otherwise limited hereby, be in addition to those granted or implied by statutory law.
- 24.5 This Charge shall be construed and enforceable under and in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein, and the Borrower hereby irrevocably attorns to the non-exclusive jurisdiction of the courts sitting at Toronto, Ontario.
- 24.6 The Borrower shall at all times, do, execute, acknowledge and deliver or cause to be done, executed, acknowledged or delivered all such further acts, deeds, transfers, assignments, security agreements and assurances as the Lender may reasonably require in order to give effect to the provisions hereof and for the better granting, transferring, assigning, charging, setting over, assuring, confirming or perfecting the Charge and the priority accorded to them by law or under this Charge.
- 24.7 If any of the forms of words contained herein are also contained in Column 1 of Schedule "B" of the Short Forms of Mortgages Act (Ontario) and distinguished by a number therein, this Charge shall be deemed to include and shall have the same effect as if it contained the form of words in Column 2 of Schedule "B" of the said Act distinguished by the same number, and this Charge shall be interpreted as if the *Short Forms of Mortgages Act* (Ontario) were still in full force and effect. The implied covenants deemed to be included in a charge under Subsection 7(1) of the *Land Registration Reform Act* (Ontario) shall be and are hereby expressly excluded from the terms of this Charge.
- 24.8 This Charge shall, whether or not it secures a current or running account, be a general and continuing security to the Lender for payment of the indebtedness in an amount not exceeding the amount secured by this Charge and performance of the Borrower's other obligations under the Charge notwithstanding any fluctuation or change in the amount, nature or form of the indebtedness or in the accounts relating thereto or in the bills of exchange, promissory notes and/or other obligations now or later held by the Lender representing all or any part of the indebtedness outstanding at any particular time; and the Charge will not be deemed to have been redeemed or become void as a result of any such event or circumstance.
- 24.9 This Charge is given as collateral security to the Commitment.
- 24.10 In the event of conflict between the Commitment and the terms of this Charge, the provisions of the Commitment shall prevail; provided that any provision herein contained that is not contained in the Commitment and vice versa shall not in and of itself be considered to be inconsistent or in conflict.

ARTICLE 25 – CONDOMINIUM PROVISIONS

- 25.1 The Borrower covenants and agrees that in the event that the security for the within Charge shall be or shall become a condominium unit(s) the following provisions shall apply.

- (i) the Borrower does hereby assign to the Lender all of its rights to vote or consent in the affairs of the Condominium Corporation having jurisdiction over the subject lands and the Lender, may at its option, exercise the right of an owner of a condominium unit to vote or consent in the affairs of the Condominium Corporation in the place and stead of such owner, without in any way consulting the owner as to the manner in which the vote shall be exercised or not exercised, and without incurring any liability to the owner or anyone else because of the manner in which such vote or right to consent in the affairs of the Condominium Corporation was exercised.
- (ii) the Borrower shall pay promptly, when due, any common expenses, assessments, instalments or payments due to the Condominium Corporation.
- (iii) the Borrower shall observe and perform the covenants and provisions required to be observed and performed under or pursuant to the provisions of the *Condominium Act* (Ontario), all amendments thereto, and any legislation passed in substitution thereof, and the declaration and by-laws of the Condominium Corporation and any amendments thereto.
- (iv) Where the Borrower defaults in the Borrower's obligation to contribute to the common expenses assessed or levied by the Condominium Corporation, or any authorized agent on its behalf, or any assessment, instalment of payment due to the Condominium Corporation, upon breach of any of the foregoing covenants or provisions in this paragraph contained, regardless of any other action or proceeding taken, or to be taken by the Condominium Corporation, the Lender, at its option and without notice to the Borrower, may deem such default to be a default under the terms of this Charge and proceed to exercise its rights therein and the Lender shall be entitled at its option to pay all common expense amounts as they come due and these amounts so paid together with legal fees shall form part of the Indebtedness.

ARTICLE 26 – CONSTRUCTION LOAN PROVISIONS

In the event that any of the monies advanced or to be advanced under this Charge are intended to finance any improvement to the Charged Premises, the parties hereto covenant and agree that the following conditions shall apply:

- 26.1 All construction on the Charged Premises shall be carried out by reputable contractors having experience which is commensurate to nature and size of the project to be constructed, which contractors must be prior approved by the Lender in writing, such approval not to be unreasonably withheld.
- 26.2 The construction of the building and structures located on the Charged Premises have been commenced and shall be continued in a good and workmanlike manner, with all due diligence and in accordance with the plans and specifications delivered to the Lender and to the satisfaction of all governmental and regulatory authorities having jurisdiction.
- 26.3 Provided that should construction of the project on the Charged Premises cease for any reason whatsoever (strikes, material shortages and weather conditions beyond the control of the Borrower excepted), for a period of ten (10) consecutive days (Saturdays, Sundays and Statutory holidays excepted), then, at the option of the Lender, this Charge shall immediately become due and payable. In the event that construction does cease, then the Lender shall have the right, at its sole option, to assume complete control of the construction of the said project in such manner and on such terms as it deems advisable. The cost of completion of the said project by the Lender and all expenses incidental thereto shall be added to the principal amount of this Charge, together with a management fee of fifteen percent (15%) of the costs of the construction completed by the Lender. All costs and expenses, as well as the management fee of fifteen percent (15%) added to the principal amount of this Charge shall bear interest at the rate as herein provided for and shall form part of the principal sum herein and the Lender shall have the same rights and remedies to collection of principal and interest hereunder or at law.
- 26.4 At all times there shall be sufficient funds unadvanced under this Charge and retained by the Lender to complete the construction and/or renovation of the project on the Charged Premises and as may be necessary to retain the Lender's priority with respect to any deficiency in the holdbacks required to be retained by the Borrower under the *Construction Lien Act* (Ontario).
- 26.5 This Charge will be advanced in stages as construction upon the Charged Premises proceeds or as the conditions as enumerated by the Commitment are complied with.
- 26.6 All advances which are made from time to time hereunder shall be based on certificates of a duly qualified architect, engineer, quantity surveyor, cost consultant or other consultant(s) retained for the purpose of reviewing and advising the Lender with respect to the said project and the progress thereof, whose fees and costs shall be for the account of the Borrower regardless of by whom such person has been retained. All such certificates shall without limitation certify the value of the work completed and the estimated costs of any uncompleted work and such certificates shall further certify that such completed construction and/or renovation to the date of such certificate shall be in accordance with the approved plans and specifications for the said construction and further, in accordance with the building permits issued for such construction and in accordance with all municipal and other governmental requirements of all authorities having jurisdiction pertaining to such construction and that there shall be no outstanding work orders or other requirements pertaining to construction on the Charged Premises. Such certificates with respect to any values shall not include materials on the site which are not incorporated into the building.
- 26.7 The Borrower shall pay to the Lender on each occasion when an inspection of the Charged Premises is required to confirm construction costs to date and compliance with conditions for further advances, an inspection fee in such reasonable amount as the Lender may charge from time to time for each such inspection and the Lender's solicitors shall be paid their reasonable fees and disbursements for each sub-search and work done prior to each such advance and all such monies shall be deemed to be secured hereunder and the Lender shall be entitled to all rights and remedies with respect to collection of same in the same manner as it would have with respect to collection of principal and interest hereunder or at law.
- 26.8 The Borrower agrees to indemnify and hold the Lender harmless from any and all claims, demands, sums of money, debts, covenants, bonds, accounts, actions, causes of action, rights, obligations and liability of every kind whatsoever which arise out of claims against the property under the *Construction Lien Act* (Ontario) and that any liens for work and/or supplies that are registered against the Borrower's interest in the property will be promptly discharged within seven (7) days from the date of registration of the lien. The Lender may, but is not required to, deal with the lien claimant and pay the lien claim into court pursuant to the provision of the *Construction Lien Act* (Ontario) for the purpose of vacating the lien from title to the property.

The Borrower agrees to be liable for all costs, claims, amounts and fees including, without limitation, all legal fees (on a solicitor and his client basis) incurred by the Lender arising from or in connection with the Borrower or the Lender obtaining and registering either a release of the lien or an order vacating the lien.

ARTICLE 27 - ASSIGNMENT AND SALE

- 27.1 The Loan and all other amounts secured hereby, this Charge, the Security and all documents ancillary or collateral thereto may, in the Lender's sole discretion and without the consent of the Borrower, in whole or in part, be participated, sold, securitized, syndicated or assigned by the Lender from time to time to one or more Persons.
- 27.2 The Lender may disclose to participants, transferees or assignees or to potential participants, transferees or assignees or others in connection with any sale, assignment, participation, securitization, transfer or syndication, such information concerning the Borrower or the Charged Premises as the Lender may consider to be appropriate in connection therewith.
- 27.3 No grant, assignment or transfer pursuant to this Article 27 shall constitute a repayment by the Borrower to the Lender of the Loan or any other amounts owing hereunder and included in such assignment or transfer and the Borrower acknowledges that all obligations under this Charge and the Security with respect to such assignment or transfer will continue and not constitute new obligations.
- 27.4 The Borrower agrees to be bound by and do all things necessary or appropriate to assist and give effect to any transfer, participation, securitization, sale, syndication or assignment, but shall incur no increased liabilities as a result thereof.

DATED this 1st day of October 2020


LA PUE INTERNATIONAL INC

Per: 

Name: Pawel Fugiel

Title: President

I have the authority to bind the corporation


Pawel Fugiel as Guarantor


Witness

SEPARATOR PAGE

Properties

PIN 64349 - 0257 LT *Interest/Estate* Fee Simple
Description LOTS 46, 51, 52, 61, 62, 63, 64 & 65, PLAN 273; VILLAGE OF NIAGARA FALLS;
 NIAGARA FALLS;PART LOTS 43, 44, 45, PLAN 273; VILLAGE OF NIAGARA FALLS; AS
 IN RO712797, NIAGARA FALLS;LOTS 48, 49,& 50, PLAN 273, & PART LOT 47, PLAN
 273; NIAGARA FALLS, SURFACE ONLY AS IN RO718049; NIAGARA FALLS.
Address NIAGARA FALLS

Chargor(s)

The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.

Name LA PUE INTERNATIONAL INC.
Address for Service 6158 Allendale Avenue
 Niagara Falls, ON L2G 0A5

I, Pawel Fugiel, President, have the authority to bind the corporation.
 This document is not authorized under Power of Attorney by this party.

Chargee(s)

<i>Name</i>	<i>Capacity</i>	<i>Share</i>
MAPLE CORP INVESTMENTS	Tenants In Common	\$2,000,000.00 of \$8,000,000.00
<i>Address for Service</i> 8830 Jane Street, Vaughan ON L4K 2M9		
RIVERSIDE HUMBER CORP.	Tenants In Common	\$400,000.00 of \$8,000,000.00
<i>Address for Service</i> 8830 Jane Street, Vaughan ON L4K 2M9		
FREEMAC TILE & GRANITE INCORPORATED	Tenants In Common	\$400,000.00 of \$8,000,000.00
<i>Address for Service</i> 8830 Jane Street, Vaughan ON L4K 2M9		
ROSSI, FREDY	Tenants In Common	\$2,200,000.00 of \$8,000,000.00
<i>Address for Service</i> 8830 Jane Street, Vaughan ON L4K 2M9		
1620375 ONTARIO LIMITED	Tenants In Common	\$300,000.00 of \$8,000,000.00
<i>Address for Service</i> 8830 Jane Street, Vaughan ON L4K 2M9		
2205633 ONTARIO LIMITED	Tenants In Common	\$400,000.00 of \$8,000,000.00
<i>Address for Service</i> 8830 Jane Street, Vaughan ON L4K 2M9		
CBB HOLDINGS INC.	Tenants In Common	\$1,500,000.00 of \$8,000,000.00
<i>Address for Service</i> 8830 Jane Street, Vaughan ON L4K 2M9		
672510 ONTARIO LIMITED	Tenants In Common	\$500,000.00 of \$8,000,000.00
<i>Address for Service</i> 8830 Jane Street, Vaughan ON L4K 2M9		
SERICCHI, DOMINIC	Tenants In Common	\$300,000.00 of \$8,000,000.00
<i>Address for Service</i> 8830 Jane Street, Vaughan ON L4K 2M9		

Statements

Schedule: See Schedules

Provisions

Principal \$8,000,000.00 *Currency*
Calculation Period monthly, interest only
Balance Due Date 2021/03/01

Provisions

<i>Interest Rate</i>	9.75% per annum
<i>Payments</i>	
<i>Interest Adjustment Date</i>	2020 03 01
<i>Payment Date</i>	1st day of each and every month
<i>First Payment Date</i>	2020 04 01
<i>Last Payment Date</i>	2021 03 01
<i>Standard Charge Terms</i>	200033
<i>Insurance Amount</i>	Full insurable value
<i>Guarantor</i>	Pawel Fugiel

Additional Provisions

An interest reserve in the amount of \$780,000.00 is to be held back from the proceeds to constitute interest payable to term.

Signed By

Janna Broit	1000-120 Adelaide St. W. Toronto M5H 3V1	acting for Chargor(s)	Signed	2020 02 25
-------------	--	--------------------------	--------	------------

Tel 416-363-2211

Fax 416-363-0645

I have the authority to sign and register the document on behalf of the Chargor(s).

Submitted By

Schneider Ruggiero Spencer Milburn LLP	1000-120 Adelaide St. W. Toronto M5H 3V1	2020 02 25
--	--	------------

Tel 416-363-2211

Fax 416-363-0645

Fees/Taxes/Payment

<i>Statutory Registration Fee</i>	\$65.05
<i>Total Paid</i>	\$65.05

File Number

Chargee Client File Number : 41639

SCHEDULE TO THE ATTACHED CHARGE/MORTGAGE

RECITALS

The Lender has agreed to make a loan in favour of the Borrower upon the terms and conditions more particularly contained herein.

The Borrower is the registered owner of the lands and premises described in the electronic Charge to which this schedule is attached.

This Charge is given by the Borrower to the Lender as continuing security for the repayment by the Borrower to the Lender of such loan and the performance by the Borrower of its obligations as more particularly described herein.

ARTICLE 1 - DEFINITIONS

1.1 For the purposes of this Charge the following definitions will apply:

"Applicable Laws" means, at any time, in respect of any Person, property, transaction, event or other matter, as applicable, all then current laws, rules, statutes, regulations, treaties, orders, judgments and decrees and all official directives, rules, guidelines, orders, policies, decisions and other requirements of any Governmental Authority (whether or not having the force of law) (collectively, the "Law") relating or applicable to such Person, property, transaction, event or other matter and shall also include any interpretation of the Law or any part of the Law by any Person having jurisdiction over it or charged with its administration or interpretation;

"Applicable Rate" means the interest rate set out in the electronic Charge to which this schedule is attached or, in the alternative, the interest rate set out in the Commitment;

"Bills" has the meaning ascribed thereto in Section 10.1(a);

"Borrower" means the party identified as "Chargor" set out in the electronic Charge to which this schedule is attached and its successors and assigns;

"Business Day" means a day on which the Lender is open for business but specifically excluding Saturdays, Sundays or statutory holidays pursuant to the laws of Canada or the Province of Ontario and "Business Days" means more than one Business Day;

"Charge" means this charge/mortgage of land and all instruments supplemental hereto or in amendment, renewal, extension, restatement, replacement or confirmation hereof;

"Charged Premises" means, collectively, the Lands and the Improvements;

"Commitment" means the letter of commitment between the Borrower and the Lender, as the same has been or may be amended, restated, supplemented, renewed, extended or superseded from time to time;

"Environmental Approvals" has the meaning ascribed to it in Section 12.1 hereof;

"Environmental Laws" or "Environmental Law" has the meaning ascribed to them in Section 12.1 hereof;

"Event of Default" has the meaning ascribed thereto in Section 18.1 hereof;

"Event of Insolvency" means the occurrence of any one of the following events:

(a) If the Borrower, or the Guarantor(s), shall, other than as expressly permitted hereby:

- (i) be wound up, dissolved or liquidated, whether pursuant to the provisions of the laws of the Province of Ontario or the federal laws of Canada applicable therein, or any other law or otherwise, or becomes subject to the provisions of the *Winding-Up and Restructuring Act* (Canada), or has its existence terminated or has any resolution passed therefor; or
- (ii) makes a general assignment for the benefit of its creditors or files a proposal or a notice of intention to make a proposal under the *Bankruptcy and Insolvency Act* (Canada), shall otherwise acknowledge its insolvency or shall be declared or become bankrupt or insolvent; or
- (iii) proposes a compromise or arrangement or otherwise brings proceedings under or becomes subject to the provisions of the *Companies' Creditors Arrangement Act* (Canada) or shall file any petition or answer seeking any re-organization, arrangement, composition, re-adjustment, liquidation, dissolution or any other relief for itself under, or in any way takes the benefit of, the *Bankruptcy and Insolvency Act* (Canada) or any other present or future law relative to bankruptcy, insolvency or other relief for debtors or for or against the benefit of creditors; or
- (iv) be unable, by reason of insolvency or similar circumstances, to pay its trade creditors generally, within one hundred and twenty (120) days of the rendering of trade accounts or admit its inability to pay its debts or perform its obligations as they become due; or

(b) If a court of competent jurisdiction shall enter an order, judgment or decree against the Borrower in respect of any re-organization, arrangement, composition, re-adjustment, liquidation, dissolution, winding-up, termination of existence, declaration of bankruptcy or insolvency, or similar relief under any present or future law relative to bankruptcy, insolvency or other relief for debtors or for or against the benefit of creditors, or the Borrower shall acquiesce in the entry of such order, judgment or decree, unless the Borrower is also proceeding forthwith to diligently and in good faith contest the same and, provided that none of the Charged Premises, the Charge or the Security, the value of the Charged Premises or the operation thereof, are adversely affected and there is no prejudice to the Lender in the Lender's reasonable opinion, and such order, judgement or decree is vacated or permanently stayed within fifteen (15) days of its making; or

(c) If any trustee in bankruptcy, receiver, receiver and manager, monitor or liquidator or any other officer with similar powers shall

be appointed for the Charged Premises or any portion thereof, or for the Borrower or the Guarantor(s), or for all or any substantial part of its assets or its interest in the Charged Premises with the consent or acquiescence of the Borrower; or

- (d) If, other than as expressly permitted hereby, an encumbrancer or the holder of any lien or charge or any other creditor takes possession of the Charged Premises or the Borrower's interest in the Charged Premises, or any part thereof, or if a distress, execution, garnishment or any similar process is levied or enforced upon or against the same;

"Governmental Authority" means any federal, provincial, territorial or municipal government and any executive, judicial, regulatory or administrative functions of, or pertaining to, government (including, without limitation, all boards, commissions, agencies, departments and ministries);

"Guarantor(s)" means any Person from time to time guaranteeing the Indebtedness;

"Hazardous Substance" has the meaning ascribed to it in Section 12.1 hereof;

"Improvements" means the buildings, erections, structures, fixed machinery, fixed equipment, plant, and improvements now located on the Lands and all appurtenances pertaining thereto, together with all other buildings, structures, fixtures and improvements hereafter located from time to time in, on or under the Lands and all personal property, equipment and chattels now or hereafter affixed to the Lands or to such buildings, erections, structures, fixed machinery, fixed equipment, plant, and improvements owned by the Borrower;

"Indebtedness" means, collectively, the Principal Sum, any debts, liabilities, obligations, covenants and duties owing by the Borrower to the Lender of any kind or nature, present or future and arising under, pursuant to or in connection with this Charge, the Security or any other document delivered pursuant to or in connection herewith or therewith, whether or not evidenced by any note, guarantee or other instrument, whether or not for the payment of money, whether arising by reason of an extension of credit, loan, guarantee, indemnification, or in any other manner, whether direct or indirect (including those acquired by assignment), absolute or contingent, due or to become due, now existing or hereafter arising and however acquired and in all cases arising under, pursuant to or in connection with this Charge, the Security or any other document delivered pursuant to or in connection herewith or therewith. The term includes, without limitation, all interest, yield maintenance, charges, expenses, fees, including all processing and commitment fees and all legal fees and disbursements (in each case whether or not allowed), and any other sum chargeable to the Borrower under, pursuant to or in connection with this Charge, the Security or any other document delivered pursuant to or in connection herewith or therewith;

"Inspections" has the meaning ascribed to it in Section 12.1 hereof;

"Interest Adjustment Date" means the interest adjustment date set by the Lender for the purposes of setting a payment schedule;

"Lands" means the lands and premises described in the electronic Charge to which this schedule is attached, including all tenements, hereditaments and appurtenances belonging or in any way appertaining thereto, and the reversion or reversions, remainder and remainders, rents, issues and profits therefrom, and all the estate, right, title, interest, property claim and demand whatsoever of the Borrower of, in and to the same and of, in and to every part thereof;

"Lease Benefits" means the benefit of all covenants and obligations of tenants, licensees or occupants contained in any of the Leases, including, without limitation, all rights and benefits of any guarantors thereof, the right to demand, sue for, collect, recover and receive all Rents, to enforce the landlord's rights under any Lease and generally any collateral advantage or benefit to be derived from the Leases or any of them;

"Lease Rights" means, collectively, the Leases, the Rents and the Lease Benefits;

"Leases" means all present and future leases, subleases, licences, agreements to lease, agreements to sublease, options to lease or sublease, rights of renewal or other agreements by which the Borrower, or any predecessor or successor in title thereto, has granted or will grant the right to use or occupy all or part or parts of the Charged Premises, including all agreements collateral thereto, but which, for the purpose of this definition does not include the Property Lease, and "Lease" means any one of them;

"Lender" means the party identified as "Chargee" in the electronic Charge to which this schedule is attached, and its successors and assigns;

"Loan" means the loan extended or to be extended by the Lender to the Borrower in the principal amount set out in the electronic Charge to which this schedule is attached and secured by this Charge and other security given to the Lender by the Borrower and the Guarantor(s), if any;

"Major Tenant Leases" means any agreements to lease, offers to lease or leases, subleases or occupancy agreements in respect of premises situate on the Charged Premises and which are determined by the Lender in its discretion to be material to the Charged Premises and the extension and maintenance of the Loan;

"Maturity Date" means, subject to early maturity by reason of the occurrence of an Event of Default and the acceleration of repayment at the option of the Lender, the balance due date set out in the electronic Charge to which this schedule is attached;

"Permitted Encumbrances" means the items more particularly set out in Schedule 'A' hereto together with such other encumbrances, liens and interests affecting the Charged Premises which are acceptable to the Lender in its sole discretion. If no Schedule 'A' is attached hereto, there are no permitted encumbrances;

"Person" means any natural person, sole proprietorship, partnership, syndicate, trust, joint venture, Governmental Authority or any incorporated or unincorporated or entity or association of any nature;

"Principal" or "Principal Sum" means the principal amount of the Loan owing from time to time by the Borrower to the Lender;

"Rents" means all rents, issues and profits now due or to become due under or derived from the Leases;

"Security" means, collectively, all other or additional security, other than this Charge, given by the Borrower or others to the Lender as security for the Loan;

"Taxes" means for each year during the term of this Charge all real property taxes, business taxes, rates, duties, charges, assessments, impositions, taxes, levies and charges for local improvements or otherwise, imposed upon or assessed against the Charged Premises or any part or parts thereof by any Governmental Authority including, without limitation, school boards, and paid or payable by the Borrower or any tenant of the Charged Premises, but shall not include franchise, capital levy or transfer tax or any income, excess profits or revenue tax or any other tax or impost of a personal nature charged or levied upon the Borrower or any tenant of the Charged Premises. If the system of real property taxation or business shall be altered or varied and any new tax shall be levied or imposed on all or any portion of the Charged Premises or the revenues therefrom in substitution for, or in addition to, taxes presently levied or imposed, then any such new tax or levy shall be deemed to be and shall be included herein; and

"Term" means the term of this Charge and being a period which expires on the Maturity Date.

ARTICLE 2 - CHARGING PROVISIONS

- 2.1 Now therefore witnesseth that the Borrower, being the registered owner of a freehold estate in fee simple in possession of the Lands, in consideration of the Loan advanced or to be advanced by the Lender to the Borrower or for its benefit, and as security for the repayment of all Indebtedness and the performance of the obligations of the Borrower hereunder, does hereby grant, mortgage, charge and create a security interest in, to and in favour of the Lender all of its estate, right, title and interest in and to the Charged Premises and covenants and agrees to and with the Lender as hereinafter provided.
- 2.2 The last day of any term reserved by any lease or sublease, verbal or written, or any agreement therefor, now held or hereafter acquired by the Borrower, as lessee, and forming part of the Charged Premises is hereby excepted out of the mortgage, charge, assignment and security interest hereby created or granted or any instrument in implementations hereof, and the same shall be deemed to be a charge by way of sublease. As further security for the payment of the Indebtedness, the Borrower agrees that it will stand possessed of the reversion of such last day of the term and shall hold it in trust for the Lender for the purpose of this Charge and to assign and dispose thereof, without cost or expense to the Lender, in such manner as the Lender shall by notice in writing, for such purpose, direct. Upon any sale, assignment, sublease or other disposition of such leasehold interest or any part thereof, the Lender, for the purpose of vesting the aforesaid one day residue of such term or renewal thereof in any purchaser, assignee, sublessee or other acquirer thereof, shall be entitled by deed or writing to appoint such party or parties as a new trustee or trustees of the aforesaid residue of any such term or renewal thereof in the place of the Borrower and to vest the same accordingly in the new trustee or trustees so appointed freed and discharged from any obligation respecting the same.

ARTICLE 3 - REPAYMENT AND INTEREST

- 3.1 The Borrower covenants to pay to or to the order of the Lender at its offices as set out in Article 23 hereof or at such other address as the Lender may from time to time designate in writing, without set-off, compensation or deduction, and without deduction for bank service or any other charges, the Principal Sum together with all other Indebtedness with interest thereon at the Applicable Rate, as well after as before maturity and both before and after default, demand and judgment. Such interest at the Applicable Rate shall be computed from the date of advance to become due and be paid initially on the Interest Adjustment Date and thereafter to be paid in equal instalments of interest, commencing on the first payment date set out in the Commitment or in the electronic Charge to which this schedule is attached and continuing each month during the Term, to and including the last payment date set out in the Commitment or the electronic Charge to which this schedule is attached, each such instalment to be in the amount stipulated in the Commitment or in the electronic Charge to which this schedule is attached and the last instalment, in the amount of the then remaining balance of the Principal Sum, other Indebtedness and accrued interest thereon, to be paid on the Maturity Date.
- 3.2 The Borrower acknowledges and agrees that monthly instalments for interest described in Section 3.1 together with all payments for Taxes as set out in Section 10.1 hereof must pass through a single bank account on which the Borrower will have provided post-dated cheques (as required by the Lender) or have pre-authorized the Lender to withdraw the monthly payments under this Charge plus any Taxes payable in respect of the Charged Premises if not otherwise paid by the Borrower. In addition, the Borrower must maintain at all times in such account a minimum balance equal to the sum of the monthly payment of principal, interest and Taxes (as such Taxes become due).
- 3.3 It is hereby agreed that if default should occur in payment of any sum due at the time appointed for payment thereof as herein provided, compound interest at the Applicable Rate shall be payable on the sum in arrears from time to time, as well after as before maturity, and if interest as compounded is not paid within one (1) month from the time of default, a rest shall be made, and compound interest at the Applicable Rate shall be payable on the aggregate then due, as well after as before maturity, both before and after default, demand and judgement and so on from time to time and all such interest and compound interest shall be a charge on the Charged Premises.
- 3.4 All interest in arrears shall be treated (as to payment of interest thereon) as Principal and shall bear compound interest, as well after as before maturity, default and judgement as provided in Section 3.3 hereof.
- 3.5 The Borrower will pay interest, including interest on overdue interest, at the Applicable Rate on any arrears of instalments of interest, and any payment by the Borrower shall be applied by the Lender first on account of interest and then on account of principal.
- 3.6 All payments of principal and interest pursuant to Section 3.1 shall be made to and received by the Lender prior to 3:00 p.m. on the date due, failing which such payment shall be deemed received on the next succeeding Business Day provided that in such case, such extension of time shall be included for the purpose of computation for interest; provided further that in the event any payment is due on a day which is not a Business Day, it shall be payable prior to 3:00 p.m. on the next succeeding Business Day and provided such payment is received by such date and such time, then, save in respect of repayment of the Indebtedness at the Maturity Date where interest shall be charged for extensions to the next succeeding Business Day, interest shall not be charged for such extension.

ARTICLE 4 - CRIMINAL RATE OF INTEREST

- 4.1 Notwithstanding any other provisions of this Charge, in no event shall the aggregate "interest" (as defined in Section 347 of the Criminal Code, (Canada), as the same shall be amended, replaced or re-enacted from time to time) payable to the Lender under this Charge exceed the effective annual rate of interest on the "credit advances" (as defined in that section) under this Charge lawfully permitted under that section and, if any payment, collection or demand pursuant to this Charge in respect of "interest" (as defined in that section) is determined to be contrary to the provisions of that section, such payment, collection, or demand shall be deemed to have been made by mutual mistake of the Lender and the Borrower and the amount of such payment or collection in excess of that lawfully permitted shall be refunded by the Lender to the Borrower.

ARTICLE 5 - INTEREST ACT (CANADA)

- 5.1 For the purposes of this Charge, whenever interest is payable or stated not on the basis of a yearly rate, such rate of interest may be determined by multiplying the Applicable Rate by a fraction the numerator of which is the actual number of days in the calendar year in which the same is to be ascertained and the denominator of which is the number of days in the period for which such rate is determined to be payable.
- 5.2 All calculations of interest or fees under this Charge are to be made on the basis of the stated rates set out herein and not on any basis which gives effect to the principle of deemed re-investment.

ARTICLE 6 - PREPAYMENT

- 6.1 Subject to prepayment provisions provided for in the Commitment, if any, or early maturity by reason of the acceleration of the repayment of the Indebtedness at the option of the Lender upon the occurrence of an Event of Default, the Borrower shall not be entitled to prepay all or any portion of the Principal under this Charge prior to the Maturity Date.

ARTICLE 7 - NO OBLIGATION TO ADVANCE

- 7.1 The Borrower acknowledges and agrees that the Lender is not bound to make any advance of any of the Principal Sum or any unadvanced portion thereof by reason of the registration of this Charge in any place or registry office or the advance of any part of the said Principal Sum, it being acknowledged by the Borrower that any advance hereunder is subject, *inter alia*, to: (i) the representations and warranties contained herein being true and correct as of the date of any advance of the Loan; (ii) no default having occurred hereunder, under any of the Security or under the Commitment; and (iii) the conditions precedent contained in the Commitment having been satisfied.
- 7.2 In the event this Charge is registered and either no advance whatsoever is made hereunder by the Lender or the Borrower's ability to draw down funds is terminated by the Lender before any funds are advanced, the Lender will, at the expense of the Borrower and upon payment of all monies, costs, fees and disbursements then due to the Lender, promptly upon request by the Borrower execute and deliver to the Borrower, or any agent thereof, registrable discharges of this Charge and of the Security, for use in every registry office where they or notices thereof have been recorded or filed; provided that the Borrower acknowledges that this Section 7.2 shall be of no effect once any advance of the funds is made hereunder by the Lender.

ARTICLE 8 - REPRESENTATIONS AND WARRANTIES

- 8.1 The Borrower represents and warrants in favour of the Lender, acknowledging that the Lender is relying on such representations and warranties in extending the Loan:
- (a) The Borrower is a corporation duly organized, validly subsisting and in good standing under the laws of its incorporating jurisdiction and has all necessary corporate power and authority to enter into this Charge and the Security and to perform or cause to be performed its obligations contained herein and therein, to own and operate the Charged Premises and to carry on its business pertaining thereto as presently carried on;
 - (b) There are no provisions in the articles or bylaws of the Borrower or any unanimous shareholders agreement of or with respect to the Borrower or to which the Borrower is a party which restrict, limit or regulate in any way the powers of the Borrower to borrow on credit or to issue, sell or pledge any of the property or assets now or hereafter owned by it to secure its debt obligations, save and except any provisions which have been complied with. No steps or proceedings have been taken or are pending to amend or supersede the articles or bylaws of the Borrower in a manner which would impair or limit the Borrower's ability to perform its obligations hereunder or under the Security;
 - (c) The Borrower has taken all necessary corporate action to authorize the execution and delivery of this Charge and the Security, and performance of the provisions of each in accordance with its terms;
 - (d) The authorization, creation, execution or delivery of this Charge or the Security or the Borrower's performance of its obligations hereunder or thereunder does not require any approval or consent of any Governmental Authority having jurisdiction nor will any such action be in conflict with or contravene any of the Borrower's articles, bylaws, unanimous shareholders agreement, if any, or resolutions of directors or shareholders, or the provisions of any indenture, instrument, agreement or undertaking to which the Borrower is a party or by which it or its properties or assets are bound, or result in the creation, imposition or crystallization of any hypothec, title retention, charge, pledge, lien, encumbrance or security interest of any kind upon any of its property or assets subject to the Charge or security interest created thereby or by the Security other than in accordance with the provisions of this Charge and the Security. This Charge and the Security when executed and delivered will constitute valid and legally binding obligations of the Borrower, enforceable against it in accordance with its terms;
 - (e) There is not now pending or, to the best of the Borrower's knowledge or belief after due inquiry, threatened against the Borrower, any litigation, action, suit, investigation or other proceeding by or before any court, tribunal or other competent Governmental Authority which would materially adversely affect the present or prospective ability of the Borrower to perform its obligations under this Charge or the Security, as the case may be, or which calls into question the validity or enforceability of this Charge or the Security;
 - (f) No Event of Insolvency has occurred or is threatened or pending;

- (e) The Borrower is the registered owner of and has a good and marketable title in fee simple to the Lands, and, unless otherwise disclosed to the Lender in writing, is the legal and beneficial owner of the Charged Premises, free and clear of all security interests, charges, liens and other encumbrances whatsoever except for the Permitted Encumbrances, which Permitted Encumbrances are in good standing;
- (h) The Borrower has the right to charge the Charged Premises to the Lender;
- (i) The Borrower has not received any notice of or threat of a lien under the *Construction Lien Act* (Ontario), as amended, against the Charged Premises nor has any lien been registered against the Charged Premises in respect of labour, materials or services furnished with respect to any improvement thereon which has not been discharged;
- (j) Unless expressly stipulated in the Commitment, the Charge is not being given with the intention to use the proceeds thereof to finance any alterations, additions or repairs to, or any construction, erection, demolition or installation on the Charged Premises or any structure thereon;
- (k) Unless expressly stipulated in the Commitment, the Charge is not a building mortgage, within the meaning of the *Construction Lien Act* (Ontario), as amended, and the funds to be advanced by the Lender are not being used to repay a building mortgage;
- (l) There has been no improvement or materials supplied on or in respect of the Charged Premises in respect of which a construction lien could arise and which has not been completed or abandoned within the forty-five (45) days immediately preceding the date hereof;
- (m) Except as disclosed to the Lender in writing, the existing and proposed uses, the operation of the Charged Premises and the business conducted thereon comply and, to the best of the Borrower's knowledge and belief, have (including all prior uses) at all times complied with all Applicable Laws, including all Environmental Laws, and the Borrower is not in violation of, and does not violate, by virtue of the ownership, use, maintenance or operation of the Charged Premises or the conduct of any business related thereto, any Applicable Laws, including all Environmental Laws;
- (n) The Charged Premises may be charged by the Borrower in compliance with the *Planning Act* (Ontario), and no severance of any adjoining lands owned by the Borrower is required;
- (o) All financial statements and data delivered or presented to the Lender by the Borrower up to and including the date hereof are true and correct in all material respects as at the dates and for the periods indicated and have been prepared in accordance with Canadian generally accepted accounting principles and disclose to the Lender all financial information relevant to the Lender in respect of making the Loan and there is no information, financial or otherwise, which has not been disclosed to the Lender which would be material to the Lender in its decision to advance the Loan, and, without limiting the foregoing, neither the Guarantor(s) nor the Borrower has failed to disclose to the Lender any facts or information material to the making of the Loan;
- (p) No Event of Default, or an event which with the giving of notice, lapse of time or otherwise, would constitute an Event of Default exists;
- (q) Each Permitted Encumbrance is in good standing and all obligations and covenants required to be met or complied with thereunder on the part of the Borrower have been complied with and, in respect to any other party thereto to the best of the Borrower's knowledge and belief, have been met or complied with;
- (r) All Leases entered into as of the date hereof are valid, subsisting and enforceable leases and are in good standing as of the date hereof without right of set-off or abatement;
- (s) The Borrower is not bound by any indenture, agreement, lease or other instrument, nor is it subject to any trust agreement, charter, by-law, unanimous shareholders agreement or other corporate restriction or any of the Applicable Laws, which materially adversely affects its business operations in respect of the Charged Premises or the performance of its obligations under this Charge or the Security;
- (t) The Borrower has complied with all Applicable Laws in respect of any residential unit located on the Charged Premises, including in respect of any conversion, demolition, rentals charged or filings or applications to be made and there are no outstanding orders, decisions or directives made or pending which are or would be adverse to the Borrower or the Charged Premises in respect of any residential unit located on the Charged Premises;
- (u) Each partner of the limited partnership of which the Borrower is the general partner is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada);
- (v) With respect to each partner of the limited partnership of which the Borrower is a general partner that is a Canadian corporation, either (i) the shares of that corporation do not derive their value, directly or indirectly, primarily from foreign property, all within the meaning of the *Income Tax Act* (Canada) or (ii) the corporation is a corporation described in subsection 206(1.1) of the *Income Tax Act* (Canada), as that provision may be amended from time to time;
- (w) The Borrower shall not, without the prior written consent of the Lender, execute or deliver any mortgage, charge, lien or other encumbrance of the Lands intended to rank subordinate to this Charge; and
- (x) The Borrower is not and shall not be during the Term (without the prior written consent of the Lender), a farmer within the meaning of the *Farm Debt Mediation Act* (Canada).
- 8.2 The representations and warranties set out in this Article 8 shall speak as of the date made, survive the execution and delivery of this Charge and the making of any advance hereunder and continue to be true and accurate during the Term of this Charge, notwithstanding any investigations or examinations which may be made by the Lender or the Lender's solicitors and the Lender shall be deemed to have relied on such representations and warranties in making advances under the Loan.
- 8.3 The Borrower shall indemnify and save harmless the Lender from and against all losses, damages, claims and expenses directly

or indirectly incurred or suffered by the Lender resulting from any omission, inaccuracy or misrepresentation of the Borrower herein relating to or concerning the Charged Premises and with respect to all losses, charges, claims and expenses directly or indirectly incurred or suffered by the Lender resulting from or arising in connection with environmental matters relating to, arising from, in connection with or concerning the Charged Premises, whether referred to or contemplated herein or hereby.

ARTICLE 9 – COVENANTS

- 9.1 The Borrower covenants with the Lender that upon the occurrence of an Event of Default, the Lender shall have quiet possession of the Charged Premises, free from any encumbrances, save and except for the Permitted Encumbrances.
- 9.2 The Borrower shall not without the prior written consent of the Lender, which may be withheld in the sole discretion of the Lender permit or suffer to exist any charges, liens, security interests or other encumbrances against the Charged Premises, save and except for the Permitted Encumbrances; and the Borrower shall maintain the Permitted Encumbrances in good standing and provide notice to the Lender forthwith of any default under any of the Permitted Encumbrances.
- 9.3 The Borrower shall not initiate, permit or suffer to exist any Event of Insolvency, in respect of itself or, to the extent that the Loan, this Charge or the Security is affected by the occurrence of any such event, of any related person or corporation, including without limitation, any parent corporation of the Borrower. The Borrower covenants and agrees (i) to provide two Business Days' notice prior to the occurrence of an Event of Insolvency (an "Insolvency Notice"), and agrees that the receipt of an Insolvency Notice by the Lender shall constitute an immediate Event of Default if the Borrower or any Guarantor(s) is an applicant or takes the benefit of such statute or proceeding or if any of these proceedings otherwise affect the rights or entitlements of the Lender under the Loan, this Charge or the Security or the Lender's ability to enforce this Charge or the Security, and (ii) prior to the commencement of any such proceedings, to deliver to the Lender copies of all relevant filing materials, including, without limitation, copies of draft court orders, plans of compromise, proposals and notices of intention, it being intended by the Borrower that the Lender be entitled during the period after receipt of an Insolvency Notice to enforce this Charge and the Security for the purpose of, among other things, taking possession and control of the Charged Premises, in the Lender's sole discretion.
- 9.4 The Borrower shall not, without the prior written consent of the Lender, initiate, join in or consent to any change to or modification in any private restrictive covenant, municipal or other governmental law, rule or regulation, by-law, or any other public or private restrictions, limiting or defining the uses which may be made of the Charged Premises, or any part thereof and which could adversely affect the Charge, the Security, the day- to-day operations of the Charged Premises, the income derived therefrom or the value of the Charged Premises.
- 9.5 The Borrower shall comply in all respects with all covenants, deed restrictions, easements and Applicable Laws which pertain to the ownership, use or operation of the Charged Premises or the performance by the Borrower of its obligations under this Charge and shall ensure that all representations and warranties contained herein continue to be true and accurate at all times during the Term.
- 9.6 The Borrower shall permit the Lender, or cause to be made available to the Lender, access to all records, both written and electronic, pertaining to the Charged Premises and upon request shall make copies of such information for the Lender. For such purposes, the Lender shall have reasonable access to the Charged Premises or such other place as such records are kept upon reasonable prior written notice to the Borrower.
- 9.7 The Borrower shall fulfil on a timely basis any undertaking provided by it to the Lender at the time of the advance of the Loan.
- 9.8 The Borrower covenants to ensure that this Charge will remain a valid and enforceable mortgage of the Charged Premises with first priority subject only to the Permitted Encumbrances and the Borrower will fully and effectively maintain and keep the Security as valid and effective security during the currency hereof.
- 9.9 The Borrower shall promptly give written notice to the Lender of any litigation, proceeding or dispute affecting the Charged Premises if the result thereof might have a material adverse effect on the Charged Premises, the financial condition or operations of the Borrower or any Guarantor(s) or its ability to perform its obligations hereunder and shall, from time to time, furnish to the Lender all reasonable information requested by the Lender concerning the status of such litigation, proceeding or dispute and shall in all such cases diligently and in good faith proceed to defend, settle or otherwise deal with any such litigation, proceeding or dispute in a commercially reasonable manner.
- 9.10 The Borrower shall promptly give notice to the Lender upon becoming aware of and provide particulars in respect of:
- (a) An Event of Default or any event which with the passage of time or giving of notice would constitute an Event of Default;
 - (b) Any default under a Lease;
 - (c) Details of material renovations to the Charged Premises when the Borrower intends to or reasonably anticipates that it will renovate the Charged Premises;
 - (d) Any default under any Permitted Encumbrance;
 - (e) Any notice of expropriation, action or proceeding materially affecting the Charged Premises or the violation of any Applicable Law which may have a material adverse affect on the Charged Premises; and
 - (f) Any matter which may have a material adverse affect upon the Borrower or the Guarantor(s) or Charged Premises or the operations conducted thereon, or the security constituted by this Charge and the Security.
- 9.11 The Borrower covenants at all times:
- (a) to perform or cause to be performed all of the covenants and obligations on the part of lessor contained in the Leases

(except the extent the same have been expressly waived by the other parties to such Leases and except in circumstances where the tenant is in default and the Borrower is acting prudently and in the best interests of the Charged Premises);

- (b) to maintain or cause to be maintained the Lease Rights in good standing and not to do, permit to be done or omit to do anything which may impair the enforceability of the Lease Rights;
 - (c) save for the deposits for the first and last month rentals, not to accept Rents more than one (1) month in advance of the dates when Rents fall due;
 - (d) not to enter into Leases which are not at arm's length unless the terms thereof are at least equal to current market terms;
 - (e) not to enter into Lease which do not constitute Major Tenant Leases (each of which must be approved by the Lender as hereafter provided) unless such leases are substantially on Lender pre-approved standard lease forms and not to enter into Major Tenant Leases without the Lender's approval as hereafter provided;
 - (f) not to or to permit termination, alteration or amendment or waiver of rights or remedies or otherwise take any action with respect to any of the Leases which in the aggregate would create a material reduction in Rents from those payable as of the date hereof, without the prior approval of the Lender;
 - (g) not to further assign, mortgage or pledge or permit the assignment, mortgaging or pledging of any Lease or the rents thereunder, save for assignments by tenants of their tenant's interest in Leases, to the extent permitted under such Leases; and
 - (h) to ensure in respect of all Leases now or hereafter entered into that (i) the tenant thereunder, at the option of the Lender, subordinates its lease to the security of this Charge and attorns to and becomes a tenant of the Lender or any purchaser from the Lender in the event of the exercise of a sale remedy by the Lender, for the unexpired residue of the term and upon the terms and conditions of said lease, provided the Lender will agree to enter into non-disturbance agreements on commercially reasonable terms with all such tenants; and (ii) at the request of the Lender, provide as further security specific assignments of Leases hereinafter entered into.
- 9.12 The Borrower shall not, without the prior written consent of the Lender, acting reasonably and promptly, enter into any agreement or document in respect of the Charged Premises (except for leases in accordance with the terms hereof and the Security) which is material to the ownership, value, operation, or use of the Charged Premises unless the same is in the ordinary course of business.
- 9.13 With respect to any Major Tenant Lease, the Borrower shall not and shall not permit without the prior written consent of the Lender:
- (a) cancel or modify any Major Tenant Lease, release the obligations of any lessee thereunder, accept a surrender of a Major Tenant Lease, accept any prepayment of Rents thereunder or consent to any sublet or assignment by the lessee under any Major Tenant lease (except where the provisions of such Major Tenant Lease require the landlord to do so); or
 - (b) enter into any Major Tenant Lease unless the terms, form and substance of such Major Lease is satisfactory to the Lender, acting reasonably; or
 - (c) to further assign, mortgage, pledge, hypothecate or otherwise deal with any Major Tenant Lease.
- 9.14 The Borrower shall do or cause to be done all things necessary to keep in full force and effect all rights, franchises, licences and qualifications necessary or incidental to perform or cause to be performed its obligations contained in this Charge and the Security and to carry on its business pertaining thereto as presently carried on.
- 9.15 The Borrower shall from time to time to pay or cause to be paid all amounts related to taxes, wages, workers compensation obligations, government royalties, and any other similar amounts relating to the business conducted on the Charged Premises if non-payment thereof may result in an encumbrance (other than a Permitted Encumbrance) against the Charged Premises or any of the assets secured in favour of the Lender by the Security.
- 9.16 The Borrower shall not, without the prior written consent of the Lender, acting reasonably and promptly, cause or permit any change in the status of the Borrower that results in the representations contained in Subparagraph 8.1(u) or Subparagraph 8.1(v) ceasing to be accurate in all material respects.
- 9.17 The Borrower covenants, subject to the rights of reorganization herein contained, to continue as a corporation duly organized, validly subsisting and in good standing under the laws of its incorporating jurisdiction and maintain all necessary corporate power and authority to perform or cause to be performed its obligations contained herein and in the Security, to own and operate the Charged Premises and to carry on its business pertaining thereto as presently carried on.
- 9.18 The Borrower covenants that, unless in respect of a reorganization of the Borrower permitted under Paragraph 18.1(h) or with the consent of the Lender as provided therein, no steps or proceedings will be taken to amend or supersede the articles or bylaws of the Borrower and in any event no steps or proceedings, including any reorganization of the Borrower, will be taken in a manner which would impair or limit the Borrower's or its successor's ability to perform its obligations hereunder or under the Security.
- 9.19 The Borrower will not enter into any indenture, agreement, lease or other instrument, nor become subject to any trust agreement, charter, by-law, unanimous shareholders agreement or other corporate restriction, which materially adversely affects the Charged Premises.

ARTICLE 10 - TAXES/LIENS

10.1

- (a) The Borrower shall pay or cause to be paid, all Taxes together with such other amounts, the failure to pay which would give rise to a lien against the Charged Premises, as and when the same shall fall due and payable (collectively, the "Bills").
- (b) With respect to Taxes at the option of the Lender, the Borrower shall pay to the Lender in equal monthly instalments on the first day of each month in each calendar year during the Term, commencing on the first day of the month next following the Interest Adjustment Date, one-twelfth (1/12) of the annual Taxes (or such amount as may be required in order to pay the Taxes as they become due) as reasonably estimated by the Lender; said payments of Taxes shall be paid to the Lender in addition to the instalments of interest due and payable under this Charge, to be deposited upon receipt and held by the Lender in an interest-bearing account for the payment of Taxes, with interest to accrue thereon to the benefit of the Borrower and to be credited in reduction of the amount required to be paid to the Lender for Taxes. The Lender agrees that upon and subject to receipt of monies for Taxes it will remit such monies to the proper municipal offices in payment of Taxes as required from time to time; provided that if any Event of Default shall occur and be continuing, then the Lender, at its sole option, may apply all or any part of any funds held in such account to any amount due hereunder, whether principal, interest or otherwise. The Borrower shall also pay, or cause to be paid, to the Lender before the due date for the payment of Taxes (or next periodic instalment date therefor, as the case may be) any sums in addition to the aforesaid monthly instalments which may be required in order that out of such sums held in trust or escrow by the Lender and such additional sums, the Lender may pay the whole amount of Taxes assessed thereto, on the due date for payment thereof. Notwithstanding the foregoing provisions of this Paragraph 10.1(b), the Borrower acknowledges that the Lender is under no obligation to collect from the Borrower monthly instalments on account of Taxes. In addition, the Borrower acknowledges its obligation to pay all Taxes when due, whether or not the payment of all Taxes are the responsibilities of tenants and whether or not such tenants have remitted the same to the Borrower.
- (c) The Lender may, after written notice being given to the Borrower, pay all unpaid and due Taxes, and any amounts, the failure to pay which would give rise to a lien and any amounts so paid by the Lender shall become part of the Principal hereby secured and be a charge on the Charged Premises in favour of the Lender and shall be payable forthwith by the Borrower to the Lender with interest at the Applicable Rate until paid.
- (d) If the Charged Premises or any part thereof are sold or forfeited for nonpayment of Taxes while any sum remains unpaid hereunder, the Lender may acquire the title and rights of the purchaser at any sale, or the rights of any other person or corporation becoming entitled on or under any such forfeiture, or the Lender may pay, either in its own name or in the name of the Borrower and on the Borrower's behalf, any and all sums necessary to be paid to redeem such land so sold or forfeited, and to revest such lands in the Borrower, and the Borrower hereby nominates and appoints the Lender as agent to pay such monies on the Borrower's behalf and in the Borrower's name, and any monies so expended by the Lender shall become part of the Principal Sum hereby secured and be a charge on the Charged Premises in favour of the Lender and shall be payable forthwith by the Borrower to the Lender and until so paid shall bear interest at the Applicable Rate or in the alternative, the Lender may purchase the Charged Premises at any tax sale of the same.
- (e) Notwithstanding anything to the contrary herein contained, the Borrower shall have the right to contest or defend any actions brought to recover, or appeal any judgments recovered against it in respect of any Bills, or other like charges, or any construction or other liens levied or registered against the Charged Premises, by appropriate proceedings diligently conducted in good faith, provided that the Borrower shall have first deposited with the Lender, or otherwise provided to the reasonable satisfaction of the Lender, such security as the Lender acting reasonably may require including, without limitation, security for the payment of such Bills, charges or liens and any costs payable in connection therewith, and further provided that the Lender shall have determined, to its reasonable satisfaction, that any such contest, defence or appeal or any delay or nonpayment of such Bills, charges or liens shall not materially prejudice the prior charge or lien of this Charge or the title of the Borrower to the Charged Premises. Should the Lender at any time thereafter determine, in its reasonable discretion, that any such contest, defence or appeal or any delay or nonpayment of such Bills, charges or liens shall materially prejudice the prior charge or lien of this Charge or the title of the Borrower to the Charged Premises, the Lender may realize upon such security for payment as aforesaid and pay such Bills, charges or liens. Upon termination of such proceedings, the Borrower shall promptly pay or cause to be paid the amount of the Bills, charges or liens and any other costs, fees, interest and penalties as are properly payable upon determination of such proceedings and promptly cause any tax notifications, caveats, liens, certificates of or pertaining litigation or any other form of notice or encumbrance in respect thereof to be promptly discharged from the title to the Charged Premises at the sole expense of the Borrower whereupon all such security deposited or otherwise provided to the Lender and any proceeds from the realization thereof not paid on account of Bills as aforesaid, shall be returned and paid to the Borrower.
- (f) The Borrower agrees to and does hereby indemnify the Lender against all claims, demands, costs, damages and expenses which arise in respect of any default, late payment, omission, act or proceeding by the Borrower, under or in respect of this Section 10.1.
- (g) If the Lender comes into and for as long as it is in possession of the Charged Premises, the Lender, in its sole discretion, shall be entitled to and shall enjoy all the rights of the Borrower set out in Paragraph 10.1(d) herof, to the exclusion of the Borrower.

ARTICLE 11 - INSURANCE

- 11.1 The Borrower will immediately insure, unless already insured, and during the continuance of the Charge keep insured against loss or damage by fire, in such proportions upon each building as may be required by the Lender, the buildings on the land to the amount of not less than their full insurable value on a replacement cost basis in dollars of lawful money of Canada. Such insurance shall be placed with a company approved by the Lender. Buildings shall include all buildings whether now or hereafter erected on the land, and such insurance shall include not only insurance against loss or damage by fire but also insurance against loss or damage by explosion, tempest, tornado, cyclone, lightning and all other extended perils customarily

provided in insurance policies including "all risks" insurance. The covenant to insure shall also include where appropriate or if required by the Lender, boiler, plate glass, rental and public liability insurance in amounts and on terms satisfactory to the Lender. Evidence of continuation of all such insurance having been effected shall be produced to the Lender at least fifteen (15) days before the expiration thereof; otherwise the Lender may provide therefore and charge the premium paid and interest thereon at the rate provided for in the Charge to the Borrower and the same shall be payable forthwith and shall also be a charge upon the land. It is further agreed that the Lender may at any time require any insurance of the buildings to be cancelled and new insurance effected in a company to be named by the Lender and also of his own accord may effect or maintain any insurance herein provided for, and any amount paid by the Lender therefore shall be payable forthwith by the Borrower with interest at the rate provided for in the Charge and shall also be a charge upon the land. Policies of insurance herein required shall provide that loss, if any, shall be payable to the Lender as his interest may appear, subject to the standard form of mortgage clause approved by the Insurance Bureau of Canada which shall be attached to the policy of insurance.

11.2 During any construction on the Charged Property, the Borrower shall maintain:

- (i) Builders' all-risk coverage for 100% of the construction cost with loss payable to the Lender by way of an Insurance Bureau of Canada ("IBC") approved mortgage clause. The policy must cover flood, earthquake, building by-laws, delayed opening, must allow for partial occupancy of the premises and provide for interim loss payments during reconstruction;
- (ii) Wrap-Up Liability coverage in an amount not less than \$10,000,000 per occurrence;
- (iii) Project performance and completion bonds and insurance, including coverage for labour and material bonds; and
- (iv) Professional Liability coverage in an amount not less than \$10,000,000.

ARTICLE 12 - ENVIRONMENTAL

12.1 The following capitalized terms shall have the following respective meanings:

"Environmental Approvals" means all applicable permits, licences, authorizations, consents, directions or approvals required by Governmental Authorities pursuant to the Environmental Laws with respect to the use, occupation, ownership or operation of the Charged Premises;

"Environmental Laws" means all applicable federal, provincial and municipal laws, by-laws, regulations, executive orders, judgments and protocols, relating in whole or in part, to the environment or its protection, and without restricting the generality of the foregoing, includes without limitation, those laws relating to the manufacturing, processing, use, handling, packaging, labelling, sale, storage, recycling, transportation, treatment, destruction, burial or disposal of Hazardous Substances, employee safety, and the emission, discharge, release, deposit, issuance, spraying, dumping, throwing, pouring, spilling, emptying, placing, leaking, seeping, exhausting or abandonment of Hazardous Substances into the atmosphere, air, surface water, ground water, land surface or subsurface strata and, in each such case, as such Environmental Laws may be amended or supplemented from time to time, and "Environmental Law" means any of them;

"Hazardous Substance" means any pollutant, contaminant, waste, hazardous waste, toxic substance or dangerous good which is defined or identified in or the object of any Environmental Law, the presence of which in the environment is in contravention of any Environmental Law; and

"Inspections" means all inspections, evaluations or tests conducted by the Lender or any agent or consultant thereof for the purpose of determining the environmental condition of the Charged Premises, as the Lender may deem appropriate, acting reasonably.

12.2 The Borrower represents and warrants (which representations and warranties shall continue throughout the Term of the Loan) that:

- (a) The condition and use of the Charged Premises is and, to the best of the Borrower's knowledge, any prior use of the same was, in compliance in all material respects with all applicable Environmental Laws;
- (b) The Charged Premises is not subject to any judicial or administrative proceedings alleging violation of any Environmental Laws and there are no outstanding orders or proceedings against the Charged Premises from a Governmental Authority responsible for protecting the environment alleging the violation of any Environmental Laws;
- (c) To the knowledge of the Borrower, the Charged Premises is not the subject of any investigation by Governmental Authorities having jurisdiction evaluating whether any remedial action is needed to respond to a contravention of any Environmental Laws; and
- (d) There is no contingent liability of which the Borrower has knowledge or reasonably should have knowledge in connection with the contravention of any Environmental Laws.

12.3 The Borrower covenants with the Lender:

- (a) If not already provided, to provide to the Lender within ninety (90) days of the execution of this Charge, an environmental audit with respect to the Lands, and if an event shall have occurred after the date of this Charge, which the Lender, acting reasonably, believes may have resulted or may result in material adverse change in the environmental condition of the Charged Premises or any part thereof, to provide such further environmental audits as the Lender may require;
- (b) To provide notice within fifteen (15) days of either having learned of any enactment or promulgation of any Environmental Laws which may result in any material adverse change in the condition, financial or otherwise, of the Charged Premises;

- (c) To defend, indemnify and hold harmless the Lender, its directors, officers, employees, agents and their respective successors and assigns, against any and all loss, cost, expense, claim, liability or alleged liability arising out of any environmental damage occasioned to the Charged Premises contravention of any Environmental Laws;
- (d) To, at all times and at its own expense, conduct its business and maintain the Charged Premises in compliance with all Environmental Laws and Environmental Approvals including causing all tenants of the Charged Premises to comply with the same;
- (e) If the Borrower:
 - (i) receives notice from any Governmental Authority having jurisdiction that violation of any Environmental Law or Environmental Approval has been committed by the Borrower or any tenant with respect to the Charged Premises;
 - (ii) receives notice that any remedial order or other proceeding has been filed against the Borrower or any tenant alleging in respect of the Charged Premises violations of any Environmental Law or requiring the Borrower to take any action in connection with the release of a Hazardous Substance into the environment; or
 - (iii) receives any notice from a Governmental Authority having jurisdiction in respect of the Charged Premises that the Borrower or any tenant may be liable or responsible for costs associated with a nuisance or a response to, or clean up of, a release of a Hazardous Substance into the environment or any damages caused thereby;

to provide to the Lender a copy of such notice within ten (10) days of the Borrower's receipt thereof, and thereafter shall keep the Lender informed in a timely manner of any developments in such matters, and shall provide to the Lender such other information in respect thereto as may be reasonably requested by the Lender from time to time and shall proceed to deal with the same diligently and in good faith in order to bring the Charged Premises into compliance to the extent necessary to comply with Environmental Laws;

- (f) Unless in existence on the Charged Premises on the date of this Charge, not to use, discharge, transport or install in or upon the Charged Premises any material or equipment containing PCBs or permit any tenant of the Charged Premises to do so and, to the extent in existence on the Charged Premises as of the date of this Charge, to maintain the same in compliance with all Environmental Laws;
- (g) To maintain, and to require all occupants of the Charged Premises to maintain in good leak-proof condition all above-ground and underground storage tanks and drums on the Charged Premises;
- (h) Not to install asbestos or permit asbestos to be installed in the Charged Premises. With respect to any asbestos present in the Charged Premises on the date of this Charge, the Borrower shall, at its expense, promptly comply with the requirements of Environmental Laws and Governmental Authorities respecting the use, removal and disposal of asbestos; and
- (i) To obtain or cause its solicitors to obtain copies of all relevant environmental studies or assessments of the Charged Premises which the Borrower or its solicitors or agents have commissioned or which are in the possession or control of the Borrower, as of the date of this Charge and, to the extent any such assessments or studies are required by the Lender from time to time, to promptly provide same to the Lender upon request and hereby authorizes and directs its solicitors, agents and consultants to promptly release same to the Lender.

12.4 Having due regard to the rights of any tenant of the Borrower, the Lender and its employees and agents shall have the right, and are hereby granted permission by the Borrower, to enter the Charged Premises from time to time, and to have access to the Borrowers' relevant documents and records, in order to conduct inspections, to determine compliance with Environmental Laws as the Lender, acting reasonably, may deem appropriate. Inspections shall be:

- (a) at such times and to such extent as may be reasonable in the circumstances on prior notice to the Borrower if the Lender has reasonable grounds for believing that:
 - (i) there are, contrary to Environmental Laws or Environmental Approvals, Hazardous Substances in or upon the Charged Premises which have not been disclosed to and approved by the Lender and appropriate Government Authorities; or
 - (ii) the Borrower is in breach of any environmental representations in this Charge or its covenants in this Article; or
 - (iii) the Borrower is not in compliance with any Environmental Laws or material Environmental Approvals; and
- (b) at any time without prior notice upon the occurrence of an Event of Default which is continuing.

If the Borrower is found not to be in compliance with the Environmental Laws or Environmental Approvals and such failure to comply becomes an Event of Default that is continuing, the Lender may, at its option (but without any obligation to do so) take such actions as are required, acting reasonably, to bring the Charged Premises into compliance, and the costs thereof shall immediately become due and payable to the Lender by the Borrower and shall be secured by the Security.

12.5 The Lender shall not, by virtue of being the chargee under this Charge or the enforcement of its rights contained herein for purposes of the Environmental Laws, be or be deemed to be the owner of, any of the Charged Premises, or to have management, charge, control, occupation or possession of any of the Charged Premises or the businesses of the Borrower, or of any Hazardous Substances located on, upon or within any of the Charged Premises.

12.6 The Borrower hereby covenants and agrees to be responsible for, and to indemnify and hold harmless the Lender and each of its officers, directors, employees, shareholders, all unitholders of any pooled funds under its management and agents and their

respective successors and assigns (in this Section, collectively referred to as the "Indemnified Parties") from and against all claims, demands, liabilities, losses, costs, damages and expenses (including, without limitation, reasonable legal fees and all costs incurred in the investigation, pursuing of any claim, or in any proceeding with respect to, defense and settlement of any item or matter hereinafter set out) that the Indemnified Parties may incur or suffer, directly or indirectly as a result of or in connection with:

- (a) Any inaccuracy in or breach of the Borrower's representations and warranties relating to the environmental matters contained herein;
- (b) The presence of any Hazardous Substance on, upon or within the Charged Premises, or the escape, seepage, leakage, spillage, discharge, emission, release, disposal or transportation away from the Charged Premises of any Hazardous Substance, whether or not there is compliance with all applicable Environmental Laws and Environmental Approvals;
- (c) The imposition of any remedial order affecting the Lands, or any non-compliance with Environmental Laws or Environmental Approvals pertaining to the Charged Premises by any person, including the Borrower, the Lender or any person acting on behalf of the Lender; and
- (d) Any diminution in the value or any loss on the disposition of the Charged Premises arising directly or indirectly as a result of the presence on the Lands of any Hazardous Substance, or as a result of the imposition of any remedial order or the breach by any person of any Environmental Law or Environmental Approval.

This indemnity shall survive the satisfaction and release of this Charge and the Security and the payment and satisfaction of all indebtedness hereunder. The benefit of this indemnity may be assigned by the Lender to any successor or assign of the Lender and the Borrower hereby consents to any such assignment.

ARTICLE 13 - ASSIGNMENT OF RENTS AND LEASES

- 13.1 As further security for the payment of all monies owing and the performance of all obligations to be performed hereunder, the Borrower does, as and by way of security, hereby sell, assign, transfer and set over unto to the Lender all of the Borrower's right, title and interest, both at law and equity, in and to the Lease Rights, to hold and receive the same unto the Borrower with full power and authority to demand, collect, sue for, recover and receive and give receipts for Rents and enforce payments of the same and enforce performance of the obligations of tenants under the Leases, provided, however, that, subject to the terms of this Charge, the Borrower shall have the full right, so long as no Event of Default has occurred and is continuing, to continue to collect Rents, to take or cause to take all actions as it deems necessary with respect to the Lease Rights, acting as a reasonable lessor.
- 13.2 It is expressly acknowledged and agreed by the Borrower that nothing contained in this Charge shall oblige the Lender to assume or perform any obligation of the Borrower to any third party in respect of or arising out of the assigned Lease Rights. The Lender may, however, after the occurrence of an Event of Default and while such Event of Default continues, at its option, assume or perform any such obligation as the Lender considers necessary or desirable to obtain the benefit of the Lease Rights, free of any set-off, reduction or abatement, and any money expended by the Lender in this regard shall form part of or be deemed to form part of the indebtedness secured by this Charge and shall bear interest at the Applicable Rate.

ARTICLE 14 - MANAGEMENT AND REPAIR

- 14.1 The Borrower shall cause the Charged Premises at all times to be professionally maintained, managed and operated and fully and continuously operational during customary business hours, including all uses ancillary or incidental to its operations, at all times, by competent managers and staff of proper background and training, in a first class manner consistent with the management and operation of other properties which are of size, location, use, class, age and type comparable to the Charged Premises, and the Borrower shall obtain the Lender's prior written approval of any manager and any management contract with any manager which may be entered into by the Borrower for the management of the Charged Premises. In addition to any other rights hereunder of the Lender, the Lender shall have the right, acting reasonably, to replace the manager at the expense of the Borrower in the event the management standards are not maintained as required hereunder and the situation is not remedied within thirty (30) days after written notice from the Lender. The Lender acknowledges and approves, as of the date hereof, of the Borrower or a company controlled by the Borrower acting as manager of the Charged Premises provided that the Charged Premises are managed and maintained in accordance with the provisions hereof.
- 14.2 The Borrower shall promptly repair, maintain, restore, replace, rebuild, keep, make good, finish, add to and put in order, or cause to be so done, the Charged Premises, so that the same shall, at all times, be in good condition and repair and to pay or cause to be paid when due all claims for labour performed and materials furnished therefor. The Borrower shall not commit or suffer any waste of the Charged Premises nor take any action that might invalidate or give cause for cancellation of any insurance maintained in respect of the Charged Premises. No building or other property now or hereafter charged by this Charge shall be removed, or demolished or nor shall the structure of any building be materially altered, redeveloped, retrofitted or renovated, without the prior written consent of the Lender, except that the Borrower shall have the right, without such consent, to remove and dispose of, free from the lien or charge of this Charge, such fixed equipment as from time to time may become worn out or obsolete, provided that either (a) simultaneously with or prior to such removal, and if necessary for the operation of the Charged Premises such equipment shall be replaced with other equipment of a quality comparable to that of the replaced equipment and free from any lien, title retention agreement, conditional sale contract, security agreement or other encumbrance, and by such removal and replacement the Borrower shall be deemed to have subjected such fixed equipment to the lien or charge of this Charge, or, (b) any net cash proceeds received from such disposition shall, at the option of the Lender, be paid over promptly to the Lender to be applied in a manner determined by Lender in its sole discretion toward the payment of any amounts owing hereunder or secured hereby. The Borrower shall notify the Lender promptly of any material damage to or defects in any of the Improvements, and thereafter forthwith shall make or cause to be made such repairs thereto as are required to correct any such damage or defects and return the Charged Premises to a state of condition and repair equivalent to the state of condition and repair required by the provisions of this Charge.
- 14.3 The Borrower shall comply with, or cause to be complied with, all statutes including without limitation the provisions of the *Construction Lien Act* (Ontario), ordinances and requirements of any Governmental Authority having jurisdiction with respect to the Charged Premises; the Borrower shall complete and pay for, within a reasonable time, any structure at any time in the

process of construction on the Charged Premises.

- 14.4 The Borrower shall permit the Lender or its authorized agents at all reasonable times to enter upon the Charged Premises and inspect same, and if such inspection reveals that any repairs or like actions are necessary, the Lender may give notice to the Borrower requiring the Borrower to repair, rebuild or reinstate the same, or take such other like action within a reasonable time. Any failure by the Borrower to comply with such notice shall constitute an Event of Default hereunder and the Lender may repair, rebuild or reinstate the Charged Premises at the cost of the Borrower and charge all sums of money determined by the Lender to be properly paid therefor and interest thereon at the Applicable Rate until paid.

ARTICLE 15 - INCREASED COSTS

- 15.1 In the event that as a result of any application of or any change in or enactment of any applicable law, regulation, treaty or official directive after the date hereof (whether or not having the force of law), or in the interpretation of application thereof by any court or by any governmental or other authority or entity charged with the administration thereof which now or hereafter:
- (a) Subjects the Lender to any tax or changes the basis of taxation, or increases any existing tax, on payments of principal, interest or other amounts payable by the Borrower to the Lender under this Charge (except for taxes on the overall net income of the Lender or capital of the Lender imposed by the Government of Canada or any political subdivision thereof or by the jurisdiction in which the principal or lending office of the Lender is located); or
 - (b) Imposes, modifies or deems applicable any special requirements against assets held by, or deposits in or for the account of or any other acquisition of funds by the Lender or imposes on the Lender a requirement to maintain or allocate capital or additional capital in relation to the Loan; or
 - (c) Imposes on the Lender any other condition with respect to this Charge; or
 - (d) Renders any portion of this Charge illegal or unenforceable;

and the result of any of the foregoing is to increase the cost to the Lender, or reduce the amount of principal, interest or other amount received or receivable by the Lender hereunder or its effective return hereunder in respect of making or maintaining the Loan hereunder or to reduce the payments receivable by the Lender in respect of the Loan by an amount which the Lender deems to be material, the Lender shall promptly give written notice thereof to the Borrower setting out in reasonable detail the facts giving rise to and a summary calculation of such increased costs or reduced payments, and the Borrower shall forthwith pay to the Lender upon receipt of such notice that amount which will compensate the Lender for such additional cost or reduction in income (herein referred to as "Additional Compensation"). Upon the Lender having determined that it is entitled to Additional Compensation in accordance with the provisions of this Section, the Lender shall promptly so notify the Borrower. The Borrower shall forthwith pay to the Lender upon receipt of such notice such Additional Compensation calculated on the date of demand. The Lender shall be entitled to be paid such Additional Compensation from time to time to the extent that the provisions of this Section are then applicable notwithstanding that the Lender has previously been paid any Additional Compensation. The Lender shall endeavour to limit the incidence of any such Additional Compensation, including seeking recovery for the account of the Borrower, by appealing any assessment at the expense of the Borrower upon the Borrower's request.

- 15.2 All payments made by the Borrower to the Lender will be made free and clear of all present and future taxes, withholdings or deductions of whatever nature. If these taxes, withholdings or deductions are required by Applicable Law and are made, the Borrower shall, as a separate and independent obligation, pay to the Lender all additional amounts as shall fully indemnify the Lender from any such taxes, withholding or deduction. Provided, however, that the Borrower shall have no obligation to pay any withholding or like tax which may be exigible, incurred or required as a result of the Lender being a non-resident of Canada for the purposes of the *Income Tax Act* (Canada).
- 15.3 If the result of any law, regulation, treaty or official directive or request or any change in or any introduction thereof or change in the interpretation or application thereof or compliance by the Lender with the same (including, without limitation, those relating to taxation, reserve requirements, capital adequacy or other banking or monetary controls) is such that it is or will become (other than as a result of some positive action of the Lender, including any participation or syndication hereof by the Lender) unlawful for the Lender to make, fund or allow to remain outstanding all or part of the Loan, or to carry out all or any of its other obligations under this Charge and/or the Security or receive interest or any fee at the Applicable Rate, then in such case:
- (a) The Lender may give written notice to the Borrower of such law, regulation, treaty or official directive or request (whether or not having the force of law) or such change in or any introduction thereof or change in the interpretation or application thereof or compliance by the Lender with the same (including, without limitation, those relating to taxation, reserve requirements, capital adequacy or other banking or monetary controls) which such notice shall certify that such law, regulation, treaty, official directive or request is generally applicable to all other borrowers from the Lender with any accommodation similar to that herein provided; and
 - (b) The Borrower shall prepay the indebtedness on such date and to such extent as the Lender shall certify to be necessary to comply with the relevant law or change described above;

provided, however, that should the Loan become unlawful, the Lender, without prejudice to its rights to require repayment and without any obligation on its part, will consider other means of funding the Loan which would not be unlawful, would allow the Lender to carry out its obligations in respect of the Loan and would enable the Lender to receive interest at the Applicable Rate, provided always, notwithstanding the foregoing, the Lender is not obligated to provide alternate funding.

ARTICLE 16 - OBTAINING AND MAINTAINING SECURITY

- 16.1 Regardless of whether such sums are advanced or incurred with the knowledge, consent, concurrence or acquiescence of the Borrower or otherwise and in addition to any other amounts provided for herein or otherwise permitted by Applicable Law to be secured hereby, except as herein otherwise provided, the following are to be secured hereby and shall be a charge on the Charged Premises, together with the interest thereon at the Applicable Rate, and all such monies shall be repayable to the Lender, on demand, except as herein otherwise provided:

- (a) All reasonable and properly chargeable solicitor's, inspector's, valuator's, consultant's, architect's, engineer's, surveyor's and appraiser's fees and out-of-pocket expenses:
- (i) for drawing and registering this Charge and the Security and financing statements in connection therewith, and attending to advances hereunder;
 - (ii) for examining the Charged Premises and the title thereto up the date hereof;
 - (iii) for making and maintaining this Charge as a registered charge on the Charged Premises and maintaining the Security (including the registration and filing of renewals);
 - (iv) for the preparation of this Charge, the Security and any related documents and in exercising or enforcing or attempting to enforce or advising the Lender in respect of defaults hereunder or in pursuit of any right, power, remedy or purpose hereunder or subsisting at law;
 - (v) reasonable allowance for the time, work and expenses of the Lender or of any agent of the Lender in connection therewith; and
- (b) All reasonable sums which the Lender may from time to time advance, expend, incur or suffer hereunder:
- (i) for insurance premiums, Bills, Taxes, rates, or in or toward payment of prior liens, charges, encumbrances or claims charged or to be charged against the Charged Premises;
 - (ii) in maintaining, repairing, restoring or completing construction of the Charged Premise;
 - (iii) in inspecting, leasing, managing or improving the Charged Premises as permitted hereunder, including the price or value of any goods of any sort or description supplied to be used on the Charged Premises as permitted hereunder; and
- (c) Without limiting the generality of any of the foregoing, the then current reasonable fee of the Lender and/or its solicitor for the following matters:
- (i) executing any cessation or discharge of this Charge, notwithstanding that said cessation or discharge may have been prepared by the Borrower;
 - (ii) entering into an agreement to amend the interest rate or any other provision in the Charge;
 - (iii) handling any dishonored cheque;
 - (iv) preparing an amortization schedule showing the principal and interest components of payments due under this Charge;
 - (v) the cost of completing a Phase I & II Environmental Audit and such other environmental audits as the Lender may require in its discretion;
 - (vi) such other administrative matters as the Lender may perform with regards to the Charge or with regards to any collateral security, as permitted by the Commitment;
 - (vii) the fee charged by the Lender's insurance consultant to review the Borrower's policy of insurance for the subject lands including business interruption insurance if required by the Lender; and
 - (viii) the execution and delivery of any consents, postponements, acknowledgments or any other documents that may be required from the Lender, whether from the Borrower and/or any governmental authorities and/or public/private utilities.

16.2 If any action or proceeding be commenced (except an action to foreclose this Charge or to collect the money that is secured hereby) in which the Lender becomes a party or participant by reason of being the holder of this Charge or the indebtedness secured hereby, all sums paid by the Lender for the expense of so becoming a party or participating (including all reasonable and properly chargeable legal costs) shall, on written notice, be paid by the Borrower, together with interest thereon at the Applicable Rate from the dates of payment of such sums by the Lender, and shall be a lien and charge on the Charged Premises, prior to any right or title to, interest in, or claim upon the Charged Premises subordinate to the lien and charge of this Charge, and shall be deemed to be secured by this Charge, and that in any action or proceeding to foreclose this Charge, or to recover or collect the indebtedness secured hereby, provisions of law respecting the recovery of costs, disbursements and allowances shall prevail unaffected by this covenant.

ARTICLE 17 - CONDEMNATION AWARDS

17.1 The Borrower shall notify the Lender promptly upon it being aware of any and all awards or payments ("Condemnation Award(s)") including interest thereon, and the right to receive the same (save for any portion of any such Condemnation Award paid for remedial purposes and which is actually used for such purpose) which may be made with respect to the Charged Premises, or any part thereof, as a result of:

- (a) Any condemnation, eminent domain, compulsory acquisition, expropriation or like procedures ("Condemnation"), partial or complete, including any sidewalk or lane; or
- (b) The imposition, and enforcement, of any restriction, regulation or condition to meet any building or development guideline for development or restriction of or by any municipality or other competent authority; or

- (c) Any other material injury to or decrease in the value of the Charged Premises by any lawful regulation or any governmental authority having jurisdiction;

(any matter referred to in (a), (b) or (c) above being hereinafter called an "Incident of Expropriation") to the extent of all amounts which may be secured by this Charge at the date of receipt of any such Condemnation Award by the Borrower. Notwithstanding the occurrence of any Incident of Expropriation, the Borrower shall continue to pay interest at the Applicable Rate on the Principal Sum. The Borrower does hereby charge, assign, set over as transfer to the Lender, as security for the repayment of all Indebtedness.

- 17.2 Any Condemnation Award received by the Lender shall be held by the Lender as part of the security for the Loan subject to application as provided in this Article 17. Pending such application, such amounts received shall be held and invested by the Lender, acting reasonably. If at any time an Event of Default has occurred and is continuing, the Lender may, at its option, apply such amounts in reduction of the amounts owing hereunder.
- 17.3 Notwithstanding the provisions of Sections 17.1 and 17.2, in the event that any Incident of Expropriation shall occur which, in the reasonable opinion of the Lender, would materially and adversely affect the security of the Charge or any other Security after the application of any Condemnation Award pursuant to Section 17.1 hereof, the Lender may, at its option, declare such Incident of Expropriation to be an Event of Default and be entitled to exercise any and all rights and remedies available to it hereunder at law or in equity.

ARTICLE 18 - EVENTS OF DEFAULT

- 18.1 The whole of the Principal Sum together with interest thereon at the Applicable Rate, interest on overdue interest and any amounts payable pursuant to Article 6, and all other amounts secured hereby shall, at the option of the Lender, subject to Section 18.2 hereof, become due and payable and all powers conferred on the Lender herein and hereby shall become exercisable, in like manner to all intents and purposes as if the time herein mentioned for payment of such Principal monies had fully come and expired, if specifically provided for in this Charge, or if any of the following events shall occur (the occurrence of any such event together with the expiry of the applicable cure period, if any, and any other occurrence specifically provided for herein as an Event of Default being collectively referred to as an "Event of Default"):
- (a) Upon default in payment of any regularly schedule instalment of interest beyond the date such payment is due and payable; or
 - (b) Upon default in payment of the Indebtedness due and owing on the Maturity Date; or
 - (c) Upon default in payment of any Indebtedness (other than an instalment of interest and upon maturity) due hereunder within five (5) Business Days after written notice thereof is provided by the Lender; or
 - (d) Save as otherwise provided for in subparagraphs (a), (b) and (c) hereof or otherwise specifically provided herein, upon any default in the performance of any covenant or obligation of the Borrower hereunder within fifteen (15) days after written notice thereof is provided by the Lender, provided that if such default is curable and the nature of such default is such that the exercise of reasonable diligence of more than fifteen (15) days is required to cure such default, and if such default in the Lender's reasonable discretion does not jeopardize or adversely effect the security interest of the Lender hereunder or adversely affect the Borrower or its ability to perform its obligations hereunder or under the Security or adversely affect the Charged Premises, the Lender will not, for a further sixty (60) days so long as no other Event of Default has occurred, enforce its remedies in respect of such default while and so long as during such time the Borrower is actively continuing to diligently and in good faith cure such default; or
 - (e) If at any time during the Term there is a breach of any representation or warranty contained herein or at any time during the Term if any representation or warranty contained herein is no longer true or accurate or becomes untrue or inaccurate for any reason and provided the same can be rectified, and the same is not rectified within thirty (30) days after written notice thereof is provided by the Lender; or
 - (f) Upon the assignment by the Borrower to any other party of the whole or a part of the rents, income or profits arising from the Charged Premises, without the written consent of the Lender; or
 - (g) The occurrence of an Event of Insolvency; or
 - (h) If without the prior written consent of the Lender, in its sole and absolute discretion:
 - (i) the Borrower transfers, sells, conveys, or otherwise disposes of all or any part of the Charged Premises, or any interest therein (other than by way of Leases), whether legal or beneficial or enters into any transaction or series of transactions where all or any part of the Charged Premises becomes the property of another person, whether through reorganization, amalgamation, merger, consolidation or otherwise, or if there is any change in the legal or beneficial interest, in whole or in part, of the Charged Premises; or
 - (i) If, without the prior written consent of the Lender, in its sole and absolute discretion:
 - (i) there is any change in the Borrower's corporate control or change in the Borrower's effective control existing as of the date of this Charge; or
 - (ii) the Borrower creates, permits or suffers to exist any mortgage, pledge, charge, loan, assignment, hypothecation, security interest or other encumbrance attaching the Charged Premises other than this Charge, the Security and the Permitted Encumbrances; or
 - (j) Upon default by or non-compliance of the Borrower or any Guarantor(s), or any others bound by or acknowledging to be bound by the terms of this Charge, with respect to any of the provisions of the Security or the Permitted Encumbrances; or

- (k) If the Charged Premises are abandoned; or
 - (l) Failure by the Borrower to fulfil, complete or comply with any undertakings delivered by the Borrower to Lender in connection with the Loan in accordance with the terms of such undertakings; or
 - (m) Upon any breach, default, non-observance occurring or being alleged, charged or claimed against the Borrower as lessor under any lease or as sublessor under any sublease of the Charged Premises and the Borrower is not diligently proceeding to rectify any such breach, default, non-observance or non-performance or defend any allegations, charges or claims of the same; or
 - (n) If this Charge, or any of the Security, shall fail to constitute a legal, valid, binding and enforceable first charge, first assignment or first security interest, each enforceable in accordance with its terms, subject only to Permitted Encumbrances; or
 - (o) If in the reasonable opinion of the Lender there occurs an event which has a material adverse effect on the financial condition or operation of the Borrower, the Charged Premises, this Charge, the Security or the ability of the Borrower to pay the Indebtedness or to perform its obligations hereunder or under the Security and which cannot be rectified by the Borrower within a reasonable period of time.
- 18.2 Save as otherwise specifically provided, an Event of Default hereunder or under any Security shall not have occurred or be deemed to have occurred until the expiration of any applicable notice period, if any, called for in this Charge or in such Security within which the Borrower may remedy such default. In any event, if in the opinion of the Lender, an event has occurred which with the passing of time, the giving of notice or otherwise would constitute an Event of Default and as a result of which the Charged Premises or the property assets and undertaking subject to the Security is materially at risk, the Lender may take such action or exercise such remedies as may be appropriate without notice to the Borrower or the expiry of any cure period.

ARTICLE 19 - REMEDIES

- 19.1 If an Event of Default has occurred hereunder and is continuing (or if the Lender exercises its rights pursuant to Section 18.2 hereof before the occurrence of an Event of Default), then at any time thereafter, but subject always to the waiver thereof by the Lender, the Lender may:
- (a) Declare the Indebtedness to be immediately due and payable and proceed to exercise any and all rights hereunder or under the Security or any other rights available to it under any other document or instrument or at law or in equity including without limitation, the drawdown of any letter of credit held by the Lender;
 - (b) Commence legal action to enforce payment of the Indebtedness or performance of the obligations by the Borrower to the Lender;
 - (c) At the expense of the Borrower, when and to such extent as the Lender deems advisable, observe and perform or cause to be observed and performed any covenant, agreement, proviso or stipulation contained herein or in the Security, and the reasonable cost thereof with interest thereon at the Applicable Rate until paid, shall immediately become due from the Borrower to the Lender after demand by the Lender upon the Borrower therefor;
 - (d) Pay or discharge any mortgage, encumbrance, lien, adverse claim or charge that may exist or be threatened against the Charged Premises; in any such case, the amounts so paid together with costs, charges and expenses incurred in connection therewith shall be added to the Principal outstanding and shall bear interest at the Applicable Rate;
 - (e) Send or employ any inspector or agent to inspect and report upon the value, state and condition of the Charged Premises and may employ a lawyer to examine and report upon the title to the same;
 - (f) Immediately take possession of all of the Charged Premises or any part or parts thereof by action or otherwise, with power, among other things, to exclude the Borrower, to enforce the Borrower's rights, to preserve and maintain the Charged Premises, to repair, alter or extend the Charged Premises, to lease the Charged Premises, to complete construction and development of the Charged Premises, to operate and manage the Charged Premises and to collect or receive rents, income and profits of all kinds (including taking proceedings in the name of the Borrower for that purpose) and pay therefrom all reasonable expenses and charges of maintaining, preserving, protecting and operating the Charged Premises (payment of which may be necessary to preserve or protect the Charged Premises), and to enjoy and exercise all powers necessary to the performance of all functions made necessary or advisable by possession, including without limitation, power to advance its own moneys and enter into contracts and undertake obligations for the foregoing purposes upon the security hereof, and all sums advanced or expended shall be added to the Principal outstanding and shall bear interest at the Applicable Rate;
 - (g) On default of payment for at least fifteen (15) days may, on at least thirty-five (35) days' notice, sell and dispose in the Charged Premises with or without entering into possession of the same and with notice to such persons and in such manner and form and within such terms as provided under Part III of the *Mortgages Act* (Ontario), as amended; and all remedies available may be resorted to and all rights, powers and privileges granted or conferred upon the Lender under and by virtue of any statute or by this Charge may be exercised and no want of notice or publication or any other defect, impropriety or irregularity shall invalidate any sale made or purporting to be made in the Charged Premises; and the Lender may sell, transfer and convey any part of the Charged Premises on such terms, including on credit for all or part of the consideration, (provided the Borrower shall not be accountable for any default in respect of the credit), secured by contract or agreement for sale, or charge, or otherwise, as shall appear to the Lender most advantageous and for such prices as can reasonably be obtained therefor in the circumstances; and in the event of sale on credit or part cash and part credit, whether by way of contract for sale or by conveyance or transfer, charge, or otherwise, the Lender is not to be accountable for or charged with any monies until the same shall be actually received in cash or received by a take-back charge; and sales may be made from time to time of parts of the Charged Premises to satisfy interest and leaving the Principal or part thereof to run with interest at the Applicable Rate; and the Lender may make any stipulations as to title or evidences or commencement of title or otherwise as the Lender shall deem proper and may buy or rescind or vary any contract for sale; and on any sale or resale, the Lender shall not be answerable for loss

occasioned thereby; and for any of such purposes the Lender may make and execute all arrangements and assurances that the Lender shall deem advisable or necessary;

(h) With respect to the Leases:

- (i) to demand, collect and receive the Rents or any part thereof and to give acquittances therefor, and to take from time to time, in the name of the Borrower, any proceeding which may be, in the opinion of the Lender or its counsel, expedient for the purpose of collecting the Rents or for securing the payment thereof or for enforcing any of the Borrower's rights under the Leases;
- (ii) to compound, compromise or submit to arbitration any dispute which has arisen or may arise in respect to any amount of Rent and any settlement arrived at shall be binding upon the Borrower;
- (iii) to enter upon the Lands by its officers, agents or employees for the purpose of collecting the Rents; (iv) to receive, enjoy or otherwise avail itself of the Lease Rights; and
- (v) on behalf of the Borrower to alter, modify, amend or change the terms of Leases; to terminate Leases, to enter into new Leases; to give consents, concessions or waivers of any rights or provisions of Leases; to accept surrenders of Leases; to give consents to assignment of or subletting under Leases;

(i) With or without taking possession of all or any part of the Charged Premises, sell, lease or otherwise dispose of the whole or any part of the Charged Premises, as agent for the Borrower and not the Lender, and in exercising the foregoing power, the Lender may, in its absolute discretion:

- (i) sell, lease or otherwise dispose of the whole or any part of the Charged Premises by public auction, public tender with notice, or by private contract (in the name of or on behalf of the Borrower) or otherwise, with such notice, advertisement or other formality as is required by law;
- (ii) make and deliver to the purchaser good and sufficient deeds, assurances and conveyances of the Charged Premises and give receipts for the purchase money, and any such sale once effected shall be a perpetual bar, both at law and in equity, to the Borrower and all those claiming an interest in the Charged Premises by, from, through or under the Borrower making any claim against the purchaser of the Charged Premises;
- (iii) grant, rescind, vary or complete any contract for sale, lease or options to purchase or lease, or rights of first refusal to purchase or lease the whole or any part of the Charged Premises, for cash or for credit, with or without security being given therefor, and on terms as shall appear to be most advantageous to the Lender (including a term that a commission be payable to the Lender or a related corporation in respect thereof) and if a sale is on credit, the Lender shall not be accountable for any moneys until actually received;
- (iv) make any stipulation as to title or conveyance or commencement of title;
- (v) re-sell or re-lease the Charged Premises or any part thereof without being answerable for any loss occasioned thereby; and
- (vi) make any arrangements or compromises which the Lender shall think expedient in the interest of the Lender and to assent to any modification of this Charge, and to exchange any part or parts of the Charged Premises for any other property suitable for the purposes of the Lender on such terms as the Lender considers expedient, either with or without payment of money for equality or exchange or otherwise;

(j) Take proceedings in any court of competent jurisdiction for sale or foreclosure of all or any part of the Charged Premises;

(k) To borrow or raise money on the security of the Charged Premises or any part thereof in priority to this Charge or otherwise, for the purpose of the maintenance, preservation or protection of the Charged Premises or any part thereof or for carrying on all or any part of the business of the Borrower relating to the Charged Premises;

(l) Take proceedings in any court of competent jurisdiction for the appointment of a receiver (which term as used in this Charge includes a manager and a receiver and manager, and hereafter, the "Receiver") of all or any part of the Charged Premises;

(m) By instrument in writing appoint, with or without taking possession, any person to be a Receiver of the Charged Premises or of any part thereof and may remove any Receiver so appointed and appoint another in his stead, with all fees and costs related thereto being the Borrower's obligations; and the following shall apply in respect of any such Receiver so appointed:

- (i) the Lender may from time to time fix the remuneration of the Receiver who shall be entitled to deduct that same out of the revenue from the Charged Premises or the proceeds thereof;
- (ii) the Receiver shall, to the fullest extent permitted by law, be deemed the agent or attorney of the Borrower for all purposes and the Lender shall not be in any way responsible for any actions other than as caused by gross negligence, willful misconduct or fraud, of any Receiver, and the Borrower hereby agrees to indemnify and save harmless the Lender from and against any and all claims, demands, actions, costs, damages, expenses or payments which the Lender may hereafter suffer, incur or be required to pay as a result, in whole or in part, of any action taken by the Receiver or any failure of the Receiver to do any act or thing other than as are caused by gross negligence, willful misconduct or fraud;
- (iii) the appointment of the Receiver by the Lender shall not incur or create any liability on the part of the Lender to the Receiver in any respect and such appointment or anything which may be done by the Receiver or the removal of the Receiver or the termination of any such Receivership shall not have the effect of constituting

the Lender a mortgagee in possession in respect of the Lands or any part thereof;

- (iv) the Receiver may exercise or pursue any other remedy or proceeding which the Lender is entitled as the holder of the Charge authorized or permitted hereby or by law or in equity in order to enforce the security constituted by this Charge;
- (v) and for the purposes above, the Borrower hereby irrevocably empowers the Receiver so appointed as its attorney to execute deeds, transfers, leases, contracts, agreements or other documents on its behalf and in its place (and the same shall bind the Borrower and have the same effect as if such deeds were executed by the Borrower) and to affix the Borrower's seal, if necessary, or a duplicate thereof to any of the same. On its own account or through a Receiver and whether alone or in conjunction with the exercise of all or any other remedies contemplated hereby, shall have the right, at any time, to notify and direct any account debtor to make all payments whatsoever to the Lender and the Lender shall have the right, at any time, to hold all amounts received from any account debtor and any proceeds as part of the Secured Property; any payments received by the Borrower from and after the security hereby constituted becomes enforceable, shall be held by the Borrower in trust for the Lender in the same medium in which received, shall not be commingled with any assets of the Borrower and shall, at the request of the Lender, be turned over to the Lender not later than the next Business Day following the day of their receipt; and
- (vi) save as to claims for accounting under paragraph (o) below, the Borrower hereby releases and discharges the Lender and the Receiver from every claim of every nature, whether resulting in damages or not, which may arise or be caused to the Borrower by reason or as a result of anything done by the Lender or any successor or assign claiming through or under the Lender or the Receiver under the provisions of this paragraph unless such claim be the direct result of dishonesty or gross neglect;
- (n) The Lender may at any time and from time to time terminate any receivership by notice in writing to the Borrower and to the Receiver;
- (o) The Receiver shall account for all monies received in respect of the Charged Premises or any part thereof, and shall pay, out of such monies received, subject to the further direction of the Lender in its discretion, the following in the order specified:
 - (i) the Receiver's remuneration;
 - (ii) all payments reasonably made or incurred by the Receiver in connection with its receivership;
 - (iii) all payments of interest, Principal and other money which may, from time to time, be or become charged upon the Charged Premises in priority to this Charge, and all Bills, Taxes, insurance premiums and every other proper expenditure reasonably made or incurred by the Receiver in respect to the Charged Premises or any part thereof; and
 - (iv) all payments to the Lender of all interest due or falling due hereunder and the balance to be applied upon Principal due and payable and secured hereby;and thereafter any surplus remaining in the hands of the Receiver after payments made as aforesaid shall be accountable to the Borrower or other persons entitled thereto; and
- (p) On its own account or through a Receiver and whether alone or in conjunction with the exercise of all or any other remedies contemplated hereby, shall have the right, at any time, to notify and direct any account debtor to make all payments whatsoever to the Lender and the Lender shall have the right, at any time, to hold all amounts received from any account debtor and any proceeds thereof as security for the Indebtedness; any payments received by the Borrower from and after the security hereby constituted becomes enforceable, shall be held by the Borrower in trust for the Lender in the same medium in which received, shall not be commingled with any assets of the Borrower and shall, at the request of the Lender, be turned over to the Lender not later than the next Business Day following the day of their receipt.

ARTICLE 20 - DEFAULT UNDER SECURITY, PARAMOUNTCY DISCHARGE AND RENEWAL

- 20.1 Payments of principal and interest made under and pursuant to the terms of the Security shall constitute payment hereunder and vice versa and default in the payment of principal and interest under the Security shall constitute default hereunder and vice versa. Default in compliance with any of the conditions, covenants, undertakings, provisions and stipulations contained in the Security shall entitle the Lender to exercise all or any of the rights or remedies provided herein and the occurrence of an Event of Default hereunder or in compliance with any of the conditions, covenants, undertakings, provisions and stipulations contained herein shall entitle the Lender to exercise all or any of the rights or remedies provided in the Security. The occurrence of an Event of Default hereunder shall constitute an Event of Default under the Security and vice versa.
- 20.2 The cancellation of or any other dealing with any Security (other than foreclosure thereof) shall not release or affect this Charge, and the taking of this Charge, or the cancellation of or any other dealing with, or proceeding under (other than foreclosure hereunder), this Charge, shall not release or affect any Security:
 - (a) The Lender may at any time and from time to time release any part or parts of the Charged Premises or any other Security or any surety for payment of all or any part of the monies hereby secured or may release the Borrower or any other person from any covenant or other liability to pay the Principal Sum and interest and all other monies secured hereby, or any part thereof, either with or without any consideration therefor, and without being accountable for the value thereof or for any monies except those actually received by the Lender, and without thereby releasing any other part of the Charged Premises, or any other Security or covenants herein contained, it being especially agreed that notwithstanding any such release, the Charged Premises, the Security and the covenants remaining unreleased shall stand charged with the whole of the monies hereby secured;

- (b) In the event that the monies advanced hereunder are applied to payment of any charge or encumbrance, the Lender shall be subrogated to all the rights of and stand in the position of and be entitled to all the equities of the party or parties so paid whether such charge or encumbrance has or has not been discharged; and the decision of the Lender as to the validity or amount of any advance or disbursement made under this Charge or of any claims so paid, shall be final and binding on the Borrower; and
- (e) The Lender shall not be charged with any monies receivable or collectible out of the Charged Premises or otherwise, except those actually received by or on behalf of the Lender and all revenue of the Charged Premises received or collected by the Lender from any source other than payment by the Borrower may, at the option of the Lender, be retained in a separate account to be used in, maintaining, insuring or improving the Charged Premises to the extent required for such purpose, in the opinion of the Lender, acting reasonably, or in payment of Taxes or other liens, charges or encumbrances against the Charged Premises, or applied in reduction of the amounts owing hereunder.
- 20.3 Subject to Section 6.1 hereof, upon payment of all amounts secured by this Charge, the Borrower shall be entitled to receive and the Lender shall provide a discharge of this Charge and the Security within a reasonable period of time after the request therefor. The Lender shall have a reasonable time after such payment within which to prepare and execute such discharge and all reasonable legal and other expenses for the preparation, execution and registration of such discharge and/or documents, as the case may be, shall be borne by the Borrower.
- 20.4 All payments made pursuant to Section 20.3 shall be made to and received by the Lender prior to 1:00 p.m. on the date due or the next succeeding Business Day in the event the date due is not a Business Day; provided such extension of time shall be included for the purposes of computation of interest.

ARTICLE 21 - NO MERGER OR WAIVER OF LENDER'S RIGHTS

- 21.1 It is further understood and agreed that this Charge and the Security shall stand as a continuing security for repayment of the Loan, including, all advances made thereunder together with all interest, damages, costs, charges and expenses which may become due and payable to the Lender in respect of or in connection with the Loan or any portion thereof, notwithstanding any fluctuation or change in the amount, nature or form of the Loan or in the obligations now or hereafter representing the Loan or any portion thereof or in the names of the obligors or any of them.
- 21.2 The rights of the Lender arising under this Charge shall be separate, distinct and cumulative and, except as expressly provided herein, none of them shall be in exclusion of the other and no act of the Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision, anything herein or otherwise to the contrary notwithstanding.
- 21.3 The giving and taking of this Charge shall in no way merge, waive, prejudice, suspend or affect any of the rights or remedies of the Lender under any Security which may be given or which may have been or may hereafter be given in respect of the Principal Sum hereof, interest and other monies secured by this Charge, or any part thereof, or under the Security and all rights and remedies which the Lender now has or may hereafter have against any one or more persons, are hereby preserved.
- 21.4 The taking of a judgment or judgments under any of the covenants or obligations herein or under any Security shall not operate as a merger of the covenants of the Borrower or affect the Lender's right to interest at the Applicable Rate on any monies due or owing to the Lender during the continuance of this Charge, under any of the covenants herein contained or on any judgment to be recovered thereon.
- 21.5 The covenant of the Borrower to pay interest shall not merge in any judgment in respect of any covenant or obligation of the Borrower under this Charge or any Security and such judgment shall bear interest at the Applicable Rate until such judgment and all interest thereon have been paid in full.
- 21.6 Any waiver by the Lender of any default by the Borrower or any omission on the Lender's part in respect of any default by the Borrower shall not extend to or be taken in any manner whatsoever to affect any subsequent default by the Borrower or the rights resulting therefrom.
- 21.7 No extension of time given by the Lender to the Borrower or anyone claiming under the Borrower, shall in any way affect or prejudice the rights of the Lender against the Borrower or any person liable for payment of the monies hereby secured.

ARTICLE 22 - FINANCIAL DATA

- 22.1 The Borrower shall provide or cause to be provided promptly to the Lender full and complete information about the financial condition and operations of the Charged Premises, including a comprehensive rent roll of all space in the Charged Premises, about the financial condition of the Borrower and any Guarantor(s) and such other information which the Lender may reasonably require from time to time, and the Lender shall have the right to examine the books and records of the Borrower relating to the Charged Premises at reasonable times and upon reasonable prior notice.
- 22.2 Without limiting the foregoing, the Borrower covenants and agrees to provide or cause to be provided to the Lender audited financial statements together with operating statements pertaining to the Charged Premises and such other financial information the Lender may reasonably require, (a) in the case of audited financial statements, within ninety (90) days of the end of each fiscal year of the Borrower (or such other time as may reasonably be required by the Lender), and (b) with respect to operating statements for the Charged Premises, within thirty (30) days of the end of each quarter of each calendar year. The audited financial statements are to be prepared by a nationally recognized firm of chartered accountants and shall include a balance sheet, and a detailed statement of income and expenditures and supporting notes and schedules. The operating statements shall contain a certificate by a senior officer of the Borrower as to the contents and preparation thereof, and shall include detailed statements of income, expenditures results of operation and such other matters relating to the operation of the Charged Premises as the Lender may reasonably require. In the event applicable, the Borrower shall provide the Lender with copies of all proxy statements, reports and information circulars that the Borrower makes available to its shareholders and copies of all regular and periodic reports which the Borrower may file with any securities commission or any other Governmental Authority.
- 22.3 The Borrower shall provide or cause to be provided to the Lender, or as the Lender may direct, a comprehensive list of all

current tenants and rentals of space in the Charged Premises during the Term, which list shall disclose, without limitation, the name of each tenant, the duration of its term, renewal options, if any, and the term thereof, the rental being paid, the last date on which rental was paid and whether such tenancy is in good standing. Such list shall contain an endorsement by an officer of the Borrower as to being complete and accurate.

- 22.4 All statements, reports and other documents required to be provided hereunder shall be prepared in a manner acceptable to the Lender, in its reasonable discretion.

ARTICLE 23 - NOTICE

- 23.1 Unless otherwise provided herein, any demand, notice or communication given or required to be given to a party hereunder shall be in writing and shall be personally delivered or given by transmittal by telecopy or facsimile transmission addressed to the respective parties at its address or telecopy or facsimile number set forth below or to such other address or telecopy or facsimile number as such party may designate by notice in writing to the other party hereto:

- (a) If to the Borrower, at the address for service set out in the electronic Charge to which this schedule is attached; and
- (b) If to the Lender, at the address for service set out in the electronic Charge to which this schedule is attached.

Any demand, notice or communication made by or given by personal delivery shall be conclusively deemed to have been made or given on the day of actual delivery thereof, and, if made or given by telecopy or by facsimile, on the first day other than a Saturday, Sunday or a statutory holiday in Ontario, on which Schedule I banks are open for commercial business in Toronto, Ontario, following the transmittal thereof.

ARTICLE 24 - GENERAL

- 24.1 If any provision of this Charge or the application thereof to any circumstances shall be held to be invalid or unenforceable, it shall be deemed severed herefrom and the remaining provisions of this Charge, or the application thereof to other circumstances, shall not be affected thereby and shall be held valid and enforceable to the full extent permitted by law. In particular, and without limiting the generality of the foregoing, to the extent any and all amounts due pursuant to Article 6 hereof may be deemed to be in excess of what is permissible by law, any such excess shall be deemed not to be due under this Charge.
- 24.2 Wherever used in this Charge, unless the context clearly indicates a contrary intent as unless or otherwise specifically provided herein, the word "Borrower" shall mean "Borrower and/or subsequent owner or owners of the Charged Premises", the word "Lender" shall mean "Lender or any subsequent holder or holders of this Charge".
- 24.3 The descriptive headings of the several subparagraphs or paragraphs or sections or articles of this Charge are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.
- 24.4 Wherever the singular number or masculine gender is used in this Charge, the same shall be construed as including the plural and feminine or a body corporate, respectively, and vice versa, where the fact or context so requires; and the successors and assigns of any party executing this Charge are bound by the covenants, agreements stipulations and provisos herein contained. The covenants, agreements stipulations and provisos herein stated shall, except as otherwise limited hereby, be in addition to those granted or implied by statutory law.
- 24.5 This Charge shall be construed and enforceable under and in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein, and the Borrower hereby irrevocably attorns to the non-exclusive jurisdiction of the courts sitting at Toronto, Ontario.
- 24.6 The Borrower shall at all times, do, execute, acknowledge and deliver or cause to be done, executed, acknowledged or delivered all such further acts, deeds, transfers, assignments, security agreements and assurances as the Lender may reasonably require in order to give effect to the provisions hereof and for the better granting, transferring, assigning, charging, setting over, assuring, confirming or perfecting the Charge and the priority accorded to them by law or under this Charge.
- 24.7 If any of the forms of words contained herein are also contained in Column 1 of Schedule "B" of the Short Forms of Mortgages Act (Ontario) and distinguished by a number therein, this Charge shall be deemed to include and shall have the same effect as if it contained the form of words in Column 2 of Schedule "B" of the said Act distinguished by the same number, and this Charge shall be interpreted as if the *Short Forms of Mortgages Act* (Ontario) were still in full force and effect. The implied covenants deemed to be included in a charge under Subsection 7(1) of the *Land Registration Reform Act* (Ontario) shall be and are hereby expressly excluded from the terms of this Charge.
- 24.8 This Charge shall, whether or not it secures a current or running account, be a general and continuing security to the Lender for payment of the indebtedness in an amount not exceeding the amount secured by this Charge and performance of the Borrower's other obligations under the Charge notwithstanding any fluctuation or change in the amount, nature or form of the indebtedness or in the accounts relating thereto or in the bills of exchange, promissory notes and/or other obligations now or later held by the Lender representing all or any part of the indebtedness outstanding at any particular time; and the Charge will not be deemed to have been redeemed or become void as a result of any such event or circumstance.
- 24.9 This Charge is given as collateral security to the Commitment.
- 24.10 In the event of conflict between the Commitment and the terms of this Charge, the provisions of the Commitment shall prevail; provided that any provision herein contained that is not contained in the Commitment and vice versa shall not in and of itself be considered to be inconsistent or in conflict.

ARTICLE 25 - CONDOMINIUM PROVISIONS

- 25.1 The Borrower covenants and agrees that in the event that the security for the within Charge shall be or shall become a condominium unit(s) the following provisions shall apply.

- (i) the Borrower does hereby assign to the Lender all of its rights to vote or consent in the affairs of the Condominium Corporation having jurisdiction over the subject lands and the Lender, may at its option, exercise the right of an owner of a condominium unit to vote or consent in the affairs of the Condominium Corporation in the place and stead of such owner, without in any way consulting the owner as to the manner in which the vote shall be exercised or not exercised, and without incurring any liability to the owner or anyone else because of the manner in which such vote or right to consent in the affairs of the Condominium Corporation was exercised.
- (ii) the Borrower shall pay promptly, when due, any common expenses, assessments, instalments or payments due to the Condominium Corporation.
- (iii) the Borrower shall observe and perform the covenants and provisions required to be observed and performed under or pursuant to the provisions of the *Condominium Act* (Ontario), all amendments thereto, and any legislation passed in substitution thereof, and the declaration and by-laws of the Condominium Corporation and any amendments thereto.
- (iv) Where the Borrower defaults in the Borrower's obligation to contribute to the common expenses assessed or levied by the Condominium Corporation, or any authorized agent on its behalf, or any assessment, instalment of payment due to the Condominium Corporation, upon breach of any of the foregoing covenants or provisions in this paragraph contained, regardless of any other action or proceeding taken, or to be taken by the Condominium Corporation, the Lender, at its option and without notice to the Borrower, may deem such default to be a default under the terms of this Charge and proceed to exercise its rights therein and the Lender shall be entitled at its option to pay all common expense amounts as they come due and these amounts so paid together with legal fees shall form part of the Indebtedness.

ARTICLE 26 – CONSTRUCTION LOAN PROVISIONS

In the event that any of the monies advanced or to be advanced under this Charge are intended to finance any improvement to the Charged Premises, the parties hereto covenant and agree that the following conditions shall apply:

- 26.1 All construction on the Charged Premises shall be carried out by reputable contractors having experience which is commensurate to nature and size of the project to be constructed, which contractors must be prior approved by the Lender in writing, such approval not to be unreasonably withheld.
- 26.2 The construction of the building and structures located on the Charged Premises have been commenced and shall be continued in a good and workmanlike manner, with all due diligence and in accordance with the plans and specifications delivered to the Lender and to the satisfaction of all governmental and regulatory authorities having jurisdiction.
- 26.3 Provided that should construction of the project on the Charged Premises cease for any reason whatsoever (strikes, material shortages and weather conditions beyond the control of the Borrower excepted), for a period of ten (10) consecutive days (Saturdays, Sundays and Statutory holidays excepted), then, at the option of the Lender, this Charge shall immediately become due and payable. In the event that construction does cease, then the Lender shall have the right, at its sole option, to assume complete control of the construction of the said project in such manner and on such terms as it deems advisable. The cost of completion of the said project by the Lender and all expenses incidental thereto shall be added to the principal amount of this Charge, together with a management fee of fifteen percent (15%) of the costs of the construction completed by the Lender. All costs and expenses, as well as the management fee of fifteen percent (15%) added to the principal amount of this Charge shall bear interest at the rate as herein provided for and shall form part of the principal sum herein and the Lender shall have the same rights and remedies to collection of principal and interest hereunder or at law.
- 26.4 At all times there shall be sufficient funds unadvanced under this Charge and retained by the Lender to complete the construction and/or renovation of the project on the Charged Premises and as may be necessary to retain the Lender's priority with respect to any deficiency in the holdbacks required to be retained by the Borrower under the *Construction Lien Act* (Ontario).
- 26.5 This Charge will be advanced in stages as construction upon the Charged Premises proceeds or as the conditions as enumerated by the Commitment are complied with.
- 26.6 All advances which are made from time to time hereunder shall be based on certificates of a duly qualified architect, engineer, quantity surveyor, cost consultant or other consultant(s) retained for the purpose of reviewing and advising the Lender with respect to the said project and the progress thereof, whose fees and costs shall be for the account of the Borrower regardless of by whom such person has been retained. All such certificates shall without limitation certify the value of the work completed and the estimated costs of any uncompleted work and such certificates shall further certify that such completed construction and/or renovation to the date of such certificate shall be in accordance with the approved plans and specifications for the said construction and further, in accordance with the building permits issued for such construction and in accordance with all municipal and other governmental requirements of all authorities having jurisdiction pertaining to such construction and that there shall be no outstanding work orders or other requirements pertaining to construction on the Charged Premises. Such certificates with respect to any values shall not include materials on the site which are not incorporated into the building.
- 26.7 The Borrower shall pay to the Lender on each occasion when an inspection of the Charged Premises is required to confirm construction costs to date and compliance with conditions for further advances, an inspection fee in such reasonable amount as the Lender may charge from time to time for each such inspection and the Lender's solicitors shall be paid their reasonable fees and disbursements for each sub-search and work done prior to each such advance and all such monies shall be deemed to be secured hereunder and the Lender shall be entitled to all rights and remedies with respect to collection of same in the same manner as it would have with respect to collection of principal and interest hereunder or at law.
- 26.8 The Borrower agrees to indemnify and hold the Lender harmless from any and all claims, demands, sums of money, debts, covenants, bonds, accounts, actions, causes of action, rights, obligations and liability of every kind whatsoever which arise out of claims against the property under the *Construction Lien Act* (Ontario) and that any liens for work and/or supplies that are registered against the Borrower's interest in the property will be promptly discharged within seven (7) days from the date of registration of the lien. The Lender may, but is not required to, deal with the lien claimant and pay the lien claim into court pursuant to the provision of the *Construction Lien Act* (Ontario) for the purpose of vacating the lien from title to the property.

The Borrower agrees to be liable for all costs, claims, amounts and fees including, without limitation, all legal fees (on a solicitor and his client basis) incurred by the Lender arising from or in connection with the Borrower or the Lender obtaining and registering either a release of the lien or an order vacating the lien.

ARTICLE 27 - ASSIGNMENT AND SALE

- 27.1 The Loan and all other amounts secured hereby, this Charge, the Security and all documents ancillary or collateral thereto may, in the Lender's sole discretion and without the consent of the Borrower, in whole or in part, be participated, sold, securitized, syndicated or assigned by the Lender from time to time to one or more Persons.
- 27.2 The Lender may disclose to participants, transferees or assignees or to potential participants, transferees or assignees or others in connection with any sale, assignment, participation, securitization, transfer or syndication, such information concerning the Borrower or the Charged Premises as the Lender may consider to be appropriate in connection therewith.
- 27.3 No grant, assignment or transfer pursuant to this Article 27 shall constitute a repayment by the Borrower to the Lender of the Loan or any other amounts owing hereunder and included in such assignment or transfer and the Borrower acknowledges that all obligations under this Charge and the Security with respect to such assignment or transfer will continue and not constitute new obligations.
- 27.4 The Borrower agrees to be bound by and do all things necessary or appropriate to assist and give effect to any transfer, participation, securitization, sale, syndication or assignment, but shall incur no increased liabilities as a result thereof.

DATED this 21 day of February 2020


LA PUE INTERNATIONAL INC

Per: 

Name: Pawel Fugiel

Title: President

I have the authority to bind the corporation


Pawel Fugiel as Guarantor


Witness



Schedule A

Administration Fees:

The mortgagor shall pay to the Mortgagee an Administration Fee of \$500.00 for each occurrence of any of the following events.

- Late payment.
- Cheque dishonored for any reason.
- Failure to provide proof of payment of Realty taxes.
- Failure to provide proof of payment of Insurance coverage on an annual basis.
- Failure to provide post-dated cheques.
- Failure to notify mortgagee of registration on lien by the Condominium Corporation for common maintenance arrears.
- Failure to notify mortgagee of registration of lien with CRA arrears.
- Requests for any mortgage information statements.
- Dealing with any default insurance notices.

Late Payment

In Event the loan is not repaid at the time or times provided herein, the Chargee will not be required to accept payment of the principal monies without first receiving three (3) months interest bonus in advance of the principal monies.

Additionally

There will be a \$2,000.00 (two thousand dollar) Administration fee payable to TriLend Inc. if any mortgages on the property fall into more than sixty (60) days arrears. Such administration fees will be added to the principal amount outstanding if the mortgage arrears are not paid within 5 days of demand of payment for the same. In the event of a further occurrence as set out herein, the penalty shall increase by a further sum of \$50.00 and this shall be on a cumulative basis.

There will be a \$2,000.00 (two thousand dollar) Administration fee payable to TriLend Inc. if insurance on the property is cancelled and not reinstated five (5) days prior to the cancellation date.

There will also be a \$2,000.00 (two thousand dollar) Administration fee payable to TriLend Inc. if property taxes fall into arrears greater than one (1) year and are not paid within thirty (30) days of the mortgagee's request to pay said arrears.



Upon renewal of any mortgage term a minimal renewal fee equal to the lender fee charged at time of original lending. If a signed Renewal is not received within thirty (30) days after maturity or if the mortgagee does not receive written notification within thirty (30) days after maturity that the mortgagor intends not to renew, then the mortgage is considered automatically renewed and the renewal fee is payable regardless of receiving a signed Renewal.

A \$500.00 fee will be payable for any mortgage statement for discharge purposes, not including the mortgagee's solicitor discharge fee.

Disposition of the Mortgage Lands

Provided that if the mortgagor sells, transfers, conveys or otherwise disposes of the subject property, or any interest therein, then all amounts, whether principal interest or otherwise that may be owing hereunder, including administration fees and bonuses, shall be immediately due and payable at the sole option of the mortgagee.

Post Dated Cheques

The mortgagor agrees to provide to TriLend Inc. a series of twelve (12) post-dated cheques on or before the closing date of the mortgage and further series of post-dated cheques on or before each anniversary date / renewal of the within mortgage. Failure to provide such cheques shall constitute a default under the mortgage at the sole option of the mortgagee.

Discharge

Provided that when a discharge of this mortgage is required, then unless otherwise stated on the discharge statement, the Mortgagee's Solicitor will prepare the Discharge Statement for execution by the Mortgagee, the cost of which will be the mortgagor's expense.

Time of Payment

Any payment that is received at the Mortgagee's office after 1:00 pm Eastern Standard Time on any date shall be deemed, for the purpose of calculation of interest, to have been made on the next business day.



Default of Encumbrances

Default under any terms or covenants contained in any encumbrances registered in priority or subsequent to this Mortgage shall constitute default under the herein Mortgage at the sole option of TriLend.

Principal Residence

In the event that the subject property is not used as the principal residence of the mortgagor, then all amounts, whether principal, interest or otherwise that may owed, hereunder, including Administration fees and bonuses, shall be immediately due and payable at the sole option of TriLend.

Encumbrances

Provided further that by signing this document, you are agreeing that the Mortgagor(s) shall not give cause for prior registered charge mortgage of Land(s) registered on the property described herein to be transferred or assigned to a third party, and if such should occur, this mortgage shall deem to be immediately in default with all monies to become due and payable in full with all penalties and costs forthwith unless expressly approved in writing between the Mortgagor(s) and the Mortgagee(s). Provided further that by signing this document, the Mortgagor(s) also agree to keep the lands described herein free and clear of all encumbrances, Liens, Mortgages, Security Interests and other financing agreements of any kind subordinate to our interests in the property unless expressly approved in writing between the Mortgagor(s) and TriLend Inc.

Bankruptcy and Insolvency Act

The Chargor/Guarantor represents and warrants that she/he is not an "undischarged bankrupt" as defined in the *Bankruptcy and Insolvency Act*, In the event that the Chargor/Guarantor is an "Undischarged Bankrupt", then all the amounts, whether principal, interest or otherwise that may be owing hereunder including administration fees and bonuses together with a one (1) month interest payment thereon shall be immediately due and payable at the sole option of the Charge.

Prepayment Provisions

Provided that the Chargor,, when not in default hereunder, shall have the privilege of prepaying all or any part of the principal sum hereby secured upon payment of three months interest by way of bonus.



Servicing Fee

In the event that TriLend Inc. called upon to pay any payment in order to protect its security position, including but not limited to the payment of realty taxes, insurance premiums, condominium common expenses, principal, interest or costs under a prior mortgage, it is agreed that such payment shall bear interest at eighteen (18%) per cent per annum, calculated and compounded monthly and that there shall be a service charge of not less than \$300.00 for making such payment or payments.

Rental Assignments

On all mortgages, where the subject property is non-owner occupied, an Assignment of Rents and Leases are to be provided. In the event the Lender or its agent invokes the Rent Assignment, a service charge in the sum of TWO HUNDRED DOLLARS (**\$200.00**) per each month, will be added to the mortgage and payable to Lender.

Additional Fees

The Chargor/Mortgagor agrees that should TriLend Inc. issue either a Notice of sale or Statement of Claims, TriLend, at its option, shall be entitled to charge an additional fee equivalent to three (3) months interest. The chargor/ Mortgagor agree that should the mortgage not be renewed or discharged on the maturity date that TriLend, at its option shall be entitled to charge an additional fee equivalent to three (3) months interest.

Alterations

The Chargor will not make or permit to be made, any structural alterations or additions to the land or to the building or structure thereon or change or permit to be changed the use of the premises without written consent oldie Charges.

Severability of any Invalid Provisions

In the event that any covenant term or provision contained in the charge is held to be invalid. illegal or unenforceable in whole or in part then, the validity, legality and enforceability of the remaining covenants, provisions and terms shall continue in full force and effect. All covenants, provisions and terms hereof are declared to be separate and distinct covenants, provisions or terms as the case may be.



Maintenance Fee

TriLend shall be entitled to a fee of \$100.00 per day for administering the maintenance and security of any property in its possession.

Chargor _____
(Signature)

Date _____

Chargor _____
(Print Name)

***THIS IS EXHIBIT "E" TO THE
AFFIDAVIT OF CECIL HAYES
SWORN BEFORE ME THIS 14TH
DAY OF JANUARY, 2025***

A Commissioner Etc.



MORTGAGE DISCHARGE STATEMENT

November 16, 2021

La Pue International Inc.
 6158 Allendale Avenue
 Niagara Falls, ON L2G 0A5

Account: #1104, 2nd Mortgage, Lots 48,49, &50, Plan 273 PT Lot 47, Plan 273, Niagara Falls, ON

Please be advised that the amount below is required to obtain a discharge of the above-mentioned mortgage as of discharge date below.

Discharge Date:	November 30, 2021
Maturity Date	December 1, 2021
Next Payment Due	December 1, 2021
Interest Rate	12.000%
Interest Paid-To Date	November 1, 2021
Principal Balance	\$3,000,000.00
Interest for Month of November 2021	\$30,000.00
Accrued Interest	\$0.00
Unpaid Interest	\$0.00
Unpaid Late Charges	\$0.00
Unpaid Charges attached	\$0.00
Early Payout Bonus	\$0.00
Other Fees *For additional details see itemization attached	\$750.00
Trust Balance	\$0.00
Discharge Amount:	\$3,030,750.00

Please add \$986.30 for each additional day past December 1, 2021.

We reserve the right to amend this demand should any changes occur that would increase the total amount for the discharge.

Sincerely,

Bryce Coates



TRILEND

RESIDENTIAL COMMERCIAL DEVELOPMENT

ITEMIZATION OF OTHER FEES	
Description	Amount
Statement Fee	\$250.00
Discharge Fee	\$500.00
	\$0.00
Total	\$750.00

TriLend Inc.

8830 Jane St, Vaughan, ON L4K 2M9
FSCO Broker #12788 FSCO Administrator # 12832

CONFIDENTIAL



MORTGAGE DISCHARGE STATEMENT

November 16, 2021

La Pue International Inc.
 6158 Allendale Avenue
 Niagara Falls, ON L2G 0A5

Account: #1097, 1st Mortgage, Lots 48,49, &50, Plan 273 PT Lot 47, Plan 273, Niagara Falls, ON

Please be advised that the amount below is required to obtain a discharge of the above-mentioned mortgage as of discharge date below.

Discharge Date:	November 30, 2021
Maturity Date	December 1, 2021
Next Payment Due	December 1, 2021
Interest Rate	9.750%
Interest Paid-To Date	November 1, 2021
Principal Balance	\$8,000,000.00
Interest for Month of November 2021	\$65,000.00
Accrued Interest	\$0.00
Unpaid Interest	\$0.00
Unpaid Late Charges	\$0.00
Unpaid Charges attached	\$0.00
Early Payout Bonus	\$0.00
Other Fees *For additional details see itemization attached	\$750.00
Trust Balance	\$0.00
Discharge Amount:	\$8,065,750.00

Please add \$2,136.99 for each additional day past December 1, 2021.

We reserve the right to amend this demand should any changes occur that would increase the total amount for the discharge.

Sincerely,

Bryce Coates



TRILEND

RESIDENTIAL COMMERCIAL DEVELOPMENT

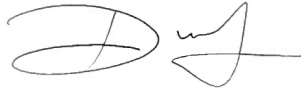
ITEMIZATION OF OTHER FEES	
Description	Amount
Statement Fee	\$250.00
Discharge Fee	\$500.00
	\$0.00
Total	\$750.00

TriLend Inc.

8830 Jane St, Vaughan, ON L4K 2M9
FSCO Broker #12788 FSCO Administrator # 12832

CONFIDENTIAL

***THIS IS EXHIBIT "F" TO THE
AFFIDAVIT OF CECIL HAYES
SWORN BEFORE ME THIS 14TH
DAY OF JANUARY, 2025***

A handwritten signature in black ink, consisting of a large, stylized 'D' followed by a smaller, more fluid signature.

A Commissioner Etc.

Properties

PIN 64349 - 0200 LT
Description LTS 64, 63, 50, 49, 48 PL 273, PT LT 47 PL 273; NIAGARA FALLS, SURFACE ONLY AS IN RO718049; NIAGARA FALLS
Address 5916 ALLENDALE AVENUE
NIAGARA FALLS

PIN 64349 - 0202 LT
Description LT 51 PL 273; NIAGARA FALLS
Address 5943 STANLEY AVENUE
NIAGARA FALLS

PIN 64349 - 0203 LT
Description LT 52 PL 273; NIAGARA FALLS
Address 5943 STANLEY AVENUE
NIAGARA FALLS

PIN 64349 - 0204 LT
Description LT 62 PL 273; NIAGARA FALLS
Address 5943 STANLEY AVENUE
NIAGARA FALLS

PIN 64349 - 0205 LT
Description LT 61 PL 273; NIAGARA FALLS
Address 5943 STANLEY AVENUE
NIAGARA FALLS

PIN 64349 - 0214 LT
Description LT 65 PL 273 VILLAGE OF NIAGARA FALLS; NIAGARA FALLS
Address VACANT LANDS, W/S STANLEY AVENUE
NIAGARA FALLS

PIN 64349 - 0215 LT
Description PT LTS 43, 44 & 45 PL 273 VILLAGE OF NIAGARA FALLS AS IN RO712797; NIAGARA FALLS
Address 5510 FERRY STREET
NIAGARA FALLS

PIN 64349 - 0181 LT
Description LT 46 PL 273 VILLAGE OF NIAGARA FALLS ; NIAGARA FALLS
Address 5536 FERRY STREET
NIAGARA FALLS

Applicant(s)

Name LA PUE INTERNATIONAL INC.
Address for Service 96 Cumberland Avenue
Mississauga, Ontario L5G 3M8

I, Pawel Fugiel, President, have the authority to bind the corporation.
This document is not authorized under Power of Attorney by this party.

Statements

The registered owner applies to consolidate the selected PINs and the proposed description for the parcels to be consolidated is Lots 46, 51, 52, 61, 62, 63, 64 & 65, Plan 273; Village of Niagara Falls; Niagara Falls;
Part Lots 43, 44, 45, Plan 273; Village of Niagara Falls; as in RO712797, Niagara Falls;
Lots 48, 49, & 50, Plan 273, & Part Lot 47, Plan 273; Niagara Falls, Surface only as in RO718049; Niagara Falls.

Signed By

Rocco Vacca 40 Queen St., PO Box 1360 acting for Signed 2019 12 12
St. Catharines Applicant(s)
L2R 6Z2

Tel 905-688-6655

Fax 905-688-5814

I have the authority to sign and register the document on behalf of the Applicant(s).

Submitted By

SULLIVAN MAHONEY LLP
40 Queen St., PO Box 1360
St. Catharines
L2R 6Z2
2019 12 12

Tel 905-688-6655
Fax 905-688-5814

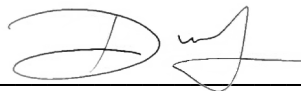
Fees/Taxes/Payment

Statutory Registration Fee	\$65.05
Total Paid	\$65.05

File Number

Applicant Client File Number : 120259-RV

***THIS IS EXHIBIT "G" TO THE
AFFIDAVIT OF CECIL HAYES
SWORN BEFORE ME THIS 14TH
DAY OF JANUARY, 2025***

A handwritten signature in black ink, appearing to be 'D. J.', written over a horizontal line.

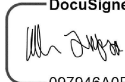
A Commissioner Etc.

TRUST ADVANCE STATEMENT - Anticipated Closing Date: November 30, 2021
MarshallZehr Group Inc. corporate financing with La Pue International Inc.
The Stanley District Lands MZGI 424

Internal Notes:

Received from MarshallZehr Group Inc.		\$ 12,000,000.00
Paid to TriLend Inc - payout of existing 1st mortgage	\$ 8,065,750.00	
<i>Per Diem is \$2,136.99 for each additional day past December 1st</i>	\$ 2,136.99	
Paid to TriLend Inc - payout of existing 2nd mortgage	\$ 3,030,750.00	
<i>Per Diem is \$986.30 for each additional day past December 1st</i>	\$ 986.30	
Paid to Schneider Ruggiero Spencer Millburn LLP	\$ 4,000.00	
<i>Legal Fees for Discharge of TriLend Inc. Mortgages</i>		
Paid to MA Main Street Mortgages - Broker Fee	\$ 30,000.00	
Paid to First Canadian Title - Title Insurance Policy	\$ 8,822.09	
Paid to Insurance Reviewer - Intech Risk Management Inc. Inv #55615	\$ 700.06	
Paid to MarshallZehr Group Inc., in trust:		
<i>Lender Fee</i>	\$ 240,000.00	
<i>Good Faith Deposit previously received</i>	-\$ 30,000.00	
<i>Admin Fee</i>	\$ 5,000.00	
<i>Interest Reserve</i>	\$ 570,000.00	
Held by Chaitons LLP, in trust		
<i>Estimated Legal Fees + disbursements plus HST</i>	\$ 21,450.00	
Paid to Keyser Mason Ball LLP, in trust	\$ 50,404.56	
	\$ 12,000,000.00	\$ 12,000,000.00

DocuSigned by:



097946A0E5624EB

Aiden Lupyrypa , *Project Risk Manager*

E & O E

***THIS IS EXHIBIT "H" TO THE
AFFIDAVIT OF CECIL HAYES
SWORN BEFORE ME THIS 14TH
DAY OF JANUARY, 2025***

A handwritten signature in black ink, consisting of a large, stylized 'D' followed by a smaller 'J' and a horizontal line extending to the right.

A Commissioner Etc.



MarshallZehr Group Inc.

412 Albert Street, Suite 100
Waterloo, ON N2L 3V3, Canada

June 27, 2022

PRIVATE AND CONFIDENTIAL

La Pue International Inc.
6158 Allendale Ave
Niagara Falls ON

Attention: Pawel Fugiel

RE: Project: The Stanley District Lands – MZGI 424
 Purpose: First (1st) Amendment
 Borrower: La Pue International Inc.
 Property Address: 5528 Ferry Street, Niagara Falls ON
 Current Maturity Date: January 1, 2023

MarshallZehr Group Inc. (the "Lender") is pleased to advise we have approved the following amendment (the "1st Amendment") to the above noted mortgage and Commitment Letter dated November 15, 2021:

Delete (Original):

Loan Amount: \$12,000,000 (the "Loan")

Insert (New):

Loan Amount: \$12,375,000 (the "Loan")

Delete (Original):

Sources and Uses of Funds

Uses

Land Costs	\$	11,432,000
Development Costs	\$	659,000
Hard Costs	\$	748,000
Soft Costs	\$	2,514,000
Sales & Administrative Costs	\$	2,450,000
Financing Costs	\$	1,410,000
3rd Party Broker Fee	\$	30,000
Total Uses	\$	19,244,000

Sources

1st Mortgage - Land	\$	12,000,000
---------------------	----	------------

MarshallZehr Group Inc. | Mortgage Administration #11955 | Mortgage Brokerage #12453

412 Albert Street, Suite 100, Waterloo, ON N2L 3V3 | p.519.342.1000 f.519.342.0851 | www.marshallzehr.com



Deferred Costs	\$	570,000
Cash Equity	\$	6,674,000
Total Sources	\$	19,244,000

Insert (New):

Sources and Uses of Funds

Uses		
Land Costs	\$	11,432,000
Development Costs	\$	659,000
Hard Costs	\$	748,000
Soft Costs	\$	2,515,000
Sales & Administrative Costs	\$	2,450,000
Financing Costs	\$	1,785,000
3rd Party Broker Fee	\$	30,000
Total Uses	\$	19,619,000
Sources		
1st Mortgage - Land	\$	12,375,000
Deferred Costs	\$	570,000
Cash Equity	\$	6,674,000
Total Sources	\$	19,619,000

The following provisions shall be included in this Amendment that were not contemplated in the original Commitment:

Amendment Fee: Upon execution of this Amendment, the Borrower shall pay a fee of \$10,000 to the Lender (the "Amendment Fee"). This Amendment shall not be effective until such time as the Lender has received the Amendment Fee in full. Please make the cheque payable to MarshallZehr Group Inc.

Subsearch: A subsearch will be completed prior to executing this Amendment at the expense of the Borrower .

All other terms of the Commitment shall survive, unamended.

This Agreement may be simultaneously executed in several counterparts, each of which when so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument. A facsimile or electronic copy of an executed counterpart shall be deemed to be an original.

By signing this amending letter the Borrowers and Guarantors agree that the Lender may obtain credit and other financially related information about the Borrower(s) and the Guarantor(s), including reports from other credit grantors, consumer reporting agencies and credit bureau.



Project: The Stanley District Lands – MZGI 424
June 27, 2022

The execution of this letter does not obligate the Lender to advance any of the agreed funds unless all of the conditions to such advances have been satisfied to the satisfaction of the Lender and its solicitors.

If you are in agreement with the above terms, please indicate such agreement by signing and forwarding to the undersigned a copy of this agreement, along with the Amendment Fee, by June 29, 2022.

This Amendment Letter is not binding until it has been approved and signed back by an Officer of the Lender, MarshallZehr Group Inc. and the mortgage is in good standing.

Sincerely,

DocuSigned by:

6697E6642B774AE...



Cecil Hayes CIM
Chief Operating Officer

T 519 342 1000 X 233
C 519 590 3810

marshallzehr.com | [email](#)

Broker
MarshallZehr Group Inc. | Mortgage Administration #11955 | Mortgage Brokerage #12453



By signing below, I agree to the extension of the above-noted mortgage.

Borrower:

I HEREBY accept the terms and conditions as stated herein.

DATED this 27 day of June, 2022.

La Pue International Inc.

DocuSigned by:

Per: _____
EC1BCDA69A18485...

Name:
Title:
I have authority to bind the corporation

The following parties execute this Commitment letter in their capacities as guarantors only.

Pawel Fugiel

DocuSigned by:

Per: _____
EC1BCDA69A18485...

Name:
Title:
I have authority to bind the corporation

Witness:

DocuSigned by:


Pawel Fugiel /s



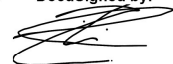
Project: The Stanley District Lands – MZGI 424
June 27, 2022

Lender:

I HEREBY accept the terms and conditions as stated herein.

DATED at Waterloo, this 27 day of June, 2022.

MarshallZehr Group Inc.

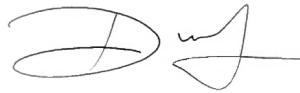
DocuSigned by:


Per: _____
07AE409601764A8...

Gregory Zehr
CEO & Co-Founder

I have the authority to bind the Corporation

***THIS IS EXHIBIT "I" TO THE
AFFIDAVIT OF CECIL HAYES
SWORN BEFORE ME THIS 14TH
DAY OF JANUARY, 2025***

A handwritten signature in black ink, consisting of a large, stylized 'D' followed by a smaller, more fluid signature.

A Commissioner Etc.

TRUST ADVANCE STATEMENT - Date: June 30th, 2022
MarshallZehr Group Inc. Corporate Financing with La Pue International Inc.
The Stanley District Lands MZGI 424 Facility 1 #1A - Funding 2

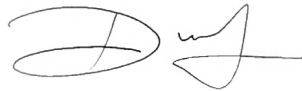
Received from MarshallZehr Group Inc.		\$	375,000.00	
Paid to MarshallZehr Group Inc. <i>First Amendment Fee</i>	\$	10,000.00		
Paid to Chaitons LLP, in Trust <i>Subsearch Fee</i>	\$	582.12		
Paid to MarshallZehr Group Inc. <i>Draw Fee</i>	\$	250.00		
Paid to MarshallZehr Group Inc, CTR <i>MZ Invoice #2768</i>	\$	1,809.70		
Paid to MarshallZehr Group Inc., in Trust <i>Interest Reserve Top Up</i>	\$	362,358.18		
	\$	375,000.00	\$	375,000.00

DocuSigned by:
Lisa Evans
E7E40E6466094E2

Lisa Evans, Manager, Project Manager

E & O E

***THIS IS EXHIBIT "J" TO THE
AFFIDAVIT OF CECIL HAYES
SWORN BEFORE ME THIS 14TH
DAY OF JANUARY, 2025***

A handwritten signature in black ink, appearing to be the initials 'DJ' with a stylized flourish.

A Commissioner Etc.



Wednesday, November 30, 2022

PRIVATE AND CONFIDENTIAL

La Pue International Inc.
6158 Allendale Ave.
Niagara Falls, ON
Attention: Pawel Fugiel

Dear Pawel Fugiel

RE: **Project:** The Stanley District Lands – MZGI 424
 Purpose: Second (2nd) Amendment
 Borrower: La Pue International Inc.
 Property Address: 5528 Ferry Street, Niagara Falls ON
 Current Maturity Date: January 1st, 2023

MarshallZehr Group Inc. (the “Lender”) is pleased to advise we have approved the following amendment (the “2nd Amendment”) to the above noted mortgage and Commitment Letter dated November 15, 2021, and the 1st Amendment dated June 27, 2022:

Delete (Original):
Maturity Date: January 1st, 2023

Insert (New):
Maturity Date: April 1st, 2023

Delete (Original):
Loan Amount: \$12,375,000 (the “Loan”)

Insert (New):
Loan Amount: \$18,000,000 (the “Loan”)

Delete (Original):
Sources & Uses:

Uses		
Land Costs	\$	11,432,000
Development Costs	\$	659,000
Hard Costs	\$	748,000
Soft Costs	\$	2,515,000
Sales & Administrative Costs	\$	2,450,000
Financing Costs	\$	1,785,000
3rd Party Broker Fee	\$	30,000
Total Uses	\$	19,619,000
Sources		
1st Mortgage - Land	\$	12,375,000
Deferred Costs	\$	570,000
Cash Equity	\$	6,674,000
Total Sources	\$	19,619,000

Insert (New):
Sources & Uses:

Uses	
Land Costs	\$ 11,432,000
Development Costs	\$ 659,000
Hard Costs	\$ 748,000
Soft Costs	\$ 2,515,000
Project Related Costs to Complete	\$ 4,274,500
Sales & Administrative Costs	\$ 2,450,000
Financing Costs	\$ 3,135,500
3rd Party Broker Fee	\$ 30,000
Total Uses	\$ 25,244,000
Sources	
1st Mortgage - Land	\$ 18,000,000
Deferred Costs	\$ 570,000
Cash Equity	\$ 6,674,000
Total Sources	\$ 25,244,000

Delete (Original):
Security to be Delivered Mortgage

A 1st mortgage in the amount of \$13,800,000 on The Stanley District Lands – MZGI 424 Project and property plus any accrued contingent payments. The mortgage will be registered at the Wrap Up rate of interest, being two times the rate of Prime + 14.10%.

Insert (New):
Security to be Delivered Mortgage

A 1st mortgage in the amount of \$21,600,000 on The Stanley District Lands – MZGI 424 Project and property plus any accrued contingent payments. The mortgage will be registered at the Wrap Up rate of interest, being two times the rate of Prime + 14.10%.

Delete (Original):
4.2 b) Project Loan to Value Ratio (LTV)

The Borrower shall, at all times, maintain an LTV Ratio of less than 70.0%; notwithstanding the foregoing, for the purposes of calculating this ratio each Fiscal Quarter as required pursuant to the compliance certificate contemplated in Section 4.1(e)(iv). LTV shall be calculated in accordance with the parameters defined in Section 2.1;

Insert (New):
4.2 b) Project Loan to Value Ratio (LTV)

The Borrower shall, at all times, maintain an LTV Ratio of less than 72.5%; notwithstanding the foregoing, for the purposes of calculating this ratio each Fiscal Quarter as required pursuant to the compliance certificate contemplated in Section 4.1(e)(iv). LTV shall be calculated in accordance with the parameters defined in Section 2.1;

Delete (Original):
4.2 c) Project Loan to Cost Ratio (LTC)

The Borrower shall, at all times, maintain an LTC Ratio of less than 70.0%; notwithstanding the foregoing, for the purposes of calculating this ratio each Fiscal Quarter as required pursuant to the compliance certificate contemplated in Section 4.1(e)(iv). LTC shall be calculated in accordance with the parameters defined in Section 2.1;

Insert (New):
4.2 c) Project Loan to Cost Ratio (LTC)

The Borrower shall, at all times, maintain an LTC Ratio of less than 72.5%; notwithstanding the foregoing, for the purposes of calculating this ratio each Fiscal Quarter as required pursuant to the compliance certificate contemplated in Section 4.1(e)(iv). LTC shall be calculated in accordance with the parameters defined in Section 2.1;

Insert (New):
1st Renewal

Provided the Borrower is not in default of any of its obligations under this Commitment or under any Lender security, the Lender will offer one three (3) month extension option with 30 days written notice prior to the end of the Term (the "Renewal Term"). The interest will

be calculated and compounded at the same rate as the original Term of this mortgage. The extension is open for repayment at any time, within the Renewal Term with 30 days' notice. The Borrower shall pay a renewal fee of 0.50% of the outstanding loan balance. A subsearch will be conducted by the Lender's solicitor upon the acceptance of this renewal letter at the Borrower's expense. The Borrower will be responsible for any reasonable costs associated with the extension.

[Space left intentionally blank]

The following provisions shall be included in this 2nd Amendment that were not contemplated in the original Commitment:

- 3rd Advance Conditions** The following conditions must be fulfilled by the Borrower, to the Lender's satisfaction, in its sole discretion, prior to the advance of \$5,625,000 funds (the "**3rd Advance**") by the Lender:
- a) The Borrower shall provide an executed copy of a finalized partnership agreement between the Borrower, or an Affiliate, and Buttcon Limited, to the satisfaction of the Lender, in their sole discretion. Such partnership agreement shall be satisfactory to the Lender in terms of form, content, conditions, and terms;
 - b) The Borrower shall provide financial statements for Buttcon Limited's two most recently ended fiscal years. The Lender shall be satisfied with Buttcon Limited's financial capacity to guarantee a construction loan, in their sole discretion;
 - c) The 3rd Advance shall be requested in writing and in the form provided to the Borrower by the Lender;
 - d) A title search will be conducted by the Lender's solicitors for each Lender Advance. The title search and solicitors' fees and expenses applicable thereto are at the Borrower's expense and shall be deducted from the Lender Advance by the Lender. In the event a Lender Advance is occurring simultaneously with a Borrower Draw, only one title search will be conducted; and
 - e) The Borrower shall deliver an executed statutory declaration, in the form provided by the Lender, indicating it is in compliance with the requirements of the Construction Act, if applicable, and that all funds shall be used to pay for the applicable Project Costs outlined in the advance request.

The Borrower hereby acknowledges and agrees that interest shall accrue as of the date that the 3rd Advance is deposited into the Lender's trust account, regardless of whether the Borrower has met the conditions set out herein.

2nd Amendment Fee: Upon execution of this 2nd Amendment, the Borrower shall pay a fee of \$61,875 to the Lender for extension of the Loan Term (the "**1st Installment**").

Upon satisfying all conditions for advance of the 3rd Advance, the Borrower shall pay of fee of \$112,500 to allow the increase in the Loan Amount (the "**2nd Installment**").

Both the 1st Installment and 2nd Installment of said fees shall constitute the 2nd Amendment Fee. This 2nd Amendment shall not be effective until such time as the Lender has received the 2nd Amendment Fees as outlined above, in full.

Syndication of the 2nd Amendment It is the Lender's intention to syndicate all or a portion of the 2nd Amendment with other lenders on terms and conditions satisfactory to the Lender. All obligations of the Lender are conditional on successful syndication by the Lender. This 2nd Amendment shall be null and void if the Lender is unable to syndicate the 2nd Amendment.

Subsearch: A subsearch will be completed by the Lender's solicitor upon acceptance this 2nd Amendment at the Borrower's expense. A subsearch will be required upon execution of the extended maturity date as well as execution of the loan increase.

All other terms of the Commitment shall survive, unamended.



This 2nd Amendment may be simultaneously executed in several counterparts, each of which when so executed shall be deemed to be an original and such counterpart together shall constitute one and the same instrument. A facsimile or electronic copy of an executed counterpart shall be deemed to be an original.

By signing this amending letter, the Borrowers and Guarantors agree that the Lender may obtain credit and other financially related information about the Borrower(s) and the Guarantor(s), including reports from other credit grantors, consumer reporting agencies and credit bureau.


The execution of this letter does not obligate the Lender to advance any of the agreed funds unless all of the conditions to such advances have been satisfied to the satisfaction of the Lender and its solicitors.

If you are in agreement with the above terms, please indicate such agreement by signing and forwarding to the undersigned a copy of this agreement, along with the 1st Installment of the 2nd Amendment Fee as outlined above, by November 28th, 2022.

This amending letter is not binding until it has been approved and signed back by an Officer of the Lender, MarshallZehr Group Inc. and the mortgage is in good standing.

Sincerely,

MARSHALLZEHR GROUP INC.

DocuSigned by:

6697E6642B774AE...

Per: _____

Name: Cecil Hayes

Title: Chief operating officer

I have the authority to bind the Corporation

Acknowledged and agreed at OAKVILLE this 30TH day of NOVEMBER, 2022.

Borrower:

La Pue International Inc.

Per:  _____

Name: LA PUE INTERNATIONAL INC.

Title: CEO, PRESIDENT

Per: _____

Name:

Title:

I/we have authority to bind the Corporation

The following parties execute this Commitment in their capacities as guarantors only.

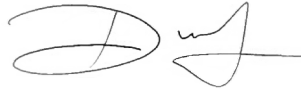
Guarantors:

 _____ I/S

Pawel Fugiel

Witness:

***THIS IS EXHIBIT "K" TO THE
AFFIDAVIT OF CECIL HAYES
SWORN BEFORE ME THIS 14TH
DAY OF JANUARY, 2025***

A handwritten signature in black ink, appearing to be 'D J', written over a horizontal line.

A Commissioner Etc.

Properties

PIN 64349 - 0257 LT Interest/Estate Fee Simple
 Description LOTS 46, 51, 52, 61, 62, 63, 64 & 65, PLAN 273; VILLAGE OF NIAGARA FALLS;
 NIAGARA FALLS;PART LOTS 43, 44, 45, PLAN 273; VILLAGE OF NIAGARA FALLS; AS
 IN RO712797, NIAGARA FALLS;LOTS 48, 49,& 50, PLAN 273, & PART LOT 47, PLAN
 273; NIAGARA FALLS, SURFACE ONLY AS IN RO718049; NIAGARA FALLS.
 Address NIAGARA FALLS

Chargor(s)

The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.

Name LA PUE INTERNATIONAL INC.
 Address for Service 6158 Allendale Ave, Niagara Falls,
 Ontario, Canada, L2G 0A5

I, Pawel Fugiel, President, have the authority to bind the corporation.
 This document is not authorized under Power of Attorney by this party.

Chargee(s)

Capacity

Share

Name MARSHALLZEHR GROUP INC.
 Address for Service 465 Phillip St., Suite 206, Waterloo, ON N2L 6C7

Statements

Schedule: See Schedules

Provisions

Principal \$13,800,000.00 Currency CDN
 Calculation Period Monthly, Interest Only
 Balance Due Date 2023/01/01
 Interest Rate Two times the Prime Rate plus 14.10% per annum
 Payments
 Interest Adjustment Date 2021 12 01
 Payment Date 1st day of each and every month
 First Payment Date 2021 12 01
 Last Payment Date 2023 01 01
 Standard Charge Terms 200033
 Insurance Amount Full insurable value
 Guarantor Pawel Fugiel

Signed By

Wing Chiu Wu 5000 Yonge Street, 10th Floor acting for Signed 2021 12 01
 Toronto Chargor(s)
 M2N 7E9

Tel 416-222-8888
 Fax 416-218-1860

I have the authority to sign and register the document on behalf of the Chargor(s).

Submitted By

CHAITONS LLP 5000 Yonge Street, 10th Floor 2021 12 01
 Toronto
 M2N 7E9

Tel 416-222-8888
 Fax 416-218-1860

Fees/Taxes/Payment

Statutory Registration Fee \$66.30
 Total Paid \$66.30

SCHEDULE - ADDITIONAL PROVISIONS

1. DEFINITIONS

In this Charge, unless the context requires otherwise:

- (a) “**Act**” means the *Condominium Act, 1998* (Ontario) as amended.
 - (b) “**Applicable Taxes**” means any goods and services tax levied under Part IV of the *Excise Tax Act* (Canada), the provincial portion of harmonized sales tax, value-added tax or any similar tax applicable thereon.
 - (c) “**Business Day**” means any day, other than a Saturday or Sunday, on which Canadian chartered banks are open for domestic and foreign exchange business in the Province of Ontario.
 - (d) “**Charge**” means this charge/mortgage of land (including the attached electronic form of charge/mortgage, this schedule and all other schedules to this charge) as it may be amended, restated or replaced from time to time.
 - (e) “**Chargee**” means MarshallZehr Group Inc.
 - (f) “**Chargor**” means the Person or Persons indicated in the applicable Computer Field.
 - (g) “**Commitment**” means collectively, the loan proposal and the letter of commitment, each issued by the Chargee to the Chargor in connection with the borrowing contemplated hereby, as may be subsequently amended from time to time.
 - (h) “**Computer Field**” means a computer data entry field in the attached electronic form of charge/mortgage registered pursuant to Part 111 of the *Land Registration Reform Act* (Ontario) in which the terms and conditions of this Charge may be inserted.
 - (i) “**Condominium Corporation**” means, if applicable, the proposed condominium corporation which may be created on any portion of the Real Property upon registration of a declaration and description by the Chargor.
 - (j) “**Costs**” means all fees, costs, charges and expenses of the Chargee of and incidental to, including without limitation:
 - (i) the collection of any amounts payable hereunder, enforcement of any covenants contained herein, and the realization of the security herein contained;
 - (ii) procuring or attempting to procure payment of any portion of the outstanding principal sum secured hereunder or any other amounts due and payable hereunder, including foreclosure, power of sale or execution proceedings commenced by the Chargee or any other party;
 - (iii) the Chargee having to go into possession of the Real Property and secure, complete and equip any buildings or improvements situate thereon in any way in connection therewith;
 - (iv) the exercise of any of the powers of a Receiver contained herein; and
 - (v) all solicitor’s costs, charges and expenses relating to any of the foregoing and any necessary examination of title to the Real Property.
- For greater certainty, Costs shall:
- (i) extend to and include legal costs incurred by the Chargee on a substantial indemnity basis;
 - (ii) be payable forthwith by the Chargor;
 - (iii) bear interest at the Interest Rate; and
 - (iv) be a charge on the Real Property.
- (k) “**Covenantor**” means the Person or Persons indicated in the applicable Computer Field.
 - (l) “**Governmental Authority**” means, when used with respect to any Person, any government, parliament, legislature, regulatory authority, agency, commission, tribunal, department, commission, board, administrative agency, court, arbitration board or arbitrator or other law, regulation or rule making entity having or purporting to have jurisdiction on behalf of, or pursuant to the laws of Canada or any province, municipality or district located therein.

- (m) **"Hazardous Substance"** means any hazardous waste or substance, pollutant, contaminant, waste or other substance, whether solid, liquid or gaseous in form, which when released into the natural environment may immediately or in the future directly or indirectly cause material harm or degradation to the natural environment or to the health or welfare of any living thing and includes, without limiting the generality of the foregoing:
 - (i) any such substance as defined or designated under any applicable laws and regulations for the protection of the environment or any living thing;
 - (ii) asbestos, urea formaldehyde, poly-chlorinated biphenyl ("**PCB's**") and materials manufactured with or containing the same; and
 - (iii) radioactive and toxic substances.
- (n) **"Interest Adjustment Date"** means the date indicated in the applicable Computer Field.
- (o) **"Interest Rate"** means the interest rate set out in the Commitment.
- (p) **"Loan"** means the loan extended by the Chargee to the Chargor pursuant to the terms of the Commitment.
- (q) **"Maturity Date"** means the Balance Due Date as set out in the applicable Computer Field.
- (r) **"Person"** is to be broadly interpreted and includes an individual, a corporation, a partnership, a trust, an unincorporated organization, and the executors, administrators or other legal representatives of an individual in such capacity.
- (s) **"Project"** means the proposed project intended to be developed by the Chargor on the Real Property, which may consist of the Units together with any ancillary amenities thereto.
- (t) **"Real Property"** means the real property described in the attached electronic form of charge/mortgage, together with all of the present and future interest of the Chargor in the Real Property including, all rights, benefits, agreements, rights-of-way, easements, privileges and right to use or occupy now or hereafter to such real property; and, all fixtures, improvements, buildings and other structures placed, installed or erected from time to time on any such real property (including all such property now or in the future owned, leased, licensed, possessed or acquired by the Chargor, or in which the Chargor now or in the future has any interest or to which the Chargor is now or may in the future become entitled).
- (u) **"Requirements of Environmental Law"** means all requirements of the common law or the statutes, regulations, by-laws, ordinances, treaties, judgments and decrees and (whether or not they have the force of law) rules, policies, guidelines, orders, approvals, notices, permits, directives and the like, of any Governmental Authority relating to environmental, health, fire or safety matters, or any of them and the Real Property and the activities carried out therein (whether in the past, present or the future), including, but not limited to, all such requirements relating to Hazardous Substances.
- (v) **"Taxes"** means all taxes, rates and assessments of whatever nature or kind and to whomever imposed, levied, collected, withheld or assessed as of the date of this Charge or at any time in the future charged or payable with respect to the Real Property by any Governmental Authority having jurisdiction, including local improvement rates and any and all interest, fines and penalties in connection therewith.
- (w) **"Term"** means the term of this Charge, to expire on the Maturity Date.
- (x) **"Unit"** means any portion of the Real Property (i) designated or intended for use as a single family residential dwelling in accordance with the *Planning Act* (Ontario) and/or (ii) consisting of an individual condominium unit created in accordance with the provisions of the Act, and "**Units**" means more than one (1) Unit.

2. NON-MERGER

Notwithstanding the registration of this Charge and the advance of funds secured hereunder, the Chargor hereby acknowledges that the terms, conditions, obligations, liabilities, warranties and representations contained in the Commitment shall not merge on the closing, registration and/or delivery of the Loan security, including, without limitation, this Charge, but shall remain binding and effective upon the parties

hereto and in full force effect. It is understood and agreed that any default under the Commitment shall be deemed a default under this Charge. In the event of an inconsistency or conflict between any of the terms of this Charge and the terms of the Commitment, the Chargee shall determine, in its sole and unfettered discretion, which shall prevail.

3. **LOAN FACILITY EXTENDED TO THE CHARGOR AND SECURED HEREIN**

- (a) Whereas pursuant to the terms of the Commitment, the Chargee has agreed to extend a loan facility to the Chargor and the Chargor hereby charges the Real Property in favour of the Chargee with the indebtedness owing from time to time pursuant to the Loan up to the principal amount set out in the Commitment, together with interest thereon at the Interest Rate, Costs and other amounts thereon as provided for herein.
- (b) Provided this Charge to be void upon payment to the Chargee of the aggregate of the unpaid balance advanced to the Chargor by the Chargee in lawful money of Canada with interest thereon at the Interest Rate, and, which interest shall be calculated and compounded monthly not in advance as hereinafter set forth, as well after as before maturity and both before and after default and judgment.
- (c) Interest calculated daily and compounded monthly, not in advance, at the Interest Rate on the amount advanced from time to time shall become due and payable monthly on the first (1st) day of each and every month from and including the first (1st) day of the month immediately following the Interest Adjustment Date to and including the first (1st) day of the month in which the Maturity Date takes place. The aggregate sum advanced to the Chargor by the Chargee, together with interest thereon at the Interest Rate shall become due and payable on the Maturity Date. The first payment of interest to be computed from the Interest Adjustment Date shall be due and payable on the first (1st) day of the month immediately following such date.
- (d) Costs and Taxes and performance of statute labour, and observance and performance of all covenants, provisos and conditions herein contained.

4. **COMPOUND INTEREST**

It is hereby agreed that in case default shall be made in payment of any sum in respect of the Loan to become due for interest at any time appointed for payment thereof as aforesaid, compound interest shall be payable and the sum in arrears for interest from time to time, as well after as before maturity, shall bear interest at the rate aforesaid, and in case the interest and compound interest are not paid in one (1) month from the time of default a rest shall be made, and compound interest at the Interest Rate shall be payable on the aggregate amount then due, as well after as before maturity, and so on from time to time, and all such interest and compound interest shall be a charge upon the Real Property.

5. **CAPITALIZED INTEREST**

The Chargee shall have the right at its sole option to capitalize any interest owing from time to time and to add same to the principal amount of the Loan and to treat it as part thereof and charge interest thereon. Such capitalized interest and interest thereon shall at all times be secured under the security granted by the Chargor to the Chargee pursuant to this Loan in first priority in the same manner as accrued interest. The Chargee at its sole option shall have the right to treat such capitalized interest as principal or accrued interest. Notwithstanding anything contained herein to the contrary, the principle of deemed reinvestment of interest shall not apply to any interest calculation in respect of this Charge.

6. **PREPAYMENT**

The Chargor, when not in default hereunder, the Commitment, and/or any other Additional Security, shall have the prepayment rights set out in the Commitment.

7. **PRE-AUTHORIZED DEBIT**

- (a) If so requested by the Chargee from time to time, all or a portion of the payments to be made by the Chargor to the Chargee hereunder shall be made by way of automatic monthly debit withdrawals by the Chargee from a designated bank account of the Chargor, as the Chargor may notify the Chargee in writing. In this regard, the Chargor hereby authorizes and directs the Chargee to automatically debit any bank account designated by the Chargor for amounts payable hereunder. The Chargor hereby further agrees to do, make and execute, or cause to be done, made and executed, all such documents, acts, matters and things as may be reasonably required by the

Chargee to give effect to the foregoing, including, without limitation, executing the Chargee's Pre-Authorized Debit Form.

- (b) Alternatively (or in addition), if so requested by the Chargee, the Chargor shall deliver to the Chargee a series of post-dated cheques from time to time at any time during the Term following the delivery to the Chargor by the Chargee of the final advance to be made under the Loan, representing all or a portion of monthly payments on account of interest due and owing on account thereof throughout the then-remaining Term.

8. **PAYMENTS AFTER 1:00 P.M.**

Any payment received by the Chargee after 1:00 P.M. (local time) on any Business Day, shall be deemed for the purpose of calculation of interest, to have been made and received on the immediately following Business Day. For greater certainty, if funds are received (or deemed received) on a Friday after 1:00 P.M. (local time), interest shall be calculated to the following Business Day.

9. **SALE OR CHANGE OF CONTROL**

- (a) In the event that the Chargor directly or indirectly sells, conveys, transfers, assigns or exercises a power of appointment with respect to the Real Property or any portion thereof to a purchaser, transferee or assignee, other than a sale or transfer of individual Units to a purchaser thereof as contemplated by Section 15 hereof, or in the event of a change of shareholders of the Chargor which results in a change of control of the Chargor, or in the event of a change in the legal or beneficial ownership of the Real Property or any portion thereof, other than a sale or transfer of individual Units to a purchaser thereof as contemplated by Section 15 hereof, the Chargee may, at the Chargee's sole option, declare all of the sums secured by this Charge to be immediately due and payable and invoke any remedies permitted by this Charge or law, unless the written consent of the Chargee is first obtained, which consent may be arbitrarily or unreasonably withheld. The right of the Chargee pursuant to this provision shall not be affected or limited in any way by the acceptance of payments due under this Charge from the Chargor or any Person claiming through or under the Chargor and the rights of the Chargee hereunder shall continue without diminution for any reason whatsoever until such time as the Chargee has consented in writing as required by this provision.
- (b) No sale or other dealings by the Chargor with the equity of redemption in the Real Property or any part thereof shall in any way change the liability of the Chargor for the observance, fulfilment and maintenance of all covenants, terms and provisions herein or in any way alter the rights of the Chargee as against the Chargor or any other Person liable for payment of the moneys hereby secured. No dealing between the Chargee and the Chargor or the owner of the equity of redemption, including extending or renewing this Charge, shall in any way affect, change or prejudice the liability of the Chargor for the observance, fulfilment and maintaining of all covenants, terms, provisos, conditions, agreements and stipulations in this Charge or any amendment or extension thereof or in any way alter the rights of the Chargee as against the Chargor or any other Person liable for payment of the moneys hereby secured, and the Chargor expressly waives all notice of such dealings between the Chargee with the owner of the equity of redemption, including extending or renewing this Charge.

10. **MATERIAL ADVERSE CHANGES**

In the event that at any time while any indebtedness remains outstanding pursuant to the provisions of this Charge, the Chargee discovers that there is or has been any material adverse change, discrepancy or inaccuracy in any written information, statements or representations made or furnished to the Chargee by or on behalf of the Chargor and/or any Covenantor concerning the Real Property or the financial condition and responsibility of the Chargor or any Covenantor, or in the event of default by the Chargor or any Covenantor, then, in the event of such default, or if such material change, discrepancy or inaccuracy cannot be rectified or nullified by the Chargor or such Covenantor within thirty (30) days after written notification thereof by the Chargee to the Chargor or such Covenantor, the Chargee shall be entitled forthwith to withdraw and cancel its obligations hereunder or decline to advance any further funds, as the case may be, and to declare any funds which have been advanced, together with interest, to be forthwith due and repayable in full.

11. **RESTRICTIONS ON FURTHER FINANCING**

The Chargor covenants and agrees that it will not enter into, create, incur, assume, suffer or permit to exist any other charge, pledge or other form of financing against the Real Property and/or in respect of any chattels or other equipment directly related to the Real Property, and not to further encumber same in any

manner without the prior written consent of the Chargee, which approval may be unreasonably withheld by the Chargee.

12. **CONSENT TO REGISTRATION OF A PLAN OF CONDOMINIUM**

Provided that the Chargor is not in default hereunder, the Commitment, and/or any other Additional Security, the Chargee hereby agrees that it will consent to the Chargor registering a plan of condominium and declaration (the "**Condominium**") pursuant to the Act with respect to a portion of the Real Property provided that the Chargee has received and approved the draft plan of condominium and the declaration.

13. **NON-APPORTIONMENT**

Units into which the Real Property is or may hereafter be divided do and shall stand charged with the whole of the principal amount of this Charge and interest and all other amounts payable under this Charge, and no Person shall have any right to require the principal amount of this Charge or interest or such other amounts to be apportioned upon or in respect of any such Unit, other than as provided for in the Act.

14. **DEVELOPMENT PROVISIONS**

- (a) The Chargor, its agents, employees, and parties authorized by it may not conduct development and construction operations on the Real Property, including, without limitation, demolition and removal of existing structures, survey work, grading and excavation operations, installation of services, construction of a sales pavilion and all other acts incidental to the development of the Project without the prior written consent of the Chargee, in its sole and unfettered discretion. Provided that in the event that the Chargee has approved of any such construction operations on the Real Property and the Chargor is not in default hereunder, the Commitment, and/or any other Additional Security, the Chargee shall, on written request from the Chargor, execute and deliver within five (5) Business Days of written request therefore, without the requirement of payment of any principal or interest under this Charge, all plans, agreements, consents, postponements, releases and other documents so that the Chargor may develop the Real Property, including, without limitation the following:
- (i) engineering, financial, condominium, subdivision, servicing, site plan, development, cost-sharing and reciprocal agreements required by the Governmental Authorities;
 - (ii) consents or authorizations required to have the Real Property or any part thereof rezoned or divided or to comply with the provisions of the *Planning Act* (Ontario);
 - (iii) consents or postponements for any easements required to be granted for any public service or other purpose including the realignment of the existing pedestrian and vehicular easement with the adjoining land owner;
 - (iv) consents or partial discharges for or relating to parts of the Real Property required by the Governmental Authorities for the purpose of granting or dedicating roads, road widenings, walkways, reserves, parklands, recreation sites, school sites, drainage areas, buffer strips or other public purposes, provided such conveyances do not negatively impact on continued access to the Real Property; and
 - (v) consents for the registration of the Condominium relating to the Real Property.
- (b) Provided, however, that the Chargee shall not be required to undertake or assume any financial or other obligation as a result thereof and provided further, that with respect to partial discharges or consents required for any of the purposes referred to herein, an amount shall be paid for a partial discharge for such portion of the Real Property equal to the amount if any, received by the Chargor from any third party for the transfer or dedication of any such lands as set out in Section 15 herein.
- (c) The Chargor hereby covenants and agrees that it will:
- (i) indemnify the Chargee and save it harmless from any losses, claims, actions or damages arising as a result of its agreement to execute any of the documentation referred to above; and
 - (ii) bear the Costs of the Chargee's solicitors and consultants in connection with the review of such documentation.

15. **PARTIAL DISCHARGE PROVISIONS**

- (a) The following provisions shall apply in respect of each and every partial discharge of this Charge from any part of the Real Property as may be requested by the Chargor and/or given by the Chargee pursuant to the terms of this Charge:
- (i) notwithstanding anything otherwise contained herein, the Chargor shall not be entitled to request or receive any partial discharge when there is any outstanding material default by the Chargor hereunder;
 - (ii) in addition to all amounts on account of principal required to be paid by the Chargor to the Chargee in respect of any part of the Real Property to be partially discharged, the Chargor shall also pay to the Chargee:
 - a. accrued and unpaid interest on such principal amounts to the date of partial discharge;
 - b. the reasonable legal and other costs incurred by the Chargee in connection with each such partial discharge; and
 - c. any and all other charges due and owing by the Chargor pursuant to the provisions of this Charge;
 - (iii) the Chargor shall not be entitled to request and the Chargee shall not be obliged to give any partial discharge if doing so and registration of the same would result in any of the following:
 - a. a violation of the *Planning Act* (Ontario);
 - b. any undischarged parts of the Real Property becoming landlocked;
 - c. the occupancy and use of any undischarged parts of the Real Property in the same manner as prior to such partial discharge to be in non-compliance with any laws, by-laws or regulations of any Governmental Authority having jurisdiction;
 - (iv) the Chargee hereby agrees to deliver to the Chargor, upon prior written request, execution copies of all instruments and other documents reasonably required to be executed by the Chargee in connection with any partial discharge(s) of this Charge (collectively, the "**Discharge Documents**") contemplated to be registered at any time during the Term, in respect of any portion of the Real Property designated or intended for use as a Unit, provided that any such Discharge Documents so delivered to the Chargor by the Chargee pursuant to this subsection (d) shall be held in escrow by the Chargor's solicitors (provided that the Chargor's solicitors are acceptable to the Chargee) pending (i) the successful sale of any such Unit to a third party purchaser for value and delivery of the applicable Net Closing Proceeds (as hereinafter defined) to the Chargee (or as it may otherwise direct) together with payment of the Chargee's reasonable administrative and legal costs incurred with respect to preparation and delivery of such partial discharge(s), and (ii) written notice from the Chargee or its solicitors that any such Discharge Documents may be so released. Any other request for partial discharge shall be made by the Chargor upon not less than five (5) Business Days' prior written notice to the Chargee accompanied by execution copies of all Discharge Documents required to be executed by the Chargee in connection therewith; and
 - (v) all monies payable to the Chargee in respect of each partial discharge shall be paid by certified cheque, in lawful money of Canada.
- (b) When and if pursuant to exercise of the partial discharge provisions set forth in this Charge, the Chargor has paid to the Chargee all amounts secured by this Charge, then the Chargee acknowledges and agrees that, notwithstanding anything otherwise contained herein, the Chargor shall be entitled to request and obtain from the Chargee one or more partial discharges of this Charge from all parts of the Real Property then remaining undischarged without further payment on account of principal, but subject always to the provisions set forth in this Section 15.

- (c) Notwithstanding the foregoing, but subject always to the provisions set forth in this Section 15(a), the Chargor shall be entitled to request and obtain from the Chargee a partial discharge of any portion of the Real Property designated or intended for use as a Unit upon payment to the Chargee for each such Unit an amount on account of principal which is equal to one hundred (100%) percent of the Net Closing Proceeds from the sale of each such Unit. For the purposes herein, "**Net Closing Proceeds**" shall mean the sale price of such Unit (which sale price shall be approved by the Chargee) less, the aggregate of:
- (i) approved legal costs in respect of such sale;
 - (ii) approved sales commission in respect of such sale; and
 - (iii) any Applicable Taxes payable in respect of the sale of such Unit.

16. **CONDOMINIUM PROVISIONS**

- (a) Provided that if all or any part of the Real Property is or becomes a Unit pursuant to the provisions of the Act, the following covenants and provisions shall apply in addition to all other covenants and provisions set forth in this Charge:
- (i) for the purposes of all parts of the Real Property comprising one or more such Unit, all references in this Charge to the Real Property shall include the Chargor's appurtenant undivided interest in the common elements and other assets of the Condominium Corporation;
 - (ii) the Chargor shall at all times comply with the Act;
 - (iii) the Chargor shall pay, when due, all monies payable by the Chargor or with respect to the Real Property in accordance with the provisions of the Act and the declaration, by-laws and rules of the Condominium Corporation, including all required contributions to common expenses and any special levies, charges and assessments, and shall provide proof of such payment to the Chargee upon request; and if the Chargor fails to make any such payment, the Chargee may do so at its option and all amounts so paid by the Chargee shall be secured by this Charge and shall be payable by the Chargor to the Chargee forthwith upon demand, together with interest thereon as herein provided;
 - (iv) the Chargee shall not be under any obligation to vote or to consent or to protect the interests of the Chargor;
 - (v) the exercise by the Chargee of its right to vote or to consent or to abstain from doing so shall not constitute the Chargee as a mortgagee or chargee in possession and shall not give rise to any liability on the part of the Chargee;
 - (vi) the Chargor hereby authorizes and directs the Condominium Corporation to permit the Chargee to inspect the records of the Condominium Corporation at any reasonable time;
 - (vii) in addition to and notwithstanding any other provisions of this Charge, the outstanding principal amount and all accrued interest and other charges secured by this Charge shall, at the Chargee's option, become immediately due and payable without notice or demand if any of the following events or circumstances shall occur and be continuing:
 - a. the government of the Condominium Corporation or the government of the Real Property by the Condominium Corporation is terminated;
 - b. a vote of the Condominium Corporation authorizes the sale of all or substantially all of its property or assets or all or any part of its common elements or all or any part of the Real Property;
 - c. the Condominium Corporation fails to comply with any provision of the Act or its declaration or any of its by-laws and rules; and/or
 - d. the Condominium Corporation fails to insure its assets, including the Real Property, in accordance with the Act and the declaration and by-laws of the

Condominium Corporation, or any insurer thereof cancels or threatens cancellation of any existing obligation to insure the same;

- (viii) the Chargee is hereby irrevocably authorized and empowered to exercise all rights of the Chargor (in its capacity as an owner of any particular Unit forming a part of the condominium development (the "**Condominium**") to vote or to consent in all matters relating to the affairs of the Condominium Corporation (collectively, the "**Rights**") provided that:
 - a. the Chargee may at any time or from time to time give notice in writing to the undersigned and the Condominium Corporation that the Chargee does not intend to exercise the Rights until such time as the Chargee revokes same and the undersigned may exercise its respective Rights. Any such notice may be for an indeterminate period of time or for a limited period of time or for a specific meeting or matter; and
 - b. the Chargee shall not by virtue of the assignment to the Chargee of the Rights be under any obligation to vote or consent or to protect the interest of the undersigned;
 - c. the foregoing assignment is made pursuant to the (i) *Land Registration Reform Act*, R.S.O. 1990, Chapter L.4 and (ii) Act.

17. **ENVIRONMENTAL PROVISIONS**

- (a) The Chargor represents and warrants that:
 - (i) it has not caused or permitted, and to the best of its knowledge, information and belief after making due inquiry, no other person has caused or permitted, any Hazardous Substance to be manufactured, refined, traded, transported or transformed to or from, handled, produced, processed, placed, stored, located or disposed of on, under or at the Real Property;
 - (ii) it has no knowledge that any owner or occupier of any abutting or neighbouring properties has done any one or more of the matters or things prohibited by subsection (a) hereof;
 - (iii) it and its tenants, invitees and other occupiers of the Real Property have and will at all times carry out, and to the best of their respective knowledge, information and belief after making due inquiry, all prior owners and occupiers of the Real Property have at all times carried out, all business and other activities upon the Real Property in compliance with all applicable laws intended to protect the environment including, without limitation, laws respecting the discharge, emission, spill or disposal of any Hazardous Substance;
 - (iv) no order, direction, enforcement action or other governmental or regulatory action or notice, nor any action, suit or proceeding relating to an Hazardous Substance or the environment has been issued or is otherwise threatened or pending with respect to the Real Property;
 - (v) all of the representations and warranties set out herein shall remain true and accurate in all respects until all amounts secured hereunder are paid in full; and
 - (vi) the Chargee may delay or refuse to make any advance to the Chargor if the Chargee believes that any of the representations and warranties set out herein were not true and accurate when made or at any time thereafter.
- (b) The Chargee or agent of the Chargee may, at any time, before and after default of this Charge, and for any purpose deemed necessary by the Chargee, enter upon the Real Property to inspect the Real Property and buildings thereon. Without in any way limiting the generality of the foregoing, the Chargee (or its respective agents) may enter upon the Real Property to conduct any and all tests, inspections, appraisals and environmental audits of the Real Property deemed necessary by the Chargee so as to determine and ensure compliance with the provisions of this Charge including, without limitation, the right to conduct soil tests and to review and copy any records relating to the Real Property or the businesses and other activities conducted thereon at any time and from time to time. The reasonable cost of such testing, assessment, investigation or study, as the case may be,

with interest at the Interest Rate, shall be payable by the Chargor forthwith and shall be a charge upon the Real Property. The exercise of any of the powers enumerated in this clause shall not deem the Chargee or its respective agents to be in possession, management or control of the Real Property.

- (c) In consideration of the advance of funds by the Chargee, the Chargor and the Covenantor by way of separate guarantee, hereby agree that, in addition to any liability imposed on the Chargor and the Covenantor under any instrument evidencing or securing the Loan indebtedness, the Chargor and the Covenantor shall be jointly and severally liable for any and all of the costs, expenses, damages or liabilities of the Chargee, its directors and officers (including, without limitation, all reasonable legal fees) directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal or presence on, under or about the Real Property of any Hazardous Substances and such liability shall survive foreclosure of the security for the Loan and any other existing obligations of the Chargor and Covenantor to the Chargee in respect of the Loan and any other exercise by the Chargee of any remedies available to it for any default under the Charge.
- (d) The Chargor covenants that it will:
 - (i) remedy forthwith, at its own expense, any environment damage that may occur or be discovered on the Real Property in the future;
 - (ii) comply with and monitor, on a regular basis, its compliance and the compliance of any tenant, subtenant, assignee or other occupant of the Real Property with all Requirements of Environmental Law;
 - (iii) notify the Chargee promptly of any event or occurrence that has given, or is likely to give, rise to a report, order, inquiry or investigation relating to a matter that may have an adverse effect on the financial position of the Chargor or the Real Property or any action, suit or proceeding against the Chargor or others having an interest in the Real Property relating to, or a violation of, the Requirements of Environmental Law, including any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, leaching or migration of Hazardous Substances into, on or under the Real Property, air and surface and ground water, and will also notify the Chargee promptly of any such above-mentioned information of which the Chargor has or receives knowledge relating to lands adjacent to the Real Property;
 - (iv) not lease or content to any sublease or assignment of any part of the Real Property to a tenant, subtenant or assignee who may engage in, nor permit any tenant, subtenant, assignee or occupant of the Real Property to engage in a business involving the generation of Hazardous Substances or the storing, handling, processing, manufacturing or disposing of Hazardous Substances in, or, under or from the Real Property save and except in accordance with the Requirements of Environmental Law, and any lease, sublease or assignment of any part of the Real Property shall preserve as against any lessee, sublessee or assignee all of the rights of the Chargee herein;
 - (v) save and except for those Hazardous Substances which are present on, in or under the Real Property in accordance with the Requirements of Environmental Law and which have been disclosed to the Chargee in writing remove, in accordance with all Requirements of Environmental Law, any Hazardous Substances from the Real Property forthwith upon their discovery and advise the Chargee forthwith in writing of the procedures taken;
 - (vi) provide to the Chargee upon request such information, certificates or statutory declarations as to compliance with the provisions hereof and all Requirements of Environmental Law and conduct such environmental audits or site assessments as may be reasonably necessary to ensure compliance with the Requirements of Environmental Law, and to provide to the Chargee copies of any environmental, soils, safety or health reports or studies in respect of the Real Property that it receives or possesses from time to time; and
 - (vii) permit the Chargee to conduct such inspections and appraisals of all of any of its records, business and property relating to the Real Property at any time and from time to time to monitor compliance with the Requirements of Environmental Law.

- (e) The Chargor and Covenantor further covenant that they will be liable for and fully indemnify and save harmless the Chargee and its officers, directors, employees, agents and shareholders from and against any and all losses, damages, costs and expenses of any and every nature and kind whatsoever (including legal fees on a substantial indemnity basis and any environmental remediation costs included by the Chargee) which at any time or from time to time may be paid or incurred by or asserted against any of them as a direct or indirect result of:
- (i) a breach of any of the representations, warranties or covenants hereinbefore set out;
 - (ii) the presence of any Hazardous Substance in, on or under the Real Property; or
 - (iii) the discharge, emission, spill or disposal of any Hazardous Substance from the Real Property into or upon any property, the atmosphere, any watercourse, body of water or wetland;

and such losses, damages, costs and expenses include, without limitation:

- (i) the costs of defending, counterclaiming or claiming over against one or more third parties in respect of any action or matter; and
- (ii) any settlement of any action or proceeding entered into by the Chargee with the consent of the Chargor (which consent shall not be unreasonably withheld);

and the provisions of all representations, warranties, covenants and indemnifications set out herein shall survive the release and discharge of this Charge and any other security held by the Chargee and repayment and satisfaction of the Loan. The provisions of this indemnity shall enure to the benefit of the Chargee and its successors and assigns including, without limitation, any assignees of this Charge.

18. **TAXES**

- (a) The Chargor covenants and agrees that in the event the Chargee does not elect to collect the realty taxes imposed for the Real Property that the Chargor shall pay all instalments as they become due and shall provide proof of payment by way of a receipt to the Chargee on or before the due date for each such payment. In the event the Chargee elects to collect the realty taxes levied for the Real Property together with the monthly interest payment hereunder, and subsequently the monthly realty tax payments collected from the Chargor are insufficient to pay any realty tax bill when due, the Chargor covenants to pay all arrears, insufficiencies and instalments to the Chargee within fourteen (14) days of written notice from the Chargee's solicitors to make such payment. In the event that the Chargor fails to provide proof of payment as set out above, the Chargor agrees that the Chargee's solicitors may obtain verbal information from the applicable Governmental Authority, or for those Governmental Authorities which do not provide verbal information pertaining to realty tax accounts, by obtaining a tax certificate, and the Chargor agrees that the cost of obtaining such information shall be borne by the Chargor plus disbursements and Applicable Taxes which cost will be determined by the Chargee and will be added to the principal amount secured by the Charge. In all other respects, the Chargor covenants and agrees with the Chargee that it will comply strictly with every requirement of any Governmental Authority including without limitation, pay all Taxes as and when they are due and deliver to the Chargee evidence of such payment.

19. **INSURANCE**

Insurance shall be provided to the Chargee in accordance with the provisions of Paragraph 16 of Standard Charge Terms 200033 and in accordance with the provisions of the Commitment and shall be subject to the review and approval of the insurance consultant of the Chargee as contemplated in the Commitment.

20. **ACKNOWLEDGEMENT ON ASSIGNMENT**

In the event that the Chargee assigns, transfers or otherwise conveys its interest hereunder, and upon the delivery of notice of same to the Chargor, the Chargor, if so requested, shall without cost, at any time and from time to time, execute an acknowledgment with respect to the terms and conditions of this Charge and the amount outstanding thereunder. Failure to execute the acknowledgment shall be deemed to be default by the Chargor hereunder.

21. INSPECTION OF REAL PROPERTY

- (a) The Chargee shall be entitled to inspect the Real Property periodically and/or to appoint a monitor to conduct such inspections. The Chargee and/or any monitor when so appointed shall have the power to:
- (i) inspect physical status of the Real Property and to make or cause to be made such tests and inspections in connection therewith as it may deem advisable; and
 - (ii) review the management and financial position of the business being conducted at the Real Property, and for such purpose shall have full access to all books and records relating to same.
- (b) The Chargee will not, by virtue of the exercise of the foregoing rights, or in exercising any of the rights given to the Chargee in this Charge, be deemed to be a mortgagee-in-possession of the Real Property.

22. EXPROPRIATION

If the Real Property or any part of it is expropriated by any Governmental Authority having powers of expropriation, all money payable in respect of such expropriation shall be paid to the Chargee and, if received by the Chargor, shall be received in trust for the Chargee and forthwith paid over to the Chargee subject to the rights of any prior chargee pursuant to the terms of its charge provided such charge is permitted by this Charge. Such money shall, at the option of the Chargee, be applied against the obligations hereunder or such part of them as the Chargee may determine, or be held unappropriated in a collateral account as continuing security for the full payment and performance of the obligations hereunder. The Chargor shall forthwith deliver to the Chargee a copy of any notice of expropriation or proposed expropriation received by the Chargor in respect of the Real Property.

23. LIENS

The Chargor shall provide such additional security, information, documentation and assurances as may be required from time to time by the Chargee during the currency of this Charge to determine and to establish and preserve, in all respects, the priority of this Charge and all advances made hereunder over any rights of lien claimants pursuant to the provisions of the *Construction Act* (Ontario). If the Chargee makes any payment, in connection with the determination, establishment or preservation of its priority, whether such payment is made to a lien claimant or other Person claiming an interest in the Real Property or is paid into court, then the amount or amounts so paid and all costs, charges and expenses incurred in connection therewith shall be forthwith payable to the Chargee by the Chargor and shall be a charge on the Real Property and shall be added to the debt hereby secured and shall bear interest at the applicable rate and, in default of payment, the powers of sale and other remedies hereunder may be exercised. It is further agreed that the Chargee shall not become a mortgagee in possession by reason only of exercising any of the rights given to it under this Section 23 or in making any payment to preserve, protect or secure the Real Property.

24. ADDITIONAL SECURITY

- (a) A General Assignment of Rents, General Security Agreement and other collateral security documents contemplated by the Commitment (collectively, the “**Additional Security**”) are being given as further security to this Charge, which Additional Security is being granted by the Chargor to the Chargee and any default under the Additional Security shall constitute default under this Charge and any default under this Charge shall constitute default under the Additional Security and at the option of the Chargee require the entire principal secured under this Charge, together with all accrued and unpaid interest to become due and payable. Payment under the Additional Security shall constitute payment under this Charge and payment on account of this Charge shall constitute payment under the Additional Security.
- (b) It is agreed that the Chargee’s rights hereunder shall in no way merge or be affected by any proceedings the Chargee may take under the Additional Security and the Chargee shall not be required to take proceedings under such Additional Security or any part thereof before proceeding under this Charge, and conversely, no proceedings under this Charge shall in any way affect the rights of the Chargee under such Additional Security and the Chargee shall not be required to take proceedings under this Charge before proceeding under the Additional Security or any part thereof.

- (c) Upon request from the Chargee, the Chargor agrees forthwith upon delivery from time to time of any chattels in which it has an ownership interest (including replacements thereof) relating to the Real Property, it shall promptly notify the Chargee, and its solicitors, of such delivery and shall forthwith supply the Chargee with all serial numbers and a description which shall include make and model. The Chargor agrees to provide written evidence of proof of purchase of the chattels, free of encumbrances, and of insurance of same, both in the form and content satisfactory to the Chargee.

25. **UNDERTAKINGS**

In the event the Chargor or any Covenantor default with respect to any undertakings delivered to the Chargee in consideration of the advance of funds under this Charge or with respect to any covenant contained in the terms and provisions contained in this Charge or the Additional Security, such default will be an event of default under this Charge.

26. **SALE ON TERMS**

In the event power of sale proceedings are taken, the Chargee, as vendor, may sell the Real Property on terms and if the result is that any mortgages taken back are at a rate lower than the rate for first and/or second mortgages in the industry then the Chargee shall be entitled to sell these charges at a discount and the discount shall form part of the loss incurred by the Chargee and be recoverable against the Chargor.

27. **COSTS**

It is agreed that all Costs of the Chargee incurred in endeavouring to collect any money overdue under this Charge, including all legal costs on a substantial indemnity basis, whether legal proceedings are instituted or not, shall be added to the principal and be payable forthwith by the Chargor. Furthermore, and in addition to any Costs payable by the Chargee as aforesaid, upon default under this Charge resulting in the Chargee entering into or taking possession of the Real Property or any part of it, the Chargee or any Person appointed on its behalf shall be entitled to a management fee equal to five (5%) percent of the outstanding principal indebtedness hereunder plus Applicable Taxes thereon, which fee shall be added to the mortgage indebtedness and shall bear interest at the rate herein set forth. The Chargor acknowledges and agrees that the Costs provided for herein are a genuine pre-estimate of the value of the services performed for same and are not a penalty or additional interest on the Loan secured by this Charge.

28. **MORTGAGE STATEMENT**

Any request for a mortgage statement shall be made in writing allowing the Chargee, at minimum, five (5) Business Days to respond. The Cost of any such statement shall be borne by the Chargor.

29. **EVENTS OF DEFAULT**

- (a) At the option of the Chargee, it shall constitute default hereunder if the Chargor or any Covenantor shall become insolvent or be the subject of any bankruptcy, arrangement with creditors, proposal, amalgamation or any transaction or series of transactions which results in a change in control of the Chargor (subject to Section 9), reorganization (subject to Section 9), or any liquidation, winding-up, dissolution or receivership or without the Chargee's consent, seeks continuation under the laws of any other jurisdiction. In the event of a default by the Chargor under this Charge, the Chargor will, if required by the Chargee, establish a separate bank account for the Project.
- (b) Provided and without in any way limiting anything herein contained, in the event that:
- (a) the Chargor makes default in the payment of any principal or interest or any other monies required to be paid by the Chargor hereunder;
 - (b) the Chargor fails to observe or perform any other covenant or agreement herein contained and/or the Commitment;
 - (c) any representation or warranty made herein and/or in the Commitment by the Chargor is at any time while this Charge is outstanding not true;
 - (d) any construction lien is registered against any portion of the Real Property and is not removed within ten (10) Business Days;

- (e) an order is made or a resolution is passed for the winding up of the Chargor, or if a petition is filed for the winding up of the Chargor;
- (f) the Chargor becomes insolvent or makes an unauthorized assignment or bulk sale of the Chargor's assets or if a bankruptcy petition is filed or presented against the Chargor;
- (g) any proceedings with respect to the Chargor are commenced under the *Companies' Creditors Arrangement Act* (Canada) or other debtor relief legislation;
- (h) an execution, sequestration, extent or any other process of any court becomes enforceable against the Chargor or if a distress of analogous process is levied against the Real Property or any portion thereof, provided such execution, sequestration, extent, process of court, distress or analogous process is not in good faith being disputed by the Chargor;
- (i) the Chargor shall permit any sum which has been admitted as due by the Chargor or is not disputed to be due by the Chargor and which forms, or is capable of being made, a charge upon any portion of the Real Property in priority to or ranking equally with the charge of this Charge to be or remain unpaid;
- (j) any charge or encumbrance created or issued by the Chargor having the nature of a fixed and/or floating charge shall become enforceable, whether ranking in priority to, or *pari passu* with this Charge; and/or
- (k) the Chargor ceases or threatens to cease to carry on its business or if the Chargor commits or threatens to commit any act of bankruptcy;

then, and in any such event, this Charge shall, at the option of the Chargee, be deemed to be in default.

30. **REMEDIES ON DEFAULT**

- (a) Upon the occurrence and during the continuance of default the Chargee may, personally or by agent, at such time or times as the Chargee in its discretion may determine to exercise any one or more of the remedies in and by this Charge or conferred by law in case of default, including the following remedies:
 - (a) Possession. Entry into possession and use of the Real Property or any part or parts of it with power, among other things, to exclude the Chargor therefrom, to preserve and maintain the Real Property and to make such repairs, replacements, alterations and additions to the whole or any part of the Real Property that the Chargee may think advisable, to satisfy the whole or any part of any prior charge or any other prior claim or encumbrance then affecting the Real Property, to receive rents, income and profits of all kinds owing to the Chargor in respect of the Real Property and to pay from it all expenses of maintaining, preserving, protecting and operating the Real Property, including payments which may be due for insurance, Taxes, assessments, charges or liens prior to the charge of this Charge upon the Real Property and for the services of lawyers, agents and other Persons, and all costs, charges and expenses incurred in connection with the execution of the powers contained in this Charge; and to enjoy and exercise all powers necessary to the performance of all functions made necessary or advisable by possession, including the power to advance its own money (with interest payable on it at the Interest Rate) and to enter into contracts and to undertake obligations for the foregoing purposes upon the security of this Charge;
 - (b) Court Receiver. Proceedings in any court of competent jurisdiction for the appointment of a receiver of all or any part of the Real Property, and removal or replacement from time to time of any such receiver;
 - (c) Private Receiver. Appointment by instrument in writing of a receiver of all or any part of the Real Property, whether before or after entry into possession of the Real Property or any part of it, and removal or replacement from time to time of any such receiver;
 - (d) Distress. The Chargee may distress for arrears of payments in respect of the principal amount of this Charge, interest or any other amount payable under this Charge;
 - (e) Sale or Lease. Sale, lease or other disposition of all or any part of the Real Property whether before or after entry into possession of the Real Property or any part of it;

- (f) Foreclosure. Proceedings in any court of competent jurisdiction for sale or foreclosure of all or any part of the Real Property, with or without entry into possession of it;
 - (g) Action on Covenant. Taking any action or proceeding to enforce the performance of any covenant in favour of the Chargor contained in this Charge, whether before or after entry into possession of the Real Property or any part of it;
 - (h) Proof of Claim. Filing of proofs of claim and other documents to establish the claims of the Chargee in any proceeding relating to the Chargor; and
 - (i) Other. Any other remedy or proceeding authorized or permitted by this Charge or at law or in equity.
- (b) No right or remedy of the Chargee under this Charge or that the Chargee may have at law or in equity shall be exclusive or dependent on any other right or remedy, but any one or more of such rights and remedies may from time to time be exercised independently or in combination. The rights, remedies and powers conferred under this Charge are supplementary to and not in substitution for any of the powers that the Chargee may have or be entitled to at law, in equity or otherwise.

31. RECEIVER

- (a) Upon the occurrence of any one or more events of default, the Chargee may, in its discretion, by writing appoint a receiver (which term shall include a receiver and manager) (a "**Receiver**") of the Real Property or any part of it and of the rents and profits from it and may from time to time remove any Receiver and appoint another in his place, and in making any such appointment or appointments the Chargee shall be deemed to be acting as the attorney for the Chargor unless the Chargee indicates in writing a contrary intention. The following provisions shall apply in respect of the appointment of any Receiver:
- (i) such appointment may be made either before or after the Chargee shall have entered into or taken possession of the Real Property or any part of it;
 - (ii) such Receiver may, in the discretion of the Chargee, be vested with all or any of the powers and discretion of the Chargee and shall have the power to borrow on the security of the Real Property;
 - (iii) the Chargee may from time to time fix the remuneration of such Receiver and direct the payment of such remuneration from out of the proceeds of the Real Property;
 - (iv) such Receiver shall, so far as concerns the responsibility for his acts or omissions, be deemed the agent of the Chargor and in no event the agent of the Chargee and the Chargee in making or consenting to such appointment shall not incur any liability to the Receiver for his remuneration or otherwise howsoever;
 - (v) such Receiver shall from time to time have the power to collect, realize, sell or otherwise deal with the Real Property in such manner, upon such terms and conditions and at such time or times as may seem to the Receiver to be advisable and without notice to the Chargor;
 - (vi) such Receiver shall from time to time have the power to lease any portion of the Real Property which may become vacant for such term and subject to such provisions as the Receiver may deem advisable or expedient and, in so doing, such Receiver shall act as the attorney or agent for the Chargor (unless specifically appointed by the Chargee as the agent of the Chargee) and such Receiver shall have authority to execute, under seal or otherwise, any leases of any such premises in the name of and on behalf of the Chargor and the Chargor undertakes to ratify and confirm whatever any such Receiver may do on the Real Property; and
 - (vii) such Receiver shall have full power to manage, operate, amend, repair, alter or extend the Real Property or any part of it in the name of the Chargor for the purpose of securing the payment of rental from the Real Property or any part of it, including the power to:
 - a. take proceedings in the name of the Chargor or otherwise and to make any arrangement or compromise;

- b. borrow or raise money on all or any part of the Real Property in priority to this Charge or otherwise for such purposes as may be approved by the Chargee;
- c. give any and all notices to be given by the Chargor under any leases and exercise any and all rights of the Chargor under them;
- d. do or cause to be done any and all acts and things under any lease and adjust and settle all matters relating to such performance; and
- e. institute and prosecute all suits, proceedings and actions which the Receiver in his opinion considers necessary for the proper protection of the Real Property, defend all suits, proceedings and actions against the Chargor or the Receiver, appear in and conduct the prosecution and defence of any suit, proceeding or action then pending or thereafter instituted and appeal any suit, proceeding or action.

32. **APPLICATION OF PROCEEDS**

All money and other proceeds of disposition of any Real Property of the Chargor received by the Chargee or a Receiver may be applied to discharge or satisfy any expenses (including the Receiver's remuneration and other expenses of enforcing the Chargee rights against the Chargor under this Charge), encumbrances over the Real Property of the Chargor in favour of Persons other than the Chargee, borrowings, Taxes and other outgoings affecting the Real Property of the Chargor or which are considered advisable by the Chargee or the Receiver to protect, preserve, repair, process, maintain or enhance the Real Property of the Chargor or prepare it for sale, lease or other disposition, or to keep in good standing any encumbrances on the Real Property ranking in priority to the Charge from the Chargor, or to sell, lease or otherwise dispose of the Real Property of the Chargor. The balance of such proceeds, if any, may, at the sole discretion of the Chargee, be held as security for the obligations of the Chargor hereunder or be applied to such of the obligations (whether or not they are due and payable) in such manner and at such times as the Chargee considers appropriate (including in such manner as may be required to comply with any priority, subordination or security sharing arrangements between any one or more of those for whom the Chargee is the chargee) and thereafter will be accounted for as required by law.

33. **ATTORNEY OF THE CHARGOR**

- (a) Under Leases. The Chargee, as attorney or agent for the Chargor and in its name, may at any time and from time to time after default, exercise any of the rights, powers, authorities and discretion which under the terms of any of the leases could be exercised by the Chargor.
- (b) On Sale. In case of any sale under this Charge, whether by the Chargee or by a Receiver or under any judicial proceedings, the Chargor agrees that it will, forthwith upon request, execute and deliver to the purchaser such deeds, assurances, conveyances and receipts as may be necessary to transfer good title to the Real Property or any part or parts of it sold, and if in case of any such sale the Chargor shall fail to do so forthwith after request, the Chargee or such Receiver may execute and deliver to the purchaser of the Real Property or any part or parts of it such deeds, assurances, conveyances and receipts as may be necessary to transfer good and sufficient title to it, the Chargee or, if appointed, the Receiver being hereby irrevocably constituted the attorney of the Chargor for the purpose of making such sale and executing all deeds, assurances, conveyances, receipts and documents pertaining thereto.

34. **LIMITATION OF OBLIGATIONS**

The Chargee shall not, nor shall any Receiver appointed by it, be responsible or liable, otherwise than as a trustee, for any debts contracted by it or for salaries during any period during which the Chargee or such Receiver is managing the Real Property or any part or parts of it upon or after entry, as provided for in this Charge, nor shall the Chargee nor the Receiver be liable to account as mortgagee in possession or for anything except actual receipts or be liable for any loss on realization or for any default or omission for which a mortgagee in possession might be liable.

35. **CHARGEES COSTS**

- (a) The Chargee may (but shall not be obliged to) pay all costs, charges and expenses (including agents' charges and solicitors' fees and disbursements on a solicitor and his own client basis) incurred from time to time in taking, recovering and keeping possession of the Real Property or in performing work in respect of the buildings, erections, structures and improvements situate on it or in

inspecting it and generally in any other proceedings taken to realize the money secured by this Charge or in protecting the security for such money, whether any action or other judicial proceeding to enforce such payment has been taken or not. Any and all amounts so paid shall be added to the obligation and shall be payable forthwith by the Chargor to the Chargee with interest at the Interest Rate from the date of payment by the Chargee.

- (b) The Chargor shall immediately pay to the Chargee all amounts paid or incurred by or on behalf of the Chargee and all costs and expenses of preparing, executing and registering the Charge and any other related instruments, inspecting, protecting, repairing, completing, insuring, taking, keeping possession of and managing all or any part of the Real Property, preparing the Real Property for sale or lease, selling or leasing the Real Property, collecting all or any part of the Principal amount of this Charge, the exercise of any of the rights of a Receiver appointed pursuant to the provisions of this Charge and such Receiver's fees and expenses, agents' costs and expenses, legal fees and disbursements on a solicitor and his own client basis, and any other costs and expenses of exercising or protecting the Chargee's rights (under this Charge or otherwise) or all or any part of the Real Property.

36. **ADDITIONAL REMEDIES**

The rights, powers, and remedies conferred herein are supplementary to and not in substitution for any of the powers which the Chargee may have or be entitled to at law or otherwise. Any one or more remedies may from time to time be exercised independently of or in combination with any of the others, as often and in such order as the Chargee considers appropriate and the remedies include, but are not limited to, the Chargee's right to commence court proceedings to foreclose the Chargor's right, title and equity of redemption to the Real Property and the Chargee's right to ask the court to order the sale of the Real Property under the court's supervision. Such rights, powers and remedies shall not be capable of being waived or varied except by virtue of an expressed waiver or variation in writing signed by an officer of the Chargee. In particular, any failure to exercise or any delay in exercising any of such rights and remedies shall not operate as a waiver or variation of that or any other such right or remedy, any defective or partial exercise of any of such rights shall not preclude any other or future exercise of that or any other such right or remedy and no act or course of conduct or negotiation on the part of the Chargee or on its behalf shall in any way preclude it from exercising any such right or remedy or constitute a suspension or variation of any such right or remedy.

37. **CONSENT TO PERSONAL INFORMATION AS PER PRIVACY POLICY**

The Chargor and each Covenantor agrees that any information, personal or otherwise, either that the Chargor and each Covenantor has provided or will provide to the Chargee or that the Chargee has on file about the Chargor and each Covenantor shall be retained and may be used as the Chargee deems necessary in its sole discretion for the mortgage placement herein, collection of any arrears or deficiencies in the event of a default and any renewals or extensions of same. The Chargor and each Covenantor also agree to any credit bureau search being carried out by the Chargee from time to time as the Chargee deems necessary in its sole and unfettered discretion. By signing this Charge, the Chargor and each Covenantor agree that the Chargee shall have the right to seek any information from any Governmental Authority at any time either before or after the registration of the Charge and before and after default including to request site inspections or any information on file about the Chargor and each Covenantor and/or the Real Property and the Chargee shall have the right to retain such information which may be used as the Chargee deems necessary in its sole and unfettered discretion. The Chargor and each Covenantor also agree that the Chargee may retain all information provided to it in accordance with the provisions of this Section 37 on file for as long as the Chargee deems appropriate.

38. **SEVERABILITY OF ANY INVALID PROVISIONS**

If in the event that any covenant, term or provision contained in this Charge is held to be invalid, illegal or unenforceable in whole or in part, then the validity, legality and enforceability of the remaining covenants, provisions and terms shall not be affected or impaired thereby, and all such remaining covenants, provisions and terms shall continue in full force and effect. All covenants, provisions and terms hereof are declared to be separate and distinct covenants, provisions or terms as the case may be.

39. **INDEMNIFICATION OF CHARGE**

In the event the Chargee shall, without fault on its part, be made a party to any litigation commenced by or against the Chargor, the Chargor shall protect and hold the Chargee harmless therefrom and shall pay all

costs, expenses and solicitors' fees on a substantial indemnity basis. Such costs shall be a charge on the Real Property and may be added to the Loan.

40. **HEADINGS**

The headings herein are not to be considered part of this Charge and are included solely for the convenience of reference and are not intended to be full or accurate descriptions of the contents of the paragraphs to which they relate.

41. **BREACH OF COVENANT**

A breach of any covenant contained in this Charge shall constitute a default hereunder and at the option of the Chargee, it may avail itself of the remedies contained in this Charge or available at law.

42. **TIME OF ESSENCE**

Time shall be of the essence of this Charge in all respects.

43. **GOVERNING LAW**

This Charge shall be governed by the laws of the Province of Ontario.

44. **SUCCESSORS AND ASSIGNS**

This Charge shall enure to the benefit of and be binding on the parties and their respective successors and permitted assigns.

45. **AGREEMENTS IN WRITING**

No agreement for modification to this Charge or to any other security agreement provided to the Chargee, including any renewals hereof for extension of the time for payment of the indebtedness due hereunder shall result from, or be implied from, any payment or payments of any kind whatsoever made by the Chargor to the Chargee after the expiration of the Maturity Date, or of any subsequent term agreed to in writing between the Chargor and the Chargee, and that no modification, amendment, renewal hereof of extension of the time for payment of any indebtedness due hereunder shall result from, or be implied from, any other act, matter or thing, save only an express agreement in writing between the Chargor and the Chargee.

46. **CURRENCY REFERENCES**

All dollar amounts referred to in this Charge are stated in lawful money of Canada.

47. **CONFLICT/AMBIGUITY**

In the event of any inconsistency between the terms of this schedule to this Charge and the terms of Standard Charge Terms 200033, the terms of this schedule to this Charge shall prevail and the inclusion of any term in Standard Charge Terms 200033 that is not set out in this schedule to this Charge shall not be an inconsistency.

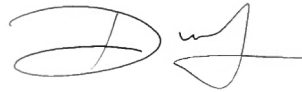
48. **BLANKET CHARGE**

(a) The Chargor hereby acknowledges and agrees that the indebtedness owing from time to time pursuant to the Loan shall be secured by all of the Real Property described under Properties field in the electronic form to which this Schedule is attached. For purposes hereof, each of the parcels of land comprising of the Real Property and designated by the Land Titles Office in which this Charge is registered shall hereinafter be referred to as a "Parcel" and collectively referred to as the "Parcels". The Chargor hereby further acknowledges and agrees that:

- (i) the Charge shall be registered against each of the Parcels;
- (ii) each Parcel shall be charged with the whole of the principal sum secured hereby together with interest thereon at the Interest Rate and Costs and other amounts thereon as provided herein; and

- (iii) the Chargor shall not be entitled to apportion any principal amount due under the Loan in respect of any of the Parcels.

***THIS IS EXHIBIT "L" TO THE
AFFIDAVIT OF CECIL HAYES
SWORN BEFORE ME THIS 14TH
DAY OF JANUARY, 2025***

A handwritten signature in black ink, consisting of a large, stylized 'D' followed by a smaller, more fluid signature.

A Commissioner Etc.



LAND
REGISTRY
OFFICE #59

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

64349-0258 (LT)

PAGE 1 OF 4
PREPARED FOR Camelia01
ON 2024/12/10 AT 13:24:52

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

PROPERTY DESCRIPTION: FIRSTLY: LOTS 46, 51, 52, 61, 62, 63, 64 & 65, PLAN 273 & PART LOTS 43, 44, 45, 47, 48, 49 & 50, PLAN 273, VILLAGE OF NIAGARA FALLS, PARTS 1 & 3 PLAN 59R17206; SECONDLY: SURFACE RIGHTS ONLY (AS IN R0718049), PART LOTS 47, 48, 49 & 50 PLAN 273, VILLAGE OF NIAGARA FALLS, PART 2 PLAN 59R17206; SUBJECT TO AN EASEMENT OVER PARTS 1 & 2 59R17292 IN FAVOUR OF PART LOTS 41 & 42 PLAN 273 AS IN R0441658 AS IN SN754703; CITY OF NIAGARA FALLS

PROPERTY REMARKS: FOR THE PURPOSE OF THE QUALIFIER THE DATE OF REGISTRATION OF ABSOLUTE TITLE IS 2022/03/11. CORRECTION: DOCUMENT 59R16793 ADDED TO 64349-0258 ON 2022/04/07 AT 10:29 BY OTTEN, LISA.

ESTATE/QUALIFIER:
FEE SIMPLE
LT ABSOLUTE PLUS

RECENTLY:
RE-ENTRY FROM 64349-0257

FIN CREATION DATE:
2022/03/11

OWNERS' NAMES
LA PUE INTERNATIONAL INC.

CAPACITY SHARE
ROWN

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/GBKD
** PRINTOUT INCLUDES ALL DOCUMENT TYPES (DELETED INSTRUMENTS NOT INCLUDED) **						
**SUBJECT TO SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPHS 3 AND 14 AND *						
** PROVINCIAL SUCCESSION DUTIES AND EXCEPT PARAGRAPH 11 AND ESCHEATS OR FORFEITURE **						
** TO THE CROWN UP TO THE DATE OF REGISTRATION WITH AN ABSOLUTE TITLE. **						
NOTE: THE NO DEALINGS INDICATOR IS IN EFFECT ON THIS PROPERTY						
SN549654	2018/04/20	TRANSFER	\$2,100,000	MALMER HOLDINGS LTD.	LA PUE INTERNATIONAL INC.	C
REMARKS: PLANNING ACT STATEMENTS.						
SN549655	2018/04/20	TRANSFER	\$250,000	NIACAN LTD.	LA PUE INTERNATIONAL INC.	C
REMARKS: PLANNING ACT STATEMENTS.						
SN549656	2018/04/20	TRANSFER	\$2,000,000	2075790 ONTARIO INC.	LA PUE INTERNATIONAL INC.	C
REMARKS: PLANNING ACT STATEMENTS.						
SN613492	2019/12/12	APL CONSOLIDATE		LA PUE INTERNATIONAL INC.		C
SN629148	2020/05/14	NOTICE		THE CORPORATION OF THE CITY OF NIAGARA FALLS		C
REMARKS: AGREEMENT						
SN642462	2020/09/18	NOTICE		THE CORPORATION OF THE CITY OF NIAGARA FALLS		C
REMARKS: SITE PLAN AGREEMENT						
59R16793	2020/10/01	PLAN REFERENCE				C
REMARKS: SN643628.						
SN644659	2020/10/02	CHARGE	\$2,000,000	LA PUE INTERNATIONAL INC.	THE SOVEREIGN GENERAL INSURANCE COMPANY	C
SN658896	2021/01/26	NOTICE	\$1	LA PUE INTERNATIONAL INC.	THE SOVEREIGN GENERAL INSURANCE COMPANY	C

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
		REMARKS: SN644659				
SN666113	2021/03/22	BYLAW DEEM PLNP		THE CORPORATION OF THE CITY OF NIAGARA FALLS		C
		REMARKS: BY-LAW 2020-04 TO DEEM LOTS NOT TO BE REGISTERED ON PART LOTS 43, 44, 45 AND 47 AND LOTS 46, 48-52 AND 61-65, ON PLAN 273 FOR THE PURPOSE OF SUBSECTION 50(4) OF THE PLANNING ACT.				
SN666891	2021/03/26	NOTICE		THE CORPORATION OF THE CITY OF NIAGARA FALLS		C
SN703091	2021/12/01	CHARGE	\$13,800,000	LA PUE INTERNATIONAL INC.	MARSHALLZEHR GROUP INC.	C
SN703094	2021/12/01	NO ASSGN RENT GEN		LA PUE INTERNATIONAL INC.	MARSHALLZEHR GROUP INC.	C
		REMARKS: SN703091				
SN703098	2021/12/01	POSTPONEMENT		THE SOVEREIGN GENERAL INSURANCE COMPANY	MARSHALLZEHR GROUP INC.	C
		REMARKS: SN644659 TO SN703091				
SN703255	2021/12/01	RESTRICTION-LAND		LA PUE INTERNATIONAL INC.		C
		REMARKS: PROHIBITING ANY FURTHER CHARGE OF SUCH LANDS WITHOUT THE CONSENT OF MARSHALLZEHRGROUP INC.				
59R17206	2022/03/11	PLAN REFERENCE				C
SN716940	2022/03/11	APL ABSOLUTE TITLE		LA PUE INTERNATIONAL INC.	LA PUE INTERNATIONAL INC.	C
		REMARKS: SN625230				
SN721529	2022/04/12	APL (GENERAL)		THE CORPORATION OF THE CITY OF NIAGARA FALLS		C
		REMARKS: SN629148 RELEASED FROM PART LOTS 61, 62, 63, 64 & 65, PLAN 273 BEING PART 1 ON 59R-16793 AND PART LOTS 44, 45 & 46, PLAN 273 BEING PART 3 ON 59R-17206				
SN721530	2022/04/12	APL (GENERAL)		THE CORPORATION OF THE CITY OF NIAGARA FALLS		C
		REMARKS: SN642462 FROM PART LOTS 61, 62, 63, 64 & 65, PLAN 273 BEING PART 1 ON 59R-16793 AND PART LOTS 44, 45 & 46, PLAN 273 BEING PART 3 ON 59R-17206				
SN721531	2022/04/12	APL (GENERAL)		THE CORPORATION OF THE CITY OF NIAGARA FALLS		C
		REMARKS: SN666891 FROM PART LOTS 61, 62, 63, 64 & 65, PLAN 273 BEING PART 1 ON 59R-16793 AND PART LOTS 44, 45 & 46, PLAN 273 BEING PART 3 ON 59R-17206				
SN723231	2022/04/26	NOTICE		THE CORPORATION OF THE CITY OF NIAGARA FALLS		C
59R17292	2022/06/13	PLAN REFERENCE				C
		REMARKS: SN729954.				
SN743390	2022/09/26	NO CHNG ADDR INST		MARSHALLZEHR GROUP INC.		C
SN754703	2023/01/13	TRANSFER EASEMENT	\$1	LA PUE INTERNATIONAL INC.	LOUKAS, ANASTASIA GEORGINA	C

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
SN754704	2023/01/13	POSTPONEMENT		MARSHALLZEHR GROUP INC.	2779006 ONTARIO INC. LOUKAS, ANASTASIA GEORGINA 2779006 ONTARIO INC.	C
		REMARKS: SN703091 AND SN703094 TO SN754703 PARTS 1 AND 2, 59R17292				
SN754705	2023/01/13	POSTPONEMENT		THE SOVEREIGN GENERAL INSURANCE COMPANY	LOUKAS, ANASTASIA GEORGINA 2779006 ONTARIO INC.	C
		REMARKS: SN644659 AND SN658896 TO SN754703 PARTS 1 AND 2, 59R17292				
SN754853	2023/01/16	LR'S ORDER		LAND REGISTRAR, NIAGARA SOUTH LAND REGISTRY OFFICE		C
		REMARKS: AMENDING TYPO IN PROPERTY DESCRIPTION				
SN758055	2023/02/22	CONSTRUCTION LIEN	\$3,673,337	HC MATCON INC.		C
SN759949	2023/03/15	CONSTRUCTION LIEN	\$841,498	KADA GROUP INC.		C
SN760306	2023/03/17	CONSTRUCTION LIEN	\$8,205,941	BUTTCOON LIMITED		C
SN761643	2023/03/31	CONSTRUCTION LIEN	\$123,734	KADA GROUP INC.		C
SN763208	2023/04/17	NOTICE	\$1	LOUKAS, ANASTASIA GEORGINA 2779006 ONTARIO INC. LA FUE INTERNATIONAL INC.		C
SN764799	2023/05/01	CERTIFICATE		HC MATCON INC.		C
		REMARKS: SN758055				
SN767364	2023/05/26	CONSTRUCTION LIEN	\$23,278	TT GALBRAITH ELECTRIC LTD		C
SN769190	2023/06/12	CERTIFICATE		BUTTCOON LIMITED		C
		REMARKS: SN760306				
SN770167	2023/06/21	CERTIFICATE		KADA GROUP INC.		C
		REMARKS: SN759949, SN761643				
SN771564	2023/07/04	CONSTRUCTION LIEN	\$43,630	HC MATCON INC.		C
SN772841	2023/07/14	CERTIFICATE		HC MATCON INC.		C
		REMARKS: SN771564				
SN787037	2023/11/29	CONSTRUCTION LIEN	\$254,023	HC MATCON INC.		C

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.



PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

LAND
REGISTRY
OFFICE #59

64349-0258 (LT)

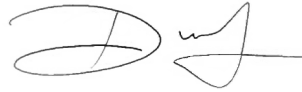
PAGE 4 OF 4
PREPARED FOR Camelia01
ON 2024/12/10 AT 13:24:52

* 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
SN788992 REMARKS: SN787037	2023/12/18	CERTIFICATE		HC MATCON INC.		C

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

***THIS IS EXHIBIT "M" TO THE
AFFIDAVIT OF CECIL HAYES
SWORN BEFORE ME THIS 14TH
DAY OF JANUARY, 2025***

A handwritten signature in black ink, appearing to be 'DJ', written in a cursive style.

A Commissioner Etc.

PRIORITY AGREEMENT

THIS AGREEMENT dated the 30th day of November, 2021.

B E T W E E N:

THE SOVEREIGN GENERAL INSURANCE COMPANY
(hereinafter collectively called the "**Surety**")

- and -

MARSHALLZEHR GROUP INC.
(hereinafter called the "**Lender**")

WHEREAS:

1. La Pue International Inc. (hereinafter called the "**Principal**") has entered into a commitment letter with the Lender dated as of the 15th day of November, 2021 (the "**Commitment Letter**") pursuant to which it has executed and delivered certain security to the Lender, including, without limitation, a charge of land dated the 30th day of November, 2021, in the principal amount of Thirteen Million Eight Hundred Thousand (\$13,800,000) Dollars (the "**First Charge**").
2. The Principal has granted to the Lender, pursuant to the provisions of the Commitment Letter and the First Charge, certain other security interests in its personal property (all present and future security granted by the Principal to the Lender, including such security pursuant to the First Mortgage, is hereinafter collectively referred to as the "**Lender Security**").
3. The First Charge was registered in the Niagara (South) Land Registry No. 59 (the "**Registry Office**") on the 1st day of December, 2021, as Instrument No. SN703091 against the lands municipally known as 5528 Ferry Street, Niagara Falls, Ontario and legally described in PIN 64349-0257 (LT) (hereinafter called the "**Property**").
4. All deposit monies received from time to time from purchasers of dwelling units in the condominium being developed by the Principal on the Property (the "**Project**") and accrued interest thereon (the "**Deposit Monies**") have (or will be) deposited in a designated trust account at the Bank of Montreal, Trust Account #1000-937 (the "**Designated Trust Account**") with Sullivan Mahoney LLP.
5. By a mortgage (the "**Surety Mortgage**") made between the Principal as mortgagor and the Surety as mortgagee which Surety Mortgage was registered on the 2nd day of October, 2020 in the Registry Office as Instrument No. SN644659, as amended by a notice to amend registered on the 26th day of January, 2021 in the Registry Office as Instrument No. SN658896, the Principal did mortgage the Property to the Surety to secure payment of the sum of Twelve Million (\$12,000,000) Dollars and interest as set out in the Surety Mortgage.
6. The Principal has granted to the Surety, pursuant to the provisions of the Surety Mortgage, security interests in certain of its personal property, including the Deposit Monies (all present and future security granted by the Principal to the Surety, including

such security pursuant to the Surety Mortgage, hereinafter collectively referred to as the "**Surety Security**").

7. The parties hereto wish to record their agreement as to the priorities of the Lender Security and the Surety Security.

NOW THEREFORE for good and valuable consideration (the receipt and sufficiency of which are acknowledged) the Surety and the Lender agree as follows:

- (a) The Lender's Security and all amounts secured thereby (including all costs, charges and fees and expenses incurred by the Lender, or any agent, receiver or receiver and manager appointed by the Lender, in connection therewith but including advances made thereunder only to the extent of Thirteen Million Eight Hundred Thousand (\$13,800,000) Dollars, plus interest thereunder and secured thereby and all additional advances for construction cost overruns, shall be an encumbrance upon the Property ranking at all times prior to the Surety Security, and the Surety hereby postpones and subordinates all of its rights and interests under the Surety Security, to and in favour of the Lender's Security, and to all amounts secured thereby (including all costs, charges, fees and expenses incurred by the Lender, or any agent, receiver or receiver and manager appointed by the Lender, in connection therewith), and to all advances made thereunder to the extent noted above and to all interest accruing thereunder and secured thereby. In order to give effect to this postponement and subordination, the Surety releases to the Lender all of its rights and claims to priority with respect to the Surety Security, to the extent noted above.
- (b) Subject to the provisions of paragraph (a) above, the Surety Security shall at all times be postponed to (and shall correspondingly rank subordinate to) the Lender Security, except in respect of the Deposit Monies, in respect of which the Surety Security shall have priority over the Lender Security for only so long as, and to the extent that, such Deposit Monies shall remain in the Designated Trust Account.
- (c) The above postponements and subordinations shall apply notwithstanding the respective dates of execution and registration of any of the Lender Security and the Surety Security, in whole or in part, or the date of attachment or perfection of any security interest(s) granted thereby, the date of any advance(s), the date of any default(s), or any other matter(s). Each of the parties hereto agrees that it shall not claim against the others the benefit of any charge, mortgage, security interest, trust or other claim which would affect the priorities set out herein.
- (d) The Surety hereby agrees that, except in respect of the Deposit Monies, it shall not take any Enforcement Action (as defined hereunder) under or in respect of the Surety Security with respect to all or any part of the Property or against the Principal and/or Pawel Fugiel (collectively, the "**Credit Parties**") without reasonable prior notice to and the written consent of the Lender, which consent may be given or withheld by the Lender in its sole discretion. The Surety shall not challenge, contest or bring into question the validity, priority or perfection of the Lender Security or any Enforcement Action taken by the Lender under or in respect of the Lender Security against all or any part of the Property or against the Credit Parties.

In this Agreement the term "**Enforcement Action**" means the commencement of a power of sale, foreclosure or other judicial or private sale proceedings, the appointment or obtaining of the appointment of a receiver, a manager, or a receiver/manager of all or any part of the Property, or the appointment of any other person, corporation or entity having similar powers as the aforesaid, the attainment of rents, the taking of possession or control of all or any part of the Property or any other property or undertaking of the Credit Parties, the commencing, giving notice of or making any demand for payment, the

provision of any notice of intention to enforce security, the taking or commencement of any action or proceeding seeking payment of or recovery of all or any part of any indebtedness or damages in lieu thereof, the accepting of a transfer of any property in lieu of foreclosure and/or the exercise of any other rights or remedies available to a creditor under its security or otherwise at law or in equity, including without limitation, any bankruptcy proceedings or any consent of the Surety to any voluntary bankruptcy proceeding initiated by the Credit Parties.

- (e) Notwithstanding anything contained in this Agreement to the contrary, it is expressly understood and agreed that:
 - (i) the foregoing covenants set out in paragraph (d) above shall only be binding and enforceable against the Surety for ninety (90) days after default of the Credit Parties under the Lender Security; and
 - (ii) nothing contained herein shall prevent the Surety from filing a proof of claim in (or otherwise participating in) any bankruptcy or insolvency proceedings initiated by any other creditor (or by the Credit Parties themselves) against the Credit Parties and/or the estate of Pawel Fugiel, to the extent applicable.
- (f) The Surety hereby confirms that notwithstanding any provision to the contrary in any of the Surety Security, the security provided by the Surety Security over the Property and other assets of the Principal in any way related to the Project (including without limitation, the Deposit Monies) shall not secure any indebtedness, liability or obligation of the Credit Parties except in respect of the Project, while any amounts under the Lender Security remains unpaid.
- (g) The Surety and the Lender hereby consent to the granting of the security by the Principal referred to herein, and shall at all times (and from time to time) execute and deliver to the others all such further documents, agreements or other assurances as may be necessary to give effect to this agreement, and to carry out the intent hereof.
- (h) Nothing herein shall affect the rights of the Surety and the Lender, respectively against the Principal. The provisions of this agreement shall enure to the benefit of, and be correspondingly binding upon, the Lender and the Surety and their respective successors and assigns, and shall be interpreted and construed according to the laws of the Province of Ontario.
- (i) The Surety hereby covenants, agrees and undertakes to and with the Lender to execute and deliver any usual documentation required in connection with the development and registration of the Property as a Condominium.
- (j) The Lender may grant time, renewals, extensions, releases and discharges to, accept compositions from and otherwise deal with the Credit Parties as it may see fit, including without limitation renewal of the loan secured by the Lender Security, upon written notice to the Surety and without prejudice to or in any way limiting or affecting the agreements on the part of the Surety pursuant to this Agreement.
- (k) This Agreement may be signed in any number of counterparts, each of which shall be deemed to be an original, but all such separate counterparts shall together constitute one and the same instrument. Executed counterparts of this Agreement may be transmitted by electronic transmission in pdf format (or other electronic format) and shall in such event be deemed to be originals and binding on the parties hereto.

[remainder of this page intentionally left blank]

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

THE SOVEREIGN GENERAL INSURANCE COMPANY

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the Corporation

MARSHALLZEHR GROUP INC.

DocuSigned by:
Murray Snedden
Per: _____
Name: Murray Snedden
Title: Chief Financial Officer & Principal Broker


Per: _____
Name:
Title:

I/We have authority to bind the Corporation

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

THE SOVEREIGN GENERAL INSURANCE COMPANY

Per: 
Name: Janarthan Selvarajah
Title: Sr. Underwriter, Residential Surety

Per: 
Name: Steve Irwin
Title: Manager, Residential Surety

I/We have authority to bind the Corporation

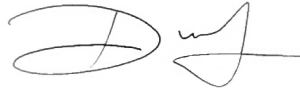
MARSHALLZEHR GROUP INC.

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the Corporation

***THIS IS EXHIBIT "N" TO THE
AFFIDAVIT OF CECIL HAYES
SWORN BEFORE ME THIS 14TH
DAY OF JANUARY, 2025***

A handwritten signature in black ink, appearing to be 'D. J.', written in a cursive style.

A Commissioner Etc.

Properties

PIN 64349 - 0257 LT
Description LOTS 46, 51, 52, 61, 62, 63, 64 & 65, PLAN 273; VILLAGE OF NIAGARA FALLS;
 NIAGARA FALLS;PART LOTS 43, 44, 45, PLAN 273; VILLAGE OF NIAGARA FALLS; AS
 IN RO712797, NIAGARA FALLS;LOTS 48, 49,& 50, PLAN 273, & PART LOT 47, PLAN
 273; NIAGARA FALLS, SURFACE ONLY AS IN RO718049; NIAGARA FALLS.
Address NIAGARA FALLS

Source Instruments

<i>Registration No.</i>	<i>Date</i>	<i>Type of Instrument</i>
SN644659	2020 10 02	Charge/Mortgage

Party From(s)

Name THE SOVEREIGN GENERAL INSURANCE COMPANY
Address for Service One York Street, Suite 1400
 Toronto, Ontario L5J 0B6

I, Steve Irwin, Manager, Residential Surety & Cecilia Yanga, Jr. Underwriter, Residential Surety, have the authority to bind the corporation.

This document is not authorized under Power of Attorney by this party.

Party To(s)*Capacity**Share*

Name MARSHALLZEHR GROUP INC.
Address for Service 465 Phillip St., Suite 206, Waterloo, ON N2L 6C7

Statements

The applicant postpones the rights under the selected instrument to the rights under an instrument registered as number SN703091 registered on 2021/12/01

Schedule: The applicant further postpones the rights under Instrument No. SN658896 to the rights under an instrument registered as number SN703091.

This document relates to registration number(s)SN658896

Signed By

Wing Chiu Wu 5000 Yonge Street, 10th Floor acting for Signed 2021 12 01
 Toronto Party From(s)
 M2N 7E9

Tel 416-222-8888

Fax 416-218-1860

I have the authority to sign and register the document on behalf of the Party From(s).

Submitted By

CHAITONS LLP 5000 Yonge Street, 10th Floor 2021 12 01
 Toronto
 M2N 7E9

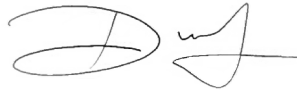
Tel 416-222-8888

Fax 416-218-1860

Fees/Taxes/Payment

<i>Statutory Registration Fee</i>	\$66.30
<i>Total Paid</i>	\$66.30

***THIS IS EXHIBIT "O" TO THE
AFFIDAVIT OF CECIL HAYES
SWORN BEFORE ME THIS 14TH
DAY OF JANUARY, 2025***

A handwritten signature in black ink, appearing to be the initials 'DJ' with a stylized flourish.

A Commissioner Etc.

Properties

PIN 64349 - 0258 LT
Description FIRSTLY: LOTS 46, 51, 52, 61, 62, 63, 64 & 65, PLAN 273 & PART LOTS 43, 44, 45, 47, 48, 49 & 50, PLAN 273, VILLAGE OF NIAGARA FALLS, PARTS 1 & 3 PLAN 59R17206; SECONDLY: SURFACE RIGHTS ONLY (AS IN RO718049), PART LOTS 47, 48, 49 & 50 PLAN 273, VILLAGE OF NIAGARA FALLS, PART 2 PLAN 59R17206; SUBJECT TO AN EASEMENT OVER PARTS 1 & 2 59R17292 IN FAVOUR OF PART LOTS 41 & 42 PLAN 273 AS IN RO441658 AS IN SN754703; CITY OF NIAGARA FALLS
Address NIAGARA FALLS

Consideration

Consideration \$3,673,337.03

Claimant(s)

Name HC MATCON INC.
Address for Service c/o Pavay Law LLP
 73 Water St. N., Suite 200
 Cambridge, ON
 N1R 7L6

I, Frank Claessens, Senior Project Manager, am the agent of the lien claimant and have informed myself of the facts stated in the claim for lien and believe them to be true.

A person or persons with authority to bind the corporation has/have consented to the registration of this document.

This document is not authorized under Power of Attorney by this party.

Statements

Name and Address of Owner La Pue International Inc. 6158 Allendale Avenue, Niagara Falls, ON L2G 0A5 Name and address of person to whom lien claimant supplied services or materials Buttcon Limited, 8000 Jane St., Tower B, Suite 401, Concord, ON L4K 5B8 Time within which services or materials were supplied from 2022/06/15 to 2023/02/06 Short description of services or materials that have been supplied Labour, Material, and Equipment for shoring and caissons. Contract price or subcontract price \$5,891,432.64, inclusive of H.S.T. Amount claimed as owing in respect of services or materials that have been supplied \$3,673,337.03.

The lien claimant claims a lien against the interest of every person identified as an owner of the premises described in said PIN to this lien Schedule: Additional or alternative party with whom the lien claimant contracted and supplied services and materials to: La Pue International Inc. 1658 Allendale Avenue, Niagara Falls, ON L2G 0A5

Signed By

Ioana Mandru 73 Water Street North, Suite 200 acting for Signed 2023 02 22
 Cambridge Applicant(s)
 N1R 7L6

Tel 519-621-7260

Fax 519-621-1304

I have the authority to sign and register the document on behalf of the Applicant(s).

Submitted By

PAVEY LAW LLP 73 Water Street North, Suite 200 2023 02 22
 Cambridge
 N1R 7L6

Tel 519-621-7260

Fax 519-621-1304

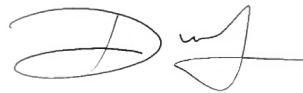
Fees/Taxes/Payment

Statutory Registration Fee \$69.00
Total Paid \$69.00

File Number

Claimant Client File Number : 20230130

***THIS IS EXHIBIT "P" TO THE
AFFIDAVIT OF CECIL HAYES
SWORN BEFORE ME THIS 14TH
DAY OF JANUARY, 2025***

A handwritten signature in black ink, appearing to be the initials 'DJ' with a stylized flourish.

A Commissioner Etc.

Properties

PIN 64349 - 0258 LT
Description FIRSTLY: LOTS 46, 51, 52, 61, 62, 63, 64 & 65, PLAN 273 & PART LOTS 43, 44, 45, 47, 48, 49 & 50, PLAN 273, VILLAGE OF NIAGARA FALLS, PARTS 1 & 3 PLAN 59R17206; SECONDLY: SURFACE RIGHTS ONLY (AS IN RO718049), PART LOTS 47, 48, 49 & 50 PLAN 273, VILLAGE OF NIAGARA FALLS, PART 2 PLAN 59R17206; SUBJECT TO AN EASEMENT OVER PARTS 1 & 2 59R17292 IN FAVOUR OF PART LOTS 41 & 42 PLAN 273 AS IN RO441658 AS IN SN754703; CITY OF NIAGARA FALLS
Address NIAGARA FALLS

Consideration

Consideration \$43,630.39

Claimant(s)

Name HC MATCON INC.
Address for Service c/o Pavey Law LLP
 73 Water St. N., Suite 200
 Cambridge, ON N1R 7L6

Attention: Anthony J. Gabriele

I, Frank Claessens, Senior Project Manager, am the agent of the lien claimant and have informed myself of the facts stated in the claim for lien and believe them to be true.

A person or persons with authority to bind the corporation has/have consented to the registration of this document.

This document is not authorized under Power of Attorney by this party.

Statements

Name and Address of Owner La Pue International Inc., 6158 Allendale Avenue, Niagara Falls, ON L2G 0A5 Name and address of person to whom lien claimant supplied services or materials Buttcon Limited, 8000 Jane St., Tower B, Suite 401, Concord, ON L4K 5B8 Time within which services or materials were supplied from 2022/06/15 to 2023/06/06 Short description of services or materials that have been supplied Labour, Material, and Equipment for shoring and caissons. Contract price or subcontract price \$5,690,978.52, inclusive of H.S.T. Amount claimed as owing in respect of services or materials that have been supplied \$43,630.39, inclusive of H.S.T.

The lien claimant claims a lien against the interest of every person identified as an owner of the premises described in said PIN to this lien Schedule: Additional or alternative party with whom the lien claimant contracted and supplied services and materials to: La Pue International Inc. 1658 Allendale Avenue, Niagara Falls, ON L2G 0A5. The within Construction Lien is in addition to the Construction Lien registered as SN758055 on February 22, 2023.

Signed By

Ioana Mandru 73 Water Street North, Suite 200 acting for Signed 2023 07 04
 Cambridge Applicant(s)
 N1R 7L6

Tel 519-621-7260

Fax 519-621-1304

I have the authority to sign and register the document on behalf of the Applicant(s).

Submitted By

PAVEY LAW LLP 73 Water Street North, Suite 200 2023 07 04
 Cambridge
 N1R 7L6

Tel 519-621-7260

Fax 519-621-1304

Fees/Taxes/Payment

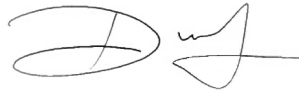
Statutory Registration Fee \$69.00

Total Paid \$69.00

File Number

Claimant Client File Number : 20230130

***THIS IS EXHIBIT "Q" TO THE
AFFIDAVIT OF CECIL HAYES
SWORN BEFORE ME THIS 14TH
DAY OF JANUARY, 2025***

A handwritten signature in black ink, appearing to be 'DJ' with a flourish, positioned above a horizontal line.

A Commissioner Etc.

Properties

PIN 64349 - 0258 LT
Description FIRSTLY: LOTS 46, 51, 52, 61, 62, 63, 64 & 65, PLAN 273 & PART LOTS 43, 44, 45, 47, 48, 49 & 50, PLAN 273, VILLAGE OF NIAGARA FALLS, PARTS 1 & 3 PLAN 59R17206; SECONDLY: SURFACE RIGHTS ONLY (AS IN RO718049), PART LOTS 47, 48, 49 & 50 PLAN 273, VILLAGE OF NIAGARA FALLS, PART 2 PLAN 59R17206; SUBJECT TO AN EASEMENT OVER PARTS 1 & 2 59R17292 IN FAVOUR OF PART LOTS 41 & 42 PLAN 273 AS IN RO441658 AS IN SN754703; CITY OF NIAGARA FALLS
Address NIAGARA FALLS

Consideration

Consideration \$254,023.98

Claimant(s)

Name HC MATCON INC.
Address for Service c/o Pavey Law LLP (ATT: Anthony J. Gabriele)
 73 Water St. N., Suite 200
 Cambridge, ON
 N1R 7L6
 Email: gabriele@paveylaw.com

I, Frank Claessens, Senior Project Manager, am the agent of the lien claimant and have informed myself of the facts stated in the claim for lien and believe them to be true.

A person or persons with authority to bind the corporation has/have consented to the registration of this document.

This document is not authorized under Power of Attorney by this party.

Statements

Name and Address of Owner La Pue International Inc., 6158 Allendale Avenue, Niagara Falls, ON L2G 0A5 Name and address of person to whom lien claimant supplied services or materials Buttcon Limited, 8000 Jane Street, Tower B, Suite 401, Concord, ON L4K5B8 Time within which services or materials were supplied from 2022/06/15 to 2023/10/19 Short description of services or materials that have been supplied Labour, Material, Equipment and design services for shoring and caissons. Contract price or subcontract price \$5,945,002.50 Amount claimed as owing in respect of services or materials that have been supplied \$254,023.98, inclusive of H.S.T. The lien claimant claims a lien against the interest of every person identified as an owner of the premises described in said PIN to this lien Schedule: Additional or alternative party with whom the lien claimant contracted and supplied services and materials to: La Pue International Inc., 1658 Allendale Avenue, Niagara Falls, ON L2G 0A5.

Signed By

Ioana Mandru 73 Water Street North, Suite 200 acting for Signed 2023 11 29
 Cambridge Applicant(s)
 N1R 7L6

Tel 519-621-7260

Fax 519-621-1304

I have the authority to sign and register the document on behalf of the Applicant(s).

Submitted By

PAVEY LAW LLP 73 Water Street North, Suite 200 2023 11 29
 Cambridge
 N1R 7L6

Tel 519-621-7260

Fax 519-621-1304

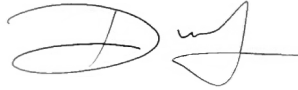
Fees/Taxes/Payment

Statutory Registration Fee \$69.95
Total Paid \$69.95

File Number

Claimant Client File Number : 20230130

***THIS IS EXHIBIT "R" TO THE
AFFIDAVIT OF CECIL HAYES
SWORN BEFORE ME THIS 14TH
DAY OF JANUARY, 2025***

A handwritten signature in black ink, appearing to be 'D. J.', written in a cursive style.

A Commissioner Etc.

Properties

PIN 64349 - 0258 LT
 Description FIRSTLY: LOTS 46, 51, 52, 61, 62, 63, 64 & 65, PLAN 273 & PART LOTS 43, 44, 45, 47, 48, 49 & 50, PLAN 273, VILLAGE OF NIAGARA FALLS, PARTS 1 & 3 PLAN 59R17206; SECONDLY: SURFACE RIGHTS ONLY (AS IN RO718049), PART LOTS 47, 48, 49 & 50 PLAN 273, VILLAGE OF NIAGARA FALLS, PART 2 PLAN 59R17206; SUBJECT TO AN EASEMENT OVER PARTS 1 & 2 59R17292 IN FAVOUR OF PART LOTS 41 & 42 PLAN 273 AS IN RO441658 AS IN SN754703; CITY OF NIAGARA FALLS
 Address NIAGARA FALLS

Consideration

Consideration \$841,498.31

Claimant(s)

Name KADA GROUP INC.
 Address for Service 50865 OReillys Road,
 Wainfleet, ON L3B 5N6

I, Kevin DeGazio, President, am the agent of the lien claimant and have informed myself of the facts stated in the claim for lien and believe them to be true.

A person or persons with authority to bind the corporation has/have consented to the registration of this document.

This document is not authorized under Power of Attorney by this party.

Statements

Name and Address of Owner La Pue International Inc., 6158 Allendale Avenue, Niagara Falls, ON L2G 0A5 Name and address of person to whom lien claimant supplied services or materials Buttcon Limited, 8000 Jane Street, Suite 401, Tower B, Concord, ON L4K 5B8 Time within which services or materials were supplied from 2022/07/01 to 2023/01/31 Short description of services or materials that have been supplied Site services and earthworks Contract price or subcontract price \$2,549,000.00 Amount claimed as owing in respect of services or materials that have been supplied \$841,498.31

The lien claimant claims a lien against the interest of every person identified as an owner of the premises described in said PIN to this lien Schedule: Alternative party to whom the claimant supplied: Buttcon Ltd., 8000 Jane Street, Suite 401, Tower B, Concord, ON L4K 5B8

Signed By

Glenn William Ackerley 66 Wellington Street West, Suite 4100 acting for Signed 2023 03 15
 Applicant(s)
 Toronto
 M5K 1B7

Tel 416-365-1110

Fax 416-365-1876

I have the authority to sign and register the document on behalf of the Applicant(s).

Submitted By

WEIRFOULDS LLP 66 Wellington Street West, Suite 4100 2023 03 15
 Toronto
 M5K 1B7

Tel 416-365-1110

Fax 416-365-1876

Fees/Taxes/Payment

Statutory Registration Fee \$69.00

Total Paid \$69.00

File Number

Claimant Client File Number : 23571.00005

Properties

PIN 64349 - 0258 LT
Description FIRSTLY: LOTS 46, 51, 52, 61, 62, 63, 64 & 65, PLAN 273 & PART LOTS 43, 44, 45, 47, 48, 49 & 50, PLAN 273, VILLAGE OF NIAGARA FALLS, PARTS 1 & 3 PLAN 59R17206; SECONDLY: SURFACE RIGHTS ONLY (AS IN RO718049), PART LOTS 47, 48, 49 & 50 PLAN 273, VILLAGE OF NIAGARA FALLS, PART 2 PLAN 59R17206; SUBJECT TO AN EASEMENT OVER PARTS 1 & 2 59R17292 IN FAVOUR OF PART LOTS 41 & 42 PLAN 273 AS IN RO441658 AS IN SN754703; CITY OF NIAGARA FALLS
Address NIAGARA FALLS

Consideration

Consideration \$123,734.28

Claimant(s)

Name KADA GROUP INC.
Address for Service c/o WEIRFOULDS LLP
 66 Wellington Street West, Suite 4100
 P.O. Box 35, TD Bank Tower,
 Toronto, ON M5K 1B7
 Attention: D. Dilks

I, Kevin DeGazio, am the agent of the lien claimant and have informed myself of the facts stated in the claim for lien and believe them to be true.

A person or persons with authority to bind the corporation has/have consented to the registration of this document.

This document is not authorized under Power of Attorney by this party.

Statements

Name and Address of Owner La Pue International Inc., 6158 Allendale Avenue, Niagara Falls, ON L2G 0A5 Name and address of person to whom lien claimant supplied services or materials Buttcon Limited, 8000 Jane Street, Suite 401, Tower B, Concord, ON L4K 5B8 Time within which services or materials were supplied from 2022/07/01 to 2023/01/31 Short description of services or materials that have been supplied Site services and earthworks Contract price or subcontract price \$2,549,000.00 Amount claimed as owing in respect of services or materials that have been supplied \$123,734.28

The lien claimant claims a lien against the interest of every person identified as an owner of the premises described in said PIN to this lien Schedule: Alternative party to whom the claimant supplied: Buttcon Ltd., 8000 Jane Street, Suite 401, Tower B, Concord, ON L4K 5B8

Signed By

Michael Robert Swartz 66 Wellington Street West, Suite 4100 acting for Signed 2023 03 31
 Applicant(s)
 Toronto
 M5K 1B7

Tel 416-365-1110

Fax 416-365-1876

I have the authority to sign and register the document on behalf of the Applicant(s).

Submitted By

WEIRFOULDS LLP 66 Wellington Street West, Suite 4100 2023 03 31
 Toronto
 M5K 1B7

Tel 416-365-1110

Fax 416-365-1876

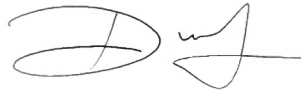
Fees/Taxes/Payment

Statutory Registration Fee \$69.00
Total Paid \$69.00

File Number

Claimant Client File Number : 23571.00005

***THIS IS EXHIBIT "S" TO THE
AFFIDAVIT OF CECIL HAYES
SWORN BEFORE ME THIS 14TH
DAY OF JANUARY, 2025***

A handwritten signature in black ink, consisting of a large, stylized 'D' followed by a smaller, more fluid signature.

A Commissioner Etc.

Properties

PIN 64349 - 0258 LT
Description FIRSTLY: LOTS 46, 51, 52, 61, 62, 63, 64 & 65, PLAN 273 & PART LOTS 43, 44, 45, 47, 48, 49 & 50, PLAN 273, VILLAGE OF NIAGARA FALLS, PARTS 1 & 3 PLAN 59R17206; SECONDLY: SURFACE RIGHTS ONLY (AS IN RO718049), PART LOTS 47, 48, 49 & 50 PLAN 273, VILLAGE OF NIAGARA FALLS, PART 2 PLAN 59R17206; SUBJECT TO AN EASEMENT OVER PARTS 1 & 2 59R17292 IN FAVOUR OF PART LOTS 41 & 42 PLAN 273 AS IN RO441658 AS IN SN754703; CITY OF NIAGARA FALLS
Address NIAGARA FALLS
PIN 64349 - 0178 LT
Description LT 54 PL 273 VILLAGE OF NIAGARA FALLS; NIAGARA FALLS (AMENDED BY REGISTRAR #27 1999/11/26 AT 15:19PM)
Address 5978 ALLENDALE AVE
 NIAGARA FALLS

Consideration

Consideration \$8,205,941.87

Claimant(s)

Name BUTTCON LIMITED
Address for Service 8000 Jane Street, Suite 401, Tower B,
 Concord, Ontario, L4K 5B8

SOLICITOR: Emilio Bisceglia
 9100 Jane Street, 2nd floor,
 Concord, Ont L4K 0A4

I, Mark Rowlands, am the agent of the lien claimant and have informed myself of the facts stated in the claim for lien and believe them to be true.

A person or persons with authority to bind the corporation has/have consented to the registration of this document.

This document is not authorized under Power of Attorney by this party.

Statements

Name and Address of Owner LA PUE INTERNATIONAL INC., 6158 Allendale Avenue, Niagara Falls, Ontario, L2G 0A5 Name and address of person to whom lien claimant supplied services or materials LA PUE INTERNATIONAL INC., 6158 Allendale Avenue, Niagara Falls, Ontario, L2G 0A5 Time within which services or materials were supplied from 2020/04/06 to 2023/03/17 Short description of services or materials that have been supplied : Provide construction manager services, labour and materials, with respect to the Stanley District Mixed Use Development and related matters. Contract price or subcontract price \$12,021,033.63 (H.S.T. included) Amount claimed as owing in respect of services or materials that have been supplied \$8,205,941.87 (H.S.T. included)

The lien claimant claims a lien against the interest of every person identified as an owner of the premises described in said PIN to this lien

Signed By

Anne Scott 85 Rosebury Lane acting for Signed 2023 03 17
 Woodbridge Applicant(s)
 L4L 3Z1

Tel 905-264-1632

Fax 905-264-1059

I have the authority to sign and register the document on behalf of the Applicant(s).

Submitted By

SUMMIT SEARCH LIMITED 85 Rosebury Lane 2023 03 17
 Woodbridge
 L4L 3Z1

Tel 905-264-1632

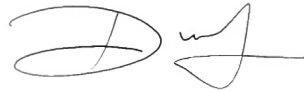
Fax 905-264-1059

Fees/Taxes/Payment

Statutory Registration Fee \$69.00

Total Paid \$69.00

***THIS IS EXHIBIT "T" TO THE
AFFIDAVIT OF CECIL HAYES
SWORN BEFORE ME THIS 14TH
DAY OF JANUARY, 2025***

A handwritten signature in black ink, appearing to be the initials 'DJ' with a stylized flourish.

A Commissioner Etc.



Court File No.

Ontario
SUPERIOR COURT OF JUSTICE

IN THE MATTER OF THE *CONSTRUCTION ACT*,
R.S.O. 1990, c.C.30

B E T W E E N:

BUTTCON LIMITED

Plaintiff

- and -

**LA PUE INTERNATIONAL INC.,
THE SOVEREIGN GENERAL INSURANCE COMPANY,
MARSHALLZEHR GROUP INC., FRAMAJO ENTERPRISES LIMITED,
TOMASZ SOBOTA, ANDRZEJ ZALEWSKI and DANIELA LUPU**

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANT(S)

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff(s). The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiff(s) lawyer(s) or, where the Plaintiff(s) do(es) not have a lawyer, serve it on the Plaintiff(s), and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this Statement of Claim is served on you, if you are served in Ontario.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE:

THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five (5) years after the action was commenced unless otherwise ordered by the Court.

DATE: , 2023

ISSUED BY: _____
Local Registrar

ADDRESS OF COURT HOUSE:

Ontario
Superior Court of Justice
102 East Main Street
Welland, Ontario
L3B 3W6

TO:
LA PUE INTERNATIONAL INC.
6158 Allendale Avenue
Niagara Falls, Ontario
L2G 0A5

TO:
THE SOVEREIGN GENERAL INSURANCE COMPANY
One York Street, Suite 1400, Toronto, Ontario, L5J 0B6

TO:
MARSHALLZEHR GROUP INC.
412 Albert Street, Suite 100, Waterloo, Ontario, N2L 3V3

TO:
FRAMAJO ENTERPRISES LIMITED
81 Aviva Park Drive, Vaughan, Ontario, L4L 9C1

TO:
TOMASZ SOBOTA
c/o 82 Queen Street South, Mississauga, Ontario, L5M 1K6

TO:
ANDRZEJ ZALEWSKI
c/o 82 Queen Street South, Mississauga, Ontario, L5M 1K6

TO:

DANIELA LUPU

c/o 82 Queen Street South, Mississauga, Ontario, L5M 1K6

CLAIM

1. The Plaintiff claims as against the Defendants, or any of them, for the following:
 - (a) payment of the sum of \$8,205,941.87;
 - (b) alternatively, the sum of \$8,205,941.87 as restitution to the Plaintiff of the reasonable value of the materials and services supplied by the Plaintiff to the detriment of the Plaintiff and the benefit of the Defendants, all on the basis of *quantum meruit* and unjust enrichment;
 - (c) alternatively, the sum of \$8,205,941.87 as damages for breach of contract plus damages for breach of the duty of good faith in contractual performance for an amount to be determined by the Court or at trial;
 - (d) such further and other damages as the Plaintiff may advise prior to trial;
 - (e) pre-judgment and post-judgment interest as follows:
 - i) 2% per annum above the prime rate for the first 60 days;
 - ii) 4% per annum above the prime rate after the first 60 days;such interest shall be compounded on a monthly basis. The prime rate shall be the rate of interest quoted by to be advised for prime business loans as it may change from time to time;
 - (f) in the alternative, pre-judgment and post-judgment interest pursuant to the provisions of the *Courts of Justice Act*, R.S.O. 1990, c.C.43, and any amendments thereto;

- (g) its costs of this action on a substantial indemnity basis, including H.S.T.
- (h) that, in default of payment of the said sum of \$8,205,941.87 inclusive of H.S.T. plus costs, all the estate and interest of the Defendants in the lands and premises hereinafter described in Schedule “A” attached hereto (“Lands”) be sold and the proceeds, together with the cash proceeds of any and all bonds or letters of credit paid into Court under the *Construction Act* with respect to the improvement and premises be applied towards payment of the Plaintiff’s claim for principal, interest and costs pursuant to the provisions of the *Construction Act*, R.S.O. 1990, c. C. 30;
- (i) an order for declaration as to the holdback in relation to the Defendants and an order that the Plaintiff be paid any amounts owing;
- (j) a declaration that the Plaintiff’s lien attached to any security posted to vacate the Plaintiff’s claim for lien;
- (k) a declaration that the Plaintiff’s claim for lien is a charge against the holdbacks required to be retained by the Defendants, or any of them, pursuant to the *Construction Act*;
- (l) a declaration that the Plaintiff’s claim for lien is a charge against the holdbacks required to be retained by the Defendants, or any of them, pursuant to the *Construction Act*;
- (m) full priority over the charges of The Sovereign General Insurance Company, Marshallzehr Group Inc., Framajo Enterprises Limited, Tomasz Sobota, Andrzej Zalewski and Daniela Lupu, or alternatively, priority to the extent of any deficiency in

the holdbacks required to be retained by the Defendants, or any of them, and in addition, or in the further alternative, to the extent that the charges may be prior charges under the *Construction Act*, priority over the charges of these Defendants to the extent that any portion advanced exceeded the actual value of the premises at the time when the first lien arose, or in the further alternative, priority over the said charges to the extent of any unadvanced portions thereof or in addition, or in the further alternative, priority to the extent of any advance made at the time when there was a preserved or perfected lien against the lands and premises hereinafter described, or after receipt of a written notice of a lien;

- (n) an accounting from the Defendants of the funds advanced for the purpose of financing the construction of the improvement;
- (o) for the purposes above, and for all other purposes that all proper directions be given, queries made, and accounts taken;
- (p) an order for an issuance of a Writ of Possession in relation to the Lands;
- (q) an order for Writ of Possession of the Lands;
- (r) an order for possession of the Lands; and
- (s) such further and other relief as to this Honourable Court may seem just.

Parties

2. The Plaintiff, Buttcon Limited (“Buttcon”), is a corporation incorporated pursuant to the laws of the Province of Ontario. At all material times, the Plaintiff carried on business as a construction manager.

3. The Defendant, La Pue International Inc., is a company incorporated pursuant to the laws of the Province of Ontario, and at all material times, was the owner and party to whom the Plaintiff supplied the services and materials (“La Pue”).

4. The Defendants, The Sovereign General Insurance Company, Marshallzehr Group Inc., Framajo Enterprises Limited, Tomasz Sobota, Andrzej Zalewski and Daniela Lupu, are Mortgagees, who at all material times, provided mortgage funds.

Improvement

5. On or about April 28, 2020, Buttcon and La Pue entered into a contract to provide construction manager services, labour and materials with respect to The Stanley District Mixed Use Development (Underground Garage, Building A, Building B and Building C), Niagara Falls, Ontario (“Project”).

6. It was a term of the delivery that any overdue invoice from the Plaintiff would bear interest as follows:

- (1) 2% per annum above the prime rate for the first 60 days;
- (2) 4% per annum above the prime rate after the first 60 days;

such interest shall be compounded on a monthly basis. The prime rate shall be the rate of interest quoted by to be advised for prime business loans as it may change from time to time;

7. Buttcon delivered the materials and services requested with the sum of \$8,205,941.87, including H.S.T., remaining unpaid and owing to the Plaintiff.

8. By reason of supplying the services and materials, Buttcon became entitled to a lien upon the interest of the Lands for the sum of \$8,205,941.87 together with interest, plus costs of this action, pursuant to the provisions of the *Construction Act*.

9. Alternatively, Buttcon states that it supplied materials and services at the request of and for the benefit of La Pue to the detriment of Buttcon and without juristic reason. La Pue has been enriched by Buttcon's labour and material which are valued in the amount of \$8,205,941.87. Buttcon claims restitution from to the full extent of the value of the enrichment. Buttcon pleads and relies on the doctrine of *quantum meruit* and the principles against unjust enrichment.

Claim for Lien

10. On March 17, 2023, Buttcon caused to be registered a Claim for Lien against title to the Lands in the Land Registry Office for the Land Titles Division of Niagara Falls, (No. 59), as Instrument No. SN760306. Attached hereto and marked as Schedule "B" is a true copy of the Claim for Lien.

11. At all material times, the lands and premises described in the Claim for Lien were owned by La Pue and are the Lands to which Buttcon supplied materials at the request of, upon the credit, on behalf, with the privity and consent, and for the direct benefit of La Pue, and accordingly, it is and was, at all material times, the statutory owner within the meaning of the *Construction Act*.

12. As a result of the above, the Defendants, or any of them, are liable to the Plaintiff to the extent that they failed to comply with their obligations under the *Construction Act*. In this regard, the Plaintiff asks for an accounting of all payments made in relation to the Improvement.

Breaches by La Pue

13. La Pue breach its terms of the Contract by failing to pay Buttcon. The breaches by La Pue resulted in additional costs to Buttcon.

14. On March 14, 2023, Joe Pedlebury, an Ontario Adjudicator for Construction Contracts pursuant to *Construction Act*, made determination as follows:

1. The Respondent [La Pue] is responsible for payment of 100% of the final adjudication fee and shall therefore reimburse the Claimant [Buttcon] for their portion of the adjudication fee in the amount of \$15,311.50.
2. The Respondent is liable for payment of interest up to March 31st of \$58,449.07 for a total principal and interest owing of \$3,082,796.95.

3. The Respondent is liable for payment of interest charges if the 3 invoices continue to be outstanding after March 31, 2023. The interest payments would amount to \$26,967.10 per month.
 4. The Respondent is responsible for payment of 100% of the final adjudication fee and shall therefore reimburse the Claimant for their portion of the adjudication fee in the amount of \$15,311.50.
 5. The Respondent is responsible for payment of the Claimant's fees for ODACC Referral and Certification and shall therefore reimburse the Claimant the amount of \$621.50.
15. Buttcon served various notices of default on La Pue which defaults were not remedied by La Pue.

The Sovereign General Insurance Company

16. The Sovereign General Insurance Company became a mortgagee of the Lands by virtue of a charge which was registered on October 2, 2020, in the Land Registry Office for the Land Titles Division of Niagara Falls (No. 59), as Instrument No. SN644659 ("Sovereign Mortgage").
17. The Sovereign Mortgage was given and taken by the La Pue with the intention to secure the financing of the improvements on the Lands and the Plaintiff therefore claims that its lien has full priority over the Sovereign Mortgage.

18. Alternatively, the Plaintiff states that its lien has full priority over the Sovereign Mortgage to the extent that any portion of the Sovereign Mortgage advanced exceeded the actual value of the Lands at the time when the first lien arose.

19. In the further alternative, the Plaintiff states that its claim for lien has priority over the Sovereign Mortgage to the extent of any unadvanced portions.

20. The knowledge of all advances pursuant to the Sovereign Mortgage is within the knowledge of the respective Defendants.

21. In the further alternative, the Plaintiff states that its lien has priority over the Sovereign Mortgage to the extent of any advance made at a time when there was a preserved or perfected lien against the Lands or after receipt of written notice of a lien.

22. To the extent that the Sovereign Mortgage may be a subsequent mortgage under the *Construction Act*, the Plaintiff states that its lien has priority over the Sovereign Mortgage to the extent of any deficiency in the holdback required to be retained by the La Pue as the Sovereign Mortgage was registered after the time when the first lien arose in respect of the construction project or improvement.

Marshallzehr Group Inc.

23. Marshallzehr Group Inc. became a mortgagee of the Lands by virtue of a charge which was registered on December 1, 2021, in the Land Registry Office for the Land Titles Division of Niagara Falls (No. 59), as Instrument No. SN703091 (“Marshallzehr Mortgage”).

24. The Marshallzehr Mortgage was given and taken by the La Pue with the intention to secure the financing of the improvements on the Lands and the Plaintiff therefore claims that its lien has full priority over the Marshallzehr Mortgage.

25. Alternatively, the Plaintiff states that its lien has full priority over the Marshallzehr Mortgage to the extent that any portion of the Marshallzehr Mortgage advanced exceeded the actual value of the Lands at the time when the first lien arose.

26. In the further alternative, the Plaintiff states that its claim for lien has priority over the Marshallzehr Mortgage to the extent of any unadvanced portions.

27. The knowledge of all advances pursuant to the Marshallzehr Mortgage is within the knowledge of the respective Defendants.

28. In the further alternative, the Plaintiff states that its lien has priority over the Marshallzehr Mortgage to the extent of any advance made at a time when there was a preserved or perfected lien against the Lands or after receipt of written notice of a lien.

29. To the extent that the Marshallzehr Mortgage may be a subsequent mortgage under the *Construction Act*, the Plaintiff states that its lien has priority over the Marshallzehr Mortgage to the extent of any deficiency in the holdback required to be retained by the La Pue as the Marshallzehr Mortgage was registered after the time when the first lien arose in respect of the construction project or improvement.

Framajo Enterprises Limited

30. Framajo Enterprises Limited became a mortgagee of the Lands by virtue of a charge which was registered on March 24, 2021, in the Land Registry Office for the Land Titles Division of Niagara Falls (No. 59), as Instrument No. SN666429 (“Framajo Mortgage”).

31. The Framajo Mortgage was given and taken by the La Pue with the intention to secure the financing of the improvements on the Lands and the Plaintiff therefore claims that its lien has full priority over the Framajo Mortgage.

32. Alternatively, the Plaintiff states that its lien has full priority over the Framajo Mortgage to the extent that any portion of the Framajo Mortgage advanced exceeded the actual value of the Lands at the time when the first lien arose.

33. In the further alternative, the Plaintiff states that its claim for lien has priority over the Framajo Mortgage to the extent of any unadvanced portions.

34. The knowledge of all advances pursuant to the Framajo Mortgage is within the knowledge of the respective Defendants.

35. In the further alternative, the Plaintiff states that its lien has priority over the Framajo Mortgage to the extent of any advance made at a time when there was a preserved or perfected lien against the Lands or after receipt of written notice of a lien.

36. To the extent that the Framajo Mortgage may be a subsequent mortgage under the *Construction Act*, the Plaintiff states that its lien has priority over the Framajo Mortgage to the extent of any deficiency in the holdback required to be retained by the La Pue as the Framajo

Mortgage was registered after the time when the first lien arose in respect of the construction project or improvement.

Tomasz Sobota
Andrzej Zalewski
Daniela Lupu

37. Tomasz Sobota, Andrzej Zalewski and Daniela Lupu became mortgagees of the Lands by virtue of a charge which was registered on January 26, 2022, in the Land Registry Office for the Land Titles Division of Niagara Falls (No. 59), as Instrument No. SN710458 (collectively “SZL Mortgage”).

38. The SZL Mortgage was given and taken by the La Pue with the intention to secure the financing of the improvements on the Lands and the Plaintiff therefore claims that its lien has full priority over the SZL Mortgage.

39. Alternatively, the Plaintiff states that its lien has full priority over the SZL Mortgage to the extent that any portion of the SZL Mortgage advanced exceeded the actual value of the Lands at the time when the first lien arose.

40. In the further alternative, the Plaintiff states that its claim for lien has priority over the SZL Mortgage to the extent of any unadvanced portions.

41. The knowledge of all advances pursuant to the SZL Mortgage is within the knowledge of the respective Defendants.

42. In the further alternative, the Plaintiff states that its lien has priority over the SZL Mortgage to the extent of any advance made at a time when there was a preserved or perfected lien against the Lands or after receipt of written notice of a lien.

43. To the extent that the SZL Mortgage may be a subsequent mortgage under the *Construction Act*, the Plaintiff states that its lien has priority over the SZL Mortgage to the extent of any deficiency in the holdback required to be retained by the La Pue as the SZL Mortgage was registered after the time when the first lien arose in respect of the construction project or improvement.

44. The Plaintiff further states that in the event that its claim for lien is vacated from title to the Lands by the posting of security with the Accountant of the Ontario Superior Court of Justice, the Plaintiff's claim is entitled to be paid from the proceeds of the security, should it be found that the posting of the security resulted in the Plaintiff's claim for lien ceasing to attach to and/or bind the Lands and premises or the holdback.

45. The Plaintiff proposes that this action be tried in the City of Welland, Niagara Region, in the Province of Ontario.

DATE OF ISSUE:

BISCEGLIA & ASSOCIATES
Professional Corporation
Barristers-at-law
9100 Jane Street, Suite 200, Building A
Vaughan, Ontario, L4K 0A4

Emilio Bisceglia -LSO No. 34568Q
Tel: (905) 695-5200
Fernando Souza – LSO No. 36920I
fsouza@lawtoronto.com

Lawyers for the Plaintiff

SCHEDULE "A"

PIN 64349 - 0258 LT

Description FIRSTLY: LOTS 46, 51, 52, 61, 62, 63, 64 & 65, PLAN 273 & PART LOTS 43, 44, 45, 47,48, 49 & 50, PLAN 273, VILLAGE OF NIAGARA FALLS, PARTS 1 & 3 PLAN 59R17206; SECONDLY: SURFACE RIGHTS ONLY (AS IN RO718049), PART LOTS 47, 48, 49 & 50 PLAN 273, VILLAGE OF NIAGARA FALLS, PART 2 PLAN 59R17206; SUBJECT TO AN EASEMENT OVER PARTS 1 & 2 59R17292 IN FAVOUR OF PART LOTS 41 & 42 PLAN 273 AS IN RO441658 AS IN SN754703; CITY OF NIAGARA FALLS

Address NIAGARA FALLS

PIN 64349 – 0178 LT

Description LT 54 PL 273 VILLAGE OF NIAGARA FALLS; NIAGARA FALLS (AMENDED BY REGISTRAR #27 1999/11/26 AT 15:19PM)

Address 5978 ALLENDALE AVE

NIAGARA FALLS

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 1 of 1

Properties

PIN 64349 - 0258 LT
Description FIRSTLY: LOTS 46, 51, 52, 61, 62, 63, 64 & 65, PLAN 273 & PART LOTS 43, 44, 45, 47, 48, 49 & 50, PLAN 273, VILLAGE OF NIAGARA FALLS, PARTS 1 & 3 PLAN 59R17206; SECONDLY: SURFACE RIGHTS ONLY (AS IN RO718049), PART LOTS 47, 48, 49 & 50 PLAN 273, VILLAGE OF NIAGARA FALLS, PART 2 PLAN 59R17206; SUBJECT TO AN EASEMENT OVER PARTS 1 & 2 59R17292 IN FAVOUR OF PART LOTS 41 & 42 PLAN 273 AS IN RO441658 AS IN SN754703; CITY OF NIAGARA FALLS
Address NIAGARA FALLS
PIN 64349 - 0178 LT
Description LT 54 PL 273 VILLAGE OF NIAGARA FALLS; NIAGARA FALLS (AMENDED BY REGISTRAR #27 1999/11/26 AT 15:19PM)
Address 5978 ALLENDALE AVE
NIAGARA FALLS

Consideration

Consideration \$8,205,941.87

Claimant(s)

Name BUTTCON LIMITED
Address for Service 8000 Jane Street, Suite 401, Tower B,
Concord, Ontario, L4K 5B8

SOLICITOR: Emilio Bisceglia
9100 Jane Street, 2nd floor,
Concord, Ont L4K 0A4

I, Mark Rowlands, am the agent of the lien claimant and have informed myself of the facts stated in the claim for lien and believe them to be true.

A person or persons with authority to bind the corporation has/have consented to the registration of this document.

This document is not authorized under Power of Attorney by this party.

Statements

Name and Address of Owner LA PUE INTERNATIONAL INC., 6158 Allendale Avenue, Niagara Falls, Ontario, L2G 0A5 Name and address of person to whom lien claimant supplied services or materials LA PUE INTERNATIONAL INC., 6158 Allendale Avenue, Niagara Falls, Ontario, L2G 0A5 Time within which services or materials were supplied from 2020/04/06 to 2023/03/17 Short description of services or materials that have been supplied : Provide construction manager services, labour and materials, with respect to the Stanley District Mixed Use Development and related matters. Contract price or subcontract price \$12,021,033.63 (H.S.T. included) Amount claimed as owing in respect of services or materials that have been supplied \$8,205,941.87 (H.S.T. included)

The lien claimant claims a lien against the interest of every person identified as an owner of the premises described in said PIN to this lien

Signed By

Anne Scott 85 Rosebury Lane acting for Signed 2023 03 17
Woodbridge Applicant(s)
L4L 3Z1

Tel 905-264-1632

Fax 905-264-1059

I have the authority to sign and register the document on behalf of the Applicant(s).

Submitted By

SUMMIT SEARCH LIMITED 85 Rosebury Lane 2023 03 17
Woodbridge
L4L 3Z1

Tel 905-264-1632

Fax 905-264-1059

Fees/Taxes/Payment

Statutory Registration Fee \$69.00

Total Paid \$69.00

BUTTCON LIMITED

Plaintiff

-and-

LA PUE INTERNATIONAL INC., et al.

Defendants

Court File no.

ONTARIO

SUPERIOR COURT OF JUSTICE

IN THE MATTER OF THE CONSTRUCTION ACT

PROCEEDING COMMENCED AT WELLAND

STATEMENT OF CLAIM

**BISCEGLIA & ASSOCIATES
PROFESSIONAL CORPORATION**

Barristers-At-Law

9100 Jane Street, Bldg. "A",

Suite 200 Vaughan, Ontario L4K 0A4

Emilio Bisceglia – LSO No. 34568Q

Tel: 905 695- 3200

Email: ebisceglia@lawtoronto.com

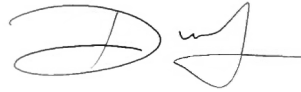
Fernando Souza – LSO No. 36920I

Tel. 905 695 1500

Email: fsouza@lawtoronto.com

Lawyers for the Plaintiff, Buttcon Limited

***THIS IS EXHIBIT "U" TO THE
AFFIDAVIT OF CECIL HAYES
SWORN BEFORE ME THIS 14TH
DAY OF JANUARY, 2025***

A handwritten signature in black ink, appearing to be 'DJ', written over a horizontal line.

A Commissioner Etc.

Properties

PIN 64349 - 0258 LT
Description FIRSTLY: LOTS 46, 51, 52, 61, 62, 63, 64 & 65, PLAN 273 & PART LOTS 43, 44, 45, 47, 48, 49 & 50, PLAN 273, VILLAGE OF NIAGARA FALLS, PARTS 1 & 3 PLAN 59R17206; SECONDLY: SURFACE RIGHTS ONLY (AS IN RO718049), PART LOTS 47, 48, 49 & 50 PLAN 273, VILLAGE OF NIAGARA FALLS, PART 2 PLAN 59R17206; SUBJECT TO AN EASEMENT OVER PARTS 1 & 2 59R17292 IN FAVOUR OF PART LOTS 41 & 42 PLAN 273 AS IN RO441658 AS IN SN754703; CITY OF NIAGARA FALLS
Address NIAGARA FALLS

Consideration

Consideration \$23,278.00

Claimant(s)

Name TT GALBRAITH ELECTRIC LTD
Address for Service 2-213 BUNTING RD
 ST. CATHERINES, ON, L2M 3Y2

I, JAMES GALBRAITH, OWNER, am the agent of the lien claimant and have informed myself of the facts stated in the claim for lien and believe them to be true.

A person or persons with authority to bind the corporation has/have consented to the registration of this document.

This document is not authorized under Power of Attorney by this party.

Statements

Name and Address of Owner LA PUE INTERNATIONAL INC. of 6158 ALLENDALE AVENUE, NIAGARA FALLS, ON L2G 0A5 Name and address of person to whom lien claimant supplied services or materials BUTTCON LIMITED of B401-8000 JANE ST, CONCORD, ON, L4K 5B8 Time within which services or materials were supplied from 2022/10/28 to 2023/04/13 Short description of services or materials that have been supplied provision of labour and material to install underground electrical ductbank and transformer vault with ground grid, excavate/fill splice pit for hydro connections. Contract price or subcontract price \$23,278.00 Amount claimed as owing in respect of services or materials that have been supplied \$23,278.00

The lien claimant claims a lien against the interest of every person identified as an owner of the premises described in said PIN to this lien

Signed By

Bradley James Lohner 17315A 108 Ave NW acting for Signed 2023 05 26
 Edmonton Applicant(s)
 T5S 1G2

Tel 780-486-0219

Fax 780-486-3998

I have the authority to sign and register the document on behalf of the Applicant(s).

Submitted By

Priority Credit Management Corp. 17315A 108 Ave NW 2023 05 26
 Edmonton
 T5S 1G2

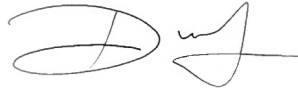
Tel 780-486-0219

Fax 780-486-3998

Fees/Taxes/Payment

Statutory Registration Fee \$69.00
Total Paid \$69.00

***THIS IS EXHIBIT "V" TO THE
AFFIDAVIT OF CECIL HAYES
SWORN BEFORE ME THIS 14TH
DAY OF JANUARY, 2025***

A handwritten signature in black ink, consisting of a large, stylized 'D' followed by a smaller, more fluid signature.

A Commissioner Etc.

Properties

PIN 64349 - 0258 LT
Description FIRSTLY: LOTS 46, 51, 52, 61, 62, 63, 64 & 65, PLAN 273 & PARTS 43, 44, 45, 47, 48, 49 & 50, PLAN 273, VILLAGE OF NIAGARA FALLS, PARTS 1 & 3 PLAN 59R17206; SECONDLY: SURFACE RIGHTS ONLY (AS IN RO718049), PART LOTS 47, 48, 49 & 50 PLAN 273, VILLAGE OF NIAGARA FALLS, PART 2 PLAN 59R17206; CITY OF NIAGARA FALLS
Address NIAGARA FALLS

Consideration

Consideration \$494,853.95

Claimant(s)

Name ASTRO EXCAVATING INC.
Address for Service c/o Pallett Valo LLP Lawyers
 Attention: Maria Ruberto
 77 City Centre Drive
 West Tower, Suite 300
 Mississauga, Ontario L5B 1M5
 Direct Dial/Fax: 289-805-3441
 Email: mruberto@pallettvalo.com

I, Ilan Philosophe, am the agent of the lien claimant and have informed myself of the facts stated in the claim for lien and believe them to be true.

A person or persons with authority to bind the corporation has/have consented to the registration of this document.

This document is not authorized under Power of Attorney by this party.

Statements

Name and Address of Owner La Pue International Inc., 6158 Allendale Ave., Niagara Falls, ON L2G 0A5. Name and address of person to whom lien claimant supplied services or materials see schedule. Time within which services or materials were supplied from 2021/11/29 to 2022/07/06 Short description of services or materials that have been supplied site preparation, strip topsoil & remove offsite, supply & install drill platform, laydown area, staging area & mud mat, bulk excavation & removals, trucking and disposal offsite; Contract price or subcontract price \$3,029,195.35, inclusive of HST. Amount claimed as owing in respect of services or materials that have been supplied \$494,853.95, inclusive of HST.

The lien claimant claims a lien against the interest of every person identified as an owner of the premises described in said PIN to this lien Schedule: Name and address of person to whom lien claimant supplied services or materials: La Pue International Inc., 6158 Allendale Ave., Niagara Falls, ON L2G 0A5 and Butcon Limited, 800 Jane St, Ste 401, Concord, ON, L4K 5B0

Signed By

Maria Ruberto 77 City Centre Drive, West Tower, acting for Signed 2022 07 13
 Suite 300 Applicant(s)
 Mississauga
 L5B 1M5

Tel 905-273-3300

Fax 905-273-6920

I have the authority to sign and register the document on behalf of the Applicant(s).

Submitted By

PALLET VALO LLP 77 City Centre Drive, West Tower, 2022 07 13
 Suite 300
 Mississauga
 L5B 1M5

Tel 905-273-3300

Fax 905-273-6920

Fees/Taxes/Payment

Statutory Registration Fee \$66.30

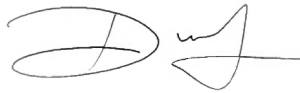
Total Paid \$66.30

File Number

Claimant Client File Number :

88031

***THIS IS EXHIBIT "W" TO THE
AFFIDAVIT OF CECIL HAYES
SWORN BEFORE ME THIS 14TH
DAY OF JANUARY, 2025***

A handwritten signature in black ink, appearing to be the initials 'D' and 'J' with a flourish, positioned above a horizontal line.

A Commissioner Etc.



Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

IN THE MATTER OF the *Construction Act*, R.S.O. 1990, c. C.30

B E T W E E N:

ASTRO EXCAVATING INC.

Plaintiff

and

BUTTCON LIMITED, LA PUE INTERNATIONAL INC.,
THE SOVEREIGN GENERAL INSURANCE COMPANY and
MARSHALLZEHR GROUP INC.

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff.
The Claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

~~If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.~~

-2-

~~Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.~~

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$1,500 for costs, within the time for serving and filing your Statement of Defence you may move to have this proceeding dismissed by the Court. If you believe the amount claimed for costs is excessive, you may pay the Plaintiff's claim and \$400 for costs and have the costs assessed by the Court.

~~TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.~~

Date August 15, 2022

Issued by _____

Local Registrar

Address of court office: 59 Church Street
St. Catharines, Ontario L2R 7N8

TO: **Butcon Limited**
8000 Jane Street
Suite 401, Tower B
Concord, Ontario L4K 5B8

AND TO: **La Pue International Inc.**
6158 Allendale Avenue
Niagara Falls, Ontario L2G 0A5

AND TO: **The Sovereign General Insurance Company**
One York Street, Suite 1400
Toronto, Ontario M5J 0B6

AND TO: **Marshallzehr Group Inc.**
412 Albert Street, Suite 100
Waterloo, Ontario N2L 3V3

-3-

CLAIM

1. THE PLAINTIFF CLAIMS:

- (a) payment of the sum of \$494,853.95, inclusive of HST, with respect to the Lien, as defined herein, against the Defendants, or any of them;
- (b) alternatively, damages in the amount of \$494,853.95, inclusive of HST, on the basis of *quantum meruit* or unjust enrichment;
- (c) payment of the additional sum of \$565,000.00, inclusive of HST, with respect to the Loss of Profit Claim, as defined herein, as against the Defendants, Buttcon Limited and La Pue International;
- (d) payment of the additional sum of \$847,500.00, inclusive of HST, with respect to the Delay Claim, as defined herein, as against the Defendants, Buttcon Limited and La Pue International Inc.;
- (e) alternatively, payment of pre-judgment interest on the sum of \$1,907,353.95, in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (f) post-judgment interest in accordance with section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;

-4-

- (g) that in default of payment of the sum of \$494,853.95 plus costs, that the estate and interest of the Defendants, or any of them, in the lands and premises to which the Construction Lien hereinafter described attaches, and which are the subject matter of this action, be sold and the proceeds applied toward payment of the Plaintiff's claim as aforesaid plus costs, pursuant to the provisions of the *Construction Act*, R.S.O. 1990, c. C.30 (the "*Act*");
- (h) a charge against the holdbacks required to be maintained under the *Act* and any additional amount owed by the Defendant, La Pue International Inc., or any other payer to the Defendant, Buttcon Limited;
- (i) full priority over the Mortgages, as defined herein, in favour of the Mortgagees, as defined herein, or alternatively, priority over the Mortgages, as defined herein, to the extent that any portion of the said mortgages advanced exceeded the actual value of the lands and premises at the time the first lien arose, or, in the further alternative, priority over the said mortgages to the extent of any unadvanced portions, or in the further alternative, priority to the extent of any deficiencies in the holdback required to be maintained pursuant to the provisions of the *Act*;
- (j) for all purposes aforesaid and for all other purposes, that accounts be taken and directions be given;
- (k) costs of this action including all HST attributable to any award of costs; and
- (l) such further and other relief as this Honourable Court deems just.

-5-

THE PARTIES

2. The Plaintiff, Astro Excavating Inc. (“Astro”), is a corporation incorporated pursuant to the laws of the Dominion of Canada and carries on business as an excavating and site grading contractor.

3. The Defendant, Buttcon Limited (“Buttcon”), is a corporation incorporated pursuant to the laws of the Province of Ontario and carries on business as a general contractor.

4. The Defendant, La Pue International Inc. (“La Pue”), is, and at all material times was, the registered owner of the lands and premises known as The Stanley District, located at 5510-5526 and 5536 Ferry Street, 5943 Stanley Avenue and 5916 Allendale Avenue, Niagara Falls, Ontario (the “Project”), which are the lands and premises to which the Construction Lien hereinafter described attaches (the “Subject Lands”).

5. The Defendants, The Sovereign General Insurance Company (“Sovereign”) and Marshallzehr Inc. (“Marshallzehr”), (collectively, the “Mortgagees”), are the holder of mortgages registered on title to the Subject Lands, as described herein.

THE LETTER OF INTENT

6. On or about June 15, 2021, at the request of Buttcon and La Pue, or either of them, Astro submitted a revised excavation quotation to Buttcon for the supply of various preliminary works, bulk excavation, detail excavation, backfill and related services as set out in the revised quotation (the “Quotation”). The Quotation provided for the following pricing:

- (a) Excavation Lump Sum Price in the amount of \$2,275,000.00, plus HST;

-6-

- (b) Additional Price to Supply & Install Temporary Road & Stone Lot Plan in the amount of \$57,500.00, plus HST;
 - (c) Additional Price for Supply & Install 200mm of Granular A below SOG in the amount of \$140,000.00, plus HST; and
 - (d) Additional Price for 50% Performance Bond in the amount of \$35,000.00, plus HST.
7. Subsequent to the submission of the Quotation, Buttcon and La Pue, or either of them, requested additional items to be added to the scope of work thereby increasing the quoted price for the agreed scope of work to \$2,653,900.00 plus HST (the “Original Price”).
8. On or about September 27, 2021, Buttcon provided Astro with the scope of work checklist and breakdown of the Original Price.
9. On or about October 14, 2021, at the request of Buttcon and La Pue, Astro agreed to reduce the Original Price quoted for the scope of work, as detailed in the preceding paragraph, to \$2,500,000.00 plus HST (the “Contract Price”). As a result, Buttcon delivered a Letter of Intent (“LOI”) to Astro accepting the Quotation for an agreed upon Contract Price. The LOI provided that a formal contract was being prepared and would be issued shortly.
10. On October 15, 2021, Astro executed the LOI and agreed to proceed with the work as detailed in the Quotation, which included site preparation, stripping of topsoil and removal of offsite, supply and installation of drill platform, laydown area, staging area and mud mat, bulk

-7-

excavation and removals, and trucking and disposal offsite (the “Work”), on the understanding that a formal contract would be provided to Astro without delay.

11. Further to the preceding paragraph, on the direction of Buttcon and La Pue, or either of them, on or around November 29, 2021, Astro began to perform the Work at the Subject Lands.

12. Upon commencing the Work, Astro advised La Pue and Buttcon, or either of them, that there was excess debris and soil contamination issues encountered on the Project (the “Soil Conditions”) that would need to be investigated and disposed of in accordance with the Ministry of Environment requirements and regulations, which was not part of Astro’s scope of Work under the LOI (the “Disposal of Contaminated Soil”).

13. Astro was directed by La Pue and Buttcon, or either of them, to proceed with the investigation of the Soil Conditions and Disposal of Contaminated Soil, which was an extra to the Work (the “Extra”). Astro issued an invoice for the Extra in the amount of \$204,195.35, inclusive of HST (the “Extra Amount”).

14. Astro rendered invoices to La Pue and Buttcon, or either of them, for the Work and the Extras and payment of said invoices was due by the 30th day following the date of each invoice.

15. Despite repeated requests, La Pue and Buttcon, or either of them, have failed to deliver a contract to Astro in accordance with the LOI.

-8-

INDEBTEDNESS

16. As of the date hereof, Buttcon and La Pue, or either of them, remain indebted to Astro in the total sum of \$494,853.95, inclusive of HST, for the Work and the Extras supplied to the Subject Lands, but not including the Loss of Profit Claim and the Delay Claim, as defined herein, broken down as follows:

June 25, 2022	Invoice No. 1428	Progress Draw No. 2	\$290,658.60
June 25, 2022	Invoice No. 1426	Extra	\$2,282.60
June 25, 2022	Invoice No. 1427	Extra	\$10,181.30
June 27, 2022	Invoice No. 1438	Extra	\$191,731.45
TOTAL			\$494,853.95

WRONGFUL TERMINATION

17. On July 6, 2022, without justification, Buttcon delivered a letter to Astro stating that the LOI was terminated and that Astro had 48 hours to remove its equipment and machinery from the Subject Lands, or by no later than July 9, 2022 (the “Termination”).

18. Astro states that the Termination was wrongful and without justification as at all material times, Astro was ready and willing to proceed with the Work and the Extras, but Buttcon and La Pue, or either of them, refused to deliver the contract and refused to pay for the Work and the Extras completed.

19. Astro states that the Termination was wrongful and that Buttcon and La Pue breached their duty of honest performance and good faith, the particulars of which include but are not limited to the following:

-9-

- (a) failing to issue the contract in accordance with the LOI, despite repeated requests from Astro;
- (b) expecting Astro to proceed without addressing the Soil Conditions without signing off on the work orders and the Extras, resulting in substantial delays to the Project and Astro incurring escalation costs (the “Delays”);
- (c) refusing to acknowledge the value of the Work and Extras performed by Astro;
- (d) failing to provide accurate information and details of the Soil Conditions and attempting to force Astro to dispose of material contrary to Ministry of Environment requirements and regulations, which Astro refused to do; and
- (e) breaching their payment obligations by failing to pay Astro the amounts that are properly due and owing for the Work and the Extras.

LOSS OF PROFIT AND DELAY CLAIM

20. As a result of the wrongful Termination by Buttcon, Astro was not allowed to complete the remaining Work under the LOI, resulting in damages for loss of profit in the amount of \$565,000.00, inclusive of HST, being 20% of the Contract Price (the “Loss of Profit Claim”).

21. As a result of the Delays, Astro also suffered damages for escalation costs in the amount of \$847,500.00, inclusive of HST, being 30% of the Contract Price (the “Delay Claim”).

-10-

22. Therefore, Astro claims total damages, inclusive of the Loss of Profit Claim and the Delay Claim, in the amount of \$1,907,353.95, inclusive of HST, from Buttcon and La Pue, or either of them.

THE LIEN

23. By reason of supplying the Work and the Extras, Astro is entitled to a lien upon the interest of the Defendants, or any of them, in the Subject Lands.

24. On July 13, 2022, Astro caused to be registered a Construction Lien against title to the Subject Lands in the amount of \$494,853.95, inclusive of HST, in the Land Registry Office for the Land Titles Division of Niagara South (No. 59), at St. Catharines, as Instrument No. SN734331 (the “Lien”). Attached hereto as Schedule “A” is a true copy of the Lien.

25. Further, by reason of supplying the Work and the Extras, Astro is entitled to a charge against the holdback required to be maintained under the *Act* and any additional amounts owing by La Pue, or any other payer, to Buttcon.

26. The Subject Lands were at all material times occupied by La Pue, and are the lands for which Astro supplied the Work and the Extras at the request of, on behalf of, with the consent and for the direct benefit of La Pue and accordingly, La Pue is, and at all material times was, an owner within the meaning of section 1(1) of the *Act*.

-11-

THE MORTGAGES

27. The following mortgages are registered on title to the Subject Lands:

Name of Mortgagee	Instrument Number	Registration Date	Principal Amount
Sovereign	SN644659	October 2, 2020	\$2,000,000.00
Marshallzehr	SN703091	December 1, 2021	\$13,800,000.00

(collectively, the “Mortgages”).

28. Astro states that the Mortgages were given and taken with the intention to secure the financing of the improvements herein and Astro claims that it has full priority over the Mortgages.

29. Alternatively, Astro states that the Lien has priority over the Mortgages to the extent of any deficiency in the holdbacks required to be retained pursuant to the provisions of the *Act*.

30. In the further alternative, Astro states that the Lien has priority over the Mortgages to the extent that any portion of monies advanced under the Mortgages exceeds the actual value of the Subject Lands at the time when the first lien arose.

31. In the further alternative, Astro states that the Lien has priority over the Mortgages to the extent of any unadvanced portion thereof.

32. Astro states that the knowledge of all advances made pursuant to the Mortgages is within the knowledge of the Defendants.

-12-

UNJUST ENRICHMENT/QUANTUM MERUIT

33. In the alternative, Astro states that by reason of performing the Work and the Extras, the Defendants, or any of them, have received the benefit of same and have been unjustly enriched in the amount of \$494,853.95, at the expense and to the detriment of Astro. Astro pleads and relies upon the doctrine of unjust enrichment.

34. In the further alternative, Astro states that it is entitled to damages in the amount of \$494,853.95 as against Buttcon and La Pue on the basis of *quantum meruit*.

Date: August 15, 2022

PALLET VALO LLP
Lawyers & Trade-Mark Agents
77 City Centre Drive, West Tower
Suite 300
Mississauga, Ontario
L5B 1M5

MARIA RUBERTO (LSO # 51148D)
mruberto@pallettvalo.com
Direct Dial/Fax: 289-805-3441

Lawyers for the Plaintiff

-13-

SCHEDULE "A"

LRO # 59 Construction Lien

Received as SN734331 on 2022 07 13 at 15:07

The applicant(s) hereby applies to the Land Registrar:

yyyy mm dd Page 1 of 2

Properties

PIN 64349 - 0258 LT
Description FIRSTLY: LOTS 46, 51, 52, 61, 62, 63, 64 & 65, PLAN 273 & PARTS 43, 44, 45, 47, 48, 49 & 50, PLAN 273, VILLAGE OF NIAGARA FALLS, PARTS 1 & 3 PLAN 59R17206;
SECONDLY: SURFACE RIGHTS ONLY (AS IN RO718049), PART LOTS 47, 48, 49 & 50 PLAN 273, VILLAGE OF NIAGARA FALLS, PART 2 PLAN 59R17206; CITY OF NIAGARA FALLS
Address NIAGARA FALLS

Consideration

Consideration \$494,853.95

Claimant(s)

Name ASTRO EXCAVATING INC.
Address for Service c/o Palett Valo LLP Lawyers
Attention: Maria Ruberto
77 City Centre Drive
West Tower, Suite 300
Mississauga, Ontario L5B 1M5
Direct Dial/Fax: 289-805-3441
Email: mruberto@pallettvalo.com

I, Ilian Philopophe, am the agent of the lien claimant and have informed myself of the facts stated in the claim for lien and believe them to be true.

A person or persons with authority to bind the corporation has/have consented to the registration of this document.

This document is not authorized under Power of Attorney by this party.

Statements

Name and Address of Owner La Pue International Inc., 6158 Allendale Ave., Niagara Falls, ON L2G 0A5. Name and address of person to whom lien claimant supplied services or materials see schedule. Time within which services or materials were supplied from 2021/11/29 to 2022/07/06 Short description of services or materials that have been supplied site preparation, strip topsoil & remove offsite, supply & install drill platform, laydown area, staging area & mud mat, bulk excavation & removals, trucking and disposal offsite; Contract price or subcontract price \$3,029,195.35, inclusive of HST. Amount claimed as owing in respect of services or materials that have been supplied \$494,853.95, inclusive of HST.

The lien claimant claims a lien against the interest of every person identified as an owner of the premises described in said PIN to this lien Schedule: Name and address of person to whom lien claimant supplied services or materials: La Pue International Inc., 6158 Allendale Ave., Niagara Falls, ON L2G 0A5 and Butcon Limited, 800 Jane St, Ste 401, Concord, ON, L4K 5B0

Signed By

Maria Ruberto 77 City Centre Drive, West Tower, acting for Signed 2022 07 13
Suite 300 Applicant(s)
Mississauga
L5B 1M5

Tel 905-273-3300

Fax 905-273-6920

I have the authority to sign and register the document on behalf of the Applicant(s).

Submitted By

PALLET VALO LLP 77 City Centre Drive, West Tower, 2022 07 13
Suite 300
Mississauga
L5B 1M5

Tel 905-273-3300

Fax 905-273-6920

Fees/Taxes/Payment

Statutory Registration Fee \$66.30
Total Paid \$66.30

-14-

LRO # 59 Construction Lien

Received as SN734331 on 2022 07 13 at 15:07

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 2 of 2

File Number

Claimant Client File Number : 88031

ASTRO EXCAVATING INC.
Plaintiff

-and- BUTTCON LIMITED, et al.
Defendants

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

IN THE MATTER OF the *Construction Act*, R.S.O. 1990, c. C.30

PROCEEDING COMMENCED AT
ST. CATHARINES

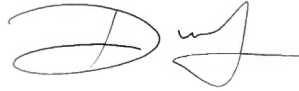
STATEMENT OF CLAIM

PALLET VALO LLP
Lawyers & Trade-Mark Agents
77 City Centre Drive, West Tower
Suite 300
Mississauga, Ontario
L5B 1M5

MARIA RUBERTO (LSO # 51148D)
mruberto@pallettvalo.com
Direct Dial/Fax: 289-805-3441

Lawyers for the Plaintiff

***THIS IS EXHIBIT "X" TO THE
AFFIDAVIT OF CECIL HAYES
SWORN BEFORE ME THIS 14TH
DAY OF JANUARY, 2025***

A handwritten signature in black ink, consisting of a large, stylized 'D' followed by a smaller, more fluid signature.

A Commissioner Etc.

Court File No. CV-22-00060943-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

IN THE MATTER OF the *Construction Act*, R.S.O. 1990, C. c.30

B E T W E E N :

ASTRO EXCAVATING INC.

Plaintiff

-and-

**BUTTCOON LIMITED, LA PUE INTERNATIONAL INC.,
THE SOVEREIGN GENERAL INSURANCE COMPANY and
MARSHALLZEHR GROUP INC.**

Defendants

STATEMENT OF DEFENCE AND COUNTERCLAIM

1. The Defendants, La Pue International Inc. ("La Pue") and Buttcon Limited ("Buttcon") (collectively referred to as the "Defendants" herein) admit the allegations contained in paragraphs 3, 4, 11, 24 and 27 of the Statement of Claim.
2. La Pue and Buttcon deny that the Plaintiff is entitled to the relief set out in paragraph 1 of the Statement of Claim and further denies the allegations contained in paragraphs 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 33 and 34 of the Statement of Claim.
3. La Pue denies that the Plaintiff is entitled to the relief set out in paragraphs 28 through to 32 of the Statement of Claim.

-2-

4. La Pue and Buttcon have no knowledge in respect of the allegations contained in paragraphs 2, and 5 of the Statement of Claim.

5. Buttcon has no knowledge in respect of the allegations contained in paragraphs 27-32 of the Statement of Claim.

6. In respect of paragraph 26, La Pue admits that the Subject Lands (as defined in the Statement of Claim) were at all material times occupied by and owned La Pue, but denies the remainder of the paragraph.

The Parties

7. The Defendant, La Pue is the registered owner of the lands and premises known as the Stanley District Project located at 5510-5526 and 5536 Ferry Street, 5943 Stanley Avenue and 5916 Allendale Avenue, Niagara Falls, Ontario (the "Project").

8. The Defendant, Buttcon, is the Construction Manager for the Project.

9. Buttcon and La Pue entered into a Construction Management Contract – for Services and Construction for the Project, in accordance with an agreement between the Defendants dated April 28, 2020.

The Site Conditions

10. With respect to paragraph 12 and 13, the Defendants have no knowledge that the soil located on the lands and premises at the Project, ever has been or is contaminated soil and put the Plaintiff to the strictest proof thereof.

-3-

11. On or about July 14, 2022, Buttcon engaged Niagara Soils Solutions Ltd., to obtain samples and verify the soil conditions at the Project. All results indicate that the soil conditions are Table 1 and classified as clean fill.

12. Further, the Summary of Environmental Soil Quality report dated August 14, 2020 by Wood Environment & Infrastructure Solutions, A Division of Wood Canada Limited (the “Wood Report”), confirmed that the soil at the Project met Table 1 SCS and classified as clean fill, except for one sample that required re-analysis. Re-analysis confirmed the sample was below Table 1 SCS.

13. The Defendants maintain that the soil at the Project at all material times has been and remains Table 1 clean soil except for the one noted sample in the Wood Report.

14. The Defendants assert that the Plaintiff’s lien claim is without merit, and is for work that was either part of the scope, or remedial work that the Plaintiff was correcting to repair the Plaintiff’s own defective workmanship.

The Tender Package

15. On or about July 14, 2020, Tender Package TP1.3 – Bulk/Detailed Earthworks & Removals (“Tender Package”) was issued.

16. A site visit was scheduled that bidders were encouraged to attend on July 21, 2020. The Tender Package noted, “*no extras will be considered for existing site conditions that could have been know by visiting the site.*”

17. The existing concrete foundations at the Project were partially visible and reasonably would have been known to all bidders who attended the scheduled site visit.

-4-

18. All bidders were required to familiarize themselves with the Tender Package, and all related documentation.

19. The Tender Package documentation included the Geotechnical Investigation Report prepared by Terraprobe dated October 10 2019 (the "Terraprobe Report"). The Terraprobe Report noted that the pre-grading requirements included but were not limited to:

- (a) Removal of existing asphalt pavement;
- (b) Removal of topsoil and any unsuitable fill; and
- (c) Cutting and/or grading to achieve design subgrade elevations.

20. The Terraprobe Report specifically noted the possibility of "*building foundations from former structures*" being present in the soil.

21. On or about May 28, 2021, Post Tender Addendum 03 for Tender Series #1 was issued and a Revised Tender Form was to be submitted by the bidders.

Astro's Excavation Quote

22. On June 15, 2021, the Plaintiff, Astro Excavating Inc. ("Astro"), provided Buttcon with an excavation quotation for the Project, in response to the Tender Package (the "Original Quote"). The Original Quote had an excavation lump sum price of \$2,275,000.00.

-5-

23. However, Astro's Original Quote was incomplete, as it did not include a completed scope of work checklist. The checklist was included with the Tender Package and required by all bidders to be completed.

24. The scope checklist included the following items:

- (a) Item #5: Perform site removals as shown and specified.
- (b) Item #16: Dispose off-site of Surplus Material. Allow for soil removal as per Phase Two Environmental Site Assessment prepared by Wood Environment & Infrastructure Solutions dated October 9, 2018.
- (c) Item #22: Provide truck routing plan to and from site. Identify location of disposal and fill sites

25. On June 25, 2021, Buttcon emailed Astro in response to its tender bid submission and asked that Astro complete the required scope checklist for the Project.

26. On June 29, 2021, Astro replied with the completed scope checklist. In respect of Items #16 and #22, Astro circled "Yes" confirming that these items were to be included in the Original Quote.

27. On June 30, 2021, Buttcon requested pricing for items excluded from Astro's Original quote (items #6 through to #12, #20, #28, #33 & #34).

28. On or about July 6, 2021, Astro confirmed the price for the requested items.

-6-

29. On or about July 27, 2021, Buttcon emailed Astro to confirm: (i) that Astro had reviewed the Wood Report, and (ii) confirmed with Astro's disposal sites that the potential lead levels in the excavated soil met Table 1 criteria for disposal.

30. On August 3, 2021, Astro confirmed in writing that (i) it had reviewed the Wood Report and (ii) that the receiving sites confirmed that the lead levels in the locations samples met the Table 1 criteria (with the 1 exception). Astro noted that additional test pits would be required for the areas that were not previously sampled.

31. On August 10, 2021, Buttcon requested the additional amount to dispose of soil in the event it did not meet Table 1 criteria.

32. On August 11, 2021, Astro provided the additional charge for disposal of \$7.50 per tonne for areas with lead concentrations in the top 1 meter of soil that had not been approved by the receiving sites due to insufficient volume of samples.

Astro and Buttcon Negotiations

33. On September 24, 2021, Buttcon and Astro met to discuss the Original Quote and the scope checklist. At this meeting, Astro provided an updated quote for the costs of the additional scope items that it had omitted from their Original Quote. This revised the price to \$2,635,900.00.

34. On September 27, 2021, Astro provided the completed scope checklist to Buttcon with a contract price of \$2,507,500.00 (the "Astro's Scope Checklist").

35. On September 28, 2022, Astro agreed to a negotiated price of \$2,500,000.00. This price was to complete the full scope of the work required in the Tender Package.

The Subcontract

36. On October 6, 2021, Buttcon submitted a Letter of Recommendation to La Pue recommending Astro for the Tender Package (the “Work”). The subcontract price was \$2,500,000.00 plus HST.

37. On October 14, 2021, Buttcon delivered to Astro a Letter of Intent to award the subcontract for the Work, for the price of \$2,500,000 plus HST.

38. A formal contract was not delivered to Astro. Astro and Buttcon’s agreement was governed by the following documents: (i) the Tender Package (ii) the Letter of Intent, (iii) the Scope Checklist (iv) Addenda and Post Tender Addenda to the Tender Package (v) verbal or written agreements between the parties regarding additional items to be performed within Astro’s existing scope of work (herein referred to as the “Subcontract”).

Astro’s Early Works Mobilization

39. On or about November 12, 2021, La Pue directed Astro to contact the surveyors for the Project, Rouse Surveyors, to coordinate and commence the Work.

40. On November 14, 2021, La Pue provided to Astro and Rouse Surveyors a link to all relevant site information. The link included the Terraprobe Report.

41. At La Pue’s direction Astro mobilized at the Project to perform certain early works at the site, including but not limited to:

- (a) preparing the site for vertical drilling;
- (b) strip and removal of topsoil offsite;

-8-

- (c) supplying and installing drill platform; and
- (d) supplying and installing mud matt.

(Collectively referred to herein as the “Early Works”)

42. The Early Works, were part of the Subcontract, and was to be completed by December 31, 2022. The total agreed price for the Early Works was \$150,000.00 exclusive of HST.

43. On December 24, 2021, the Plaintiff issued invoice #1287 for \$169,500 inclusive of HST. The invoice was for the completion of the Early Works.

44. On or about December 31, 2021, the Project closed for the winter.

45. On March 2, 2022, La Pue paid the Plaintiff in full for the work that was represented to have been completed, as listed pursuant on Invoice #1287.

Astro’s Second Mobilization

46. On March 2, 2022, Buttcon provided a Revised Letter of Recommendation to La Pue for the Work, to reflect La Pue’s direct payment to Astro of \$150,000 plus HST. The revised amount was for \$2,350,000 plus HST.

47. The remaining Work under the Subcontract included but was not limited to:

- (a) Site Grading – Cut & Fill
- (b) Bulk excavation* to First Row Tie-back & Offsite Disposal;
- (c) Bulk Excavation* to Subgrade & Offsite Disposal;

-9-

- (d) Layout;
- (e) Detail Excavation of footings, pile caps, raft slabs, grade beams, crane pad & offsite disposal;
- (f) *Bulk excavation *implicitly* includes the removal of buried foundations and underground structures as noted in section 5.1 of the Terraprobe Report.
- (g) Work as described in: (i) the Tender Package (ii) the Letter of Intent, (iii) Scope Checklist (iv) Addenda and Post Tender Addenda to the Tender Package (v) verbal or written agreements between the parties regarding additional items to be performed within Astro's scope of work but excluding certain early works.

Collectively referred to herein as the "Subcontract Work".

48. Astro represented itself to La Pue and/or to Buttcon, that was an experienced, skillful excavator and that it would be able to complete the excavation work and that it would be able to complete excavation work in a high quality manner, in accordance with the plans and specifications.

Astro's Deficiencies Discovered

49. On about May 2, 2022, Buttcon attended a site meeting at the Project regarding the preparation of the pad area /working surface for the Rotatory Foundation Drill (the "Rig Platform"). RWH Engineering Inc. ("RWH") had identified a list of deficiencies.

-10-

50. On May 4, 2022, Astro attended a site review with Buttcon and RWH. Minutes of the meeting were recorded. At the meeting, the following deficiencies in the Astro's Early Works, including but not limited to the following, were identified:

- (a) The existing Rig Platform was 9 metres wide and not the recommended 12 metres as outlined in the RWH design proposal and field notes.
- (b) The presence of a number of underground structures (existing foundations, tree stump, signage bases, etc.); and
- (c) No rip-rap stone had been installed for the mud-mat.

51. Astro disagreed that items (a) and (b) were within its scope, despite the clear requirements within the contract documents. With respect to (c) above, Astro confirmed that it would apply two inches of clear stone and level.

52. On May 27, 2022, Buttcon had a site meeting with Astro. Buttcon directed Astro to correct the deficiencies listed above in the Early Works before commencing the remaining Subcontract Work. Astro was directed to mobilize and to complete the deficiencies noted in Early Works, including but not limited to:

- (a) Excavation of the additional width for the Rig Platform;
- (b) Removal of the concrete foundations and underground structures; and
- (c) Installation of rip-rap stone for the mud-matt.

53. At this meeting, Astro confirmed that it would remove the buried existing concrete foundations and underground structures for the agreed to contract price. The removal

-11-

included but was not limited to the existing billboard footings, tree stumps, and any other existing sign's bases. Astro was to provide a separate price/load for the disposal of concrete.

54. Buttcon requested that Astro commence the site activities on May 30th, 2022.

55. On May 30, 2022, Astro mobilized its equipment to the site. Buttcon's Site Supervisor, Michael D'Aversa, recorded no excavation activities.

56. On June 1, 2022, Astro commenced excavation, but did not have sufficient workers onsite. With only one worker present, Astro did not have the workers required to complete the Work within the timelines required by the Project, contrary to its contractual obligations.

57. On or about June 6, 2022, the delay from the lack of sufficient workers on site continued, resulting in site delay. Buttcon reported the lack of workers to La Pue.

58. On or about June 10, 2022, RWH. conducted an inspection and prepared a report identifying additional deficiencies in the Rig Platform which had failed to pass the test proof roll (the "RWH Report").

59. That same day, Astro was provided with the RWH Report identifying the areas needing additional compaction. Astro was given until Monday June 13, 2022, to correct the defective workmanship prior to re-inspection and additional proof roll testing (the "Remedial Work").

60. On June 14, 2022, Astro refused to complete the requested Remedial Work.

-12-

61. On June 20, 2022, Astro again raised that sorting and disposing of existing structures was not part of their scope of work, despite the Tender Package, Astro's Scope Checklist, and Astro's previous agreement to perform such work at the Initial Site Meeting on May 27, 2022.

62. On June 21, 2022, Astro provided Buttcon with a premium rate to dispose of buried foundations, concrete, cinder blocks etc., of \$50 per tonne.

63. Buttcon rejected this premium rate as these materials were within Astro's Scope Checklist.

64. On June 23, 2022, Astro refused to perform soil stripping as required, leaving Buttcon to complete the 10 hours of work.

65. On or about June 14, 2022, Astro began to refuse to haul materials away from the Project. These refusals include, but are not limited to: June 24, June 27 and June 28, 2022.

66. Astro failed to complete the items required in the Scope Checklist, including but not limited to:

- (a) Removal and disposal of the asphalt off-site (eight loads were left onsite and disposed of by Buttcon);
- (b) Mud matt (incomplete at all three entrances at time of demobilization);
- (c) Proof rolling (was not able to supply);
- (d) Soil stripping (as noted above at paragraph 64);

-13-

(e) Sediment control (refusal to complete).

Notice of Default

67. On June 27, 2022, Buttcon advised Astro that the work being performed was falling behind schedule and there was a potential delay to the shoring contractor. Buttcon delivered a Notice of Default to Astro.

68. In its Notice of Default, Buttcon confirmed, among other defaults, that Astro had failed and/or refused to perform the Remedial Work, and had failed and/or refused to haul materials, contrary to its contractual obligations and in breach thereof. Buttcon provided Astro with an opportunity to correct its defaults by, among other things, requesting that Astro re-mobilize and continue with the remaining Subcontract Work by no later June 30, 2022.

69. As of July 6, 2022, Astro had not re-mobilized at the Project and failed to provide any explanation as to its failure to re-mobilize.

The Termination

70. On July 7, 2022, Buttcon provided Astro with a Notice of Termination.

71. La Pue and Buttcon deny that the termination was wrongful or without justification in light of Astro's ongoing refusals to haul materials from the Project, effectively refusing to perform the work it was retained to perform, or complete the Work in a competent, diligent and experienced manner.

-14-

72. Astro's failure to complete the Work in compliance with the requirements and specifications and to perform the Work in a timely manner has resulted in delays to the Project and the construction schedule.

73. Astro failed to complete the Work in compliance with the Subcontract requirements and specifications.

74. Astro failed to cure the default as noted in the Notice of Default of June 27, 2022 by the June 30, 2022, deadline.

75. On July 11, 2022, Astro demobilized from the site

Astro's Failure to Follow Protocols

76. As noted above, Astro's Scope Checklist included:

16. Disposing of off-site Surplus Material. Allow for soil removal as per Phase Two Environmental Assessment prepared by Wood Environment & Infrastructure Solutions dated October 9, 2018.

22: Provide truck routing plan to and from site. Identify location of disposal and fill sites.

77. Astro did not follow the protocols in Astro's Scope Checklist for Items #16 and #22.

78. Astro was required to contact Wood to provide any additional testing pits required to ensure the soil was Table 1 soil and could be received at disposal sites. To the knowledge of the Defendants, Wood never performed such additional testing.

-15-

79. Astro also did not provide the truck routing, or identify the location of the disposal and fill sites.

80. It was an express and/or implied condition of the Subcontract that all protocols would be followed by Astro.

81. The site hauling logs note that a total of 176 loads were removed by Astro from the Project. The tickets provided to Buttcon and La Pue are from the Walkers Ridgemount Quarries. This quarry only accepts Table 1 soil. Buttcon and La Pue have no knowledge of where the allegedly contaminated soil was disposed of.

Astro's Invoice for Extra Amounts

82. On June 27, 2022, Buttcon and/or La Pue received:

- (a) Astro's invoice # 1438 for the "Extra" amount of \$204,195.35. It includes \$182,220.00 for "Bulk Excavation to First Row Tie-back & Offsite Disposal";
- (b) Weight Tickets dated June 23, 2022, June 20, 2022, June 16, 2022 and June 15, 2022; and
- (c) EXP's Draft Report on behalf of Queensway Chippawa Properties Inc., dated July 16, 2021.

83. With respect to (c) above, the Defendants plead that on or about June 22, 2021, Astro and EXP Services Inc. wrongfully entered and trespassed at the Project. The entry was unlawful and without any notice to the Defendants. Queensway Chippawa Properties Inc. is not a registered owner of the Project and has no right or claim to the Project. As a

-16-

result, Queensway Chippawa Properties Inc. had no ability to authorise or request that Astro and EXP Services Inc.'s attend at the Project site.

84. The Defendants assert that all soil disposed of by Astro was in compliance with Table 1 and delivered and accepted to a Table 1 disposal site, and that no extra amount is due or payable.

85. In the alternative, if any soil disposed by Astro did not comply with Table 1, it was pre-approved by the disposal site in advance and grandfathered under Ontario Regulations 406/19 sampling requirements, and no extra amount is due or payable to Astro.

86. To date, and despite requests for same, the Defendants have received no weight tickets indicating that the Plaintiff deposited any "contaminated" soil to any disposal site.

87. The Plaintiff has failed to provide particulars in paragraph 12 and 13 of the Statement of Claim of the following information:

- (a) the source of Astro's information confirming the allegedly contaminated soil;
- (b) its relationship with EXP and Queensway Chippawa Properties Inc.;
- (c) the location(s) where the allegedly contaminated soil was disposed of; and
- (d) the tickets from the disposal site(s) in support of the extra amount of \$204,195.35 inclusive of HST as claimed in the Statement of Claim.

In the absence of these particulars, the Defendants are unable to properly plead.

-17-

88. In the alternative, the Defendants deny that the Plaintiff is entitled to the “Extra” amount as claimed at paragraph 13 of the Statement of Claim, and put the Plaintiff to strict proof thereof.

The Disputed Invoices

89. On June 25, and June 27, 2022, the Plaintiff invoiced the Defendants La Pue and Buttcon for a total of \$494,853.95 via Invoices No. 1428, 1426, 1427, and 1438, as noted in paragraph 16 of the Statement of Claim (the “Disputed Invoices”).

90. Buttcon and La Pue deny that these Disputed Invoices are legitimate. The services listed therein were not rendered, or in the alternative, were rendered in a deficient, incomplete or unsatisfactory manner and not to the standard of the reasonable and prudent excavator.

91. La Pue has paid the Astro a total of \$150,000.00 for the Early Works.

92. Buttcon and La Pue deny that the Plaintiff was ever entitled to a lien upon the Project, denies the proper preservation and perfection of the Plaintiff’s lien and further puts the Plaintiff to the strict proof thereof, to establish the following:

- (a) That the Plaintiff ever had or now has a right to lien under the provisions of the *Construction Act*, R.S.O. 1990, c. C. 30, as amended (the “Act”).
- (b) That the Plaintiff properly preserved its Claim for Lien in accordance with the provisions of the Act;

-18-

- (c) That the Plaintiff properly perfected its Claim for Lien in accordance with the provisions of the Act; and
- (d) That the proper quantum of labour, services, and materials alleged to have been supplied to the Project is stated in the Statement of Claim.

93. Alternatively, Buttcon and La Pue state that if the Plaintiff's Claim for Lien was valid, which is not admitted but expressly denied, that the amount claimed is excessive and put the Plaintiff to the strict proof of the amount claimed. Buttcon and La Pue plead and rely upon Section 35 of the Act.

94. In the further alternative, La Pue and Buttcon state that at most, the value of the services provided to date under the Subcontract Work was \$78,946.55 (exclusive of HST).

95. Buttcon and La Pue deny that there is or was any validity to the Plaintiff's claim or that it is indebted to the Plaintiff herein.

96. Buttcon and La Pue state that Astro has performed its work in a negligent, careless and unskilful manner resulting in numerous deficiencies and delays at the Project. Buttcon and La Pue estimate the values of these deficiencies and back charges to be \$50,583.00 (exclusive of HST).

97. Buttcon and La Pue state that they are not indebted to Astro in the sum claimed of \$494,853.95 and puts the Plaintiff to the strict proof of its claim.

-19-

98. Buttcon and La Pue ask that the claim against it be dismissed with costs and that the lien registered against its lands and premises as instrument number SN 734331 be discharged.

99. Buttcon and La Pue state that it is entitled to set-off, against any amount which otherwise would be due and owing to the Plaintiff (the existence of said amounts not being admitted but denied), the amounts that have arisen or will arise and that are required to compensate them for the replacement of or to rectify, repair and complete any deficient and/or incomplete work including *inter alia*, deficiency items and/or work. After giving effect to the above-mentioned set-off, Buttcon and La Pue state that, no amounts are owing to the Plaintiff.

COUNTERCLAIM

100. The Defendants, Buttcon and La Pue claim against the Plaintiff/Defendant by Counterclaim:

- (a) Damages for breach of contract, negligence and breach of duty of \$50,000.00;
- (b) Damages for potential delays and resulting costs in an amount to be determined;
- (c) Damages for \$50,583.00 for deficiencies and back charges;
- (d) Damages for interest carrying costs of \$950,000.00 per month;
- (e) Damages for \$294,960.00 for lender fees/costs related to a loan extension;

-20-

- (f) Prejudgment and Postjudgment interest pursuant to the provisions of the *Court of Justice Act*, R.S.O. 1990, c. C 43 as amended.
- (g) Costs of this action and counterclaim on a substantial indemnity basis, plus any HST thereon pursuant to Section 86 of the Act, or alternatively, pursuant to the provisions of the Rules of Civil Procedure and this Honourable Court's inherent jurisdiction; and
- (h) Such further and other relief as this Honourable Court may seem just.

101. Buttcon and La Pue plead and rely on all statements made in the Statement of Defence herein.

102. Buttcon and La Pue state that as a result of Astro's failure to complete the Early Works and Subcontract Work in a proper manner it has suffered damages in the amount of \$1,345,543.00.

103. Buttcon and La Pue plead that Astro was in breach of contract, by abandoning the job on or about June 14, 2022, when it refused to haul materials from the Project.

104. As a result of this and other breaches, including Astro's negligence and numerous deficiencies in the work performed, La Pue will be required to extend large sums of money to complete the Project.

105. La Pue estimates the additional financing costs necessary as a direct result of the Plaintiff's lien claim to be at least \$1,244,960.00.

-21-

106. Full particulars of the Counterclaim will be provided at or prior to trial and as La Pue and Buttcon quantify such claims.

107. Buttcon and La Pue propose that this Counterclaim be tried with the main action.

September 30, 2022

KEYSER MASON BALL, LLP

3 Robert Speck Parkway

Suite 900

Mississauga Ontario

L4Z 2G5

Melissa Wright (LSO# 61742U)

Telephone No.: (905) 276-0404

Email: mwright@kmbllaw.com

Lawyers for the Defendants, Buttcon Limited, and La Pue International Inc.

TO: **PALLET VALO LLP**
77 City Centre Drive, West Tower
Suite 300
Mississauga, Ontario
L5B 1M5

Maria Ruberto (LSO# 51148D)
Telephone No.: (289) 805-3441
mruberto@pallettvalo.com

Lawyers for the Plaintiff

TO: **THE SOVEREIGN GENERAL
INSURANCE COMPANY**
One York Street
Suite 1400
Toronto, Ontario
M5J 0B6

TO: **MARSHALLZEHR GROUP INC.**
412 Albert Street
Suite 100
Waterloo, Ontario
N2L 3V3

Electronically filed / Déposé par voie électronique : 05-Oct-2022
St. Catharines Superior Court of Justice / Cour supérieure de justice

ASTRO EXCAVATING INC.
Plaintiffs

and

Court File No./N° du dossier du greffe : CV-22-00060943-0000

BUTTCOON LIMITED, et al
Defendants

Court File No. **CV-22-00060943-0000**

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
ST. CATHARINES

**STATEMENT OF DEFENCE AND
COUNTERCLAIM**

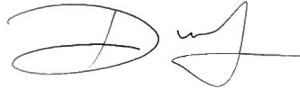
KEYSER MASON BALL LLP
Barristers & Solicitors
3 Robert Speck Parkway
Suite 900
Mississauga, Ontario L4Z 2G5

Melissa Wright (LSO# 61742U)
Telephone No.: (905) 276-0404
Email: mwright@kmblaw.com

Lawyers for the Defendants, Buttcoon
Limited, and La Pue International Inc.

Email for party served:
mruberto@pallettvalo.com

***THIS IS EXHIBIT "Y" TO THE
AFFIDAVIT OF CECIL HAYES
SWORN BEFORE ME THIS 14TH
DAY OF JANUARY, 2025***

A handwritten signature in black ink, appearing to be 'D J', written over a horizontal line.

A Commissioner Etc.

ONTARIO
SUPERIOR COURT OF JUSTICE

IN THE MATTER OF the *Construction Act*, R.S.O. 1990, c. C.30

B E T W E E N:

ASTRO EXCAVATING INC.

Plaintiff

and

BUTTCOON LIMITED, LA PUE INTERNATIONAL INC.,
THE SOVEREIGN GENERAL INSURANCE COMPANY and
MARSHALLZEHR GROUP INC.

Defendants

REPLY AND DEFENCE TO COUNTERCLAIM

1. Unless otherwise admitted herein, the Plaintiff/Defendant by Counterclaim, Astro Excavating Inc. (“Astro”), denies each and every allegation contained in the Statement of Defence and Counterclaim (the “Defence and Counterclaim”) of the Defendants/Plaintiffs by Counterclaim, Buttcon Limited (“Buttcon”) and La Pue International Inc. (“La Pue”).
2. Astro repeats and relies upon the allegations in its Statement of Claim.
3. Unless otherwise defined herein, all defined terms in this Reply and Defence to Counterclaim have the same meaning as in the Statement of Claim and in the Defence and Counterclaim.
4. Astro maintains that it is owed all amounts as claimed in the Statement of Claim without deduction or set-off.

5. Astro states that the allegations made in the Defence and Counterclaim are frivolous, vexatious, and without merit. Furthermore, the counterclaim is advanced by Buttcon and La Pue for the sole purpose of attempting to avoid their financial obligations to Astro for services supplied for the improvement of the Project.

6. Astro specifically denies that Buttcon and La Pue have suffered any of the alleged damages and costs claimed in the Defence and Counterclaim and puts Buttcon and La Pue to the strict proof thereof.

7. In the alternative, if Buttcon and La Pue have suffered any damages or incurred any costs, which is not admitted but denied, the said damages and/or costs are exaggerated, excessive, remote, and not otherwise recoverable at law.

8. In the further alternative, if Buttcon and La Pue have suffered any damages or incurred any costs, which is not admitted but denied, Astro states that Buttcon and La Pue have failed to properly mitigate those costs and damages.

9. With respect to paragraphs 7 to 9 of the Defence and Counterclaim, Astro admits that La Pue is the registered owner of the Project. On July 15, 2020, Astro submitted a quotation to La Pue for excavation work in the amount of \$3,450,000.00 plus HST (the "La Pue Quotation"). Subsequent to delivery of the La Pue Quotation, on August 6, 2020, Astro was contacted by Buttcon wherein Buttcon advised Astro that it was the Construction Manager for the Project and that La Pue had requested that Buttcon contact Astro to provide a price to Buttcon for the work.

10. With respect to the allegations at paragraphs 10, 12 and 13, Astro denies that the Soil Conditions were Table 1 and classified as clean fill.

11. Further, Astro specifically denies the allegations contained in paragraph 10 of the Defence and Counterclaim and states as follows:

- (a) at all material times, Buttcon and La Pue were aware of the Soil Conditions at the Project;
- (b) La Pue and Buttcon were aware that meetings were scheduled at the Project site to address the Soil Conditions; and
- (c) Wood and EXP were both contacted by Buttcon and/or La Pue to complete the additional sampling required and to deal with the contamination since the borehole tests that had been conducted, were insufficient to satisfy the Ministry of Environment (“MOE”) requirements and regulations and for the Qualified Person (“QP”) at the receiving sites to approve the excavated material.

12. With respect to paragraph 11 of the Defence and Counterclaim, Astro has no knowledge of any alleged testing done by Niagara Soils Solutions Ltd. (“Niagara”), on or about July 14, 2022, which was subsequent to the Termination. Astro states that any samples to verify the Soil Conditions on or after July 14, 2022 would indicate that if any remaining soil satisfied Table 1, then this would support the fact that the Disposal of Contaminated Soil was already completed by Astro prior to the Termination. Astro states that it has never been provided with Niagara’s report for its alleged testing conducted on July 14, 2022 and, therefore, has no information as to the areas, locations, perimeters, or depths that were sampled.

13. Astro states that the Wood Report sets out that Phase One and Phase Two Site Assessments were prepared for La Pue by Wood on January 7, 2019 and January 29, 2019, respectively (the “Wood Soil Assessments”).

14. Astro disagrees with the interpretation of the findings in the Wood Report since it was outdated, it already identified lead contamination, and it did not provide sufficient sampling in accordance with the requirements of Ontario Regulation 406/19 On-Site and Excess Soil Management made under the *Environmental Protection Act*, R.S.O. 1990, c. E.19 (“*Excess Soil Regulation*”), which is why additional sampling was required to determine if the soil could be accepted by Astro’s receiving sites. Astro pleads and relies on the *Excess Soil Regulation*;

15. Astro further states that the Wood Report and the Wood Soil Assessments were insufficient and did not satisfy the MOE requirements and the *Excess Soil Regulation*, since the MOE requires sampling to be completed within the last twelve months before disposal of the material, and also requires the number of samples completed, for each perimeter, to be based on the volume of export from the source site in order to be approved by the QP at any receiving site in Ontario. Therefore, since the Wood Soil Assessments were completed in 2019 and the numbers of samples were insufficient, the Wood Report was not acceptable, and updated testing and additional samples of the Soil Conditions were required for approval by the receiving sites.

16. The Wood Report was also not acceptable because the Wood Soil Assessments were insufficient to satisfy the MOE requirements and soil regulations. As a result, additional sampling had to be completed to determine the level of soil contamination at the Project because Wood had conducted limited borehole tests to properly represent the site and the chemical

characterization of the soil between the boreholes, as well as the number of samples required by the *Excess Soil Regulations*, which is based on the volume of export from the Project. Additionally, since the Wood Report did identify one area with contamination, additional samples had to be completed to verify that no other areas had contaminated soil. Wood was to conduct the additional testing and despite numerous inquiries made by Astro with Wood, LaPue and Buttcon on this, LaPue refused to have Wood proceed with additional sampling and excluded Astro from further communications with Wood, after multiple communications were sent by Astro to Wood to schedule the test pits required for the additional sampling.

17. Astro states that prior to submitting its updated Quotation dated June 15, 2021, it reached out to Queensway Chippawa Properties Inc. (“QCP”) and ultimately reserved space at QCP’s site for Astro to dispose of all excavated material from the Project, based on the materials meeting the MOE’s Table 1 RPI criteria, which is also what Astro based its Quotation and pricing on.

18. In order for Astro to proceed with disposal of the material offsite, EXP was retained by QCP to conduct a soil sampling program to characterize soil material at the Project, in order for EXP to approve the excavated material, since the Wood report provided insufficient sampling to comply with the MOE requirements. EXP conducted testing and prepared a report on July 16, 2021 (the “EXP Report”). The EXP Report concluded, in part as follows:

This soil is not to be used as “excess soil” in the context of reuse and instead, be excavated and disposed of or remediation and/or risk assessment may be warranted in these areas. It is noted that exceedance of excess soil standards in TP10 were limited to sodium adsorption ratio and as such opportunities for reuse may exist for soils in these areas depending on the receiving Site selected.

EXP recommends that the upper soils at the Site (to a depth of approximately 1.0 m bgs) be excavated in the areas of TP2, TP4, TP5, TP6, TP8, and TP9. At TP4, the impacts extend to approximately 4.0 m bgs in the vicinity of and are delineated in each direction. The impacted soil should be removed from the Site and disposed of at any receiving site that is accepting of soils with impacts. The removal of the impacted soils should occur prior to the excavation of approximately 90,000 m³ of soil as part of the future development of the Site.

19. The EXP Report confirmed that there was impacted soil that exceeded Table 1 and the impacted soil was to be disposed of at any receiving site that accepted soils with impacts, prior to accepting the material.

20. Astro specifically denies the allegations contained in paragraph 14 of the Defence and Counterclaim and states that the Work and the Extra were performed in accordance with the LOI and the Scope of Work Checklist, in a good and workmanlike manner, in accordance with Buttcon's and/or La Pue's instructions and directions, and that Astro did not have any defective work to correct, as alleged.

21. With respect to the allegations at paragraphs 15 to 21 of the Defence and Counterclaim relating to the Tender Package, Astro responds as follows:

- (a) subsequent to the July 14, 2020 Tender Package being issued, there were 8 post-Tender addendums issued. The Tender closing was August 6, 2020;
- (b) on August 6, 2020, being the date of the Tender closing, Buttcon reached out directly to Astro to ask if Astro could submit pricing to Buttcon for the work, since La Pue had sourced Astro directly to provide pricing on June 11, 2020, with very limited drawings and information. Therefore, regardless of the Tender Package, Astro did not submit a bid in response to the Tender Package but rather was sourced directly by La Pue to price out the work required for the Project;
- (c) given that Astro did not submit a bid in response to the Tender, it would not have had an opportunity to attend the site on July 21, 2020 for a site visit, as alleged at paragraph 16;

- (d) Astro denies the allegations in paragraph 17 and states that even if the existing concrete foundations were partially visible as alleged, which is specifically denied, Astro states the disposal of this material was an extra and not within Astro's scope of work; and
- (e) Other than the Post Tender Addendum, none of the requirements provided to bidders under the Tender Package applied to Astro, since Astro did not participate in the bidding process and was directly approached by La Pue to price out the work.

22. Astro specifically denies the allegations made in paragraph 19 of the Defence and Counterclaim and states that the Terraprobe Report did not determine what was included in Astro's scope of work or contract, and that the Work was based on the Quotation, which was accepted by Buttcon and La Pue, resulting in Buttcon issuing the LOI and preparing the Scope of Work Checklist. Furthermore, there is no mention of buried debris and waste in the Terraprobe Report, or any indication of any buried foundations, debris and waste in any of the borehole logs contained in the Terraprobe Report.

23. Further, Astro states that it did not charge for disposal of asphalt pavement as this work was not completed. In fact, it is industry practice to dispose and remove asphalt after the drilling work is complete, as it provides the best surface for staging and drilling. Asphalt was left in as required until shoring work completed, and Astro did not bill for this item.

24. Astro states that in its updated Quotation dated June 15, 2021 to Buttcon, since the Project was put out to re-tender on August 25, 2021, with that re-tender, closing on September

15, 2021, Astro set out what work was included and excluded and, specifically, the removal and disposal of construction debris was not included in the Work.

25. With respect to paragraph 24 of the Defence and Counterclaim, Astro states that the scope of work checklist dated September 24, 2021 (the “Scope of Work Checklist”) and the Quotation govern and set out what was in Astro’s scope of work. Astro further states that the Scope of Work Checklist set out the scope of work as agreed between Buttcon and Astro at a meeting which took place on September 24, 2021 (the “September 24th Meeting”), and emailed to Astro by Buttcon on September 27, 2021, subsequent to the meeting.

26. Further with respect to paragraph 24 of the Defence and Counterclaim, Astro responds as follows:

- (a) the Scope of Work Checklist did not include the removal of buried debris, waste, or foundations, and there was never a request from Buttcon to provide pricing for this work when Astro was asked to provide pricing for the Project;
- (b) at Item #5 of the Scope of Work Checklist, Astro acknowledges that site removals were to be performed as shown and as specified;
- (c) at Item #16 of the Scope of Work Checklist, Astro states that what is noted at paragraph 24 does not completely reflect what was set out at Item #16 of the Scope of Work Checklist. Item #16 provided that Astro was to dispose of surplus material offsite for materials that meet Table 1. Further, the top 1 metre was to be priced at a premium and that Astro was to reach out to Wood to do additional test pits to determine the soil conditions; and

(d) at Item #22 of the Scope of Work Checklist, Astro acknowledges this item.

27. With respect to paragraphs 22 to 32 of the Defence and Counterclaim regarding Astro's Excavation Quote, Astro responds as follows:

- (a) Astro admits that it submitted the Quotation to Buttcon on June 15, 2021, for the excavation lump sum price of \$2,275,000.00, but that Buttcon and La Pue, or either of them, requested additional items to be added, increasing the Quotation to \$2,653,900.00 plus HST (the "Original Price");
- (b) Astro did not provide a scope of work checklist included in the Tender Package, since it did not formally participate in the bidding process and was asked by Buttcon to submit its pricing after the Tender process;
- (c) Astro states that item #16 provided a condition that the material must meet Table 1;
- (d) Astro denies paragraph 28 as the allegations made are inaccurate as Astro did not confirm the pricing for all the items listed at paragraph 27 as alleged. Astro responded to Buttcon's June 30, 2021 communication and provided clarification on some of the items to Buttcon and indicated exclusions;
- (e) with respect to paragraph 29, Astro maintains that its price in the Scope of Work Checklist only included removal of Table 1 material and Astro was not responsible for anything exceeding Table 1;

- (f) in response to paragraph 31, Astro states that all additional amounts for removal and disposal of material exceeding Table 1 was based on unit rates, and Astro provided a volume budget to Buttcon for the lead impacted material exceeding Table 1 in the top meter only, which was the basis for the allowance that was built into the Subcontract for this item. However, the additional sampling completed on July 16, 2021, confirmed a much larger extent of contaminated soil, including substantial petroleum hydrocarbon impacted materials and other various contaminants buried up to 2 meters deep; and
- (g) with respect to paragraph 32, Astro states after additional soil sampling was completed by EXP that there was lead contamination that exceeded Table 1 as there was petroleum hydrocarbon contamination and other various heavy metal contamination found in soil samples taken by EXP in various locations, deeper than the upper 1 meter.

28. With respect to paragraph 33 of the Defence and Counterclaim, Astro admits that on or about September 27, 2021, Buttcon requested that Astro reduce the Original Price to \$2,500,000.00 (the “Reduced Price”), after the September 24th Meeting whereby Buttcon and Astro agreed on the Scope of Work Checklist.

29. Astro admits that it agreed to the Reduced Price as stated in paragraphs 34 and 35 of the Defence and Counterclaim but denies that the Reduced Price was to complete the full scope of the work required in the Tender Package, but rather was for the agreed work as detailed in the

Scope of Work Checklist, the Quotation and the Post Tender Addendum. Further, the Reduced Price was exclusive of any premiums for the removal of contaminated soil that exceeded Table 1.

30. With respect to paragraphs 36 to 38 of the Defence and Counterclaim, Astro responds as follows:

- (a) Astro has no knowledge of the allegations contained in paragraph 36;
- (b) Astro admits that on or about October 14, 2021 it received the LOI in accordance with the agreement reached with Buttcon and the scope of work agreed to in the Scope of Work Checklist and Quotation. Astro signed the LOI on October 15, 2021. The LOI specifically provided as follows:

A formal contract in the amount of \$2,500,000 + HST is being prepared and will be issued shortly. Optional extra to proceed only by revision to this contract:

- Unit rate premium of \$7.50/tonne to remove and dispose off-site material containing lead contaminants greater than 120 µg/g pending additional sampling by Wood.

- (c) despite the LOI requiring Buttcon to deliver a formal contract “shortly”, despite Astro continuously demanding a formal contract in order to continue to proceed with the Work, and despite Astro proceeding with the Work on the understanding that Buttcon would deliver a formal contract forthwith, no formal contract was ever received and, instead Buttcon wrongfully terminated Astro.

31. With respect to the allegations at paragraphs 39 to 45 of the Defence and Counterclaim with respect to Astro’s Early Works Mobilization, Astro responds as follows:

- (a) on October 28, 2021, Buttcon sent an email to Astro asking Astro to provide a price to do early works which would be billed separately to La Pue and will be a credit to the Contract Price. Buttcon requested from Astro a schedule of values for the Early Works;
- (b) on November 3, 2021, Astro sent an email to Buttcon providing a price of \$150,000.00 plus HST for Early Works, broken down as follows:
 - (i) mobilize, strip topsoil and haul topsoil offsite (300 mm deep) for a price of \$90,000.00; and
 - (ii) supply and install drill platform in the amount of \$60,000.00.(the “Early Works Price”).
- (c) La Pue wanted the Early Works completed prior to January 2022 when it expected the shoring permit to be issued;
- (d) Astro performed the Early Works, which included stripping and removing topsoil offsite and supplying and installing a drill platform (the “Platform”) for the shoring contractor to start drilling in January 2022, in accordance with the Temporary Road and Stone Lot Plan from the Site Logistics Plan;
- (e) La Pue directed Astro to construct the Platform in November 2021, prior to the shoring permit being obtained, which La Pue anticipated receiving in January 2022. However, the permit was delayed and the drilling did not commence in January 2022. In turn, Astro had to return to the Project to do maintenance work

to re-engineer the Platform due to the spring thaw, inclement weather, and change of seasons, which destroyed the Platform installed by Astro in December 2021 and, in in turn, delayed the start of the Project.

32. As directed by La Pue, Astro proceeded to do the Early Works (i.e. stripping the topsoil and installing the Platform, which was a 30 ft wide and 300 ml thick platform as specified in the site logistic plan provided to Astro by Buttcon in the Post Tender Addendum (the “Buttcon Site Logistic Plan”). However, the permit was delayed and was not received by La Pue until April 2022. As such, the delay in La Pue obtaining the shoring permit delayed the start of the Project by approximately three months.

33. Further, as a result of the delayed start to the Project, the Platform that was constructed by Astro in December 2021 deteriorated due to the Platform sitting through the winter cold and spring thaw. As a result of the Platform sitting through the winter season and then the spring thaw, additional maintenance was required to re-instate the Platform. Astro specifically denies that this was a deficiency in its work.

34. Astro states that whenever there are changing soil conditions caused by change in weather the soil engineer has to come to the Project to certify and re-inspect the Platform on a weekly basis. The permit delays caused the platform deterioration because of seasonal changes and those delays were not Astro delays. The remedial work to the Platform had nothing to do with any defective workmanship but was rather the direct result of the permit delay and La Pue prematurely requesting that Astro install the Platform in December 2021 before actually receiving the shoring permit.

35. With respect to paragraph 46 of the Defence and Counterclaim, Astro admits that the Early Work Price was to be invoiced directly to La Pue, as directed by Buttcon and La Pue, and thereby reducing the Contract Price by \$150,000.00 plus HST. Astro admits that it was paid directly by La Pue for the Early Works it completed, as detailed in Astro's Invoice No. 1287.

36. With respect to paragraph 47 of the Defence and Counterclaim, Astro states that the balance of the scope of work is the balance of the work, excluding the Early Works, as set out in the Scope of Work Checklist.

37. Astro specifically denies the allegations contained in paragraph 48 and states that all work was performed in a good and workmanlike manner. Further, Astro is one of the top three condominium excavation companies in Ontario and prides itself on meeting exceptional high standards of work, in accordance with all plans and specifications and in accordance with all MOE regulations, including but not limited to the *Excess Soil Regulation*.

38. With respect to paragraphs 49 to 66 of the Defence and Counterclaim, Astro denies the allegations that there were deficiencies in the Work and that it delayed the Project as alleged and puts Buttcon and La Pue to the strict proof thereof.

39. Further, Astro responds as follows:

- (a) the Project was delayed as a result of the delay in La Pue receiving the issued shoring permit from January 2022 to April 2022, thereby delaying the start of the Project;

- (b) the Project was also further delayed as a result of the operator's strike, which was beyond the control of Astro;
 - (c) with respect to paragraph 49, RWH directed that the Platform width and dimensions be expanded from 30 ft, as provided in the Buttcon Site Logistic Plan, to 40 ft, and requested the additional laydown areas and additional temporary roads. The Buttcon Site Logistic Plan clearly specifies a 30 ft wide shoring platform and one mud matt at gate number 1. Therefore, the RWH requirements were not deficiencies in Astro's work, but rather, additional requirements beyond Astro's scope of work.
40. With respect to paragraph 50 of the Defence and Counterclaim, Astro states as follows:
- (a) with respect to paragraph 50(a), Astro installed the Platform as per the Buttcon requirements as set out in the Buttcon Site Logistic Plan and RWH directed a larger 40 ft wide shoring platform, additional laydown areas and additional temporary roads, rather than what was specified by Buttcon in the Buttcon Site Logistics Plan;
 - (b) the items listed in paragraph 50(b) were not in Astro's scope of work and Astro provided extra pricing on a time and material basis to Buttcon; and
 - (c) the allegations in paragraph 50(c) are not accurate the mud matt and any material required for same were installed by Astro.

41. With respect to the allegations in paragraphs 51 and 52 of the Defence and Counterclaim, Astro denies there were any deficiencies in its work that required remediation as alleged, and responds to each item as follows:

- (a) Astro provided additional pricing for the extra to increase the width for the Platform;
- (b) Astro provided pricing on a time and material basis since this was not part of its scope of work as confirmed at the site meeting; and
- (c) the rip-rap stone for the mud matt was installed.

42. With respect to the allegations at paragraph 53 of the Defence and Counterclaim, Astro confirmed it would remove the buried existing concrete foundations and underground structures on a time and material price as this was not part of the Subcontract price.

43. With respect to the allegations at paragraph 55, Astro states that excavation work would not proceed before the new Platform had to be installed and before the shoring vertical drilling. Astro did mobilize to complete the maintenance of the Early Works platform that was destroyed as a result of the delayed start, as well as the additional platform work, laydown areas and temporary roads requested by RWH, to prepare the site for vertical drilling. Pursuant to the construction schedule provided to Astro by Buttcon, Astro was not scheduled to start excavation until 15 days after the shoring contractor started drilling at the Project. However, Astro, in good faith, attempted to accelerate the schedule and began excavation and trucking off site, prior to the 15 day-period after the shoring contractor started drilling.

44. Astro denies the allegations at paragraph 58 and states that any issues identified by RWH were due to soft spots caused by ground water, site conditions and inclement weather that required more than a foot of granular, water had to be pumped out, trenches were dug out to divert groundwater and this is not unusual for there to be soft spots which required digging out and adding stone. This is caused by groundwater conditions, site conditions and inclement weather. Buttcon as part of the scope of work only identified 1 ft of additional stone to be added on top of the platform and all the additional stone that was required was an extra to the Subcontract and was completed by Astro.

45. Astro denies the allegations at paragraphs 59 to 66 of the Defence and Counterclaim and states as follows:

- (a) as already noted, the disposal of foundation and/or structure debris was not within Astro's scope of work, and it was agreed that Astro would be paid on a time and material basis;
- (b) Buttcon refused to sign any work orders or progress draws;
- (c) with respect to paragraphs 62 and 63, Astro states that the rates provided were discounted rates for work outside its scope of work for which Buttcon arbitrarily refused to sign completion slips and work orders despite the work being completed and despite acknowledging it was outside of Astro's scope of work;
- (d) Astro states that it could not proceed with the work as Buttcon was refusing to sign completion slips and work orders for work completed, and extras that were

acknowledged, and Buttcon failed to deliver the Subcontract for execution in accordance with the LOI.

- (e) with respect to paragraph 66, Astro denies the allegations therein and states that
 - (i) it never applied for payment for disposal of asphalt as this work was to be completed after the shoring drilling work is completed and in light of the Termination, Astro was not afforded an opportunity to complete this work; and
 - (ii) Astro was not required to supply a mud matt at all three entrances as alleged and states that the Buttcon site logistic plan only required Astro to install one mud matt at gate number 1, which was installed.

46. Astro states that it did not delay the Project as alleged and states that any delays were caused by Buttcon and/or La Pue. In addition to what has already noted, but not limited to, the following are particulars of some of the delays caused by Buttcon and/or La Pue:

- (a) Buttcon caused delays by its refusal to deliver a formal subcontract in accordance with the LOI, but Astro, in good faith, proceeded with the Work at Buttcon's request in accordance with the LOI, Quotation, and the Scope of Work Checklist;
- (b) Buttcon refused to sign off on work orders and completion slips thereby delaying the Work;
- (c) La Pue interfered with the Work and with Astro's employees at the Project site;

- (d) the shoring permit was not received by La Pue in January 2022 but rather in April 2022, which in turn caused delays to Astro's work and resulted in remediation work to be required to the Platform that La Pue directed Astro to construct as part of the Early Works prematurely in November 2021;
- (e) Buttcon refused to provide a Change Order to Astro for removal of buried foundations, brick, block and garbage, which were not included in Astro's scope of Work under the LOI or the Scope of Work Checklist;
- (f) the Project schedule was already delayed from when Astro provided the Quotation, resulting in increased costs to Astro from when the Quotation was prepared to when the Work was performed;
- (g) Astro spent additional time sorting garbage and buried foundations within the excavation area;
- (h) the drilling of Perimeter Caissons was scheduled to begin on September 29, 2021, with excavation scheduled to start 15 days later, being October 14, 2021. However, the shoring contractor did not mobilize at the Project until June 14 or 15, 2022 and did not start drilling the Perimeter Caissons until June 15 or 16, 2022 and were then shut down for a few days waiting on design changes.

47. Astro denies the allegations contained in paragraphs 67 to 75 of the Defence and Counterclaim and states that at all materials times, Astro continued to communicate with Buttcon and requested direction, but Buttcon refused to address the outstanding issues, including issuing a formal subcontract.

48. Astro states that on July 5, 2022, Buttcon and Astro had a meeting for the purpose of finding an amicable resolution to Astro's concerns and to move forward with the Project (the "July 5th Meeting").

49. It was understood and agreed at the July 5th Meeting that:

- (a) since Buttcon raised issues with Astro's invoice and the percentage of completion for some of the items noted on Progress Draw No. 2., Astro agreed to provide the backup documentation in support of same, including the weight tickets and agreed to have Astro's surveyor complete a topographical survey of the site to take measurements to verify the quantities and percentage of completion noted for the bulk excavation line item on Progress Draw No. 2.;
- (b) Buttcon would provide the proposed formal subcontract in accordance with the LOI and an update on timing of approval of Astro's invoices and payment of same; and
- (c) Astro made it clear to Buttcon what it required to re-mobilize and continue with the Work.

50. At no point in time during the July 5th Meeting did Buttcon impose a deadline on the time frame within which the documentation/information was to be provided by Astro to Buttcon. Further, Astro proceeded in good faith and compiled the documentation requested and sent out Astro's surveyor to complete a topographical survey. Buttcon did not have the same intention to proceed in good faith since approximately 24 hours after the July 5th Meeting, Buttcon wrongfully terminated Astro.

51. Further to the preceding paragraph, Astro states that even though it went out of its way to complete and submit all the items requested by Buttcon at the July 5th Meeting, it is clear that Buttcon misrepresented its intentions during the July 5th meeting and was not acting in good faith with a view to move forward and resolving the issues so that the Work could be completed.

52. With respect to paragraphs 70 to 75 of the Defence and Counterclaim, Astro states there was no justification for the Termination as Buttcon and Le Pue were acting in bad faith.

53. Astro further states that at no material time did it refuse to perform the Work. To the contrary, Astro continuously requested that a formal subcontract be provided for execution, that Buttcon sign off on its work orders and completion slips, and that Buttcon and La Pue address the Work that was outside of Astro's scope of work. Furthermore, Astro stated multiple times during the July 5th Meeting, that it was ready, willing and able to move forward and complete the Work.

54. With respect to paragraphs 76 to 81 of the Defence and Counterclaim, Astro vigorously denies the allegations that it failed to follow protocols set out in the Scope of Work Checklist. In fact, Astro followed and complied with MOE requirements as provided in the *Excess Soil Regulations*. In fact, it is Buttcon and /or La Pue who did not follow protocols. Astro states that La Pue wanted to find illegal ways to dispose of the contaminated soil and not comply with regulatory requirements, in an effort to save costs. When Astro refused, La Pue refused to pay the necessary premiums for the Extra Amount for the Disposal of the Contaminated Soil.

55. With respect to the allegations at paragraph 76 to 80 of the Defence and Counterclaim, Astro denies the allegations there in and states as follows:

- (a) as already stated, Astro's scope of work only included removals for Table 1 soil material and everything outside of Table 1 was an extra;
- (b) with respect to paragraph 78, Astro confirms it did contact Wood to provide additional testing, but La Pue was not authorizing Wood to proceed with the additional testing after Astro sent multiple emails to try and schedule the soil sampling; and
- (c) Astro denies the allegations at paragraph 79 and states at all material times this information was communicated and within the knowledge of Buttcon.

56. With respect to paragraph 81 of the Defence and Counterclaim, Astro denies the allegations therein and states that the Contaminated Soil was in fact disposed of at Walkers and Astro had to pay a premium to dispose the Contaminated Soil.

57. With respect to paragraphs 82 to 88 of the Defence and Counterclaim, Astro responds as follows:

- (a) at no material time did Astro wrongfully enter and trespass at the Project site, as alleged;
- (b) La Pue had full knowledge that EXP would be attending at the Project on June 22, 2021 to take soil samples. La Pue discussed this with Astro on multiple occasions and authorized Astro to allow EXP on site to complete the required test pits and additional soil sampling to satisfy the MOE requirements in order to receive approval at the receiving sites;

- (c) the allegations of Buttcon and La Pue are contradictory as they allege that Astro had an obligation to perform additional borehole testing, or testing on site, and then allege that Astro was trespassing;
- (d) there were multiple communications between the parties which support the fact that La Pue and Buttcon were fully aware of the Work and additional testing being done by Astro and EXP at the Project site;
- (e) Buttcon was fully aware of the impacted material on the top 1 to 2 meters of the excavation site and Buttcon's site superintendent had communications with EXP directly regarding the handling of the impacted materials;
- (f) on June 3, 2022, Buttcon wrote to Matt LiVecchi of EXP and requested he attend the Project site on June 8, 2022 to take samples and complete a soil chemical analysis. Mr. LiVecchi went on to note on June 3, 2022, as follows:

Gentlemen, this is a comparatively massive amount of soil to be removed and will require a major soils characterization and sampling program. Based on the testing requirements of O. Reg 406/19 for the movement of excess soil, you will likely need over 100 samples to meet the minimum testing frequency. We would be talking about a test pitting or borehole program to retrieve samples from across the property.

This unfortunately is not as simple as meeting Wednesday and grabbing a couple of samples. The cost associated with testing for this much soil is also quite considerable. I recommend getting a cost quote for the work and sampling from an Environmental QP....

- (g) La Pue and/or Buttcon refused to proceed as proposed by EXP, La Pue was trying to hide the contamination, and Buttcon continued to send notices to Astro to truck

and try to force Astro to deal with the contaminations, buried construction debris, buried waste, and buried foundations, without signing off on same.

58. With respect to the allegations at paragraph 87, Astro denies that it has failed to provide particulars as alleged. Prior to the Termination, it was agreed that Astro would prepare a package of documentation to submit to Buttcon and La Pue, but for no valid reason, Astro was terminated. As of the date of this pleading, Astro has provided all supporting documentation to support the value of the Work performed at the Project.

59. With respect to the allegations at paragraphs 82 to 88 of the Defence and Counterclaim, Astro confirms it sent the documents set out at paragraph 82 as well as Progress Invoice No. 1428. Buttcon refused to sign off on work that was completed by Astro. Astro denies there was any trespassing as alleged as Astro and EXP were authorized to be on site and conduct the sampling.

60. With respect to paragraphs 89 to 99 of the Defence and Counterclaim, Astro maintains that all amounts it invoiced are legitimate and for the actual value of the Work performed at the Project, in accordance with the LOI and the Scope of Work Checklist, and there is no basis for Buttcon or La Pue to dispute the amounts that are properly due and owing.

61. Buttcon and La Pue have fabricated allegations that are without merit and without justification and failed to afford Astro an opportunity to complete the Work and thereby causing damages to Astro, over and above the amounts owing for the Work and the Extra.

62. Further, Buttcon has breached its contractual duty of good faith and the duty of honest performance which has in turn resulted in damages to Astro.

63. With respect to paragraphs 92 to 95 of the Defence and Counterclaim, Astro states that it preserved and perfected the Lien in a timely manner, within the time limits prescribed by the *Act*, the Lien is valid, and the Lien amount is not excessive as alleged as it is based on the balance owing by Buttcon to Astro for the value of the Work performed by Astro.

64. With respect to paragraphs 96 and 99 of the Defence and Counterclaim, Astro denies that Buttcon and La Pue have a right to set off amounts for alleged deficiencies and delays against any amounts due to Astro for the Work performed at the Project and that Buttcon and La Pue have failed to provide particulars of their alleged costs and damages.

DEFENCE TO COUNTERCLAIM

65. Astro denies each and every allegation contained in the Counterclaim of Buttcon and La Pue.

66. Astro repeats and relies upon the allegations contained in the Statement of Claim and Reply.

67. Astro denies that Buttcon and La Pue have suffered damages in the amounts alleged in the Counterclaim, or any amount whatsoever, and puts Buttcon and La Pue to the strict proof thereof.

68. Astro states that any damages allegedly suffered by La Pue and Buttcon, which Astro explicitly denies, were a direct result of Astro's wrongful termination by Buttcon and La Pue, following the July 5th Meeting, which was clearly done in bad faith.

69. Astro denies that it abandoned the Project and refused to haul materials from the Project,

as alleged, and states that it was unable to complete the Work due to the Termination and the refusal of Buttcon and La Pue to address various issues, including the Soil Conditions.

70. Astro specifically denies that the Work was negligent and deficient as alleged, and that if La Pue is required to expend large sums of money, which is due to its own negligence and/or the negligence of Buttcon, and not Astro.

71. Astro states that if it is liable to Buttcon and La Pue in any amount, which is not admitted but denied, Astro states that such costs were entirely caused by Buttcon and/or La Pue. Further, any alleged additional costs were a result of the Buttcon and La Pue refusing to address the Soil Conditions, and Buttcon failing to issue a formal subcontract, which caused significant delays to the Project.

72. Astro states that any costs as alleged to have been incurred by Buttcon and/or La Pue are grossly in excess of any actual costs sustained and are too remote and are not recoverable at law.

73. In the alternative, the damages and costs claimed by Buttcon and/or La Pue are remote and excessive and not within the contemplation of the parties.

74. Astro states that if Buttcon and/or La Pue have suffered any damages, which is explicitly denied, Astro states that Buttcon and/or La Pue have failed to mitigate its damages.

75. Astro denies the validity of any claim for costs and damages being asserted by Buttcon and/or La Pue in the Defence and Counterclaim and puts Buttcon and/or La Pue to the strict proof that they have suffered additional costs as alleged because of Astro. The alleged damages are without merit, unsubstantiated and merely an attempt by Buttcon and/or La Pue to avoid

making payments to Astro for amounts that are due and owing under to Astro for the Work performed at the Project.

76. Astro asks that the Counterclaim against it be dismissed with costs on a substantial indemnity basis.

Date: November 29, 2022

PALLET VALO LLP

Lawyers
77 City Centre Drive, West Tower
Suite 300
Mississauga, Ontario L5B 1M5

MARIA RUBERTO (LSO # 51148D)

mruberto@pallettvalo.com

Tel: 289.805.3441

Fax: 905.273.3300

Lawyers for the Plaintiff

TO: **KEYSER MASON BALL LLP**

3 Robert Speck Parkway
Suite 900
Mississauga, Ontario
L4Z 2G5

MELISSA WRIGHT (LSO #61742U)

mwright@kmblaw.com

Tel: (905) 276-0404, Ext.404

Fax: 905.276.2298

Lawyers for the Defendants,
La Pue International Inc., Buttcon Limited
and The Sovereign General Insurance Company

AND TO: **MARSHALLZEHR GROUP INC.**
412 Albert Street, Suite 100
Waterloo, Ontario
N2L 3V3

Defendant

ASTRO EXCAVATING INC.
Plaintiff

-and- BUTTCON LIMITED,, et al.
Defendants

Court File No. CV-22-00060943-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

IN THE MATTER OF the *Construction Act*, R.S.O. 1990, c. C.30

PROCEEDING COMMENCED AT
ST. CATHARINES

REPLY AND DEFENCE TO COUNTERCLAIM

PALLET VALO LLP

Lawyers
77 City Centre Drive, West Tower
Suite 300
Mississauga, Ontario
L5B 1M5

MARIA RUBERTO (LSO # 51148D)
mruberto@pallettvalo.com
Tel: 289.805.3441

Lawyers for the Plaintiff

***THIS IS EXHIBIT "Z" TO THE
AFFIDAVIT OF CECIL HAYES
SWORN BEFORE ME THIS 14TH
DAY OF JANUARY, 2025***

A handwritten signature in black ink, appearing to be the initials 'DJ' with a stylized flourish.

A Commissioner Etc.

Court File No. CV-22-00060943-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

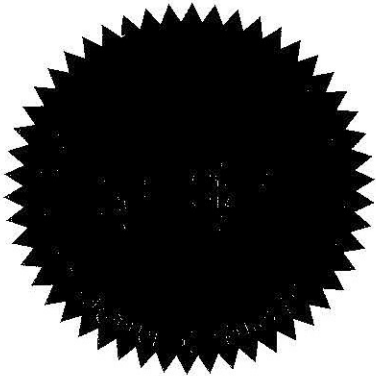
IN THE MATTER OF the *Construction Act*, R.S.O. 1990, C. c.30

THE HONOURABLE JUSTICE

M. J. DONOHUE

)
)
)

TUESDAY, THE 29th
DAY OF NOVEMBER, 2022



ASTRO EXCAVATING INC.

Plaintiff

-and-

BUTTCON LIMITED, LA PUE INTERNATIONAL INC.,
THE SOVEREIGN GENERAL INSURANCE COMPANY and
MARSHALLZEHR GROUP INC.

Defendants

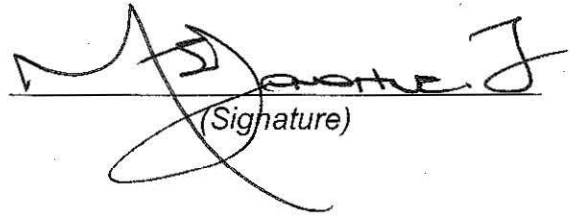
ORDER

THIS MOTION, made by the Defendants, La Pue International Inc. ("La Pue") and Buttcon Limited ("**Buttcon**") pursuant to section 44(2) of the *Construction Act*, R.S.O. 1990, c. C. 30, as amended, for an order vacating the registration of the claim for lien of the Plaintiff and the Certificate of Action of the Plaintiff, upon posting security with the Court by way of Lien Bond, was read this day at 59 Church Street, St. Catharines, Ontario.

ON READING the Affidavit of Shahista Afroze sworn November 25, 202, filed and on reading the submissions of the lawyers for Buttcon and La Pue having obtained security in the form of a lien bond, to be held by the Accountant of the Ontario Superior Court of Justice (the "**Accountant**") in the amount of \$618,567.44, being the amount of \$494,853.95 together with costs of \$123,713.49 as security for costs, by way of lien bond, dated November 18, 2022, filed as Bond No. 100224-22 (the "**Security**").

1. **THIS COURT ORDERS** that the Security to be posted with the Accountant by Buttcon and La Pue to vacate the registration of the claim for lien of the Plaintiff described in paragraph 3 herein and to vacate the registration of the Certificate of Action of the Plaintiff described in paragraph 4 herein, in the amount of \$618,567.44, which is comprised of Astro's claim for lien of \$494,853.95 together the amount of \$123,713.49 as security for costs
2. **THIS COURT ORDERS** that the Accountant shall accept a copy of the fiat as signed by the Court, such that the originally signed fiat shall not be required.
3. **THIS COURT ORDERS** that upon the posting of the approved Security, the claim for lien of the Plaintiff registered on August 15, 2022, as Instrument No. SN738509, in the Land Registry Office for the Land Titles Division of Niagara South (No. 59) at St. Catharines, in the amount of \$494,853.95, against the lands and premises referred to in Schedule "A" annexed hereto be vacated.
4. **THIS COURT ORDERS** that upon the posing of the approved Security, the Certificate of Action of the Plaintiff dated August 15, 2022 and registered on August 15, 2022 as Instrument No. SN734331 in the Land Registry Office for the Land Titles Division of Niagara South (No. 59) at St. Catharines, against the lands and premises referred to in Schedule "A" annexed hereto be vacated.

5. **THIS COURT FURTHER ORDERS** that a copy of this Order, together with a copy of the Accountant's receipt from posting the Security, be served on the solicitors for the Plaintiff forthwith after entry.


(Signature)

Schedule "A": Property

Municipal Address:	5510-5526 and 5536 Ferry Street, 5943 Stanley Avenue and 5916 Allendale Avenue, Niagara Falls, Ontario.
Legal Description:	FIRSTLY: LOTS 46, 51, 52, 61, 62, 63, 64 & 65, PLAN 273 & PARTS 43, 44, 45, 47, 48, 49 & 50, PLAN 273, VILLAGE OF NIAGARA FALLS, PARTS 1 & 3 PLAN 59R17206; SECONDLY: SURFACE RIGHTS ONLY (AS IN RO718049), PART LOTS 47, 48, 49 & 50 PLAN 273, VILLAGE OF NIAGARA FALLS, PART 2 PLAN 59R17206; CITY OF NIAGARA FALLS
PIN:	64349-0258 (LT)
Registry Office:	Land Registry Office #59

ASTRO EXCAVATING INC.
Plaintiff

-and- BUTTCON LIMITED et al.
Defendants

Court File No. CV-22-00060943-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

IN THE MATTER OF the Construction Act, R.S.O. 1990, c.
C.30

PROCEEDING COMMENCED AT
ST. CATHARINES

**ORDER
(MOTION TO VACATE LIEN)**

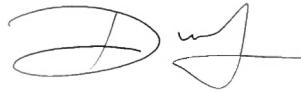
KEYSER MASON BALL, LLP
Three Robert Speck Parkway
Suite 900
Mississauga ON L4Z 2G5

Melissa Wright (LSO# 61742U)
Telephone No.: (905) 276-0404

Lawyers for the Defendants
Buttcon Limited and La Pue International Inc.

RCP-F 4C (September 1, 2020)

***THIS IS EXHIBIT "AA" TO THE
AFFIDAVIT OF CECIL HAYES
SWORN BEFORE ME THIS 14TH
DAY OF JANUARY, 2025***

A handwritten signature in black ink, appearing to be the initials 'DJ' with a stylized flourish.

A Commissioner Etc.

CCDC 5B

Construction Management Contract – for Services and Construction

2 0 1 0

The Stanley District Mixed Use Development (Underground Garage, Building A, Building B,
and Building C)

Apply a CCDC 5B copyright seal here. The application of the seal demonstrates the intention of the party proposing the use of this document that it be an accurate and unamended form of CCDC 5B – 2010 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

CANADIAN CONSTRUCTION DOCUMENTS COMMITTEE
CANADIAN CONSTRUCTION DOCUMENTS COMMITTEE
CANADIAN CONSTRUCTION DOCUMENTS COMMITTEE

TABLE OF CONTENTS

AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER – FOR SERVICES AND CONSTRUCTION

A-1	The Services and the Work
A-2	Agreements and Amendments
A-3	Description of the Project
A-4	Contract Documents
A-5	Construction Manager's Fee
A-6	Reimbursable Expenses for the Services
A-7	Cost of the Work
A-8	Options
A-9	Payment
A-10	Receipt of and Addresses for Notices in Writing
A-11	Language of the Contract
A-12	Succession

SCHEDULES TO THE AGREEMENT

A1	Services and Compensation
A2	Reimbursable Expenses Applicable to Schedule A1
B	Time-based Rates for Personnel Employed by the Construction Manager

DEFINITIONS

1.	Class A Construction Cost Estimate
2.	Class B Construction Cost Estimate
3.	Class C Construction Cost Estimate
4.	Class D Construction Cost Estimate
5.	Change Directive
6.	Change Order
7.	Construction Cost
8.	Construction Cost Estimate
9.	Construction Documents
10.	Construction Equipment
11.	Construction Manager
12.	Construction Manager's Fee
13.	Consultant
14.	Contract
15.	Contract Documents
16.	Contract Time
17.	Cost of the Work
18.	Drawings
19.	Guaranteed Maximum Price
20.	Notice in Writing
21.	Owner
22.	Place of the Work
23.	Price of the Services
24.	Price of the Work
25.	Product
26.	Project
27.	Services
28.	Shop Drawings
29.	Specifications
30.	Subcontractor
31.	Substantial Performance of the Work
32.	Supplemental Instruction
33.	Supplier
34.	Temporary Work
35.	Value Added Taxes
36.	Work
37.	Working Day

GENERAL CONDITIONS

PART 1 GENERAL PROVISIONS

GC 1.1	Contract Documents
GC 1.2	Law of the Contract
GC 1.3	Rights and Remedies
GC 1.4	Assignment
GC 1.5	Performance of the Services
GC 1.6	Project Representatives

PART 2 ADMINISTRATION OF THE CONTRACT

GC 2.1	Owner's Responsibilities
GC 2.2	Authority of the Consultant
GC 2.3	Consultant's Responsibilities
GC 2.4	Review and Inspection of the Work
GC 2.5	Defective Work

PART 3 PERFORMANCE OF THE SERVICES AND EXECUTION OF THE WORK

GC 3.1	Control of the Work
GC 3.2	Construction by Owner or Other Contractors
GC 3.3	Temporary Work
GC 3.4	Review of Drawings, Specifications and Material and Finish Schedules
GC 3.5	Construction Schedule
GC 3.6	Supervision
GC 3.7	Subcontractors and Suppliers
GC 3.8	Labour and Products
GC 3.9	Documents at the Site
GC 3.10	Shop Drawings
GC 3.11	Use of the Work
GC 3.12	Cutting and Remedial Work
GC 3.13	Cleanup

PART 4 ALLOWANCE

GC 4.1	Cash Allowances
--------	-----------------

PART 5 PAYMENT

GC 5.1	Financing Information Required of the Owner
GC 5.2	Accounting and Audit
GC 5.3	Progress Payment for the Services
GC 5.4	Progress Payment for the Work
GC 5.5	Substantial Performance of the Work
GC 5.6	Payment of Holdback Upon Substantial Performance of the Work
GC 5.7	Progressive Release of Holdback for the Work
GC 5.8	Final Payment for the Work
GC 5.9	Withholding of Payment for the Work
GC 5.10	Non-Conforming Work

PART 6 CHANGES

GC 6.1	Owner's Right to Make Changes
GC 6.2	Change Order
GC 6.3	Change Directive
GC 6.4	Concealed or Unknown Conditions
GC 6.5	Delays
GC 6.6	Claims for a Change in Construction Manager's Fee for the Services, the Price of the Work or the Guaranteed Maximum Price

PART 7 DEFAULT NOTICE

GC 7.1	Owner's Right to Perform the Work or Terminate the Contract
GC 7.2	Construction Manager's Right to Suspend the Work or Terminate the Contract

PART 8 DISPUTE RESOLUTION

GC 8.1	Authority of the Consultant
GC 8.2	Negotiation, Mediation and Arbitration
GC 8.3	Retention of Rights

PART 9 PROTECTION OF PERSONS AND PROPERTY

GC 9.1	Protection of Work and Property
GC 9.2	Toxic and Hazardous Substances
GC 9.3	Artifacts and Fossils
GC 9.4	Construction Safety
GC 9.5	Mould

PART 10 GOVERNING REGULATIONS

GC 10.1	Taxes and Duties
GC 10.2	Laws, Notices, Permits, and Fees
GC 10.3	Patent Fees
GC 10.4	Workers' Compensation

PART 11 INSURANCE — CONTRACT SECURITY

GC 11.1	Insurance
GC 11.2	Contract Security

PART 12 INDEMNIFICATION, WAIVER OF CLAIMS AND WARRANTY

GC 12.1	Indemnification
GC 12.2	Waiver of Claims
GC 12.3	Warranty

APPENDIX STIPULATED PRICE OPTION

**AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER
– FOR SERVICES AND CONSTRUCTION**

This agreement made on the 28 day of April in the year 2020
by and between

La Pue International Inc.

hereinafter called the “*Owner*”
and

Buttcon Limited

hereinafter called the “*Construction Manager*”

The *Owner* and *Construction Manager* agree as follows:

ARTICLE A-1 THE SERVICES AND THE WORK

The *Construction Manager* shall

1.1 perform the *Services* and the *Work* for

The Stanley District Mixed Use Development (Underground Garage, Building A, Building B, and Building C)

insert above the title of the Project

located at

In the parcels of land currently at 5536, 5510-5526 Ferry Street, 5916, and 5943 Stanley Avenue in Niagara Falls, Ontario

insert above the Place of the Work

and as further described in Article A-3 of the Agreement – DESCRIPTION OF THE PROJECT, for which the Agreement has been signed by the parties, and for which

ACK Architects (overall design coordination, Underground, Building A and C) and Chamberlain Architects (Building B)

insert above the name of the Consultant

is acting as and is hereinafter called the “*Consultant*”, and

1.2 do and fulfill everything indicated by the *Contract Documents*, and

1.3 commence the *Services* and the *Work* by the 6 day of April in the year 2020 and continue in accordance with any schedule provided in Article A-3 of the Agreement – DESCRIPTION OF THE PROJECT. The *Construction Manager*’s obligation to provide *Services* shall end no later than one year after the date of *Substantial Performance of the Work*.

ARTICLE A-2 AGREEMENTS AND AMENDMENTS

2.1 This *Contract* supersedes all prior negotiations, representations or agreements, either written or oral, relating in any manner to the *Project*.

2.2 This *Contract* may be amended only as provided in the *Contract Documents*.

ARTICLE A-3 DESCRIPTION OF THE PROJECT

3.1 The following is a description of the *Project* including intended use, scope, budget, schedule, phases if applicable, and the anticipated date of *Substantial Performance of the Work*), and any other information which further generally describes the nature of the *Project* and the *Work*:

We understand the scope of work to include the following:

- 1) All necessary pre-construction activities as described in the CCDC5B to provide budgeting, scheduling, value engineering, constructability advice, market conditions advice, and site logistics advice in planning for the construction of the project.
- 2) The overall construction of the following proposed in 2 phases:

Phase 1 consisting of the following:

- a) The construction of 2 levels of underground parking serving the entire development area consisting of approximately 500 parking spaces.
- b) The construction of Building A, a mixed use 7 storey building of approximately 80,000 sf of GFA above grade. This building comprises of two commercial units on the ground floor and approximately 78 residential units from levels 2-7.
- c) The construction of Building B, a 6 storey hotel building of approximately 102,000 sf of GFA above grade. This building comprises of a ground floor level of commercial retail (fit up by others), lobby and meeting space. Level 2 consists of a pool, restaurant, amenity area, and guest rooms. Levels 3-6 consist of guest rooms. The overall hotel suite count is approximately 148 units.

Phase 2 consisting of the following:

- a) The construction of a 30 storey residential tower building of approximately 350,000 sf of GFA above grade. The building comprises of approximately 300 individual units.

Our understanding of the above phasing is as follows:

- 1) Pre-construction commencing April of 2020
- 2) Site Plan Approval is anticipated to be received by April-May of 2020.
- 3) A building permit receipt and construction commencement for phase 1 above in September of 2020.
- 4) Phase 2 to commence only upon substantial completion of Phase 1.

The above is preliminary which we will investigate and optimize throughout the Pre-construction process as we work through our scheduling with the remainder of the team.

ARTICLE A-4 CONTRACT DOCUMENTS

4.1 The following are the *Contract Documents* referred to in Article A-1 of the Agreement – THE SERVICES AND THE WORK:

- the Agreement Between *Owner* and *Construction Manager* (including the Schedules to the Agreement)
- the Appendix – STIPULATED PRICE OPTION
- the Definitions
- the General Conditions
- the *Construction Documents*

*

-Email exchange between Daniel Rosati of Buttcon Limited and Pawel Fugiel of La Pue International Inc.
- Site and underground drawings prepared by ACK Architects dated Dec 05 2019 for information purposes only.
- Building A drawings prepared by ACK Architects dated August 23, 2018 for information purposes only.
- Building B drawings prepared by Chamberlain dated September 05 2019 for information purposes only.
- Building C drawings prepared by ACK Architects dated October 2019 for information purposes only.

* (Insert here, attaching additional pages if required, a list identifying all other Contract Documents)

ARTICLE A-5 CONSTRUCTION MANAGER'S FEE

5.1 The *Construction Manager's Fee* shall be equal to the sum of the fee for the *Services* as specified in paragraph 5.2 and the fee for the *Work* as described in paragraph 5.3.

5.2 The *Construction Manager's Fee* for the *Services* is comprised of one or more of the following:

- .1* A fixed amount of Not Applicable; and
- .2* A percentage amount of Not Applicable percent (na%) of the *Construction Cost Estimate*. Final reconciliation payments shall be adjusted based on *Class A Construction Cost Estimate*; and
- .3* An amount based on the time-based rates for personnel employed by the *Construction Manager* as described in Schedule B to the Agreement and engaged in performing the *Services* to the level of effort agreed prior to the commencement of the *Services*. The *Owner* may by written request require the *Construction Manager* to provide prior to commencement of the *Services* an estimate of the total fee for *Services* to be performed based on the time-based rates for evaluation and verification purposes.

* *Strike out inapplicable paragraph(s).*

5.3 The *Construction Manager's Fee* for the *Work* is comprised of one or more of the following:

- .1 A percentage fee of two point six percent (2.60%) of the *Cost of the Work* earned as the *Cost of the Work* accrues. In the event the *Owner* furnishes labour or material below market cost or materials are re-used beyond that anticipated in the original scope of the *Work*, the *Cost of the Work* for purposes of establishing the *Construction Manager's Fee* for the *Work* is the cost of all materials and labour necessary to complete the *Project* as if all materials had been new and as if all labour had been paid for at market prices at the time of construction or, in the event that the construction does not proceed, at existing market prices at the anticipated time of construction; and
- .2 A fixed fee of Not Applicable, earned as follows:

The above fee for the *Services* (pre-construction) based on time-based-rates to be invoiced and paid monthly. If awarded the *Work* (construction) Buttcon will credit back the previously invoiced and paid fee for the *Services*.

The above percentage fee for the *Work* (construction) to be invoiced monthly during construction.

Delete inapplicable paragraph.

5.4 The *Construction Manager's Fee* shall be subject to adjustment as may be required in accordance with the provisions of the *Contract Documents* listed in Article A-4 of the Agreement – CONTRACT DOCUMENTS.

5.5 All amounts are in Canadian funds.

ARTICLE A-6 REIMBURSABLE EXPENSES FOR THE SERVICES

6.1 The reimbursable expenses are the actual expenses, supported by receipts or invoices, that the *Construction Manager* incurred in performing the *Services*, and as identified in Schedule A2 to the Agreement plus the administrative charge of two point six percent (2.60%). If there are no receipts or invoices, the expenses shall be at rates prevailing in the area of the *Place of the Work* and supported with suitable documentation.

6.2 The *Owner* may by written request require the *Construction Manager* to:

- .1 provide prior to commencement of the *Services* an estimate of the total reimbursable expenses incurred by the *Construction Manager* in performing the *Services* for evaluation and verification purposes; and
- .2 inform the *Owner* in writing prior to incurring reimbursable expenses relating to the *Services*.

ARTICLE A-7 COST OF THE WORK

- 7.1 The *Cost of the Work* is the actual cost incurred by the *Construction Manager* in performing the *Work* and is limited to the actual cost of the following:
- .1 salaries, wages and benefits paid to personnel in the direct employ of the *Construction Manager* under a salary or wage schedule agreed upon by the *Owner* and the *Construction Manager*, or in the absence of such a schedule, actual salaries, wages and benefits paid under applicable bargaining agreement, and in the absence of a salary or wage schedule and bargaining agreement, actual salaries, wages and benefits paid by the *Construction Manager*, for personnel
 - (1) stationed at the *Place of the Work*, in whatever capacity employed;
 - (2) engaged in expediting the production or transportation of material or equipment, at shops or on the road;
 - (3) engaged in the preparation or review of *Shop Drawings*, fabrication drawings and coordination drawings; or
 - (4) engaged in the processing of changes in the *Work*.
 - .2 contributions, assessments or taxes incurred for such items as employment insurance, provincial or territorial health insurance, workers' compensation, and Canada or Quebec Pension Plan, insofar as such cost is based on wages, salaries or other remuneration paid to employees of the *Construction Manager* and included in the cost of the *Work* as provided in paragraph 7.1.1;
 - .3 travel and subsistence expenses of the *Construction Manager's* personnel described in paragraph 7.1.1;
 - .4 all *Products* including cost of transportation thereof;
 - .5 materials, supplies, *Construction Equipment*, *Temporary Work*, and hand tools not owned by the workers, including transportation and maintenance thereof, which are consumed in the performance of the *Work*; and cost less salvage value on such items used but not consumed, which remain the property of the *Construction Manager*;
 - .6 all tools and *Construction Equipment*, exclusive of hand tools used in the performance of the *Work*, whether rented from or provided by the *Construction Manager* or others, including installation, minor repairs and replacements, dismantling, removal, transportation, and delivery cost thereof;
 - .7 the *Construction Manager's* field office;
 - .8 deposits lost provided that they are not caused by negligent acts or omissions of the *Construction Manager* and the *Services* are performed in accordance with this *Contract*;
 - .9 the amounts of all contracts or written agreements with *Subcontractors* and *Suppliers* and the unrecoverable costs to the *Construction Manager* that result from any *Subcontractor's* or *Supplier's* default, insolvency or abandonment; termination of any *Subcontractor's* or *Supplier's* right to perform due to default by the *Subcontractor* or *Supplier*; or termination of any *Subcontractor's* or *Supplier's* contract due to default by the *Subcontractor* or *Supplier*;
 - .10 quality assurance such as independent inspection and testing services;
 - .11 charges levied by authorities having jurisdiction at the *Place of the Work*;
 - .12 royalties, patent license fees and damages for infringement of patents and cost of defending suits therefor subject always to the *Construction Manager's* obligations to indemnify the *Owner* as provided in paragraph 10.3.1 of GC 10.3 – PATENT FEES;
 - .13 premiums for all contract securities and insurance that the *Construction Manager* is required, by the *Contract Documents*, to purchase and maintain;
 - .14 taxes, other than *Value Added Taxes*, and duties relating to the *Work* for which the *Construction Manager* is liable;
 - .15 charges for long distance communications, courier services, expressage, printing, and reproduction incurred in relation to the performance of the *Work*;
 - .16 removal and disposal of waste products and debris;
 - .17 the cost of safety measures and requirements;
 - .18 legal costs, incurred by the *Construction Manager* in relation to the performance of the *Work* provided that they are not caused by negligent acts or omissions of the *Construction Manager* and the *Work* is performed in accordance with this *Contract*;
 - .19 the cost of financing the *Work* in accordance with the method determined by the parties and identified in Article A-3 of the Agreement – DESCRIPTION OF THE PROJECT;

- .20 the cost of auditing when requested by the *Owner*;
- .21 the cost of project-specific information technology and usage in accordance with the method determined by the parties in writing;
- .22 the cost of removal or containment of toxic or hazardous substances pursuant to GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES;
- .23 other costs incurred in the performance of the *Work* as listed below:

all other cost of work not mentioned above

- 7.2 The *Cost of the Work* excludes *Value Added Taxes* and shall be at rates prevailing in the locality of the *Place of the Work*, except with the prior consent of the *Owner*.
- 7.3 Any costs incurred by the *Construction Manager* due to failure on the part of the *Construction Manager* to exercise reasonable care and diligence in the *Construction Manager's* attention to the *Work* shall be borne by the *Construction Manager*.
- 7.4 All cash discounts shall accrue to the *Construction Manager* unless the *Owner* deposits funds with the *Construction Manager* with which to make payments, or where the *Owner* pays the costs of financing the *Work*, in which case the cash discounts shall accrue to the *Owner*.
- 7.5 All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment applicable to the *Work* shall accrue to the *Owner*, and the *Construction Manager* shall make provisions so that they can be secured.
- 7.6 The *Owner* may by written request require the *Construction Manager* to:
 - .1 provide prior to commencement of the *Work* an estimate of the total *Cost of the Work* for evaluation and verification purposes; and
 - .2 inform the *Owner* in writing prior to incurring reimbursable expenses relating to the *Cost of the Work*.

ARTICLE A-8 OPTIONS

8.1 The *Owner* and the *Construction Manager* may agree to exercise the options described in paragraph 8.2, 8.3 or 8.4 at the time of signing of this *Contract* or any time during the term of the *Contract*. Any agreement to exercise any of the following options after the signing of this *Contract* shall be recorded by a *Change Order*.

8.2 GUARANTEED MAXIMUM PRICE (GMP) OPTION

The sum of the *Price of the Services* and the *Price of the Work* are guaranteed by the *Construction Manager* not to exceed To be confirmed at a mutually agreed upon date /100 dollars (\$), subject to the adjustment as provided in GC 6.1 – OWNER’S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER or GC 6.3 – CHANGE DIRECTIVE. Any amount, consisting of the sum of the *Price of the Services* and the *Price of the Work*, in excess of this *Guaranteed Maximum Price* will be paid by the *Construction Manager* without reimbursement by the *Owner*.

8.3 GUARANTEED MAXIMUM PRICE PLUS % COST SAVINGS OPTION

The *Price of the Services* and the *Price of the Work* are guaranteed by the *Construction Manager* not to exceed To be confirmed at a mutually agreed upon date /100 dollars (\$), subject to the adjustment as provided in GC 6.1 – OWNER’S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER or GC 6.3 – CHANGE DIRECTIVE.

At the conclusion of the *Project*,

- .1 any amount, consisting of the sum of the *Price of the Services* and the *Price of the Work*, in excess of this *Guaranteed Maximum Price* will be paid by the *Construction Manager* without reimbursement by the *Owner*.
- .2 if the sum of the *Price of the Services* and the *Price of the Work* is less than this *Guaranteed Maximum Price*, the difference will be disbursed as follows:
 - (1) retained by the *Owner*: %
 - (2) paid to the *Construction Manager*: %

8.4 STIPULATED PRICE OPTION

The *Owner* and the *Construction Manager* may agree to change this *Contract* to a stipulated price contract, in accordance with the amendments as provided in the Appendix – STIPULATED PRICE OPTION.

ARTICLE A-9 PAYMENT

- 9.1 Where required by provincial or territorial legislation, payments shall be subject to the lien legislation applicable to the *Place of the Work*. The *Owner* shall pay the *Construction Manager*:
 - .1 payments on account of the *Construction Manager's Fee* for the *Services* earned as described in Article A-5 of the Agreement – CONSTRUCTION MANAGER'S FEE together with such *Value Added Taxes* as may be applicable to such payments, and
 - .2 payments on account of the reimbursable expenses for the *Services* earned as described in Article A-6 of the Agreement – REIMBURSABLE EXPENSES FOR THE SERVICES together with such *Value Added Taxes* as may be applicable to such payments,
 - .3 payments on account of the *Price of the Work* when due in the amount certified by the *Consultant* together with such *Value Added Taxes* as may be applicable to such payments,
 - .4 upon *Substantial Performance of the Work*, the unpaid balance of the holdback amount when due together with such *Value Added Taxes* as may be applicable to such payment, and
 - .5 upon the issuance of the final certificate for payment, the unpaid balance of the *Construction Manager's Fee* for the *Services*, the reimbursable expenses for the *Services*, and the *Price of the Work* when due together with such *Value Added Taxes* as may be applicable to such payment.
- 9.2 In the event of loss or damage occurring where payment becomes due under the property and boiler insurance policies, payments shall be made to the *Construction Manager* in accordance with the provisions of GC 11.1 – INSURANCE.
- 9.3 Interest
 - .1 Should either party fail to make payments as they become due under the terms of this *Contract* or in an award by arbitration or court, interest at the following rates on such unpaid amounts shall also become due and payable until payment:
 - (1) 2% per annum above the prime rate for the first 60 days.
 - (2) 4% per annum above the prime rate after the first 60 days.Such interest shall be compounded on a monthly basis. The prime rate shall be the rate of interest quoted by

to be advised

(Insert name of chartered lending institution whose prime rate is to be used)

for prime business loans as it may change from time to time.
 - .2 Interest shall apply at the rate and in the manner prescribed by paragraph 9.3.1 of this Article on the settlement amount of any claim in dispute that is resolved either pursuant to Part 8 of the General Conditions – DISPUTE RESOLUTION or otherwise, from the date the amount would have been due and payable under the *Contract*, had it not been in dispute, until the date it is paid.

ARTICLE A-10 RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING

- 10.1 *Notices in Writing* will be addressed to the recipient at the address set out below.
- 10.2 The delivery of a *Notice in Writing* will be by hand, by courier, by prepaid first class mail, or by facsimile or other form of electronic communication during the transmission of which no indication of failure of receipt is communicated to the sender.
- 10.3 A *Notice in Writing* delivered by one party in accordance with this *Contract* will be deemed to have been received by the other party on the date of delivery if delivered by hand or courier, or if sent by mail it shall be deemed to have been received 5 calendar days after the date on which it was mailed, provided that if either such day is not a *Working Day*, then the *Notice in Writing* shall be deemed to have been received on the *Working Day* next following such day.
- 10.4 A *Notice in Writing* sent by facsimile or other form of electronic communication shall be deemed to have been received on the date of its transmission provided that if such day is not a *Working Day* or if it is received after the end of normal business hours on the date of its transmission at the place of receipt, then it shall be deemed to have been received at the opening of business at the place of receipt on the first *Working Day* next following the transmission thereof.
- 10.5 An address for a party may be changed by *Notice in Writing* to the other party setting out the new address in accordance with this Article.

Owner

La Pue International Inc.	
<i>name of Owner*</i>	
Pawel Fugiel	
<i>address</i>	
6158 Allendale Ave Niagara Falls Ontario	
<i>facsimile number</i>	<i>email address</i>
647 705 9810	lapueinternational@gmail.com

Construction Manager

Buttcon Limited	
<i>name of Construction Manager*</i>	
8000 Jane Street, Tower B, Suite 401, Concord, Ontario	
<i>address</i>	
905-907-6556	pdigaetano@buttcon.com
<i>facsimile number</i>	<i>email address</i>

Consultant

ACK Architects (overall design coordination, Underground, Building A and C) and Chamberlain Architects (Building B)	
<i>name of Consultant*</i>	
<i>address</i>	
<i>facsimile number</i>	<i>email address</i>

* If it is intended that the notice must be received by a specific individual, that individual's name shall be indicated.

ARTICLE A-11 LANGUAGE OF THE CONTRACT

11.1 When the *Contract Documents* are prepared in both the English and French languages, it is agreed that in the event of any apparent discrepancy between the English and French versions, the English/French# language shall prevail.

#Complete this statement by striking out inapplicable term.

11.2 This Agreement is drawn in English at the request of the parties hereto. La présente convention est rédigée en anglais à la demande des parties.

ARTICLE A-12 SUCCESSION

12.1 The *Contract* shall enure to the benefit of and be binding upon the parties hereto, their respective heirs, legal representatives, successors, and assigns.

In witness whereof the parties hereto have executed this Agreement by their respective hands or the hands of their duly authorized representatives.

SIGNED AND DELIVERED

in the presence of:

WITNESS

OWNER

La Pue International Inc.


signature

PANEL FUGIER
name of Owner

signature

USA VO
name of person signing

name and title of person signing

signature

signature

name of person signing

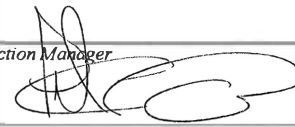
name and title of person signing

WITNESS

CONSTRUCTION MANAGER

Buttcon Limited


signature

name of Construction Manager

signature

Daniel Rosati, Director of Pre-Construction and Estimating
name of person signing

Peter Di Gaetano, President & CEO
name and title of person signing

signature

signature

name of person signing

name and title of person signing

N.B. Where legal jurisdiction, local practice or Owner or Construction Manager requirement calls for:
(a) proof of authority to execute this document, attach such proof of authority in the form of a certified copy of a resolution naming the representative(s) authorized to sign the Agreement for and on behalf of the corporation or partnership; or
(b) the affixing of a corporate seal, this Agreement should be properly sealed.

CCDC 5B – 2010

Note: This contract is protected by copyright. Use of a CCDC 5B document not containing a CCDC 5B copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 5B copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 5B – 2010 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

SCHEDULE A1 TO THE AGREEMENT – SERVICES AND COMPENSATION

<p>1. PRECONSTRUCTION</p> <p>(*Note: F1 Included in the fixed amount as described in paragraph 5.2.1 of Article A-5 – CONSTRUCTION MANAGER’S FEE. F2 Included in the percentage amount as described in paragraph 5.2.2 of Article A-5 – CONSTRUCTION MANAGER’S FEE. F3 Fee to the Construction Manager based on time-based rates as described in paragraph 5.2.3 of Article A-5 – CONSTRUCTION MANAGER’S FEE.)</p>	<p>Performed by the Owner or someone other than the Construction Manager</p>	<p>Performed by the Construction Manager (*F1/F2/F3)</p>	<p>Not Applicable</p>
<p>1.1 General Services</p> <p>.1 Attend regular <i>Project</i> meetings with the <i>Owner</i> and the <i>Consultant</i>.</p> <p>.2 Provide advice to the <i>Owner</i> and the <i>Consultant</i> with respect to construction and market conditions.</p>		<p>F3 F3</p>	
<p>1.2 Predesign</p> <p>.1 Estimating:</p> <p>(1) Confirm or prepare a <i>Class D Construction Cost Estimate</i>.</p> <p>(2) Advise the <i>Owner</i> if it appears that the <i>Construction Cost Estimate</i> may exceed the <i>Project</i> budget, and make recommendation for corrective action.</p> <p>.2 Scheduling: Prepare a preliminary overall <i>Project</i> schedule.</p>		<p>F3 F3</p>	
<p>1.3 Schematic Design Phase</p> <p>.1 Constructability: Provide advice on site use and possible improvements, selection of materials, assembly systems, and, equipment and provide recommendations on construction feasibility, availability of materials and labour, time requirements for installation and construction, and factors related to alternative designs and possible economies.</p> <p>.2 Estimating:</p> <p>(1) Prepare a <i>Class C Construction Cost Estimate</i> at the end of the Schematic Design Phase.</p> <p>(2) Advise the <i>Owner</i> if it appears that the <i>Construction Cost Estimate</i> may exceed the <i>Project</i> budget, and make recommendation for corrective action.</p> <p>.3 Scheduling: Prepare, in consultation with the <i>Consultant</i> and the <i>Owner</i>, a preliminary <i>Project</i> schedule for the <i>Owner's</i> review; such <i>Project</i> schedule shall take into consideration the sequence and timing of the required basic program decisions, including anticipated design time, approval period, preparation of documentation, bid calls and subsequent evaluations, trade contract awards, on-site construction activities, and the anticipated date of <i>Substantial Performance of the Work</i>.</p> <p>.4 Other Services: Assist in providing liaison and coordination among government authorities, utility companies, and other authorities having jurisdiction over the <i>Place of the Work</i>.</p>		<p>F3 F3 F3 F3</p>	
<p>1.4 Design Development Phase</p> <p>.1 Constructability:</p> <p>(1) Provide updates as necessary regarding the availability of materials and labour, building systems, and possible economies.</p> <p>(2) Make recommendations to the <i>Owner</i> and the <i>Consultant</i> regarding the scope of <i>Work</i> packages and <i>Work</i> to be performed by the <i>Construction Manager's</i> own forces to help facilitate the subsequent bidding and awarding of <i>Subcontractor</i> and <i>Supplier</i> contracts.</p> <p>(3) Review the <i>Specifications</i> and <i>Drawings</i> and, at the end of the Design Development Phase, make recommendations to the <i>Owner</i> and the <i>Consultant</i> as to constructability and coordination among the <i>Subcontractors</i>.</p> <p>.2 Estimating and Cost Control:</p> <p>(1) Prepare a <i>Class B Construction Cost Estimate</i> at the end of the Design Development Phase.</p> <p>(2) Advise the <i>Owner</i> if it appears that the <i>Construction Cost Estimate</i> may exceed the <i>Project</i> budget, and make recommendations for corrective action.</p> <p>(3) Establish a cost control program and prepare a cash flow forecast for the <i>Project</i>.</p>		<p>F3 F3</p>	

SCHEDULE A1 TO THE AGREEMENT – SERVICES AND COMPENSATION

<p>1. PRECONSTRUCTION</p> <p>(*Note: F1 Included in the fixed amount as described in paragraph 5.2.1 of Article A-5 – CONSTRUCTION MANAGER’S FEE. F2 Included in the percentage amount as described in paragraph 5.2.2 of Article A-5 – CONSTRUCTION MANAGER’S FEE. F3 Fee to the Construction Manager based on time-based rates as described in paragraph 5.2.3 of Article A-5 – CONSTRUCTION MANAGER’S FEE.)</p>	<p>Performed by the Owner or someone other than the Construction Manager</p>	<p>Performed by the Construction Manager (*F1/F2/F3)</p>	<p>Not Applicable</p>
<p>.3 Scheduling:</p> <p>(1) Review and update the <i>Project</i> schedule with appropriate details.</p> <p>(2) Advise the <i>Owner</i> if it appears that the <i>Project</i> schedule may vary from that specified in Article A-3 of the Agreement – DESCRIPTION OF THE PROJECT or otherwise agreed with the <i>Owner</i>, and make recommendations for corrective action.</p> <p>(3) Make recommendations to the <i>Owner</i> regarding any equipment or materials which should be pre-ordered to meet the <i>Project</i> schedule.</p>		<p>F3</p>	
<p>1.5 Construction Document Phase</p> <p>.1 Constructability:</p> <p>(1) Provide updates as necessary regarding the availability of materials and labour, building systems, and possible economies.</p> <p>(2) Review the <i>Specifications</i> and <i>Drawings</i> and make recommendations to the <i>Owner</i> and the <i>Consultant</i> as to clarity, consistency, constructability, and coordination among the <i>Subcontractors</i>.</p> <p>(3) Assist the <i>Owner</i> and the <i>Consultant</i> in preparing bid documents for <i>Subcontractors</i>.</p> <p>(4) Assist the <i>Owner</i> in determining the contract security requirements of <i>Subcontractors</i>.</p> <p>.2 Estimating and Cost Control:</p> <p>(1) Update the <i>Class B Construction Cost Estimate</i> at defined intervals of <i>Construction Documents</i> completion.</p> <p>(2) Prepare a <i>Class A Construction Cost Estimate</i> at the end of the Construction Document Phase.</p> <p>(3) Update the cash flow forecasts for the <i>Project</i>.</p> <p>(4) Advise the <i>Owner</i> if it appears that the <i>Construction Cost Estimate</i> may exceed the <i>Project</i> budget, and make recommendations for corrective action.</p> <p>.3 Scheduling:</p> <p>(1) Review and update the <i>Project</i> schedule with appropriate details.</p> <p>(2) Advise the <i>Owner</i> if it appears that the <i>Project</i> schedule may vary from that specified in Article A-3 of the Agreement – DESCRIPTION OF THE PROJECT or otherwise agreed with the <i>Owner</i>, and make recommendations for corrective action, including changes to <i>Project</i> scope, schedule or budget.</p> <p>.4 Other Services:</p> <p>(1) Make recommendations to the <i>Owner</i> regarding any equipment or materials which should be pre-ordered to meet the <i>Project</i> objective.</p>		<p>F3</p> <p>F3</p> <p>F3</p> <p>F3</p>	
<p>1.6 Construction Procurement Phase</p> <p>.1 Scheduling:</p> <p>(1) Review and update the <i>Project</i> schedule with appropriate details.</p> <p>.2 Contracting:</p> <p>(1) Develop methods of solicitation for <i>Subcontractors</i> and the distribution of addenda.</p> <p>(2) Prepare the prequalification criteria for <i>Subcontractors</i> and <i>Suppliers</i> as required by the <i>Owner</i>.</p> <p>(3) Review for completeness and coordinate all bid documents for the solicitation of competitive bids for the <i>Work</i> to be performed by <i>Subcontractors</i>.</p> <p>.3 Other Service:</p> <p>(1) Update the cash flow forecasts for the <i>Project</i>.</p>		<p>F3</p> <p>F3</p> <p>F3</p>	

SCHEDULE A1 TO THE AGREEMENT – SERVICES AND COMPENSATION

2. CONSTRUCTION (*Note: F1 Included in the fixed amount as described in paragraph 5.2.1 of Article A-5 – CONSTRUCTION MANAGER’S FEE. F2 Included in the percentage amount as described in paragraph 5.2.2 of Article A-5 – CONSTRUCTION MANAGER’S FEE. F3 Fee to the Construction Manager based on time-based rates as described in paragraph 5.2.3 of Article A-5 – CONSTRUCTION MANAGER’S FEE.)	Performed by the Owner or someone other than the Construction Manager	Performed by the Construction Manager (*F1/F2/F3)	Not Applicable
2.1 General Service .1 Chair and minute regular <i>Project</i> meetings with the <i>Owner</i> and the <i>Consultant</i> .		F3	
2.2 Cost Control and Accounting .1 Prepare and update the <i>Construction Cost</i> and cash flow forecasts in accordance with the <i>Project</i> budget as specified in Article A-3 of the Agreement – DESCRIPTION OF THE PROJECT or otherwise agreed with the <i>Owner</i> . .2 Develop, implement and maintain a system of <i>Project</i> cost control and accounting. .3 Advise the <i>Owner</i> and the <i>Consultant</i> on the variances between actual cost and <i>Construction Cost Estimate</i> . .4 Provide reasonable assistance and information to permit recovery of all tax rebates where applicable. .5 Provide recommendations to the <i>Owner</i> for necessary changes to maintain the <i>Project</i> budget and <i>Project</i> schedule.		F3 F3 F3 F3	
3. POST-CONSTRUCTION			
3.1 General Service .1 Prepare final <i>Construction Cost</i> report.		F3	
3.2 Occupancy Review .1 Assist the <i>Owner</i> in conducting post-construction occupancy review.		F3	

SCHEDULE A2 – REIMBURSABLE EXPENSES APPLICABLE TO SCHEDULE A1

Unless otherwise agreed to by the parties or as indicated in the following table, all expense items relating to *Services* are included in the *Construction Manager's Fee* for the *Services* as described in paragraph 5.2 of Article of the Agreement A-5 – CONSTRUCTION MANAGER'S FEE.

	Costs Included in the Construction Manager's Fee (A-5.2)	Reimbursable Expenses (A-6)
1. Travel and subsistence expenses of the <i>Construction Manager's</i> personnel outside a radius of 50km from the <i>Place of the Work</i> .		✓
2. Charges for long distance telephone and facsimile communications, courier services, reproduction of <i>Contract Documents</i> incurred in relation to the performance of this <i>Contract</i> .		✓
3. The cost of <i>Project</i> specific information technology support in accordance with the method determined by the parties.		✓
4. Deposits lost provided that they are not caused by negligent acts or omissions of the <i>Construction Manager</i> and the <i>Services</i> are performed in accordance with this <i>Contract</i> .		✓
5. The costs to the <i>Construction Manager</i> that result from any <i>Subcontractor's</i> insolvency or failure to perform.		✓
6. Charges levied by authorities having jurisdiction at the <i>Place of the Work</i> .		✓
7. Royalties, patent licence fees and damages for infringement of patents and cost of defending suits therefore.		✓
8. Any adjustment in taxes and duties directly related to the <i>Project</i> for which the <i>Construction Manager</i> is liable.		✓
9. Losses and expenses sustained by the <i>Construction Manager</i> for matters which are the subject of the insurance coverages obtained pursuant to GC 11.1 – INSURANCE when such losses and expenses are not recoverable because the amounts are in excess of collectible amounts, within the deductible amounts or are not insurable.		✓
10. The costs incurred due to emergencies affecting the safety of persons or property.		✓
11. Legal costs, incurred by the <i>Construction Manager</i> in relation to the performance of the <i>Services</i> provided that they are not caused by negligent acts or omissions of the <i>Construction Manager</i> and the <i>Services</i> are performed in accordance with this <i>Contract</i> .		✓
12. Such other costs directly incurred by the <i>Construction Manager</i> in the performance of this <i>Contract</i> as follows: <div style="border: 1px solid black; padding: 10px; margin-top: 10px;"> All cost of the work per Article A7. </div>		✓

SCHEDULE B – TIME-BASED RATES FOR PERSONNEL EMPLOYED BY THE CONSTRUCTION MANAGER

Personnel employed by the <i>Construction Manager</i> in the performance of the <i>Services</i> and <i>Work</i>.	Unit	Rate
**All Rates Below are Per Hour Based on Regular 40 hr Work Weeks, Monday to Friday. Any premium time or overtime is in addition to the below		
Senior Project Manager	per hour	\$137.00
Senior Site Superintendent	per hour	\$111.00
Assistant Site Superintendent(s)	per hour	\$93.00
On Site Safety Administrator	per hour	\$60.00
Senior Project Coordinator	per hour	\$74.00
Project Coordinator	per hour	\$52.00
Deficiency Coordinator (related to phase 1 and phase 2 residential component)	per hour	\$52.00
Safety Manager (as required)	per hour	\$93.00
General Superintendent (as required)	per hour	\$139.00
Commissioning Team (as required, blended rate)	per hour	\$126.00
Scheduler (as required)	per hour	\$82.00
On Site Administrator (if needed)	per hour	\$35.00
Accounting (as required from head office)	per hour	\$56.00
General Labourer	per hour	\$80.00
General Carpenter (based on 37.5 hour work weeks)	per hour	\$90.00
Travel to and From Worksite for Local Employees (per km each way)*	per km	\$0.60
Travel, Accomodations, Meals, and Per Diem for Non-Local Employees (per employee, per week, stationed at place of work, not including	per week	\$1,500

DEFINITIONS

The following Definitions apply to this *Contract Documents*. References in the definition to the singular shall be considered to include the plural as the context requires.

Class A Construction Cost Estimate

The *Class A Construction Cost Estimate* is an estimate of the *Construction Cost* based on the completed *Contract Documents*. *Class A Construction Cost Estimate* is the final estimate before the bid or proposal call. *Class A Construction Cost Estimate* shall be presented in elemental format and include labour and material costs, allowance for all costs resulting from the *Project* schedule, all actual associated costs, including cash allowances, contingencies, allowances for design, escalation, market conditions and anticipated amendment amounts as applicable.

Class B Construction Cost Estimate

The *Class B Construction Cost Estimate* is an estimate of the *Construction Cost* with a level of precision that is based on the degree of completion of the *Contract Documents* at the time of preparation of the estimate. The *Class B Construction Cost Estimate* is typically prepared when all site or installation investigations are completed and the design of the major systems and sub-systems of the *Project* (including outline specifications and preliminary drawings and models) are well underway. *Class B Construction Cost Estimate* shall be presented in elemental format and include labour and material costs, allowance for all costs resulting from the *Project* schedule, all actual associated costs, including cash allowances, contingencies, allowances for design, escalation, market conditions and anticipated amendment amounts as applicable.

Class C Construction Cost Estimate

The *Class C Construction Cost Estimate* is an estimate of the *Construction Cost* based on updated *Owner* requirements, general description of the *Project*, preliminary site information and existing conditions, and takes into consideration market conditions as well as basic implementation logistics. *Class C Construction Cost Estimate* shall include labour and material costs and the *Owner's* construction contingencies and allowances.

Class D Construction Cost Estimate

The *Class D Construction Cost Estimate* is an estimate of the *Construction Cost* based on the *Owner's* functional requirements to the degree known at the time. The *Class D Construction Cost Estimate* shall as a minimum be based on historical cost data for similar projects, suitably adjusted for such factors as inflation, location, risk, quality, size, and time. All related factors affecting cost are considered to the extent possible. The *Class D Construction Cost Estimate* provides the *Owner* an indication of the order of magnitude of the *Construction Cost* for a project completed within the estimated completion date, and shall include labour and material costs and the *Owner's* construction contingencies and allowances.

Change Directive

A *Change Directive* is a written instruction prepared by the *Consultant* and signed by the *Owner* directing the *Construction Manager* to proceed with a change in the *Work* within the general scope of this *Contract* prior to the *Owner* and the *Construction Manager* agreeing upon an adjustment in any or all of the *Construction Manager's Fee*, the *Guaranteed Maximum Price* and the *Contract Time*.

Change Order

A *Change Order* is a written amendment to this *Contract* prepared by the *Consultant* and signed by the *Owner* and the *Construction Manager* stating their agreement upon:

- a change in the *Services*;
- a change in the *Work*;
- the method of adjustment or the amount of the adjustment in the *Construction Manager's Fee*, if any;
- the method of adjustment or the amount of the adjustment in the *Guaranteed Maximum Price*, if any;
- the extent of the adjustment in the *Contract Time*, if any; and
- the options described in Article A-8 of the Agreement – OPTIONS.

Construction Cost

Construction Cost means the actual cost of all elements of the *Project* including all applicable taxes but excluding the applicable value added taxes, whether recoverable or not. *Construction Cost* does not include the *Construction Manager's Fee*, the reimbursable expenses for the *Services* as described in Article A-6 of the Agreement – REIMBURSABLE EXPENSES FOR THE SERVICES and the compensation of the *Consultant*.

Construction Cost Estimate

Construction Cost Estimate is either a *Class A Construction Cost Estimate*, a *Class B Construction Cost Estimate*, a *Class C Construction Cost Estimate*, or a *Class D Construction Cost Estimate*, as the context shall require and is prepared with a level of precision commensurate with the level of detail of information available at the time.

Construction Documents

The *Construction Documents* consist of the *Specifications* and *Drawings* that are consistent with the *Contract Documents* and are prepared by the *Consultant* and accepted by the *Owner* after execution of the Agreement for the performance of the *Project*.

Construction Equipment

Construction Equipment means all machinery and equipment, either operated or not operated, that is required for preparing, fabricating, conveying, erecting, or otherwise performing the *Work* but is not incorporated into the *Work*.

Construction Manager

The *Construction Manager* is the person or entity identified as such in the Agreement.

Construction Manager's Fee

The *Construction Manager's Fee* is the *Construction Manager's* fee for performing the *Services* and the *Work* and the amount is as stipulated in Article A-5 of the Agreement – CONSTRUCTION MANAGER'S FEE.

Consultant

The *Consultant* is the person or entity engaged by the *Owner* and identified as such in the Agreement. The *Consultant* is the Architect, the Engineer or entity licensed to practise in the province or territory of the *Place of the Work*.

Contract

The *Contract* is the undertaking by the parties to perform their respective duties, responsibilities and obligations as prescribed in the *Contract Documents* and represents the entire agreement between the parties.

Contract Documents

The *Contract Documents* consist of those documents listed in Article A-4 of the Agreement – CONTRACT DOCUMENTS and amendments agreed upon between the parties.

Contract Time

The *Contract Time* is the time stipulated in paragraph 1.3 of Article A-1 of the Agreement – THE SERVICES AND THE WORK.

Cost of the Work

The *Cost of the Work* is the amount stipulated in Article A-7 of the Agreement – COST OF THE WORK which excludes *Value Added Taxes*.

Drawings

The *Drawings* are the graphic and pictorial portions of the *Contract Documents*, wherever located and whenever issued, showing the design, location and dimensions of the *Work*, generally including plans, elevations, sections, details, and diagrams.

Guaranteed Maximum Price

The *Guaranteed Maximum Price* is the amount, if any, stipulated in paragraphs 8.2 or 8.3 of Article A-8 of the Agreement – OPTIONS which excludes *Value Added Taxes*. In the event that no amount is stipulated in paragraphs 8.2 or 8.3 of Article A-8 of the Agreement – OPTIONS, the provisions pertinent to the *Guaranteed Maximum Price*, wherever they appear in this *Contract*, shall be individually inoperative and considered as deleted from this agreement.

Notice in Writing

A *Notice in Writing*, where identified in this *Contract*, is a written communication between the parties or between them and the *Consultant* that is transmitted in accordance with the provisions of Article A-10 of the Agreement – RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING.

Owner

The *Owner* is the person or entity identified as such in the Agreement.

Place of the Work

The *Place of the Work* is the designated site or location of the *Work* identified in the Agreement.

Price of the Services

The *Price of the Services*, which excludes *Value Added Taxes*, is the sum of the *Construction Manager's Fee* for the *Services* as stipulated in paragraph 5.2 of Article A-5 – CONSTRUCTION MANAGER'S FEE and the reimbursable expenses for the *Services* as stipulated in paragraph 6.1 of Article A-6 of the Agreement – REIMBURSABLE EXPENSES FOR THE SERVICES.

Price of the Work

The *Price of the Work*, which excludes *Value Added Taxes*, is the sum of the *Construction Manager's Fee* for the *Work* as stipulated in paragraph 5.3 of Article A-5 – CONSTRUCTION MANAGER'S FEE and the *Cost of the Work*.

Product

Product means material, machinery, equipment, and fixtures incorporated into the *Work*, but does not include *Construction Equipment*.

Project

The *Project* means the total construction as described in Article A-3 of the Agreement – DESCRIPTION OF THE PROJECT contemplated by the *Owner* of which the *Work* may be the whole or a part.

Services

The *Services* means all services described in Schedule A1 to the Agreement – SERVICES AND COMPENSATION to be performed by the *Construction Manager* under this *Contract*.

Shop Drawings

Shop Drawings are drawings, diagrams, illustrations, schedules, performance charts, brochures, *Product* data, and other data which the *Construction Manager* provides to illustrate details of portions of the *Work*.

Specifications

The *Specifications* are that portion of the *Contract Documents*, wherever located and whenever issued, consisting of the written requirements and standards for *Products*, systems, workmanship, quality, and the services necessary for the performance of the *Work*.

Subcontractor

A *Subcontractor* is a person or entity having a direct contract with the *Construction Manager* to perform a part or parts of the *Work* at the *Place of the Work*.

Substantial Performance of the Work

Substantial Performance of the Work is as defined in the lien legislation applicable to the *Place of the Work*. If such legislation is not in force or does not contain such definition, or if the *Work* is governed by the Civil Code of Quebec, *Substantial Performance of the Work* shall have been reached when the *Work* is ready for use or is being used for the purpose intended and is so certified by the *Consultant*.

Supplemental Instruction

A *Supplemental Instruction* is an instruction, not involving adjustment in the *Price of the Work* or *Contract Time*, in the form of *Specifications*, *Drawings*, schedules, samples, models or written instructions, consistent with the intent of the *Contract Documents*. It is to be issued by the *Consultant* to supplement the *Contract Documents*, as required for the performance of the *Work*.

Supplier

A *Supplier* is a person or entity having a direct contract with the *Construction Manager* to supply *Products*.

Temporary Work

Temporary Work means temporary supports, structures, facilities, services, and other temporary items, excluding *Construction Equipment*, required for the execution of the *Work* but not incorporated into the *Work*.

Value Added Taxes

Value Added Taxes means such sums as shall be levied upon the *Owner's* payment to the *Construction Manager* by the Federal or any Provincial or Territorial government and is computed as a percentage of such payment and includes the Goods and Services Tax, the Quebec Sales Tax, the Harmonized Sales Tax, and any other similar tax, the collection and payment of which have been imposed on the *Construction Manager* by the tax legislation.

Work

The *Work* means the total construction and related services to be performed by the *Construction Manager* as required by the *Contract Documents* but does not include *Services*.

Working Day

Working Day means a day other than a Saturday, Sunday, statutory holiday or statutory vacation day that is observed by the construction industry in the area of the *Place of the Work*.

GENERAL CONDITIONS

PART 1 GENERAL PROVISIONS

GC 1.1 CONTRACT DOCUMENTS

- 1.1.1 The intent of the *Contract Documents* is to include the labour, *Products* and services necessary for the performance of the *Work* by the *Construction Manager* in accordance with these documents. It is not intended, however, that the *Construction Manager* shall supply products or perform services or work not consistent with, not covered by, or not properly inferable from the *Contract Documents*.
- 1.1.2 Nothing contained in the *Contract Documents* shall create any contractual relationship between:
- .1 the *Owner* and a *Subcontractor*, a *Supplier*, or their agent, employee, or other person performing any of the *Work*.
 - .2 the *Consultant* and the *Construction Manager*, a *Subcontractor*, a *Supplier*, or their agent, employee or other person performing any of the *Work*.
- 1.1.3 The components of the *Contract Documents* are complementary, and what is required by any one shall be as binding as if required by all.
- 1.1.4 Words and abbreviations which have well known technical or trade meanings are used in the *Contract Documents* in accordance with such recognized meanings.
- 1.1.5 Neither the organization of the *Specifications* nor the arrangement of *Drawings* shall control the *Construction Manager* in dividing the work among *Subcontractors* and *Suppliers*.
- 1.1.6 If there is a conflict within the *Contract Documents*:
- .1 the order of priority of documents, from highest to lowest, shall be:
 - the Agreement between the *Owner* and the *Construction Manager* (including the Schedules to the Agreement),
 - the Definitions,
 - Supplementary Conditions, if any
 - the General Conditions,
 - the *Construction Documents*
 - Division 1 of the *Specifications*,
 - technical *Specifications*,
 - material and finishing schedules,
 - the *Drawings*.
 - .2 *Drawings* of larger scale shall govern over those of smaller scale of the same date.
 - .3 dimensions shown on *Drawings* shall govern over dimensions scaled from *Drawings*.
 - .4 later dated documents shall govern over earlier documents of the same type.
 - .5 noted materials and annotations shall govern over graphic indications.
- 1.1.7 The *Owner* shall provide the *Construction Manager*, without charge, sufficient copies of the *Construction Documents* to perform the *Work*.
- 1.1.8 *Specifications*, *Drawings*, models, and copies thereof furnished by the *Consultant* are and shall remain the *Consultant's* property, with the exception of the signed *Contract* sets, which shall belong to each party to this *Contract*. All *Specifications*, *Drawings*, and models furnished by the *Consultant* are to be used only with respect to the *Work* and are not to be used on other work. These *Specifications*, *Drawings* and models are not to be copied or altered in any manner without the written authorization of the *Consultant*.
- 1.1.9 Models furnished by the *Construction Manager* at the *Owner's* expense are the property of the *Owner*.

GC 1.2 LAW OF THE CONTRACT

- 1.2.1 The law of the *Place of the Work* shall govern the interpretation of the *Contract*.

GC 1.3 RIGHTS AND REMEDIES

- 1.3.1 Except as expressly provided in the *Contract Documents*, the duties and obligations imposed by the *Contract Documents* and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law.

- 1.3.2 No action or failure to act by the *Owner*, *Consultant* or *Construction Manager* shall constitute a waiver of any right or duty afforded either of the parties to this *Contract*, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

GC 1.4 ASSIGNMENT

- 1.4.1 Neither party to the *Contract* shall assign the *Contract* or a portion thereof without the prior written consent of the other, which consent shall not be unreasonably withheld.

GC 1.5 PERFORMANCE OF THE SERVICES

- 1.5.1 Architectural or engineering aspects of the *Project* shall not be the responsibility of the *Construction Manager*. In providing *Services*, the *Construction Manager* assumes no responsibility for the performance of the *Consultant* nor offers any professional design advice.
- 1.5.2 Notwithstanding any other provisions of this *Contract*, the *Construction Manager* shall be deemed not to assume any duties nor responsibilities as agent of the *Owner*.

GC 1.6 PROJECT REPRESENTATIVES

- 1.6.1 The *Owner*, *Construction Manager* and *Consultant* may appoint one or more project representatives to assist in carrying out their responsibilities under this *Contract*. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in writing.

PART 2 ADMINISTRATION OF THE CONTRACT

GC 2.1 OWNER'S RESPONSIBILITIES

- 2.1.1 The *Owner* shall:
- .1 provide full and timely information and approvals regarding the requirements of the *Project* for the orderly progress of the *Services* and the *Work*;
 - .2 review documents submitted by the *Construction Manager* and give the *Construction Manager* timely decisions for the orderly progress of the *Services* and the *Work*;
 - .3 furnish promptly to the *Construction Manager* all information that is available or requested by the *Construction Manager* regarding the *Place of the Work* including surveys as to the physical characteristics of the site, soils reports, subsurface investigations, legal limitations, utility locations, and legal description. Subject to paragraph 9.1.2 of GC 9.1 – PROTECTION OF WORK AND PROPERTY, the *Construction Manager* shall be entitled to rely on such information;
 - .4 designate in writing a representative who shall be fully acquainted with the *Work*; and shall have the authority to act on the *Owner's* behalf in relation to all duties and responsibilities of the *Owner* under this *Contract*;
 - .5 retain the *Consultant* who shall be responsible for the design and design related services required for the *Work*;
 - .6 inform the *Construction Manager* of the scope and terms of the *Consultant's* services;
 - .7 inform the *Consultant* of the scope and terms of the *Services* and the *Work*;
 - .8 immediately notify the *Construction Manager* if the *Owner* observes or otherwise becomes aware of any fault or defect in the *Project* or any non-conformity with the requirements of the *Contract*; and
 - .9 coordinate and facilitate the *Services* of the *Construction Manager* and the *Consultant's* services.

GC 2.2 AUTHORITY OF THE CONSULTANT

- 2.2.1 The *Consultant* will have authority to act on behalf of the *Owner* only to the extent provided in the *Contract Documents*, unless otherwise modified by written agreement as provided in paragraph 2.2.2.
- 2.2.2 The duties, responsibilities and limitations of authority of the *Consultant* as set forth in the *Contract Documents* may be modified or extended only with the written consent of the *Construction Manager* following consultation with the *Consultant*.
- 2.2.3 If the *Consultant's* employment is terminated, the *Owner* shall immediately appoint or reappoint a *Consultant* against whom the *Construction Manager* makes no reasonable objection and whose duties, responsibilities and limitations of authority under the *Contract Documents* will be that of the former *Consultant*.

GC 2.3 CONSULTANT'S RESPONSIBILITIES

- 2.3.1 The *Consultant* will provide administration of the *Work* as described in the *Contract Documents*.
- 2.3.2 The *Consultant* will visit the *Place of the Work* at intervals appropriate to the progress of construction to become familiar with the progress and quality of the *Work* and to determine if the *Work* is proceeding in general conformity with the *Contract Documents*.
- 2.3.3 If the *Owner* and the *Consultant* agree, the *Consultant* will provide at the *Place of the Work*, one or more project representatives to assist in carrying out the *Consultant's* responsibilities. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in writing to the *Construction Manager*.
- 2.3.4 The *Consultant* will promptly inform the *Owner* of the date of receipt of the *Construction Manager's* applications for payment for the *Work* performed as provided in paragraph 5.4.7.1 of GC 5.4 – PROGRESS PAYMENT FOR THE WORK.
- 2.3.5 Based on the *Consultant's* observations and evaluation of the *Construction Manager's* applications for payment for the *Work* performed, the *Consultant* will determine the amounts owing to the *Construction Manager* for the *Price of the Work* and will issue certificates for payment as provided in Article A-9 of the Agreement – PAYMENT, GC 5.4 – PROGRESS PAYMENT FOR THE WORK and GC 5.8 – FINAL PAYMENT FOR THE WORK.
- 2.3.6 The *Consultant* will not be responsible for and will not have control, charge or supervision of construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs required in connection with the *Work* in accordance with the applicable construction safety legislation, other regulations or general construction practice. The *Consultant* will not be responsible for the *Construction Manager's* failure to carry out the *Work* in accordance with the *Contract Documents*. The *Consultant* will not have control over, charge of or be responsible for the acts or omissions of the *Construction Manager, Subcontractors, Suppliers*, or their agents, employees, or any other persons performing portions of the *Work*.
- 2.3.7 Except with respect to GC 5.1 – FINANCING INFORMATION REQUIRED OF THE OWNER, the *Consultant* will be, in the first instance, the interpreter of the requirements of the *Work*.
- 2.3.8 Matters in question relating to the performance of the *Work* or the interpretation of the *Contract Documents*, except with respect to the scope, fee and reimbursable expenses of the *Services*, shall be initially referred in writing to the *Consultant* by the party raising the question for interpretations and findings and copied to the other party.
- 2.3.9 Interpretations and findings of the *Consultant* shall be consistent with the intent of the *Contract Documents* as they relate to the *Work*. In making such interpretations and findings the *Consultant* will not show partiality to either the *Owner* or the *Construction Manager*.
- 2.3.10 The *Consultant's* interpretations and findings will be given in writing to the parties within a reasonable time.
- 2.3.11 With respect to claims for a change in *Price of the Work*, the *Consultant* will make findings as set out in GC 6.6 – CLAIMS FOR A CHANGE IN CONSTRUCTION MANAGER'S FEE FOR THE SERVICES, THE PRICE OF THE WORK OR THE GUARANTEED MAXIMUM PRICE.
- 2.3.12 The *Consultant* will have authority to reject work which in the *Consultant's* opinion does not conform to the requirements of the *Contract Documents*. Whenever the *Consultant* considers it necessary or advisable, the *Consultant* will have authority to require inspection or testing of work, whether or not such work is fabricated, installed or completed. However, neither the authority of the *Consultant* to act nor any decision either to exercise or not to exercise such authority shall give rise to any duty or responsibility of the *Consultant* to the *Construction Manager, Subcontractor, Suppliers*, or their agents, employees, or other persons performing any of the *Work*.
- 2.3.13 During the progress of the *Work* the *Consultant* will furnish *Supplemental Instructions* to the *Construction Manager* with reasonable promptness or in accordance with a schedule for such instructions agreed to by the *Consultant* and the *Construction Manager*.
- 2.3.14 The *Consultant* will review and take appropriate action upon *Shop Drawings*, samples and other *Construction Manager's* submittals which are provided in accordance with the *Construction Documents*.
- 2.3.15 The *Consultant* will prepare *Change Orders* and *Change Directives* as provided in GC 6.2 – CHANGE ORDER and GC 6.3 – CHANGE DIRECTIVE.
- 2.3.16 The *Consultant* will conduct reviews of the *Work* to determine the date of *Substantial Performance of the Work* as provided in GC 5.5 – SUBSTANTIAL PERFORMANCE OF THE WORK.

- 2.3.17 All certificates issued by the *Consultant* will be to the best of the *Consultant's* knowledge, information and belief. By issuing any certificate, the *Consultant* does not guarantee the *Work* is correct or complete.
- 2.3.18 The *Consultant* will receive and review written warranties and related documents required by the *Contract* and provided by the *Construction Manager* and will forward such warranties and documents to the *Owner* for the *Owner's* acceptance.

GC 2.4 REVIEW AND INSPECTION OF THE WORK

- 2.4.1 The *Construction Manager* shall provide the *Owner* and the *Consultant* access to the *Work* at all times. The *Construction Manager* shall provide sufficient, safe and proper facilities at all times for the review of the *Work* by the *Consultant* and the inspection of the *Work* by authorized agencies. If parts of the *Work* are in preparation at locations other than the *Place of the Work*, the *Owner* and the *Consultant* shall be given access to such work whenever it is in progress.
- 2.4.2 If work is designated for tests, inspections or approvals in the *Contract Documents*, or by the *Consultant's* instructions, or by the laws or ordinances of the *Place of the Work*, the *Construction Manager* shall give the *Consultant* reasonable notification of when the work will be ready for review and inspection. The *Construction Manager* shall arrange for and shall give the *Consultant* reasonable notification of the date and time of inspections by other authorities.
- 2.4.3 The *Construction Manager* shall furnish promptly to the *Consultant* two copies of certificates and inspection reports relating to the *Work*.
- 2.4.4 If the *Construction Manager* covers, or permits to be covered, work that has been designated for special tests, inspections or approvals before such special tests, inspections or approvals are made, given or completed, the *Construction Manager* shall, if so directed, uncover such work, have the inspections or tests satisfactorily completed, and make good covering work at the *Construction Manager's* expense.
- 2.4.5 The *Consultant* may order any portion or portions of the *Work* to be examined to confirm that such work is in accordance with the requirements of the *Contract Documents*. If the work is not in accordance with the requirements of the *Contract Documents*, the *Construction Manager* shall correct the work and pay the cost of examination and correction at the *Construction Manager's* expense. If the work is in accordance with the requirements of the *Contract Documents*, the *Owner* shall pay the cost of examination and restoration.

GC 2.5 DEFECTIVE WORK

- 2.5.1 The *Construction Manager* shall promptly correct defective work that has been rejected by the *Consultant* as failing to conform to the *Contract Documents* whether or not the defective work has been incorporated in the *Work* and whether or not the defect is the result of poor workmanship, use of defective products or damage through carelessness or other act or omission of the *Construction Manager*. Subject to paragraph 7.1.9 of Article A-7 of the Agreement – COST OF THE WORK, the correction of defective work shall be at the *Construction Manager's* expense.
- 2.5.2 The *Construction Manager* shall promptly make good other contractors' work destroyed or damaged by such removals or replacements. Subject to paragraph 7.1.9 of Article A-7 of the Agreement – COST OF THE WORK, the correction of destroyed or damaged work shall be at the *Construction Manager's* expense.
- 2.5.3 If in the opinion of the *Consultant* it is not expedient to correct defective work or work not performed as provided in the *Contract Documents*, the *Owner* may deduct from the amount otherwise due to the *Construction Manager* the difference in value between the work as performed and that called for by the *Contract Documents*. If the *Owner* and the *Construction Manager* do not agree on the difference in value, they shall refer the matter to the *Consultant* for a finding.

PART 3 PERFORMANCE OF THE SERVICES AND EXECUTION OF THE WORK

GC 3.1 CONTROL OF THE WORK

- 3.1.1 The *Construction Manager* shall have total control of the *Work* and shall effectively direct and supervise the *Work* so as to ensure conformity with the *Contract Documents*.
- 3.1.2 The *Construction Manager* shall be solely responsible for construction means, methods, techniques, sequences, and procedures and for co-ordinating the various parts of the *Work* under the *Contract*.

GC 3.2 CONSTRUCTION BY OWNER OR OTHER CONTRACTORS

- 3.2.1 The *Owner* reserves the right to award separate contracts in connection with other parts of the *Project* to other contractors and to perform work with own forces.
- 3.2.2 When separate contracts are awarded for other parts of the *Project*, or when work is performed by the *Owner's* own forces, the *Owner* shall:
- .1 provide for the co-ordination of the activities and work of other contractors and *Owner's* own forces with the *Work*;
 - .2 assume overall responsibility for compliance with the applicable health and construction safety legislation at the *Place of the Work*;
 - .3 enter into separate contracts with other contractors under conditions of contract which are compatible with the conditions of the *Contract*;
 - .4 ensure that insurance coverage is provided to the same requirements as are called for in GC 11.1 – INSURANCE and co-ordinate such insurance with the insurance coverage of the *Construction Manager* as it affects the *Work*; and
 - .5 take all reasonable precautions to avoid labour disputes or other disputes on the *Project* arising from the work of other contractors or the *Owner's* own forces.
- 3.2.3 When separate contracts are awarded for other parts of the *Project*, or when work is performed by the *Owner's* own forces, the *Construction Manager* shall:
- .1 afford the *Owner* and other contractors reasonable opportunity to store their products and execute their work;
 - .2 cooperate with other contractors and the *Owner* in reviewing their construction schedules; and
 - .3 promptly report to the *Consultant* in writing any apparent deficiencies in the work of other contractors or of the *Owner's* own forces, where such work affects the proper execution of any portion of the *Work*, prior to proceeding with that portion of the *Work*.
- 3.2.4 Where the *Contract Documents* identify work to be performed by other contractors or the *Owner's* own forces, the *Construction Manager* shall co-ordinate and schedule the *Work* with the work of other contractors and the *Owner's* own forces as specified in the *Contract Documents*.
- 3.2.5 Where a change in the *Work* is required as a result of the co-ordination and integration of the work of other contractors or *Owner's* own forces with the *Work*, the changes shall be authorized and valued as provided in GC 6.1 – OWNER'S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER and GC 6.3 – CHANGE DIRECTIVE.
- 3.2.6 Disputes and other matters in question between the *Construction Manager* and other contractors shall be dealt with as provided in Part 8 of the General Conditions – DISPUTE RESOLUTION provided the other contractors have reciprocal obligations. The *Construction Manager* shall be deemed to have consented to arbitration of any dispute with any contractor whose contract with the *Owner* contains a similar agreement to arbitrate.

GC 3.3 TEMPORARY WORK

- 3.3.1 The *Construction Manager* shall have the sole responsibility for the design, erection, operation, maintenance, and removal of *Temporary Work*.
- 3.3.2 The *Construction Manager* shall engage and pay for registered professional engineering personnel skilled in the appropriate disciplines to perform those functions referred to in paragraph 3.3.1 where required by law or by the *Contract Documents* and in all cases where such *Temporary Work* is of such a nature that professional engineering skill is required to produce safe and satisfactory results.
- 3.3.3 Notwithstanding the provisions of GC 3.1 – CONTROL OF THE WORK, paragraph 3.3.1 and paragraph 3.3.2 or provisions to the contrary elsewhere in the *Contract Documents* where such *Contract Documents* include designs for *Temporary Work* or specify a method of construction in whole or in part, such designs or methods of construction shall be considered to be part of the design of the *Work* and the *Construction Manager* shall not be held responsible for that part of the design or the specified method of construction. The *Construction Manager* shall, however, be responsible for the execution of such design or specified method of construction in the same manner as for the execution of the *Work*.

GC 3.4 REVIEW OF DRAWINGS, SPECIFICATIONS AND MATERIAL AND FINISH SCHEDULES

- 3.4.1 The *Construction Manager* shall review the *Drawings, Specifications* and material and finish schedules and shall report promptly to the *Consultant* any error, inconsistency or omission the *Construction Manager* may discover. If the *Construction Manager* does discover any error, inconsistency or omission in the *Drawings, Specifications* and material and finish schedules, the *Construction Manager* shall not proceed with the work affected until the *Construction Manager* has received corrected or missing information from the *Consultant*.
- 3.4.2 The review of *Drawings, Specifications* and material and finish schedules under paragraph 3.4.1 shall be to the best of the *Construction Manager's* knowledge, information and belief. In making such review the *Construction Manager* assumes no responsibility for the accuracy of the review. The *Construction Manager* shall not be liable for any damage or costs resulting from errors, inconsistencies or omissions, which the *Construction Manager* did not discover.

GC 3.5 CONSTRUCTION SCHEDULE

- 3.5.1 The *Construction Manager* shall:
- .1 prepare and submit to the *Owner* and the *Consultant* prior to the first application for payment, a construction schedule that indicates the timing of the major activities of the *Work* and provides sufficient detail of the critical events and their inter-relationship to demonstrate that the *Work* will be performed in conformity with the *Contract Time*;
 - .2 monitor the progress of the *Work* relative to the construction schedule and update the construction schedule on a monthly basis or as stipulated by the *Contract Documents*; and
 - .3 advise the *Consultant* of any revisions required to the construction schedule as the result of extensions of the *Contract Time* as provided in Part 6 of the General Conditions – CHANGES.

GC 3.6 SUPERVISION

- 3.6.1 The *Construction Manager* shall provide all necessary supervision and appoint a competent representative who shall be in attendance at the *Place of the Work* while work is being performed. The *Construction Manager* may appoint a new representative for a valid reason and to whom the *Owner* makes no reasonable objection.
- 3.6.2 The appointed representative shall represent the *Construction Manager* at the *Place of the Work*. Information and instructions provided by the *Consultant* to the *Construction Manager's* appointed representative shall be deemed to have been received by the *Construction Manager*, except with respect to Article A-10 of the Agreement – RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING.

GC 3.7 SUBCONTRACTORS AND SUPPLIERS

- 3.7.1 The *Construction Manager* shall preserve and protect the rights of the parties under the *Contract* with respect to work to be performed under subcontract, and shall:
- .1 enter into contracts or written agreements with *Subcontractors* and *Suppliers* to require them to perform their work as provided in the *Contract Documents*;
 - .2 incorporate the terms and conditions of the *Contract Documents* into all contracts or written agreements with *Subcontractors* and *Suppliers*; and
 - .3 subject to paragraph 7.1.9 of Article A-7 of the Agreement – COST OF THE WORK, be as fully responsible to the *Owner* for acts and omissions of *Subcontractors, Suppliers* and of persons directly or indirectly employed by them as for acts and omissions of persons directly employed by the *Construction Manager*.
- 3.7.2 The *Construction Manager* shall, before entering into contracts or written agreements with *Subcontractors* and *Suppliers*, submit to the *Owner* all bids received for the various parts of the *Work* to be subcontracted and obtain the *Owner's* acceptance of the *Subcontractors* and *Suppliers* selected.
- 3.7.3 The *Construction Manager* shall cause to be obtained contract security from *Subcontractors* to the extent and for the amounts approved by the *Owner*.
- 3.7.4 The *Construction Manager* shall not be required to employ as a *Subcontractor* or *Supplier*, a person or firm to which the *Construction Manager* may reasonably object.
- 3.7.5 The *Owner*, through the *Consultant*, may provide to a *Subcontractor* or *Supplier* information as to the percentage of the *Subcontractor's* or *Supplier's* work which has been certified for payment.

GC 3.8 LABOUR AND PRODUCTS

- 3.8.1 The *Construction Manager* shall maintain good order and discipline among the *Construction Manager's* employees engaged on the *Work* and shall not employ on the *Work* anyone not skilled in the tasks assigned.
- 3.8.2 Unless otherwise specified in the *Contract Documents*, *Products* provided shall be new. *Products* which are not specified shall be of a quality consistent with those specified and their use acceptable to the *Consultant*.

GC 3.9 DOCUMENTS AT THE SITE

- 3.9.1 The *Construction Manager* shall keep one copy of current *Construction Documents*, submittals, reports, and records of meetings at the *Place of the Work*, in good order and available to the *Owner* and the *Consultant*.

GC 3.10 SHOP DRAWINGS

- 3.10.1 The *Construction Manager* shall provide *Shop Drawings* as required in the *Construction Documents*.
- 3.10.2 The *Construction Manager* shall provide *Shop Drawings* to the *Consultant* to review in orderly sequence and sufficiently in advance so as to cause no delay in the *Work* or in the work of other contractors.
- 3.10.3 Upon request of the *Construction Manager* or the *Consultant*, they shall jointly prepare a schedule of the dates for provision, review and return of *Shop Drawings*.
- 3.10.4 The *Construction Manager* shall provide *Shop Drawings* in the form specified, or if not specified, as directed by the *Consultant*.
- 3.10.5 *Shop Drawings* provided by the *Construction Manager* to the *Consultant* shall indicate by stamp, date and signature of the person responsible for the review that the *Construction Manager* has reviewed each one of them.
- 3.10.6 The *Consultant's* review is for conformity to the design concept and for general arrangement only.
- 3.10.7 *Shop Drawings* which require approval of any legally constituted authority having jurisdiction shall be provided to such authority by the *Construction Manager* for approval.
- 3.10.8 The *Construction Manager* shall review all *Shop Drawings* before providing them to the *Consultant*. The *Construction Manager* represents by this review that:
 - .1 the *Construction Manager* has determined and verified all applicable field measurements, field construction conditions, *Product* requirements, catalogue numbers and similar data, or will do so, and
 - .2 the *Construction Manager* has checked and co-ordinated each *Shop Drawing* with the requirements of the *Work* and of the *Construction Documents*.
- 3.10.9 At the time of providing *Shop Drawings*, the *Construction Manager* shall expressly advise the *Consultant* in writing of any deviations in a *Shop Drawing* from the requirements of the *Construction Documents*. The *Consultant* shall indicate the acceptance or rejection of such deviation expressly in writing.
- 3.10.10 The *Consultant's* review shall not relieve the *Construction Manager* of responsibility for errors or omissions in the *Shop Drawings* or for meeting all requirements of the *Construction Documents*.
- 3.10.11 The *Construction Manager* shall provide revised *Shop Drawings* to correct those which the *Consultant* rejects as inconsistent with the *Construction Documents*, unless otherwise directed by the *Consultant*. The *Construction Manager* shall notify the *Consultant* in writing of any revisions to the *Shop Drawings* other than those requested by the *Consultant*.
- 3.10.12 The *Consultant* will review and return *Shop Drawings* in accordance with the schedule agreed upon, or, in the absence of such schedule, with reasonable promptness so as to cause no delay in the performance of the *Work*.

GC 3.11 USE OF THE WORK

- 3.11.1 The *Construction Manager* shall confine *Construction Equipment*, *Temporary Work*, storage of *Products*, waste products and debris, and operations of employees and *Subcontractors* to limits indicated by laws, ordinances, permits, or the *Contract Documents* and shall not unreasonably encumber the *Place of the Work*.
- 3.11.2 The *Construction Manager* shall not load or permit to be loaded any part of the *Work* with a weight or force that will endanger the safety of the *Work*.

GC 3.12 CUTTING AND REMEDIAL WORK

- 3.12.1 The *Construction Manager* shall perform the cutting and remedial work required to make the affected parts of the *Work* come together properly.
- 3.12.2 The *Construction Manager* shall co-ordinate the *Work* to ensure that the cutting and remedial work is kept to a minimum.
- 3.12.3 Should the *Owner*, the *Consultant*, other contractors or anyone employed by them be responsible for poorly timed work necessitating cutting or remedial work to be performed, the cost of such cutting or remedial work shall be valued as provided in GC 6.1 – OWNER’S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER and GC 6.3 – CHANGE DIRECTIVE.
- 3.12.4 Cutting and remedial work shall be performed by specialists familiar with the *Products* affected and shall be performed in a manner to neither damage nor endanger the *Work*.

GC 3.13 CLEANUP

- 3.13.1 The *Construction Manager* shall maintain the *Work* in a safe and tidy condition and free from the accumulation of waste products and debris, other than that caused by the *Owner*, other contractors or their employees.
- 3.13.2 Before applying for *Substantial Performance of the Work* as provided in GC 5.5 – SUBSTANTIAL PERFORMANCE OF THE WORK, the *Construction Manager* shall remove waste products and debris, other than that resulting from the work of the *Owner*, other contractors or their employees, and shall leave the *Place of the Work* clean and suitable for use or occupancy by the *Owner*. The *Construction Manager* shall remove products, tools, *Construction Equipment*, and *Temporary Work* not required for the performance of the remaining work.
- 3.13.3 Prior to application for the final payment, the *Construction Manager* shall remove any remaining products, tools, *Construction Equipment*, and *Temporary Work*, and waste products and debris, other than that resulting from the work of the *Owner*, other contractors or their employees.

PART 4 ALLOWANCE

GC 4.1 CASH ALLOWANCES

- 4.1.1 Cash allowances may be stated in this *Contract* if the *Guaranteed Maximum Price* is stipulated in paragraphs 8.2 or 8.3 of Article A-8 of the Agreement – OPTIONS.
- 4.1.2 The *Price of the Work* includes the cash allowances, if any, stated in this *Contract*. The scope of work or costs included in such cash allowances shall be as described in this *Contract*.
- 4.1.3 Expenditures under cash allowances shall be authorized by the *Owner* through the *Consultant*.
- 4.1.4 Where costs under any cash allowance exceed the amount of the allowance specified in this *Contract*, the *Construction Manager’s Fee* for the *Work* and the *Guaranteed Maximum Price* shall be adjusted by *Change Order* to compensate the *Construction Manager* for any excess incurred and substantiated. Where costs under any cash allowance are less than the amount of the allowance, the *Owner* shall be credited for the unexpended portion of the cash allowance, but not for the *Construction Manager’s* overhead and profit on such amount. Multiple cash allowances shall not be combined for the purpose of calculating the foregoing.
- 4.1.5 The *Construction Manager’s* overhead and profit in connection with such cash allowances is eligible to be included in progress payments on account of the *Construction Manager’s Fee* for the *Work*.
- 4.1.6 The value of the *Work* performed under a cash allowance is eligible to be included in progress payments on account of the *Cost of the Work*.
- 4.1.7 The *Construction Manager* and the *Consultant* shall jointly prepare a schedule that shows when the *Consultant* and the *Owner* must authorize ordering of items called for under cash allowances to avoid delaying the progress of the *Work*.

PART 5 PAYMENT

GC 5.1 FINANCING INFORMATION REQUIRED OF THE OWNER

- 5.1.1 The *Owner* shall, at the request of the *Construction Manager*, before signing the *Contract*, and promptly from time to time thereafter, furnish to the *Construction Manager* reasonable evidence that financial arrangements have been made to fulfill the *Owner's* obligations under the *Contract*.
- 5.1.2 The *Owner* shall give the *Construction Manager Notice in Writing* of any material change in the *Owner's* financial arrangements to fulfill the *Owner's* obligations under the *Contract* during the performance of the *Contract*.

GC 5.2 ACCOUNTING AND AUDIT

- 5.2.1 The *Construction Manager* shall keep full and detailed accounts and records necessary for the documentation of the *Cost of the Work*.
- 5.2.2 For 60 calendar days after the application for final payment or for such other period specified in the *Contract*, the *Owner* shall be afforded reasonable access to all of the *Construction Manager's* books, records, correspondence, instructions, drawings, receipt vouchers, *Subcontractor* and *Supplier* invoices, and memoranda relating to the *Cost of the Work*, and for this purpose the *Construction Manager* shall preserve all such records.

GC 5.3 PROGRESS PAYMENT FOR THE SERVICES

- 5.3.1 The *Owner* shall make payment for the *Construction Manager's Fee* for the *Services* as described in paragraph of 5.2 of Article A-5 of the Agreement – CONSTRUCTION MANAGER'S FEE and on account of the reimbursable expenses for the *Services* as described in Article A-6 of the Agreement – REIMBURSABLE EXPENSES FOR THE SERVICES no later than 20 calendar days after receipt of an application for payment for the *Services* submitted by the *Construction Manager*.
- 5.3.2 The application for payment for the reimbursable expenses for the *Services* shall include items of cost as defined in Schedule A2 to the Agreement – REIMBURSABLE EXPENSES APPLICABLE TO SCHEDULE A1 and other support documents required by the *Owner* in accordance with the *Contract Documents*.

GC 5.4 PROGRESS PAYMENT FOR THE WORK

- 5.4.1 Applications for payment on account as provided in Article A-9 of the Agreement – PAYMENT may be made monthly as the *Work* progresses.
- 5.4.2 Applications for payment shall be dated the last day of each payment period, which is the last day of the month or an alternative day of the month agreed in writing by the parties.
- 5.4.3 The amount applied for shall be the cost of the *Work* performed and *Products* delivered to the *Place of the Work* or other locations designated by the *Owner* in accordance with the provisions of Article A-7 of the Agreement – COST OF THE WORK, as of the last day of the month or an alternative day of the month agreed in writing by the parties plus the *Construction Manager's Fee* for the *Work* earned in accordance with the provisions of Article A-5 of the Agreement – CONSTRUCTION MANAGER'S FEE.
- 5.4.4 The application for payment for the *Work* shall include items of cost as defined in Article A-7 of the Agreement – COST OF THE WORK and other support documents required by the *Owner* as in accordance with the *Contract Documents*.
- 5.4.5 When submitting the second and succeeding applications for payment, the *Construction Manager* shall furnish receipted vouchers or other satisfactory evidence of payment for all items included in the preceding applications. If the *Owner* has reasonable grounds for believing that any amount included in preceding applications has not been paid the *Owner* may withhold payment in respect of such amount from the current application until satisfactory evidence of payment is given by the *Construction Manager*.
- 5.4.6 Applications for payment for *Products* delivered to the *Place of the Work* but not yet incorporated into the *Work* shall be supported by such evidence as the *Consultant* may reasonably require to establish the value and delivery of the *Products*.

- 5.4.7 After receipt by the *Consultant* of an application for payment for the *Work* submitted by the *Construction Manager* in accordance with paragraphs 5.4.1 to 5.4.6:
- .1 the *Consultant* will promptly inform the *Owner* of the date of receipt of the *Construction Manager's* application for payment;
 - .2 the *Consultant* will issue to the *Owner* and copy to the *Construction Manager*, no later than 10 calendar days after the receipt of the application for payment, a certificate for payment in the amount applied for, or in such other amount as the *Consultant* determines to be properly due. If the *Consultant* amends the application, the *Consultant* will promptly advise the *Construction Manager* in writing giving reasons for the amendment; and
 - .3 the *Owner* shall make payment to the *Construction Manager* on account as provided in Article A-9 of the Agreement – PAYMENT on or before 20 calendar days after the later of:
 - receipt by the *Consultant* of the application for payment, or
 - the last day of the monthly payment period for which the application for payment is made.

GC 5.5 SUBSTANTIAL PERFORMANCE OF THE WORK

- 5.5.1 When the *Construction Manager* considers that the *Work* is substantially performed, or if permitted by the lien legislation applicable to the *Place of the Work* a designated portion thereof which the *Owner* agrees to accept separately is substantially performed, the *Construction Manager* shall, within 1 *Working Day*, deliver to the *Consultant* and to the *Owner* a comprehensive list of items to be completed or corrected, together with a written application for a review by the *Consultant* to establish *Substantial Performance of the Work* or of the designated portion of the *Work*. Failure to include an item on the list does not alter the responsibility of the *Construction Manager* to complete the *Contract*.
- 5.5.2 The *Consultant* will review the *Work* to verify the validity of the application and shall promptly, and in any event, no later than 20 calendar days after receipt of the *Construction Manager's* list and application:
- .1 advise the *Construction Manager* in writing that the *Work* or the designated portion of the *Work* is not substantially performed and give reasons why, or
 - .2 state the date of *Substantial Performance of the Work* or a designated portion of the *Work* in a certificate and issue a copy of that certificate to each of the *Owner* and the *Construction Manager*.
- 5.5.3 Immediately following the issuance of the certificate of *Substantial Performance of the Work* or a designated portion of the *Work*, the *Construction Manager*, in consultation with the *Consultant*, shall establish a reasonable date for finishing the *Work*.

GC 5.6 PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK

- 5.6.1 After the issuance of the certificate of *Substantial Performance of the Work*, the *Construction Manager* shall:
- .1 submit an application for payment of the holdback amount,
 - .2 submit CCDC 9A 'Statutory Declaration' to state that all accounts for labour, subcontracts, *Products*, *Construction Equipment*, and other indebtedness which may have been incurred by the *Construction Manager* in the *Substantial Performance of the Work* and for which the *Owner* might in any way be held responsible have been paid in full, except for amounts properly retained as a holdback or as an identified amount in dispute.
- 5.6.2 After the receipt of an application for payment from the *Construction Manager* and the statement as provided in paragraph 5.6.1, the *Consultant* will issue a certificate for payment of the holdback amount.
- 5.6.3 Where the holdback amount required by the applicable lien legislation has not been placed in a separate holdback account, the *Owner* shall, 10 calendar days prior to the expiry of the holdback period stipulated in the lien legislation applicable to the *Place of the Work*, place the holdback amount in a bank account in the joint names of the *Owner* and the *Construction Manager*.
- 5.6.4 In the common law jurisdictions, the holdback amount authorized by the certificate for payment of the holdback amount is due and payable on the first calendar day following the expiration of the holdback period stipulated in the lien legislation applicable to the *Place of the Work*. Where lien legislation does not exist or apply, the holdback amount shall be due and payable in accordance with other legislation, industry practice or provisions which may be agreed to between the parties. The *Owner* may retain out of the holdback amount any sums required by law to satisfy any liens against the *Work* or, if permitted by the lien legislation applicable to the *Place of the Work*, other third party monetary claims against the *Construction Manager* which are enforceable against the *Owner*.
- 5.6.5 In the Province of Quebec, the holdback amount authorized by the certificate for payment of the holdback amount is due and payable 30 calendar days after the issuance of the certificate. The *Owner* may retain out of the holdback amount any sums required to satisfy any legal hypothecs that have been taken, or could be taken, against the *Work* or other third party monetary claims against the *Construction Manager* which are enforceable against the *Owner*.

GC 5.7 PROGRESSIVE RELEASE OF HOLDBACK FOR THE WORK

- 5.7.1 In the common law jurisdictions, where legislation permits and where, upon application by the *Construction Manager*, the *Consultant* has certified that the work of a *Subcontractor* or *Supplier* has been performed prior to *Substantial Performance of the Work*, the *Owner* shall pay the *Construction Manager* the holdback amount retained for such subcontract work, or the *Products* supplied by such *Supplier*, on the first calendar day following the expiration of the holdback period for such work stipulated in the lien legislation applicable to the *Place of the Work*. The *Owner* may retain out of the holdback amount any sums required by law to satisfy any liens against the *Work* or, if permitted by the lien legislation applicable to the *Place of the Work*, other third party monetary claims against the *Construction Manager* which are enforceable against the *Owner*.
- 5.7.2 In the Province of Quebec, where, upon application by the *Construction Manager*, the *Consultant* has certified that the work of a *Subcontractor* or *Supplier* has been performed prior to *Substantial Performance of the Work*, the *Owner* shall pay the *Construction Manager* the holdback amount retained for such subcontract work, or the *Products* supplied by such *Supplier*, no later than 30 calendar days after such certification by the *Consultant*. The *Owner* may retain out of the holdback amount any sums required to satisfy any legal hypothecs that have been taken, or could be taken, against the *Work* or other third party monetary claims against the *Construction Manager* which are enforceable against the *Owner*.
- 5.7.3 Notwithstanding the provisions of the preceding paragraphs, and notwithstanding the wording of such certificates, the *Construction Manager* shall ensure that such subcontract work or *Products* are protected pending the issuance of a final certificate for payment and be responsible for the correction of defects or work not performed regardless of whether or not such was apparent when such certificates were issued.

GC 5.8 FINAL PAYMENT FOR THE WORK

- 5.8.1 When the *Construction Manager* considers that the *Work* is completed, the *Construction Manager* shall submit an application for final payment.
- 5.8.2 The *Consultant* will, no later than 10 calendar days after the receipt of an application from the *Construction Manager* for final payment, review the *Work* to verify the validity of the application and advise the *Construction Manager* in writing that the application is valid or give reasons why it is not valid.
- 5.8.3 When the *Consultant* finds the *Construction Manager's* application for final payment valid, the *Consultant* will promptly issue a final certificate for payment.
- 5.8.4 Subject to the provision of paragraph 10.4.1 of GC 10.4 – WORKERS' COMPENSATION and any lien legislation applicable to the *Place of the Work*, the *Owner* shall, no later than 5 calendar days after the issuance of a final certificate for payment, pay the *Construction Manager* as provided in Article A-9 of the Agreement – PAYMENT.

GC 5.9 WITHHOLDING OF PAYMENT FOR THE WORK

- 5.9.1 If because of climatic or other conditions reasonably beyond the control of the *Construction Manager*, there are items of work that cannot be performed, payment in full for that portion of the *Work* which has been performed as certified by the *Consultant* shall not be withheld or delayed by the *Owner* on account thereof, but the *Owner* may withhold, until the remaining portion of the *Work* is finished, only such an amount that the *Consultant* determines is sufficient and reasonable to cover the cost of performing such remaining work.

GC 5.10 NON-CONFORMING WORK

- 5.10.1 No payment by the *Owner* under the *Contract* nor partial or entire use or occupancy of the *Work* by the *Owner* shall constitute an acceptance of any portion of the *Work* or *Products* which are not in accordance with the requirements of the *Contract Documents*.

PART 6 CHANGES

GC 6.1 OWNER'S RIGHT TO MAKE CHANGES

- 6.1.1 The *Owner*, through the *Consultant*, without invalidating the *Contract*, may make:
- .1 changes in the *Work* consisting of additions, deletions, or other revisions to the *Work* by *Change Order* or *Change Directive*, and
 - .2 changes to the *Contract Time* for the *Work*, or any part thereof, by *Change Order*.

- 6.1.2 The *Construction Manager* shall not perform a change in the *Work* without a *Change Order* or a *Change Directive*.
- 6.1.3 The *Owner* and the *Construction Manager*, without invalidating the *Contract*, may agree to make changes to the *Services*.

GC 6.2 CHANGE ORDER

- 6.2.1 When a change in the *Work* is proposed or required, the *Consultant* shall provide the *Construction Manager* with a written description of the proposed change in the *Work*. The *Construction Manager* shall promptly present, in a form acceptable to the *Consultant*, a method of adjustment or an amount of adjustment for the *Construction Manager's Fee*, a method of adjustment or an amount of adjustment for the *Guaranteed Maximum Price*, and the adjustment in the *Contract Time*, as applicable, for the proposed change in the *Work*.
- 6.2.2 When the *Owner* and *Construction Manager* agree to the adjustments in the *Construction Manager's Fee*, the *Guaranteed Maximum Price* and the *Contract Time*, or to the method to be used to determine the adjustments, such agreement shall be effective immediately and shall be recorded in a *Change Order*. The value of the work performed as the result of a *Change Order* shall be included in applications for progress payment.
- 6.2.3 When the *Owner* and *Construction Manager* agree to exercise the stipulated price option at any time during the term of the *Contract*, such agreement shall be recorded in a *Change Order*.

GC 6.3 CHANGE DIRECTIVE

- 6.3.1 If the *Owner* requires the *Construction Manager* to proceed with a change in the *Work* prior to the *Owner* and the *Construction Manager* agreeing upon any corresponding adjustment in the *Construction Manager's Fee*, the *Guaranteed Maximum Price* and the *Contract Time*, the *Owner*, through the *Consultant*, shall issue a *Change Directive*.
- 6.3.2 A *Change Directive* shall only be used to direct a change in the *Work* which is within the general scope of the *Contract Documents*.
- 6.3.3 A *Change Directive* shall not be used to direct a change in the *Contract Time* only.
- 6.3.4 Upon receipt of a *Change Directive*, the *Construction Manager* shall proceed promptly with the change in the *Work*.
- 6.3.5 If no method of adjustment is agreed:
- .1 the adjustment in the *Construction Manager's Fee* for a change carried out by way of a *Change Directive* shall be determined on the basis of the changes in costs of the *Construction Manager*; and
 - .2 the *Guaranteed Maximum Price* shall be adjusted by the changes in the *Cost of Work* and in the *Construction Manager's Fee* for the *Work* resulting from a *Change Directive*.
- 6.3.6 Pending determination of the adjustment to the *Construction Manager's Fee* required as a result of a *Change Directive*, the *Cost of the Work* incurred and the undisputed amount of the *Construction Manager's Fee* as the result of a *Change Directive* is eligible to be included in progress payments, notwithstanding the limit imposed by the *Guaranteed Maximum Price*.
- 6.3.7 If the *Owner* and the *Construction Manager* do not agree on the proposed adjustment in the *Construction Manager's Fee*, the *Guaranteed Maximum Price*, the *Contract Time*, or in the method of determining them, the adjustment shall be referred to the *Consultant* for a finding.
- 6.3.8 When the *Owner* and the *Construction Manager* reach agreement on the adjustment to the *Construction Manager's Fee*, the *Guaranteed Maximum Price* and the *Contract Time*, this agreement shall be recorded in a *Change Order*.

GC 6.4 CONCEALED OR UNKNOWN CONDITIONS

- 6.4.1 If the *Owner* or the *Construction Manager* discover conditions at the *Place of the Work* which are:
- .1 subsurface or otherwise concealed physical conditions which existed before the commencement of the *Work* which differ materially from those indicated in the *Contract Documents*; or
 - .2 physical conditions, other than conditions due to weather, that are of a nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the *Contract Documents*,
- then the observing party shall give *Notice in Writing* to the other party of such conditions before they are disturbed and in no event later than 5 *Working Days* after first observance of the conditions.

- 6.4.2 The *Consultant* will promptly investigate such conditions and make a finding. If the finding is that the conditions differ materially and this would justify an increase or decrease in the *Construction Manager's Fee* for the *Work*, the *Guaranteed Maximum Price* or the *Contract Time*, the *Consultant*, with the *Owner's* approval, will issue appropriate instructions for a change in the *Work* as provided in GC 6.2 – CHANGE ORDER or GC 6.3 – CHANGE DIRECTIVE.
- 6.4.3 If the *Consultant* finds that the conditions at the *Place of the Work* are not materially different or that no change in the *Construction Manager's Fee* for the *Work*, the *Guaranteed Maximum Price* or the *Contract Time* is justified, the *Consultant* will report the reasons for this finding to the *Owner* and the *Construction Manager* in writing.
- 6.4.4 If such concealed or unknown conditions relate to toxic and hazardous substances and materials, artifacts and fossils, or mould, the parties will be governed by the provisions of GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES, GC 9.3 – ARTIFACTS AND FOSSILS and GC 9.5 – MOULD.

GC 6.5 DELAYS

- 6.5.1 If the *Construction Manager* is delayed in the performance of the *Work* by an action or omission of the *Owner*, *Consultant* or anyone employed or engaged by them directly or indirectly, contrary to the provisions of the *Contract Documents*, then the *Contract Time* shall be extended for such reasonable time as the *Consultant* may recommend in consultation with the *Construction Manager*. The *Construction Manager's Fee* and the *Guaranteed Maximum Price* shall be adjusted by a reasonable amount for costs incurred by the *Construction Manager* as the result of such delay.
- 6.5.2 If the *Construction Manager* is delayed in the performance of the *Work* by a stop work order issued by a court or other public authority and providing that such order was not issued as the result of an act or fault of the *Construction Manager* or any person employed or engaged by the *Construction Manager* directly or indirectly, then the *Contract Time* shall be extended for such reasonable time as the *Consultant* may recommend in consultation with the *Construction Manager*. The *Construction Manager's Fee* and the *Guaranteed Maximum Price* shall be adjusted by a reasonable amount for costs incurred by the *Construction Manager* as the result of such delay.
- 6.5.3 If the *Construction Manager* is delayed in the performance of the *Work* by:
- .1 labour disputes, strikes, lock-outs (including lock-outs decreed or recommended for its members by a recognized contractors' association, of which the *Construction Manager* is a member or to which the *Construction Manager* is otherwise bound),
 - .2 fire, unusual delay by common carriers or unavoidable casualties,
 - .3 abnormally adverse weather conditions, or
 - .4 any cause beyond the *Construction Manager's* control other than one resulting from a default or breach of *Contract* by the *Construction Manager*,
- then the *Contract Time* shall be extended for such reasonable time as the *Consultant* may recommend in consultation with the *Construction Manager*. The extension of time shall not be less than the time lost as the result of the event causing the delay, unless the *Construction Manager* agrees to a shorter extension. The *Construction Manager's Fee* and the *Guaranteed Maximum Price* shall be adjusted by a reasonable amount for overhead costs incurred by the *Construction Manager* as the result of such delay.
- 6.5.4 No extension shall be made for delay unless *Notice in Writing* of the cause of the delay is given to the *Consultant* not later than 10 *Working Days* after the commencement of the delay. In the case of a continuing cause of delay only one *Notice in Writing* shall be necessary.
- 6.5.5 If no schedule is made under paragraph 2.3.13 of GC 2.3 – CONSULTANT'S RESPONSIBILITIES or paragraph 3.5.1 of GC 3.5 – CONSTRUCTION SCHEDULE, then no request for extension shall be made because of failure of the *Consultant* to furnish instructions until 10 *Working Days* after demand for such instructions has been made.

GC 6.6 CLAIMS FOR A CHANGE IN CONSTRUCTION MANAGER'S FEE FOR THE SERVICES, THE PRICE OF THE WORK OR THE GUARANTEED MAXIMUM PRICE

- 6.6.1 If the *Construction Manager* intends to make a claim for an increase to the *Construction Manager's Fee* for the *Services*, the *Price of the Work* or the *Guaranteed Maximum Price*, or if the *Owner* intends to make a claim against the *Construction Manager* for a credit to the *Construction Manager's Fee* for the *Services*, the *Price of the Work* or the *Guaranteed Maximum Price*, the party that intends to make the claim shall give timely *Notice in Writing* of intent to claim to the other party and, if the claim relates to the *Price of the Work* or the *Guaranteed Maximum Price*, with a copy to the *Consultant*.

- 6.6.2 Upon commencement of the event or series of events giving rise to a claim, the party intending to make the claim shall:
- .1 take all reasonable measures to mitigate any loss or expense which may be incurred as a result of such event or series of events, and
 - .2 keep such records as may be necessary to support the claim.
- 6.6.3 The party making the claim shall submit within a reasonable time to the other party a detailed account of the amount claimed and the grounds upon which the claim is based.
- 6.6.4 Where the event or series of events giving rise to the claim has a continuing effect, the detailed account submitted under paragraph 6.6.3 shall be considered to be an interim account and the party making the claim shall, at such intervals as the party receiving the claim may reasonably require, submit further interim accounts giving the accumulated amount of the claim and any further grounds upon which it is based. The party making the claim shall submit a final account after the end of the effects resulting from the event or series of events.
- 6.6.5 If the claim is not acceptable to the other party, it shall be settled in accordance with Part 8 of the General Conditions – DISPUTE RESOLUTION.

PART 7 DEFAULT NOTICE

GC 7.1 OWNER'S RIGHT TO PERFORM THE WORK OR TERMINATE THE CONTRACT

- 7.1.1 If the *Construction Manager* is adjudged bankrupt, or makes a general assignment for the benefit of creditors because of the *Construction Manager's* insolvency, or if a receiver is appointed because of the *Construction Manager's* insolvency, the *Owner* may, without prejudice to any other right or remedy the *Owner* may have, terminate the *Construction Manager's* right to continue with the *Work* by giving the *Construction Manager* or receiver or trustee in bankruptcy *Notice in Writing* to that effect.
- 7.1.2 If the *Construction Manager* neglects to prosecute the *Work* properly or otherwise fails to comply with the requirements of the *Contract Documents* to a substantial degree, and if the *Consultant* has given a written statement to the *Owner* and *Construction Manager* that sufficient cause exists to justify such action, the *Owner* may, without prejudice to any other right or remedy the *Owner* may have, give the *Construction Manager Notice in Writing* that the *Construction Manager* is in default of the *Construction Manager's* contractual obligations and instruct the *Construction Manager* to correct the default in the 5 *Working Days* immediately following the receipt of such *Notice in Writing*.
- 7.1.3 If the default cannot be corrected in the 5 *Working Days* specified or in such other time period as may be subsequently agreed in writing by the parties, the *Construction Manager* shall be in compliance with the *Owner's* instructions if the *Construction Manager*:
- .1 commences the correction of the default within the specified time, and
 - .2 provides the *Owner* with an acceptable schedule for such correction, and
 - .3 corrects the default in accordance with the *Contract* terms and with such schedule.
- 7.1.4 If the *Construction Manager* fails to correct the default in the time specified or in such other time period as may be subsequently agreed in writing by the parties, without prejudice to any other right or remedy the *Owner* may have, the *Owner* may:
- .1 correct such default and deduct the cost thereof from any payment then or thereafter due the *Construction Manager* provided the *Consultant* has certified such cost to the *Owner* and the *Construction Manager*, or
 - .2 terminate the *Construction Manager's* right to continue with the *Work* in whole or in part or terminate the *Contract*.
- 7.1.5 If the *Owner* terminates the *Construction Manager's* right to continue with the *Work* as provided in paragraphs 7.1.1 and 7.1.4, the *Owner* shall:
- .1 be entitled to take possession of the *Work* and *Products* at the *Place of the Work*; subject to the rights of third parties, utilize the *Construction Equipment* at the *Place of the Work*; finish the *Work* by whatever method the *Owner* may consider expedient, but without undue delay or expense, and
 - .2 pay the *Construction Manager* upon the *Consultant's* certificate and in accordance with Part 5 of the General Conditions – PAYMENT for the costs properly incurred by the *Construction Manager* to that time plus the proportionate amount of the fee as provided in Article A-5 of the Agreement – CONSTRUCTION MANAGER'S FEE, and
 - .3 pay to the *Construction Manager* fair compensation, either by purchase or rental, at the option of the *Owner*, for any *Construction Equipment* retained for use in the *Work*, and
 - .4 assume and become liable for all obligations, commitments and unliquidated claims as certified by the *Consultant* that the *Construction Manager* may have heretofore, in good faith, undertaken or incurred in connection with the *Work*, other than such as are properly payable by the *Construction Manager* because of neglect or default.

- 7.1.6 If the *Owner* terminates the *Construction Manager's* right to continue with the *Work* as provided in paragraphs 7.1.1 and 7.1.4, the *Construction Manager* shall, as a condition of receiving the payments, execute and deliver such papers and take such action, including the legal assignment in the *Construction Manager's* contractual rights, as the *Owner* may require for the purpose of fully vesting in the *Construction Manager* the rights and benefits of the *Construction Manager* under the obligations or commitments to be assumed by the *Owner*.
- 7.1.7 The *Construction Manager's* obligation under the *Contract* as to quality, correction and warranty of the work performed by the *Construction Manager* up to the time of termination shall continue in force after such termination of the *Contract*.

GC 7.2 CONSTRUCTION MANAGER'S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT

- 7.2.1 If the *Owner* is adjudged bankrupt, or makes a general assignment for the benefit of creditors because of the *Owner's* insolvency, or if a receiver is appointed because of the *Owner's* insolvency, the *Construction Manager* may, without prejudice to any other right or remedy the *Construction Manager* may have, terminate the *Contract* by giving the *Owner* or receiver or trustee in bankruptcy *Notice in Writing* to that effect.
- 7.2.2 If the *Work* is suspended or otherwise delayed for a period of 20 *Working Days* or more under an order of a court or other public authority and providing that such order was not issued as the result of an act or fault of the *Construction Manager* or of anyone directly or indirectly employed or engaged by the *Construction Manager*, the *Construction Manager* may, without prejudice to any other right or remedy the *Construction Manager* may have, terminate the *Contract* by giving the *Owner* *Notice in Writing* to that effect.
- 7.2.3 The *Construction Manager* may give *Notice in Writing* to the *Owner*, with a copy to the *Consultant*, that the *Owner* is in default of the *Owner's* contractual obligations if:
- .1 the *Owner* fails to furnish, when so requested by the *Construction Manager*, reasonable evidence that financial arrangements have been made to fulfill the *Owner's* obligations under the *Contract*, or
 - .2 the *Consultant* fails to issue a certificate as provided in GC 5.4 – PROGRESS PAYMENT FOR THE WORK, or
 - .3 the *Owner* fails to pay the *Construction Manager*, or
 - .4 the *Owner* violates the requirements of the *Contract* to a substantial degree and the *Consultant*, except for GC 5.1 – FINANCING INFORMATION REQUIRED OF THE OWNER, confirms by written statement to the *Construction Manager* that sufficient cause exists.
- 7.2.4 The *Construction Manager's* *Notice in Writing* to the *Owner* provided under paragraph 7.2.3 shall advise that if the default is not corrected within 5 *Working Days* following receipt of the *Notice in Writing*, the *Construction Manager* may, without prejudice to any other right or remedy the *Construction Manager* may have, suspend the *Work* or terminate the *Contract*.
- 7.2.5 If the *Construction Manager* terminates the *Contract* under the conditions set out above, the *Construction Manager* shall be entitled to be paid for all work performed including reasonable profit, for loss sustained upon *Products* and *Construction Equipment*, and such other damages as the *Construction Manager* may have sustained as a result of the termination of the *Contract*.

PART 8 DISPUTE RESOLUTION

GC 8.1 AUTHORITY OF THE CONSULTANT

- 8.1.1 Differences between the parties to the *Contract* as to the interpretation, application or administration of the *Contract* or any failure to agree where agreement between the parties is called for, herein collectively called disputes, which are not resolved in the first instance by findings of the *Consultant* as provided in GC 2.3 – CONSULTANT'S RESPONSIBILITIES, shall be settled in accordance with the requirements of Part 8 of the General Conditions – DISPUTE RESOLUTION.
- 8.1.2 If a dispute arises under the *Contract* in respect of a matter in which the *Consultant* has no authority under the *Contract* to make a finding, the procedures set out in paragraph 8.1.3 and paragraphs 8.2.3 to 8.2.8 of GC 8.2 – NEGOTIATION, MEDIATION AND ARBITRATION, and in GC 8.3 – RETENTION OF RIGHTS apply to that dispute with the necessary changes to detail as may be required.

- 8.1.3 If a dispute is not resolved promptly, the *Consultant* will give such instructions as in the *Consultant's* opinion are necessary for the proper performance of the *Work* and to prevent delays pending settlement of the dispute. The parties shall act immediately according to such instructions, it being understood that by so doing neither party will jeopardize any claim the party may have. If it is subsequently determined that such instructions were in error or at variance with the *Contract Documents*, the *Owner* shall pay the *Construction Manager* costs incurred by the *Construction Manager* in carrying out such instructions which the *Construction Manager* was required to do beyond what the *Contract Documents* correctly understood and interpreted would have required, including costs resulting from interruption of the *Work*.

GC 8.2 NEGOTIATION, MEDIATION AND ARBITRATION

- 8.2.1 In accordance with the Rules for Mediation of Construction Disputes as provided in CCDC 40 in effect at the time of bid closing, the parties shall appoint a *Project Mediator*
- .1 within 20 *Working Days* after the *Contract* was awarded, or
 - .2 if the parties neglected to make an appointment within the 20 *Working Days*, within 10 *Working Days* after either party by *Notice in Writing* requests that the *Project Mediator* be appointed.
- 8.2.2 A party shall be conclusively deemed to have accepted a finding of the *Consultant* under GC 2.3 – CONSULTANT'S RESPONSIBILITIES and to have expressly waived and released the other party from any claims in respect of the particular matter dealt with in that finding unless, within 15 *Working Days* after receipt of that finding, the party sends a *Notice in Writing* of dispute to the other party and to the *Consultant*, which contains the particulars of the matter in dispute and the relevant provisions of the *Contract Documents*. The responding party shall send a *Notice in Writing* of reply to the dispute within 10 *Working Days* after receipt of such *Notice in Writing* setting out particulars of this response and any relevant provisions of the *Contract Documents*.
- 8.2.3 The parties shall make all reasonable efforts to resolve their dispute by amicable negotiations and agree to provide, without prejudice, frank, candid, and timely disclosure of relevant facts, information and documents to facilitate these negotiations.
- 8.2.4 After a period of 10 *Working Days* following receipt of a responding party's *Notice in Writing* of reply under paragraph 8.2.2, the parties shall request the *Project Mediator* to assist the parties to reach agreement on any unresolved dispute. The mediated negotiations shall be conducted in accordance with the Rules for Mediation of Construction Disputes as provided in CCDC 40 in effect at the time of bid closing.
- 8.2.5 If the dispute has not been resolved within 10 *Working Days* after the *Project Mediator* was requested under paragraph 8.2.4 or within such further period agreed by the parties, the *Project Mediator* shall terminate the mediated negotiations by giving *Notice in Writing* to the *Owner*, the *Construction Manager* and the *Consultant*.
- 8.2.6 By giving a *Notice in Writing* to the other party and the *Consultant*, not later than 10 *Working Days* after the date of termination of the mediated negotiations under paragraph 8.2.5, either party may refer the dispute to be finally resolved by arbitration under the Rules for Arbitration of Construction Disputes as provided in CCDC 40 in effect at the time of bid closing. The arbitration shall be conducted in the jurisdiction of the *Place of the Work*.
- 8.2.7 On expiration of the 10 *Working Days*, the arbitration agreement under paragraph 8.2.6 is not binding on the parties and, if a *Notice in Writing* is not given under paragraph 8.2.6 within the required time, the parties may refer the unresolved dispute to the courts or to any other form of dispute resolution, including arbitration, which they have agreed to use.
- 8.2.8 If neither party, by *Notice in Writing* given within 10 *Working Days* of the date of *Notice in Writing* requesting arbitration in paragraph 8.2.6, requires that a dispute be arbitrated immediately, all disputes referred to arbitration as provided in paragraph 8.2.6 shall be
- .1 held in abeyance until
 - (1) Substantial Performance of the *Work*,
 - (2) the *Contract* has been terminated, or
 - (3) the *Construction Manager* has abandoned the *Work*,whichever is earlier, and
 - .2 consolidated into a single arbitration under the rules governing the arbitration under paragraph 8.2.6.

GC 8.3 RETENTION OF RIGHTS

- 8.3.1 It is agreed that no act by either party shall be construed as a renunciation or waiver of any rights or recourses, provided the party has given the *Notice in Writing* required under Part 8 of the General Conditions – DISPUTE RESOLUTION and has carried out the instructions as provided in paragraph 8.1.3 of GC 8.1 – AUTHORITY OF THE CONSULTANT.
- 8.3.2 Nothing in Part 8 of the General Conditions – DISPUTE RESOLUTION shall be construed in any way to limit a party from asserting any statutory right to a lien under applicable lien legislation of the jurisdiction of the *Place of the Work* and the assertion of such right by initiating judicial proceedings is not to be construed as a waiver of any right that party may have under paragraph 8.2.6 of GC 8.2 – NEGOTIATION, MEDIATION AND ARBITRATION to proceed by way of arbitration to adjudicate the merits of the claim upon which such a lien is based.

PART 9 PROTECTION OF PERSONS AND PROPERTY

GC 9.1 PROTECTION OF WORK AND PROPERTY

- 9.1.1 The *Construction Manager* shall protect the *Work* and the *Owner's* property and property adjacent to the *Place of the Work* from damage which may arise as the result of the *Construction Manager's* operations under this *Contract*, and shall be responsible for such damage, except damage which occurs as the result of:
- .1 errors in the *Contract Documents*;
 - .2 acts or omissions by the *Owner*, the *Consultant*, other contractors, or their respective agents and employees.
- 9.1.2 Before commencing any work, the *Construction Manager* shall locate on site all underground utilities and structures that are indicated in the *Contract Documents* or information provided by the *Owner*, or that are reasonably apparent in an inspection of the *Place of the Work*.
- 9.1.3 Should the *Construction Manager* in the performance of the *Contract* damage the *Work*, the *Owner's* property or property adjacent to the *Place of the Work*, the *Construction Manager* shall be responsible for making good such damage at the *Construction Manager's* expense.
- 9.1.4 Should damage occur to the *Work* or *Owner's* property for which the *Construction Manager* is not responsible, as provided in paragraph 9.1.1, the *Construction Manager* shall make good such damage to the *Work* and, if the *Owner* so directs, to the *Owner's* property. The *Construction Manager's Fee*, the *Guaranteed Maximum Price* and the *Contract Time* shall be adjusted as provided in GC 6.1 – OWNER'S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER and GC 6.3 – CHANGE DIRECTIVE.

GC 9.2 TOXIC AND HAZARDOUS SUBSTANCES

- 9.2.1 For the purposes of applicable legislation, the *Owner* shall be deemed to have control and management of the *Place of the Work* with respect to existing conditions.
- 9.2.2 Prior to the *Construction Manager* commencing the *Work*, the *Owner* shall,
- .1 take all reasonable steps to determine whether any toxic or hazardous substances are present at the *Place of the Work*, and
 - .2 provide the *Consultant* and the *Construction Manager* with a written list of any such substances that are known to exist and their locations.
- 9.2.3 The *Owner* shall take all reasonable steps to ensure that no person's exposure to any toxic or hazardous substance exceeds the time weighted levels prescribed by applicable legislation at the *Place of the Work* and that no property is damaged or destroyed as a result of exposure to, or the presence of, toxic or hazardous substances which were at the *Place of the Work* prior to the *Construction Manager* commencing the *Work*.
- 9.2.4 Unless the *Contract* expressly provides otherwise, the *Owner* shall be responsible for taking all necessary steps, in accordance with applicable legislation in force at the *Place of the Work*, to dispose of, store or otherwise render harmless toxic or hazardous substances which were present at the *Place of the Work* prior to the *Construction Manager* commencing the *Work*.

- 9.2.5 If the *Construction Manager*
- .1 encounters toxic or hazardous substances at the *Place of the Work*, or
 - .2 has reasonable grounds to believe that toxic or hazardous substances are present at the *Place of the Work*, which were not brought to the *Place of the Work* by the *Construction Manager* or anyone for whom the *Construction Manager* is responsible and which were not disclosed by the *Owner* or which were disclosed but have not been dealt with as required under paragraph 9.2.4, the *Construction Manager* shall
 - .3 take all reasonable steps, including stopping the *Work*, to ensure that no person's exposure to any toxic or hazardous substances exceeds any applicable time weighted levels prescribed by applicable legislation at the *Place of the Work*, and
 - .4 immediately report the circumstances to the *Consultant* and the *Owner* in writing.
- 9.2.6 If the *Owner* and *Construction Manager* do not agree on the existence or significance of toxic or hazardous substances, or whether the toxic or hazardous substances were brought onto the *Place of the Work* by the *Construction Manager* or anyone for whom the *Construction Manager* is responsible, the *Owner* shall retain and pay for an independent qualified expert to investigate and determine such matters. The expert's report shall be delivered to the *Owner* and the *Construction Manager*.
- 9.2.7 If the *Owner* and *Construction Manager* agree or if the expert referred to in paragraph 9.2.6 determines that the toxic or hazardous substances were not brought onto the place of the *Work* by the *Construction Manager* or anyone for whom the *Construction Manager* is responsible, the *Owner* shall promptly at the *Owner's* own expense:
- .1 take all steps as required under paragraph 9.2.4;
 - .2 adjust the *Construction Manager's Fee* and the *Guaranteed Maximum Price* by a reasonable amount for overhead costs incurred by the *Construction Manager* in taking the steps pursuant to paragraph 9.2.5;
 - .3 extend the *Contract Time* for such reasonable time as the *Consultant* may recommend in consultation with the *Construction Manager* and the expert referred to in paragraph 9.2.6 and adjust the *Construction Manager's Fee* and the *Guaranteed Maximum Price* by a reasonable amount for costs incurred by the *Construction Manager* as a result of the delay; and
 - .4 indemnify the *Construction Manager* as required by GC 12.1 – INDEMNIFICATION.
- 9.2.8 If the *Owner* and *Construction Manager* agree or if the expert referred to in paragraph 9.2.6 determines that the toxic or hazardous substances were brought onto the *Place of the Work* by the *Construction Manager* or anyone for whom the *Construction Manager* is responsible, the *Construction Manager* shall promptly at the *Construction Manager's* own expense:
- .1 take all necessary steps, in accordance with applicable legislation in force at the *Place of the Work*, to safely remove and dispose the toxic or hazardous substance;
 - .2 make good any damage to the *Work*, the *Owner's* property or property adjacent to the *Place of the Work* as provided in paragraph 9.1.3 of GC 9.1 – PROTECTION OF WORK AND PROPERTY;
 - .3 reimburse the *Owner* for reasonable costs incurred under paragraph 9.2.6; and
 - .4 indemnify the *Owner* as required by GC 12.1 – INDEMNIFICATION.
- 9.2.9 If either party does not accept the expert's findings under paragraph 9.2.6, the disagreement shall be settled in accordance with Part 8 of the General Conditions – DISPUTE RESOLUTION. If such disagreement is not resolved promptly, the parties shall act immediately in accordance with the expert's determination and take the steps required by paragraph 9.2.7 or 9.2.8 it being understood that by so doing, neither party will jeopardize any claim that party may have to be reimbursed as provided by GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES.

GC 9.3 ARTIFACTS AND FOSSILS

- 9.3.1 Fossils, coins, articles of value or antiquity, structures and other remains or things of scientific or historic interest discovered at the *Place of the Work* shall, as between the *Owner* and the *Construction Manager*, be deemed to be the absolute property of the *Owner*.
- 9.3.2 The *Construction Manager* shall take all reasonable precautions to prevent removal or damage to discoveries as identified in paragraph 9.3.1, and shall advise the *Consultant* upon discovery of such items
- 9.3.3 The *Consultant* will investigate the impact on the *Work* of the discoveries identified in paragraph 9.3.1. If conditions are found that would change the *Construction Manager's Fee*, the *Guaranteed Maximum Price* or the *Construction Manager's* time to perform the *Work*, the *Consultant*, with the *Owner's* approval, will issue appropriate instructions for a change in the *Work* as provided in GC 6.2 – CHANGE ORDER or GC 6.3 – CHANGE DIRECTIVE.

GC 9.4 CONSTRUCTION SAFETY

- 9.4.1 Subject to paragraph 3.2.2.2 of GC 3.2 – CONSTRUCTION BY OWNER OR OTHER CONTRACTORS, the *Construction Manager* shall be responsible for
- .1 construction health and safety at the *Place of the Work* in compliance with the rules, regulations and practices required by the applicable construction health and safety legislation, and
 - .2 establishing, initiating, maintaining and supervising all health and safety precautions and programs in connection with the performance of the *Work*.

GC 9.5 MOULD

- 9.5.1 If the *Construction Manager* or *Owner* observes or reasonably suspects the presence of mould at the *Place of the Work*, the remediation of which is not expressly part of the *Work*,
- .1 the observing party shall promptly report the circumstances to the other party in writing;
 - .2 the *Construction Manager* shall promptly take all reasonable steps, including stopping the *Work* if necessary, to ensure that no person suffers injury, sickness or death and that no property is damaged as a result of exposure to or the presence of the mould; and
 - .3 if the *Owner* and *Construction Manager* do not agree on the existence, significance or cause of the mould or as to what steps need be taken to deal with it, the *Owner* shall retain and pay for an independent qualified expert to investigate and determine such matters. The expert's report shall be delivered to the *Owner* and *Construction Manager*.
- 9.5.2 If the *Owner* and *Construction Manager* agree, or if the expert referred to in paragraph 9.5.1.3 determines that the presence of mould was caused by the *Construction Manager's* operations under the *Contract*, the *Construction Manager* shall promptly, at the *Construction Manager's* own expense:
- .1 take all reasonable and necessary steps to safely remediate or dispose of the mould, and
 - .2 make good any damage to the *Work*, the *Owner's* property or property adjacent to the *Place of the Work* as provided in paragraph 9.1.3 of GC 9.1 – PROTECTION OF WORK AND PROPERTY, and
 - .3 reimburse the *Owner* for reasonable costs incurred under paragraph 9.5.1.3, and
 - .4 indemnify the *Owner* as required by GC 12.1 – INDEMNIFICATION.
- 9.5.3 If the *Owner* and *Construction Manager* agree, or if the expert referred to in paragraph 9.5.1.3 determines that the presence of mould was not caused by the *Construction Manager's* operations under the *Contract*, the *Owner* shall promptly, at the *Owner's* own expense:
- .1 take all reasonable and necessary steps to safely remediate or dispose of the mould;
 - .2 adjust the *Construction Manager's Fee* and the *Guaranteed Maximum Price* by a reasonable amount for overhead costs incurred by the *Construction Manager* in taking the steps pursuant to paragraph 9.5.1.2 and making good any damage to the *Work* as provided in paragraph 9.1.4 of GC 9.1 – PROTECTION OF WORK AND PROPERTY;
 - .3 extend the *Contract Time* for such reasonable time as the *Consultant* may recommend in consultation with the *Construction Manager* and the expert referred to in paragraph 9.5.1.3 and adjust the *Construction Manager's Fee* and the *Guaranteed Maximum Price* by a reasonable amount for costs incurred by the *Construction Manager* as a result of the delay; and
 - .4 indemnify the *Construction Manager* as required by GC 12.1 – INDEMNIFICATION.
- 9.5.4 If either party does not accept the expert's finding under paragraph 9.5.1.3, the disagreement shall be settled in accordance with Part 8 of the General Conditions – DISPUTE RESOLUTION. If such disagreement is not resolved promptly, the parties shall act immediately in accordance with the expert's determination and take the steps required by paragraphs 9.5.2 or 9.5.3, it being understood that by so doing neither party will jeopardize any claim the party may have to be reimbursed as provided by GC 9.5 – MOULD.

PART 10 GOVERNING REGULATIONS

GC 10.1 TAXES AND DUTIES

10.1.1 The *Construction Manager* shall pay all customs, taxes and duties in effect during the performance of the *Work*. The amount incurred shall be included in the *Cost of the Work* as in accordance with paragraph 7.1.14 of the Agreement A-7 – COST OF THE WORK.

GC 10.2 LAWS, NOTICES, PERMITS, AND FEES

- 10.2.1 The laws of the *Place of the Work* shall govern the *Work*.
- 10.2.2 The *Owner* shall obtain and pay for development approvals, building permit, permanent easements, rights of servitude, and all other necessary approvals and permits, except for the permits and fees referred to in paragraph 10.2.3 or for which the *Contract Documents* specify as the responsibility of the *Construction Manager*.
- 10.2.3 The *Construction Manager* shall be responsible for the procurement of permits, licences, inspections, and certificates, which are necessary for the performance of the *Work* and customarily obtained by contractors in the jurisdiction of the *Place of the Work* after the issuance of the building permit. The *Cost of the Work* includes the cost of these permits, licences, inspections, and certificates, and their procurement.
- 10.2.4 The *Construction Manager* shall give the required notices and comply with the laws, ordinances, rules, regulations, or codes which are or become in force during the performance of the *Work* and which relate to the *Work*, to the preservation of the public health, and to construction safety.
- 10.2.5 The *Construction Manager* shall not be responsible for verifying that the *Contract Documents* are in compliance with the applicable laws, ordinances, rules, regulations, or codes relating to the *Work*. If the *Contract Documents* are at variance therewith, or if, subsequent to the time of bid closing, changes are made to the applicable laws, ordinances, rules, regulations, or codes which require modification to the *Contract Documents*, the *Construction Manager* shall advise the *Consultant* in writing requesting direction immediately upon such variance or change becoming known. The *Consultant* will make the changes required to the *Contract Documents* as provided in GC 6.1 – OWNER’S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER and GC 6.3 – CHANGE DIRECTIVE.
- 10.2.6 If the *Construction Manager* fails to advise the *Consultant* in writing, fails to obtain direction as required in paragraph 10.2.5, and performs work knowing it to be contrary to any laws, ordinances, rules, regulations or codes; the *Construction Manager* shall be responsible for and shall correct the violations thereof; and shall bear the costs, expenses and damages attributable to the failure to comply with the provisions of such laws, ordinances, rules, regulations, or codes.

GC 10.3 PATENT FEES

- 10.3.1 The *Construction Manager* shall pay the royalties and patent licence fees required for the performance of the *Contract*. The amount incurred shall be included in the *Cost of the Work* in accordance with paragraph 7.1.12 of the Agreement A-7 – COST OF THE WORK. The *Construction Manager* shall hold the *Owner* harmless from and against claims, demands, losses, costs, damages, actions, suits or proceedings arising out of the *Construction Manager*’s performance of the *Contract* which are attributable to an infringement or an alleged infringement of a patent of invention by the *Construction Manager* or anyone for whose acts the *Construction Manager* may be liable.
- 10.3.2 The *Owner* shall hold the *Construction Manager* harmless against claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of the *Construction Manager*’s performance of the *Contract* which are attributable to an infringement or an alleged infringement of a patent of invention in executing anything for the purpose of the *Contract*, or any model, plan or design which was supplied to the *Construction Manager* as part of the *Contract*.

GC 10.4 WORKERS' COMPENSATION

- 10.4.1 Prior to commencing the *Work*, again with the *Construction Manager*’s application for payment of the holdback amount following *Substantial Performance of the Work* and again with the *Construction Manager*’s application for final payment, the *Construction Manager* shall provide evidence of compliance with workers’ compensation legislation at the *Place of the Work*, including payments due thereunder.
- 10.4.2 At any time during the term of the *Contract*, when requested by the *Owner*, the *Construction Manager* shall provide such evidence of compliance by the *Construction Manager* and *Subcontractors*.

PART 11 INSURANCE — CONTRACT SECURITY

GC 11.1 INSURANCE

- 11.1.1 Without restricting the generality of GC 12.1 – INDEMNIFICATION, the *Construction Manager* shall provide, maintain and pay for the following insurance coverages, the minimum requirements of which are specified in CCDC 41 – INSURANCE REQUIREMENTS in effect at the time of bid closing except as hereinafter provided:
- .1 General liability insurance in the name of the *Construction Manager* and include, or in the case of a single, blanket policy, be endorsed to name, the *Owner* and the *Consultant* as insureds but only with respect to liability, other than legal liability arising out of their sole negligence, arising out of the operations of the *Construction Manager* with regard to the *Work*. General liability insurance shall be maintained from the date of commencement of the *Services* until one year from the date of *Substantial Performance of the Work*. Liability coverage shall be provided for completed operations hazards from the date of *Substantial Performance of the Work*, as set out in the certificate of *Substantial Performance of the Work*, on an ongoing basis for a period of 6 years following *Substantial Performance of the Work*.
 - .2 Automobile Liability Insurance from the date of commencement of the *Services* until one year after the date of *Substantial Performance of the Work*.
 - .3 Aircraft or Watercraft Liability Insurance when owned or non-owned aircraft or watercraft are used directly or indirectly in the performance of the *Work*.
 - .4 "Broad form" property insurance in the joint names of the *Construction Manager*, the *Owner* and the *Consultant*. The policy shall include as insureds all *Subcontractors*. The "broad form" property insurance shall be provided from the date of commencement of the *Work* until the earliest of:
 - (1) 10 calendar days after the date of *Substantial Performance of the Work*;
 - (2) on the commencement of use or occupancy of any part or section of the *Work* unless such use or occupancy is for construction purposes, habitational, office, banking, convenience store under 465 square metres in area, or parking purposes, or for the installation, testing and commissioning of equipment forming part of the *Work*;
 - (3) when left unattended for more than 30 consecutive calendar days or when construction activity has ceased for more than 30 consecutive calendar days.
 - .5 Boiler and machinery insurance in the joint names of the *Construction Manager*, the *Owner* and the *Consultant*. The policy shall include as insureds all *Subcontractors*. The coverage shall be maintained continuously from commencement of use or operation of the boiler and machinery objects insured by the policy and until 10 calendar days after the date of *Substantial Performance of the Work*.
 - .6 The "Broad form" property and boiler and machinery policies shall provide that, in the case of a loss or damage, payment shall be made to the *Owner* and the *Construction Manager* as their respective interests may appear. In the event of loss or damage:
 - (1) the *Construction Manager* shall act on behalf of the *Owner* for the purpose of adjusting the amount of such loss or damage payment with the insurers. When the extent of the loss or damage is determined, the *Construction Manager* shall proceed to restore the *Work*. Loss or damage shall not affect the rights and obligations of either party under the *Contract* except that the *Construction Manager* shall be entitled to such reasonable extension of *Contract Time* relative to the extent of the loss or damage as the *Consultant* may recommend in consultation with the *Construction Manager*;
 - (2) the *Construction Manager* shall be entitled to receive from the *Owner*, in addition to the amount due under the *Contract*, the amount which the *Owner's* interest in restoration of the *Work* has been appraised, such amount to be paid as the restoration of the *Work* proceeds in accordance with the progress payment provisions. In addition the *Construction Manager* shall be entitled to receive from the payments made by the insurer the amount of the *Construction Manager's* interest in the restoration of the *Work*; and
 - (3) to the *Work* arising from the work of the *Owner*, the *Owner's* own forces or another contractor, the *Owner* shall, in accordance with the *Owner's* obligations under the provisions relating to construction by *Owner* or other contractors, pay the *Construction Manager* the cost of restoring the *Work* as the restoration of the *Work* proceeds and as in accordance with the progress payment provisions.
 - .7 Contractors' Equipment Insurance from the date of commencement of the *Work* until one year after the date of *Substantial Performance of the Work*.
- 11.1.2 Prior to commencement of the *Services* and upon the placement, renewal, amendment or extension of all or any part of the insurance, the *Construction Manager* shall promptly provide the *Owner* with confirmation of coverage and, if required, a certified true copy of the policies certified by an authorized representative of the insurer together with copies of any amending endorsements applicable to this *Contract*.

- 11.1.3 The parties shall pay their share of the deductible amounts in direct proportion to their responsibility in regards to any loss for which the above policies are required to pay, except where such amounts may be excluded by the terms of the *Contract*.
- 11.1.4 If the *Construction Manager* fails to provide or maintain insurance as required by the *Contract Documents*, then the *Owner* shall have the right to provide and maintain such insurance and give evidence to the *Construction Manager* and the *Consultant*. The *Construction Manager* shall pay the cost thereof to the *Owner* on demand or the *Owner* may deduct the cost from the amount which is due or may become due to the *Construction Manager*.
- 11.1.5 All required insurance policies shall be with insurers licensed to underwrite insurance in the jurisdiction of the *Place of the Work*.
- 11.1.6 If a revised version of CCDC 41 – INSURANCE REQUIREMENTS is published, which specifies reduced insurance requirements, the parties shall address such reduction, prior to the *Construction Manager*'s insurance policy becoming due for renewal, and record any agreement in a *Change Order*.
- 11.1.7 If a revised version of CCDC 41 – INSURANCE REQUIREMENTS is published, which specifies increased insurance requirements, the *Owner* may request the increased coverage from the *Construction Manager* by way of a *Change Order*.
- 11.1.8 A *Change Directive* shall not be used to direct a change in the insurance requirements in response to the revision of CCDC 41 – INSURANCE REQUIREMENTS.

GC 11.2 CONTRACT SECURITY

- 11.2.1 The *Construction Manager* shall, prior to commencement of the *Work* or within the specified time, provide to the *Owner* any *Contract* security required by this *Contract* as in accordance with paragraph 7.1.13 of the Agreement A-7 – COST OF THE WORK.
- 11.2.2 If this *Contract* requires surety bonds to be provided, such bonds shall be issued by a duly licensed surety company authorized to transact a business of suretyship in the province or territory of the *Place of the Work* and shall be maintained in good standing until the fulfilment of this *Contract*. The form of such bonds shall be in accordance with the latest edition of the CCDC approved bond forms.

PART 12 INDEMNIFICATION, WAIVER OF CLAIMS AND WARRANTY

GC 12.1 INDEMNIFICATION

- 12.1.1 Without restricting the parties' obligation to indemnify as described in paragraphs 12.1.4 and 12.1.5, the *Owner* and the *Construction Manager* shall each indemnify and hold harmless the other from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings whether in respect to losses suffered by them or in respect to claims by third parties that arise out of, or are attributable in any respect to, their involvement as parties to this *Contract*, provided such claims are:
 - .1 caused by:
 - (1) the negligent acts or omissions of the party from whom indemnification is sought or anyone for whose acts or omissions that party is liable, or
 - (2) a failure of the party to the *Contract* from whom indemnification is sought to fulfill its terms or conditions; and
 - .2 made by *Notice in Writing* within a period of 6 years from the date of *Substantial Performance of the Work* as set out in the certificate of *Substantial Performance of the Work* issued pursuant to paragraph 5.5.2.2 of GC 5.5 – SUBSTANTIAL PERFORMANCE OF THE WORK or within such shorter period as may be prescribed by any limitation statute of the province or territory of the *Place of the Work*.

The parties expressly waive the right to indemnity for claims other than those provided for in this *Contract*.
- 12.1.2 The obligation of either party to indemnify as set forth in paragraph 12.1.1 shall be limited as follows:
 - .1 In respect to losses suffered by the *Owner* and the *Construction Manager* for which insurance is to be provided by either party pursuant to GC 11.1 – INSURANCE, the insurance limit in effect at the time of bid closing.
 - .2 In respect to losses suffered by the *Owner* and the *Construction Manager* for which insurance is not required to be provided by either party in accordance with GC 11.1 – INSURANCE, the greater of the *Price of the Work* or \$2,000,000, but in no event shall the sum be greater than \$20,000,000.

- .3 In respect to claims by third parties for direct loss resulting from bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, the obligation to indemnify is without limit. In respect to all other claims for indemnity as a result of claims advanced by third parties, the limits of indemnity set forth in paragraphs 12.1.2.1 and 12.1.2.2 shall apply.
- 12.1.3 The obligation of either party to indemnify the other as set forth in paragraphs 12.1.1 and 12.1.2 shall be inclusive of interest and all legal costs.
- 12.1.4 The *Owner* and the *Construction Manager* shall indemnify and hold harmless the other from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of their obligations described in GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES.
- 12.1.5 The *Owner* shall indemnify and hold harmless the *Construction Manager* from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings:
 - .1 as described in GC 10.3 – PATENT FEES, and
 - .2 arising out of the *Construction Manager's* performance of the *Contract* which are attributable to a lack of or defect in title or an alleged lack of or defect in title to the *Place of the Work*.
- 12.1.6 In respect to any claim for indemnity or to be held harmless by the *Owner* or the *Construction Manager*:
 - .1 *Notice in Writing* of such claim shall be given within a reasonable time after the facts upon which such claim is based became known;
 - .2 should either party be required as a result of its obligation to indemnify the other pay or satisfy a final order, judgment or award made against the party entitled by this contract to be indemnified, then the indemnifying party upon assuming all liability for any costs that might result shall have the right to appeal in the name of the party against whom such final order or judgment has been made until such rights of appeal have been exhausted.

GC 12.2 WAIVER OF CLAIMS

- 12.2.1 Subject to any lien legislation applicable to the *Place of the Work*, as of the fifth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*, the *Construction Manager* waives and releases the *Owner* from all claims which the *Construction Manager* has or reasonably ought to have knowledge of that could be advanced by the *Construction Manager* against the *Owner* arising from the *Construction Manager's* involvement in the *Work*, including, without limitation, those arising from negligence or breach of contract in respect to which the cause of action is based upon acts or omissions which occurred prior to or on the date of *Substantial Performance of the Work*, except as follows:
 - .1 claims arising prior to or on the date of *Substantial Performance of the Work* for which *Notice in Writing* of claim has been received by the *Owner* from the *Construction Manager* no later than the sixth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*;
 - .2 indemnification for claims advanced against the *Construction Manager* by third parties for which a right of indemnification may be asserted by the *Construction Manager* against the *Owner* pursuant to the provisions of this *Contract*;
 - .3 claims for which a right of indemnity could be asserted by the *Construction Manager* pursuant to the provisions of paragraphs 12.1.4 or 12.1.5 of GC 12.1 – INDEMNIFICATION; and
 - .4 claims resulting from acts or omissions which occur after the date of *Substantial Performance of the Work*.
- 12.2.2 The *Construction Manager* waives and releases the *Owner* from all claims referenced in paragraph 12.2.1.4 except for those referred in paragraphs 12.2.1.2 and 12.2.1.3 and claims for which *Notice in Writing* of claim has been received by the *Owner* from the *Construction Manager* within 395 calendar days following the date of *Substantial Performance of the Work*.
- 12.2.3 Subject to any lien legislation applicable to the *Place of the Work*, as of the fifth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*, the *Owner* waives and releases the *Construction Manager* from all claims which the *Owner* has or reasonably ought to have knowledge of that could be advanced by the *Owner* against the *Construction Manager* arising from the *Owner's* involvement in the *Work*, including, without limitation, those arising from negligence or breach of contract in respect to which the cause of action is based upon acts or omissions which occurred prior to or on the date of *Substantial Performance of the Work*, except as follows:
 - .1 claims arising prior to or on the date of *Substantial Performance of the Work* for which *Notice in Writing* of claim has been received by the *Construction Manager* from the *Owner* no later than the sixth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*;

- .2 indemnification for claims advanced against the *Owner* by third parties for which a right of indemnification may be asserted by the *Owner* against the *Construction Manager* pursuant to the provisions of this *Contract*;
 - .3 claims for which a right of indemnity could be asserted by the *Owner* against the *Construction Manager* pursuant to the provisions of paragraph 12.1.4 of GC 12.1 – INDEMNIFICATION;
 - .4 damages arising from the *Construction Manager's* actions which result in substantial defects or deficiencies in the *Work*. “Substantial defects or deficiencies” mean those defects or deficiencies in the *Work* which affect the *Work* to such an extent or in such a manner that a significant part or the whole of the *Work* is unfit for the purpose intended by the *Contract Documents*;
 - .5 claims arising pursuant to GC 12.3 – WARRANTY; and
 - .6 claims arising from acts or omissions which occur after the date of *Substantial Performance of the Work*.
- 12.2.4 The *Owner* waives and releases the *Construction Manager* from all claims referred to in paragraph 12.2.3.4 except claims for which *Notice in Writing* of claim has been received by the *Construction Manager* from the *Owner* within a period of six years from the date of *Substantial Performance of the Work* should any limitation statute of the Province or Territory of the *Place of the Work* permit such agreement. If the applicable limitation statute does not permit such agreement, within such shorter period as may be prescribed by:
- .1 any limitation statute of the Province or Territory of the *Place of the Work*; or
 - .2 the Civil Code of Quebec, if the *Place of the Work* is the Province of Quebec.
- 12.2.5 The *Owner* waives and releases the *Construction Manager* from all claims referenced in paragraph 12.2.3.6 except for those referred in paragraph 12.2.3.2, 12.2.3.3 and those arising under GC 12.3 – WARRANTY and claims for which *Notice in Writing* has been received by the *Construction Manager* from the *Owner* within 395 calendar days following the date of *Substantial Performance of the Work*.
- 12.2.6 “*Notice in Writing* of claim” as provided for in GC 12.2 – WAIVER OF CLAIMS to preserve a claim or right of action which would otherwise, by the provisions of GC 12.2 – WAIVER OF CLAIMS, be deemed to be waived, must include the following
- .1 a clear and unequivocal statement of the intention to claim;
 - .2 a statement as to the nature of the claim and the grounds upon which the claim is based; and
 - .3 a statement of the estimated quantum of the claim.
- 12.2.7 The party giving “*Notice in Writing* of claim” as provided for in GC 12.2 – WAIVER OF CLAIMS shall submit within a reasonable time a detailed account of the amount claimed.
- 12.2.8 Where the event or series of events giving rise to a claim made under paragraphs 12.2.1 or 12.2.3 has a continuing effect, the detailed account submitted under paragraph 12.2.7 shall be considered to be an interim account and the party making the claim shall submit further interim accounts, at reasonable intervals, giving the accumulated amount of the claim and any further grounds upon which it is based. The party making the claim shall submit a final account after the end of the effects resulting from the event or series of events.
- 12.2.9 If a *Notice in Writing* of claim pursuant to paragraph 12.2.1.1 is received on the seventh or sixth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*, the period within which *Notice in Writing* of claim shall be received pursuant to paragraph 12.2.3.1 shall be extended to two calendar days before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*.
- 12.2.10 If a *Notice in Writing* of claim pursuant to paragraph 12.2.3.1 is received on the seventh or sixth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*, the period within which *Notice in Writing* of claim shall be received pursuant to paragraph 12.2.1.1 shall be extended to two calendar days before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*.

GC 12.3 WARRANTY

- 12.3.1 Except for extended warranties as described in paragraph 12.3.7, the warranty period under this *Contract* is one year from the date of *Substantial Performance of the Work*.
- 12.3.2 The *Construction Manager* shall be responsible for the proper performance of the *Work* to the extent that the design and *Contract Documents* permit such performance.
- 12.3.3 The *Owner*, through the *Consultant*, shall promptly give the *Construction Manager* *Notice in Writing* of observed defects and deficiencies which occur during the one year warranty period.
- 12.3.4 Subject to paragraph 12.3.2, the *Construction Manager* shall correct promptly, at the *Construction Manager's* expense, defects or deficiencies in the *Work* which appear prior to and during the one year warranty period.

- 12.3.5 The *Construction Manager* shall correct or pay for damage resulting from corrections made under the requirements of paragraph 12.3.4.
- 12.3.6 The *Construction Manager* shall enforce the warranty obligations of the *Subcontractors* and *Suppliers* which shall include the following provisions:
- .1 the *Subcontractor* or the *Supplier* shall correct promptly at its expense defects or deficiencies in the work which appear prior to and during the warranty periods specified in the *Contract Documents*; and
 - .2 the *Subcontractor* or the *Supplier* shall correct or pay for damage resulting from corrections made under the requirements of paragraph 12.3.4.
- 12.3.7 Any extended warranties required beyond the one year warranty period as described in paragraph 12.3.1 shall be as specified in the *Contract Documents*. Extended warranties shall be issued by the warrantor to the benefit of the *Owner*. The *Construction Manager*'s responsibility with respect to extended warranties shall be limited to obtaining any such extended warranties from the warrantor. The obligations under such extended warranties are solely the responsibilities of the warrantor.

APPENDIX – STIPULATED PRICE OPTION

The *Owner* and the *Construction Manager* may agree to exercise the stipulated price option at any time during the term of the *Contract* as in accordance with Article A-8 of the Agreement – OPTIONS. Upon the issuance of the *Change Order* exercising the stipulated price option, the following Articles of the Agreement, Definitions and General Conditions shall be deemed deleted, amended or added, as the case may be, and the *Contract* so revised shall be deemed to govern the rights and obligations of the parties with respect to the *Services* and *Work* to be provided from and after the date of the *Change Order*, unless stipulated otherwise in the *Change Order*.

ARTICLES OF THE AGREEMENT

1. **Article A-1**

New paragraph 1.4

insert new paragraph as follows:

1.4 subject to adjustment in *Contract Time* as provided for in the *Contract Documents*, attain *Substantial Performance of the Work*, by the _____ day of _____ in the year _____.

2. **Article A-5**

Delete this Article in its entirety.

3. **Article A-6**

Delete this Article in its entirety.

4. **Article A-7**

Delete this Article and replace with the following:

ARTICLE A-7 COST OF WORK

7.1 The cost of performing the work attributable to any *Change Directive* shall include:

- .1 salaries, wages and benefits paid to personnel in the direct employ of the *Construction Manager* under a salary or wage schedule agreed upon by the *Owner* and the *Construction Manager*, or in the absence of such a schedule, actual salaries, wages and benefits paid under applicable bargaining agreement, and in the absence of a salary or wage schedule and bargaining agreement, actual salaries, wages and benefits paid by the *Construction Manager*, for personnel
 - (1) stationed at the *Place of the Work*, in whatever capacity employed;
 - (2) engaged in expediting the production or transportation of material or equipment, at shops or on the road;
 - (3) engaged in the preparation or review of *Shop Drawings*, fabrication drawings and coordination drawings;or
 - (4) engaged in the processing of changes in the *Work*.
- .2 contributions, assessments or taxes incurred for such items as employment insurance, provincial or territorial health insurance, workers' compensation, and Canada or Quebec Pension Plan, insofar as such cost is based on wages, salaries or other remuneration paid to employees of the *Construction Manager* and included in the cost of the *Work* as provided in paragraph 7.1.1;
- .3 travel and subsistence expenses of the *Construction Manager's* personnel described in paragraph 7.1.1;
- .4 all *Products* including cost of transportation thereof;
- .5 materials, supplies, *Construction Equipment*, *Temporary Work*, and hand tools not owned by the workers, including transportation and maintenance thereof, which are consumed in the performance of the *Work*; and cost less salvage value on such items used but not consumed, which remain the property of the *Construction Manager*;
- .6 all tools and *Construction Equipment*, exclusive of hand tools used in the performance of the *Work*, whether rented from or provided by the *Construction Manager* or others, including installation, minor repairs and replacements, dismantling, removal, transportation, and delivery cost thereof;
- .7 the *Construction Manager's* field office;

- .8 deposits lost provided that they are not caused by negligent acts or omissions of the *Construction Manager* and the *Services* are performed in accordance with this *Contract*;
- .9 the amount of all subcontracts;
- .10 quality assurance such as independent inspection and testing services;
- .11 charges levied by authorities having jurisdiction at the *Place of the Work*;
- .12 royalties, patent license fees and damages for infringement of patents and cost of defending suits therefor subject always to the *Construction Manager's* obligations to indemnify the *Owner* as provided in paragraph 10.3.1 of GC 10.3 – PATENT FEES;
- .13 any adjustment in premiums for all contract securities and insurance that the *Construction Manager* is required, by the *Contract Documents*, to purchase and maintain;
- .14 any adjustment in taxes, other than *Value Added Taxes*, and duties relating to the *Work* for which the *Construction Manager* is liable;
- .15 charges for long distance communications, courier services, expressage, printing, and reproduction incurred in relation to the performance of the *Work*;
- .16 removal and disposal of waste products and debris;
- .17 the cost of safety measures and requirements;
- .18 other costs incurred in the performance of the *Work* as listed below:

6. **Article A-8**

Delete this Article and replace with the following:

ARTICLE A-8 CONTRACT PRICE

8.1 The *Contract Price*, which excludes *Value Added Taxes*, is:
 _____ /100 dollars \$ _____

8.2 *Value Added Taxes* (of _____ %) payable by the *Owner* to the *Construction Manager* are:
 _____ /100 dollars \$ _____

8.3 Total amount payable by the *Owner* to the *Construction Manager* for the construction of the *Work* is:
 _____ /100 dollars \$ _____

8.4 These amounts shall be subject to adjustments as provided in the *Contract Documents*.

8.5 All amounts are in Canadian funds.

7. **Article A-9**

paragraph 9.1

Delete and replace with the following:

9.1 Where required by provincial or territorial legislation, payments shall be subject to the lien legislation applicable to the *Place of the Work*. The *Owner* shall pay the *Construction Manager*:

- .1 payments on account of the *Contract Price* when due in the amount certified by the *Consultant* together with such *Value Added Taxes* as may be applicable to such payments,
- .2 upon *Substantial Performance of the Work*, the unpaid balance of the holdback amount when due together with such *Value Added Taxes* as may be applicable to such payment, and
- .3 upon the issuance of the final certificate for payment, the unpaid balance of the *Construction Manager's Fee* for the *Services* and the *Contract Price* when due together with such *Value Added Taxes* as may be applicable to such payment.

8. **Schedule, A1**

Delete this Schedule in its entirety.

9. **Schedule A2**
Delete this Schedule in its entirety.
10. **Schedule B**
Delete this Schedule in its entirety.

DEFINITIONS

11. **Definition 5 – CHANGE DIRECTIVE**
Delete and replace with the following:
5. Change Directive
A *Change Directive* is a written instruction prepared by the *Consultant* and signed by the *Owner* directing the *Construction Manager* to proceed with a change in the *Work* within the general scope of this *Contract* prior to the *Owner* and the *Construction Manager* agreeing upon adjustments in the *Contract Price* and the *Contract Time*.
12. **Definition 6 – CHANGE ORDER**
Delete and replace with the following:
6. Change Order
A *Change Order* is a written amendment to this *Contract* prepared by the *Consultant* and signed by the *Owner* and the *Construction Manager* stating their agreement upon:
- a change in the *Services*;
- a change in the *Work*;
- the method of adjustment or the amount of the adjustment in the *Contract Price*, if any; and
- the extent of the adjustment in the *Contract Time*, if any.
13. **Definition 32 – SUPPLEMENTAL INSTRUCTION**
Delete and replace with the following:
Supplemental Instruction
A *Supplemental Instruction* is an instruction, not involving adjustment in the *Contract Price* or *Contract Time*, in the form of *Specifications*, *Drawings*, schedules, samples, models or written instructions, consistent with the intent of the *Contract Documents*. It is to be issued by the *Consultant* to supplement the *Contract Documents*, as required for the performance of the *Work*.
14. **New Definition 38 – CONTRACT PRICE**
Insert new Definition as follows:
Contract Price
The *Contract Price*, which excludes *Value Added Taxes*, is the amount specified in Article A-8 – CONTRACT PRICE to complete the *Services* and the *Work*.

GENERAL CONDITIONS

15. GC 2.3
Delete and replace with the following:
2.3.1 The *Consultant* will provide administration of the *Work* as described in the *Contract Documents*.
2.3.2 The *Consultant* will visit the *Place of the Work* at intervals appropriate to the progress of construction to become familiar with the progress and quality of the work and to determine if the *Work* is proceeding in general conformity with the *Contract Documents*.
2.3.3 If the *Owner* and the *Consultant* agree, the *Consultant* will provide at the *Place of the Work*, one or more project representatives to assist in carrying out the *Consultant's* responsibilities. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in writing to the *Construction Manager*.
2.3.4 The *Consultant* will promptly inform the *Owner* of the date of receipt of the *Construction Manager's* applications for payment for the *Work* performed as provided in paragraph 5.4.7.1 of GC 5.4 – PROGRESS PAYMENT FOR THE WORK.

- 2.3.5 Based on the *Consultant's* observations and evaluation of the *Construction Manager's* applications for payment for the *Work* performed, the *Consultant* will determine the amounts owing to the *Construction Manager* for the *Contract Price* and will issue certificates for payment as provided in Article A-9 of the Agreement – PAYMENT, GC 5.4 – PROGRESS PAYMENT FOR THE WORK and GC 5.8 – FINAL PAYMENT FOR THE WORK.
- 2.3.6 The *Consultant* will not be responsible for and will not have control, charge or supervision of construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs required in connection with the *Work* in accordance with the applicable construction safety legislation, other regulations or general construction practice. The *Consultant* will not be responsible for the *Construction Manager's* failure to carry out the *Work* in accordance with the *Contract Documents*. The *Consultant* will not have control over, charge of or be responsible for the acts or omissions of the *Construction Manager, Subcontractors, Suppliers,* or their agents, employees, or any other persons performing portions of the *Work*.
- 2.3.7 Except with respect to GC 5.1 – FINANCING INFORMATION REQUIRED OF THE OWNER, the *Consultant* will be, in the first instance, the interpreter of the requirements of the *Work*.
- 2.3.8 Matters in question relating to the performance of the *Work* or the interpretation of the *Contract Documents*, except with respect to the scope, fee and reimbursable expenses of the *Services*, shall be initially referred in writing to the *Consultant* by the party raising the question for interpretations and findings and copied to the other party.
- 2.3.9 Interpretations and findings of the *Consultant* shall be consistent with the intent of the *Contract Documents* as they relate to the *Work*. In making such interpretations and findings the *Consultant* will not show partiality to either the *Owner* or the *Construction Manager*.
- 2.3.10 The *Consultant's* interpretations and findings will be given in writing to the parties within a reasonable time.
- 2.3.11 With respect to claims for a change in the *Contract Price*, the *Consultant* will make findings as set out in GC 6.6 – CLAIMS FOR A CHANGE IN CONTRACT PRICE
- 2.3.12 The *Consultant* will have authority to reject work which in the *Consultant's* opinion does not conform to the requirements of the *Contract Documents*. Whenever the *Consultant* considers it necessary or advisable, the *Consultant* will have authority to require inspection or testing of work, whether or not such work is fabricated, installed or completed. However, neither the authority of the *Consultant* to act nor any decision either to exercise or not to exercise such authority shall give rise to any duty or responsibility of the *Consultant* to the *Construction Manager, Subcontractor, Suppliers,* or their agents, employees, or other persons performing any of the *Work*.
- 2.3.13 During the progress of the *Work* the *Consultant* will furnish *Supplemental Instructions* to the *Construction Manager* with reasonable promptness or in accordance with a schedule for such instructions agreed to by the *Consultant* and the *Construction Manager*.
- 2.3.14 The *Consultant* will review and take appropriate action upon *Shop Drawings*, samples and other *Construction Manager's* submittals which are provided in accordance with the *Construction Documents*.
- 2.3.15 The *Consultant* will prepare *Change Orders* and *Change Directives* as provided in GC 6.2 – CHANGE ORDER and GC 6.3 – CHANGE DIRECTIVE.
- 2.3.16 The *Consultant* will conduct reviews of the *Work* to determine the date of *Substantial Performance of the Work* as provided in GC 5.5 – SUBSTANTIAL PERFORMANCE OF THE WORK.
- 2.3.17 All certificates issued by the *Consultant* will be to the best of the *Consultant's* knowledge, information and belief. By issuing any certificate, the *Consultant* does not guarantee the *Work* is correct or complete.
- 2.3.18 The *Consultant* will receive and review written warranties and related documents required by the *Contract* and provided by the *Construction Manager* and will forward such warranties and documents to the *Owner* for the *Owner's* acceptance.

16. GC 2.4

Delete and replace with the following:

- 2.4.1 The *Construction Manager* shall provide the *Owner* and the *Consultant* access to the *Work* at all times. The *Construction Manager* shall provide sufficient, safe and proper facilities at all times for the review of the *Work* by the *Consultant* and the inspection of the *Work* by authorized agencies. If parts of the *Work* are in preparation at locations other than the *Place of the Work*, the *Owner* and the *Consultant* shall be given access to such work whenever it is in progress.

- 2.4.2 If work is designated for tests, inspections or approvals in the *Contract Documents*, or by the *Consultant's* instructions, or by the laws or ordinances of the *Place of the Work*, the *Construction Manager* shall give the *Consultant* reasonable notification of when the work will be ready for review and inspection. The *Construction Manager* shall arrange for and shall give the *Consultant* reasonable notification of the date and time of inspections by other authorities.
- 2.4.3 The *Construction Manager* shall furnish promptly to the *Consultant* two copies of certificates and inspection reports relating to the *Work*.
- 2.4.4 If the *Construction Manager* covers, or permits to be covered, work that has been designated for special tests, inspections or approvals before such special tests, inspections or approvals are made, given or completed, the *Construction Manager* shall, if so directed, uncover such work, have the inspections or tests satisfactorily completed, and make good covering work at the *Construction Manager's* expense.
- 2.4.5 The *Consultant* may order any portion or portions of the *Work* to be examined to confirm that such work is in accordance with the requirements of the *Contract Documents*. If the work is not in accordance with the requirements of the *Contract Documents*, the *Construction Manager* shall correct the work and pay the cost of examination and correction at the *Construction Manager's* expense. If the work is in accordance with the requirements of the *Contract Documents*, the *Owner* shall pay the cost of examination and restoration.
- 2.4.6 The *Construction Manager* shall pay the cost of making any test or inspection, including the cost of samples required for such test or inspection, if such test or inspection is designated in the *Contract Documents* to be performed by the *Construction Manager* or is designated by the laws or ordinances applicable to the *Place of the Work*.
- 2.4.7 The *Construction Manager* shall pay the cost of samples required for any test or inspection to be performed by the *Consultant* or the *Owner* if such test or inspection is designated in the *Contract Documents*.

17. **GC 2.5**

Delete and replace with the following:

- 2.5.1 The *Construction Manager* shall promptly correct defective work that has been rejected by the *Consultant* as failing to conform to the *Contract Documents* whether or not the defective work has been incorporated in the *Work* and whether or not the defect is the result of poor workmanship, use of defective products or damage through carelessness or other act or omission of the *Construction Manager*. The correction of defective work shall be at the *Construction Manager's* expense.
- 2.5.2 The *Construction Manager* shall make good promptly other contractors' work destroyed or damaged by such removals or replacements. The correction of destroyed or damaged work shall be at the *Construction Manager's* expense.
- 2.5.3 If in the opinion of the *Consultant* it is not expedient to correct defective work or work not performed as provided in the *Contract Documents*, the *Owner* may deduct from the amount otherwise due to the *Construction Manager* the difference in value between the work as performed and that called for by the *Contract Documents*. If the *Owner* and the *Construction Manager* do not agree on the difference in value, they shall refer the matter to the *Consultant* for a finding.

18. **GC 3.7**

Delete and replace with the following:

- 3.7.1 The *Construction Manager* shall preserve and protect the rights of the parties under the *Contract* with respect to work to be performed under subcontract, and shall:
 - .1 enter into contracts or written agreements with *Subcontractors* and *Suppliers* to require them to perform their work as provided in the *Contract Documents*;
 - .2 incorporate the terms and conditions of the *Contract Documents* into all contracts or written agreements with *Subcontractors* and *Suppliers*; and
 - .3 be as fully responsible to the *Owner* for acts and omissions of *Subcontractors*, *Suppliers* and of persons directly or indirectly employed by them as for acts and omissions of persons directly employed by the *Construction Manager*.
- 3.7.2 The *Construction Manager* shall, before entering into contracts or written agreements with *Subcontractors* and *Suppliers*, submit to the *Owner* all bids received for the various parts of the *Work* to be subcontracted and obtain the *Owner's* acceptance of the *Subcontractors* and *Suppliers* selected.

- 3.7.3 The *Construction Manager* shall cause to be obtained contract security from *Subcontractors* to the extent and for the amounts approved by the *Owner*.
- 3.7.4 The *Construction Manager* shall not be required to employ as a *Subcontractor* or *Supplier*, a person or firm to which the *Construction Manager* may reasonably object.
- 3.7.5 The *Owner*, through the *Consultant*, may provide to a *Subcontractor* or *Supplier* information as to the percentage of the *Subcontractor's* or *Supplier's* work which has been certified for payment.

19. **GC 3.8**

Delete and replace with the following:

- 3.8.1 The *Construction Manager* shall maintain good order and discipline among the *Construction Manager's* employees engaged on the *Work* and shall not employ on the *Work* anyone not skilled in the tasks assigned.
- 3.8.2 Unless otherwise specified in the *Contract Documents*, *Products* provided shall be new. *Products* which are not specified shall be of a quality consistent with those specified and their use acceptable to the *Consultant*.
- 3.8.3 The *Construction Manager* shall provide and pay for labour, *Products*, tools, *Construction Equipment*, water, heat, light, power, transportation, and other facilities and services necessary for the performance of the *Work* in accordance with the *Contract*.

20. **New GC 3.14 – SERVICES**

Insert new General Condition as follows:

GC 3.14 SERVICES

- 3.14.1 The *Construction Manager* shall:
 - .1 chair and minute regular *Project* meetings with the *Owner* and the *Consultant*,
 - .2 prepare and update the cash flow forecasts in accordance with the *Project* budget that are specified in the *Contract* or otherwise agreed with the *Owner*;
 - .3 provide reasonable assistance and information to permit recovery of all tax rebates where applicable, and
 - .4 assist the *Owner* in conducting post-construction occupancy review.

21. **GC 4.1**

Delete and replace with the following:

- 4.1.1 The *Contract Price*, and not the cash allowances, includes the *Construction Manager's* overhead and profit in connection with such cash allowances.
- 4.1.2 The *Contract Price* includes the cash allowances, if any, stated in this *Contract*. The scope of work or costs included in such cash allowances shall be as described in this *Contract*.
- 4.1.3 Expenditures under cash allowances shall be authorized by the *Owner* through the *Consultant*.
- 4.1.4 Where costs under any cash allowance exceed the amount of the allowance, the *Construction Manager* shall be compensated for the excess incurred and substantiated plus an amount for overhead and profit on the excess as set out in the *Contract Documents*. Where costs under any cash allowance are less than the amount of the allowance, the *Owner* shall be credited for the unexpended portion of the cash allowance, but not for the *Construction Manager's* overhead and profit on such amount. Multiple cash allowances shall not be combined for the purpose of calculating the foregoing.
- 4.1.5 The *Contract Price* shall be adjusted by *Change Order* to provide for any difference between each cash allowance and its actual cost.
- 4.1.6 The value of the *Work* performed under a cash allowance is eligible to be included in progress payments.
- 4.1.7 The *Construction Manager* and the *Consultant* shall jointly prepare a schedule that shows when the *Consultant* and the *Owner* must authorize ordering of items called for under cash allowances to avoid delaying the progress of the *Work*.

22. **GC 5.2**

Delete and replace with the following:

- 5.2.1 The *Construction Manager* shall keep full and detailed accounts and records necessary for the documentation of and the cost of performing the work attributable to the *Change Directive*.

- 5.2.2 For 60 calendar days after the application for final payment or for such other period specified in the *Contract*, the *Owner* shall be afforded reasonable access to all of the *Construction Manager's* books, records, correspondence, instructions, drawings, receipt vouchers, *Subcontractor* and *Supplier* invoices, and memoranda relating to the cost of performing the work attributable to the *Change Directive*, and for this purpose the *Construction Manager* shall preserve all such records..
23. **GC 5.3**
Delete this General Condition in its entirety.
24. **GC 5.4**
Delete and replace with the following:
- 5.4.1 Applications for payment on account as provided in Article A-9 of the Agreement – PAYMENT may be made monthly as the *Work* progresses.
- 5.4.2 Applications for payment shall be dated the last day of each payment period, which is the last day of the month or an alternative day of the month agreed in writing by the parties.
- 5.4.3 The amount claimed shall be for the value, proportionate to the *Contract Price*, of *Work* performed and *Products* delivered to the *Place of the Work* as of the last day of the payment period
- 5.4.4 The *Construction Manager* shall submit to the *Consultant*, at least 15 calendar days before the first application for payment after exercising the stipulated price option, a schedule of values for the parts of the *Work*, aggregating the total amount of the *Contract Price*, so as to facilitate evaluation of applications for payment.
- 5.4.5 The schedule of values shall be made out in such form and supported by such evidence as the *Consultant* may reasonably direct and when accepted by the *Consultant*, shall be used as the basis for applications for payment, unless it is found to be in error.
- 5.4.6 Applications for payment for *Products* delivered to the *Place of the Work* but not yet incorporated into the *Work* shall be supported by such evidence as the *Consultant* may reasonably require to establish the value and delivery of the *Products*.
- 5.4.7 After receipt by the *Consultant* of an application for payment for the *Work* submitted by the *Construction Manager* in accordance with paragraphs 5.4.1 to 5.4.6:
- .1 the *Consultant* will promptly inform the *Owner* of the date of receipt of the *Construction Manager's* application for payment;
 - .2 the *Consultant* will issue to the *Owner* and copy to the *Construction Manager*, no later than 10 calendar days after the receipt of the application for payment, a certificate for payment in the amount applied for, or in such other amount as the *Consultant* determines to be properly due. If the *Consultant* amends the application, the *Consultant* will promptly advise the *Construction Manager* in writing giving reasons for the amendment; and
 - .3 the *Owner* shall make payment to the *Construction Manager* on account as provided in Article A-9 of the Agreement – PAYMENT on or before 20 calendar days after the later of:
 - receipt by the *Consultant* of the application for payment, or
 - the last day of the monthly payment period for which the application for payment is made.
- 5.4.8 The *Construction Manager* shall include a statement based on the schedule of values with each application for payment.
25. **GC 6.2**
Delete and replace with the following:
- 6.2.1 When a change in the *Work* is proposed or required, the *Consultant* shall provide the *Construction Manager* with a written description of the proposed change in the *Work*. The *Construction Manager* shall promptly present, in a form acceptable to the *Consultant*, a method of adjustment or an amount of adjustment for the *Contract Price* and the adjustment in the *Contract Time*, as applicable, for the proposed change in the *Work*.
- 6.2.2 When the *Owner* and *Construction Manager* agree to the adjustments in the *Contract Price* and the *Contract Time*, or to the method to be used to determine the adjustments, such agreement shall be effective immediately and shall be recorded in a *Change Order*. The value of the work performed as the result of a *Change Order* shall be included in applications for progress payment

26. **GC 6.3**

Delete and replace with the following:

- 6.3.1 If the *Owner* requires the *Construction Manager* to proceed with a change in the *Work* prior to the *Owner* and the *Construction Manager* agreeing upon any corresponding adjustment in the *Contract Price* and the *Contract Time*, the *Owner*, through the *Consultant*, shall issue a *Change Directive*.
- 6.3.2 A *Change Directive* shall only be used to direct a change in the *Work* which is within the general scope of the *Contract Documents*.
- 6.3.3 A *Change Directive* shall not be used to direct a change in the *Contract Time* only.
- 6.3.4 Upon receipt of a *Change Directive*, the *Construction Manager* shall proceed promptly with the change in the *Work*.
- 6.3.5 For the purpose of valuing *Change Directives*, changes in the *Work* that are not substitutions or otherwise related to each other shall not be grouped together in the same *Change Directive*.
- 6.3.6 The adjustment in the *Contract Price* for a change carried out by way of a *Change Directive* shall be determined on the basis of the cost of the *Construction Manager*'s actual expenditures and savings attributable to the *Change Directive*, valued in accordance with Article A-7 of the Agreement – COST OF WORK and as follows:
 - .1 If the change results in a net increase in the *Construction Manager*'s cost, the *Contract Price* shall be increased by the amount of the net increase in the *Construction Manager*'s cost, plus the *Construction Manager*'s percentage fee on such net increase.
 - .2 If the change results in a net decrease in the *Construction Manager*'s cost, the *Contract Price* shall be decreased by the amount of the net decrease in the *Construction Manager*'s cost, without adjustment for the *Construction Manager*'s percentage fee.
 - 3 The *Construction Manager*'s fee shall be as specified in the *Contract Documents* or as otherwise agreed by the parties.
- 6.3.7 If the *Owner* and the *Construction Manager* do not agree on the proposed adjustment in the *Contract Price*, the *Contract Time*, or in the method of determining them, the adjustment shall be referred to the *Consultant* for a finding.
- 6.3.8 When the *Owner* and the *Construction Manager* reach agreement on the adjustment to the *Contract Price* and the *Contract Time*, this agreement shall be recorded in a *Change Order*.
- 6.3.9 Pending determination of the final amount of a *Change Directive*, the undisputed value of the work performed as the result of a *Change Directive* is eligible to be included in progress payments.

27. **GC 6.4**

Delete and replace with the following:

- 6.4.1 If the *Owner* or the *Construction Manager* discover conditions at the *Place of the Work* which are:
 - .1 subsurface or otherwise concealed physical conditions which existed before the commencement of the *Work* which differ materially from those indicated in the *Contract Documents*; or
 - .2 physical conditions, other than conditions due to weather, that are of a nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the *Contract Documents*,then the observing party shall give *Notice in Writing* to the other party of such conditions before they are disturbed and in no event later than 5 *Working Days* after first observance of the conditions.
- 6.4.2 The *Consultant* will promptly investigate such conditions and make a finding. If the finding is that the conditions differ materially and this would justify an increase or decrease in the *Contract Price* or the *Contract Time*, the *Consultant*, with the *Owner*'s approval, will issue appropriate instructions for a change in the *Work* as provided in GC 6.2 – CHANGE ORDER or GC 6.3 – CHANGE DIRECTIVE.
- 6.4.3 If the *Consultant* finds that the conditions at the *Place of the Work* are not materially different or that no change in the *Contract Price* or the *Contract Time* is justified, the *Consultant* will report the reasons for this finding to the *Owner* and the *Construction Manager* in writing.
- 6.4.4 If such concealed or unknown conditions relate to toxic and hazardous substances and materials, artifacts and fossils, or mould, the parties will be governed by the provisions of GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES, GC 9.3 – ARTIFACTS AND FOSSILS and GC 9.5 – MOULD.

28. **GC 6.5**

Delete and replace with the following:

- 6.5.1 If the *Construction Manager* is delayed in the performance of the *Work* by an action or omission of the *Owner*, *Consultant* or anyone employed or engaged by them directly or indirectly, contrary to the provisions of the *Contract Documents*, then the *Contract Time* shall be extended for such reasonable time as the *Consultant* may recommend in consultation with the *Construction Manager*. The *Contract Price* shall be adjusted by a reasonable amount for costs incurred by the *Construction Manager* as the result of such delay.
- 6.5.2 If the *Construction Manager* is delayed in the performance of the *Work* by a stop work order issued by a court or other public authority and providing that such order was not issued as the result of an act or fault of the *Construction Manager* or any person employed or engaged by the *Construction Manager* directly or indirectly, then the *Contract Time* shall be extended for such reasonable time as the *Consultant* may recommend in consultation with the *Construction Manager*. The *Contract Price* shall be adjusted by a reasonable amount for costs incurred by the *Construction Manager* as the result of such delay.
- 6.5.3 If the *Construction Manager* is delayed in the performance of the *Work* by:
- .1 labour disputes, strikes, lock-outs (including lock-outs decreed or recommended for its members by a recognized contractors' association, of which the *Construction Manager* is a member or to which the *Construction Manager* is otherwise bound),
 - .2 fire, unusual delay by common carriers or unavoidable casualties,
 - .3 abnormally adverse weather conditions, or
 - .4 any cause beyond the *Construction Manager's* control other than one resulting from a default or breach of *Contract* by the *Construction Manager*,
- then the *Contract Time* shall be extended for such reasonable time as the *Consultant* may recommend in consultation with the *Construction Manager*. The extension of time shall not be less than the time lost as the result of the event causing the delay, unless the *Construction Manager* agrees to a shorter extension. The *Construction Manager* shall not be entitled to payment for costs incurred by such delays unless such delays result from actions by the *Owner*, *Consultant* or anyone employed or engaged by them directly or indirectly.
- 6.5.4 No extension shall be made for delay unless *Notice in Writing* of the cause of the delay is given to the *Consultant* not later than 10 *Working Days* after the commencement of the delay. In the case of a continuing cause of delay only one *Notice in Writing* shall be necessary.
- 6.5.5 If no schedule is made under paragraph 2.3.13 of GC 2.3 – CONSULTANT'S RESPONSIBILITIES or paragraph 3.5.1 of GC 3.5 – CONSTRUCTION SCHEDULE, then no request for extension shall be made because of failure of the *Consultant* to furnish instructions until 10 *Working Days* after demand for such instructions has been made.

29. **GC 6.6**

Delete and replace with the following:

GC 6.6. CLAIMS FOR A CHANGE IN CONTRACT PRICE

- 6.6.1 If the *Construction Manager* intends to make a claim for an increase to the *Contract Price*, or if the *Owner* intends to make a claim against the *Construction Manager* for a credit to the *Contract Price*, the party that intends to make the claim shall give timely *Notice in Writing* of intent to claim to the other party with a copy to the *Consultant*.

30. **GC 7.1**

Delete and replace with the following:

- 7.1.1 If the *Construction Manager* is adjudged bankrupt, or makes a general assignment for the benefit of creditors because of the *Construction Manager's* insolvency, or if a receiver is appointed because of the *Construction Manager's* insolvency, the *Owner* may, without prejudice to any other right or remedy the *Owner* may have, terminate the *Construction Manager's* right to continue with the *Work*, by giving the *Construction Manager* or receiver or trustee in bankruptcy *Notice in Writing* to that effect.

- 7.1.2 If the *Construction Manager* neglects to prosecute the *Work* properly or otherwise fails to comply with the requirements of the *Contract Documents* to a substantial degree, and if the *Consultant* has given a written statement to the *Owner* and *Construction Manager* that sufficient cause exists to justify such action, the *Owner* may, without prejudice to any other right or remedy the *Owner* may have, give the *Construction Manager Notice in Writing* that the *Construction Manager* is in default of the *Construction Manager's* contractual obligations and instruct the *Construction Manager* to correct the default in the 5 *Working Days* immediately following the receipt of such *Notice in Writing*.
- 7.1.3 If the default cannot be corrected in the 5 *Working Days* specified or in such other time period as may be subsequently agreed in writing by the parties, the *Construction Manager* shall be in compliance with the *Owner's* instructions if the *Construction Manager*:
- .1 commences the correction of the default within the specified time, and
 - .2 provides the *Owner* with an acceptable schedule for such correction, and
 - .3 corrects the default in accordance with the *Contract* terms and with such schedule.
- 7.1.4 If the *Construction Manager* fails to correct the default in the time specified or in such other time period as may be subsequently agreed in writing by the parties, without prejudice to any other right or remedy the *Owner* may have, the *Owner* may:
- .1 correct such default and deduct the cost thereof from any payment then or thereafter due the *Construction Manager* provided the *Consultant* has certified such cost to the *Owner* and the *Construction Manager*, or
 - .2 terminate the *Construction Manager's* right to continue with the *Work* in whole or in part or terminate the *Contract*.
- 7.1.5 If the *Owner* terminates the *Construction Manager's* right to continue with the *Work* as provided in paragraphs 7.1.1 and 7.1.4, the *Owner* shall be entitled to:
- .1 take possession of the *Work* and *Products* at the *Place of the Work*; subject to the rights of third parties, utilize the *Construction Equipment* at the *Place of the Work*; finish the *Work* by whatever method the *Owner* may consider expedient, but without undue delay or expense, and
 - .2 withhold further payment to the *Construction Manager* until a final certificate for payment is issued, and
 - .3 charge the *Construction Manager* the amount by which the full cost of finishing the *Work* as certified by the *Consultant*, including compensation to the *Consultant* for the *Consultant's* additional services and a reasonable allowance as determined by the *Consultant* to cover the cost of corrections to work performed by the *Construction Manager* that may be required under GC 12.3 – WARRANTY, exceeds the unpaid balance of the *Price of the Work*; however, if such cost of finishing the *Work* is less than the unpaid balance of the *Price of the Work*, the *Owner* shall pay the *Construction Manager* the difference, and
 - .4 on expiry of the warranty period, charge the *Construction Manager* the amount by which the cost of corrections to the *Construction Manager's* work under GC 12.3 – WARRANTY exceeds the allowance provided for such corrections, or if the cost of such corrections is less than the allowance, pay the *Construction Manager* the difference.
- 7.1.6 The *Construction Manager's* obligation under the *Contract* as to quality, correction and warranty of the work performed by the *Construction Manager* up to the time of termination shall continue in force after such termination of the *Contract*.

31. GC 9.1

Delete and replace with the following:

- 9.1.1 The *Construction Manager* shall protect the *Work* and the *Owner's* property and property adjacent to the *Place of the Work* from damage which may arise as the result of the *Construction Manager's* operations under this *Contract*, and shall be responsible for such damage, except damage which occurs as the result of:
- .1 errors in the *Contract Documents*;
 - .2 acts or omissions by the *Owner*, the *Consultant*, other contractors, or their respective agents and employees.
- 9.1.2 Before commencing any work, the *Construction Manager* shall locate on site all underground utilities and structures that are indicated in the *Contract Documents* or information provided by the *Owner*, or that are reasonably apparent in an inspection of the *Place of the Work*.
- 9.1.3 Should the *Construction Manager* in the performance of the *Contract* damage the *Work*, the *Owner's* property or property adjacent to the *Place of the Work*, the *Construction Manager* shall be responsible for making good such damage at the *Construction Manager's* expense.

9.1.4 Should damage occur to the *Work* or *Owner's* property for which the *Construction Manager* is not responsible, as provided in paragraph 9.1.1, the *Construction Manager* shall make good such damage to the *Work* and, if the *Owner* so directs, to the *Owner's* property. The *Contract Price* and the *Contract Time* shall be adjusted as provided in GC 6.1 – OWNER'S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER and GC 6.3 – CHANGE DIRECTIVE.

32. **GC 9.2**

Delete and replace with the following:

9.2.1 For the purposes of applicable legislation, the *Owner* shall be deemed to have control and management of the *Place of the Work* with respect to existing conditions.

9.2.2 Prior to the *Construction Manager* commencing the *Work*, the *Owner* shall,
.1 take all reasonable steps to determine whether any toxic or hazardous substances are present at the *Place of the Work*, and
.2 provide the *Consultant* and the *Construction Manager* with a written list of any such substances that are known to exist and their locations.

9.2.3 The *Owner* shall take all reasonable steps to ensure that no person's exposure to any toxic or hazardous substance exceeds the time weighted levels prescribed by applicable legislation at the *Place of the Work* and that no property is damaged or destroyed as a result of exposure to, or the presence of, toxic or hazardous substances which were at the *Place of the Work* prior to the *Construction Manager* commencing the *Work*.

9.2.4 Unless the *Contract* expressly provides otherwise, the *Owner* shall be responsible for taking all necessary steps, in accordance with applicable legislation in force at the *Place of the Work*, to dispose of, store or otherwise render harmless toxic or hazardous substances which were present at the *Place of the Work* prior to the *Construction Manager* commencing the *Work*.

9.2.5 If the *Construction Manager*
.1 encounters toxic or hazardous substances at the *Place of the Work*, or
.2 has reasonable grounds to believe that toxic or hazardous substances are present at the *Place of the Work*, which were not brought to the *Place of the Work* by the *Construction Manager* or anyone for whom the *Construction Manager* is responsible and which were not disclosed by the *Owner* or which were disclosed but have not been dealt with as required under paragraph 9.2.4, the *Construction Manager* shall
.3 take all reasonable steps, including stopping the *Work*, to ensure that no person's exposure to any toxic or hazardous substances exceeds any applicable time weighted levels prescribed by applicable legislation at the *Place of the Work*, and
.4 immediately report the circumstances to the *Consultant* and the *Owner* in writing.

9.2.6 If the *Owner* and *Construction Manager* do not agree on the existence or significance of toxic or hazardous substances, or whether the toxic or hazardous substances were brought onto the *Place of the Work* by the *Construction Manager* or anyone for whom the *Construction Manager* is responsible, the *Owner* shall retain and pay for an independent qualified expert to investigate and determine such matters. The expert's report shall be delivered to the *Owner* and the *Construction Manager*.

9.2.7 If the *Owner* and *Construction Manager* agree or if the expert referred to in paragraph 9.2.6 determines that the toxic or hazardous substances were not brought onto the place of the *Work* by the *Construction Manager* or anyone for whom the *Construction Manager* is responsible, the *Owner* shall promptly at the *Owner's* own expense:
.1 take all steps as required under paragraph 9.2.4;
.2 reimburse the *Construction Manager* for the costs of all steps taken pursuant to paragraph 9.2.5;
.3 extend the *Contract Time* for such reasonable time as the *Consultant* may recommend in consultation with the *Construction Manager* and the expert referred to in paragraph 9.2.6 and reimburse the *Construction Manager* for reasonable costs incurred as a result of the delay; and
.4 indemnify the *Construction Manager* as required by GC 12.1 – INDEMNIFICATION.

9.2.8 If the *Owner* and *Construction Manager* agree or if the expert referred to in paragraph 9.2.6 determines that the toxic or hazardous substances were brought onto the *Place of the Work* by the *Construction Manager* or anyone for whom the *Construction Manager* is responsible, the *Construction Manager* shall promptly at the *Construction Manager's* own expense:
.1 take all necessary steps, in accordance with applicable legislation in force at the *Place of the Work*, to safely remove and dispose the toxic or hazardous substance;

- .2 make good any damage to the *Work*, the *Owner's* property or property adjacent to the place of the *Work* as provided in paragraph 9.1.3 of GC 9.1 – PROTECTION OF WORK AND PROPERTY;
- .3 reimburse the *Owner* for reasonable costs incurred under paragraph 9.2.6; and
- .4 indemnify the *Owner* as required by GC 12.1 – INDEMNIFICATION.

9.2.9 If either party does not accept the expert's findings under paragraph 9.2.6, the disagreement shall be settled in accordance with Part 8 of the General Conditions – DISPUTE RESOLUTION. If such disagreement is not resolved promptly, the parties shall act immediately in accordance with the expert's determination and take the steps required by paragraph 9.2.7 or 9.2.8 it being understood that by so doing, neither party will jeopardize any claim that party may have to be reimbursed as provided by GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES.

33. GC 9.3

Delete and replace with the following:

- 9.3.1 Fossils, coins, articles of value or antiquity, structures and other remains or things of scientific or historic interest discovered at the *Place of the Work* shall, as between the *Owner* and the *Construction Manager*, be deemed to be the absolute property of the *Owner*.
- 9.3.2 The *Construction Manager* shall take all reasonable precautions to prevent removal or damage to discoveries as identified in paragraph 9.3.1, and shall advise the *Consultant* upon discovery of such items
- 9.3.3 The *Consultant* will investigate the impact on the *Work* of the discoveries identified in paragraph 9.3.1. If conditions are found that would cause an increase or decrease in the *Construction Manager's* cost or time to perform the *Work*, the *Consultant*, with the *Owner's* approval, will issue appropriate instructions for a change in the *Work* as provided in GC 6.2 – CHANGE ORDER or GC 6.3 – CHANGE DIRECTIVE.

34. GC 9.5

Delete and replace with the following:

- 9.5.1 If the *Construction Manager* or *Owner* observes or reasonably suspects the presence of mould at the *Place of the Work*, the remediation of which is not expressly part of the *Work*,
 - .1 the observing party shall promptly report the circumstances to the other party in writing;
 - .2 the *Construction Manager* shall promptly take all reasonable steps, including stopping the *Work* if necessary, to ensure that no person suffers injury, sickness or death and that no property is damaged as a result of exposure to or the presence of the mould; and
 - .3 if the *Owner* and *Construction Manager* do not agree on the existence, significance or cause of the mould or as to what steps need be taken to deal with it, the *Owner* shall retain and pay for an independent qualified expert to investigate and determine such matters. The expert's report shall be delivered to the *Owner* and *Construction Manager*.
- 9.5.2 If the *Owner* and *Construction Manager* agree, or if the expert referred to in paragraph 9.5.1.3 determines that the presence of mould was caused by the *Construction Manager's* operations under the *Contract*, the *Construction Manager* shall promptly, at the *Construction Manager's* own expense:
 - .1 take all reasonable and necessary steps to safely remediate or dispose of the mould, and
 - .2 make good any damage to the *Work*, the *Owner's* property or property adjacent to the *Place of the Work* as provided in paragraph 9.1.3 of GC 9.1 – PROTECTION OF WORK AND PROPERTY, and
 - .3 reimburse the *Owner* for reasonable costs incurred under paragraph 9.5.1.3, and
 - .4 indemnify the *Owner* as required by GC 12.1 – INDEMNIFICATION.
- 9.5.3 If the *Owner* and *Construction Manager* agree, or if the expert referred to in paragraph 9.5.1.3 determines that the presence of mould was not caused by the *Construction Manager's* operations under the *Contract*, the *Owner* shall promptly, at the *Owner's* own expense:
 - .1 take all reasonable and necessary steps to safely remediate or dispose of the mould;
 - .2 reimburse the *Construction Manager* for the cost of taking the steps under 9.5.1.2 and making good any damage to the *Work* as provided in paragraph 9.1.4 of GC 9.1 – PROTECTION OF WORK AND PROPERTY;
 - .3 extend the *Contract Time* for such reasonable time as the *Consultant* may recommend in consultation with the *Construction Manager* and the expert referred to in paragraph 9.5.1.3 and reimburse the *Construction Manager* for reasonable costs incurred as a result of the delay; and
 - .4 indemnify the *Construction Manager* as required by GC 12.1 – INDEMNIFICATION.

9.5.4 If either party does not accept the expert's finding under paragraph 9.5.1.3, the disagreement shall be settled in accordance with Part 8 of the General Conditions – DISPUTE RESOLUTION. If such disagreement is not resolved promptly, the parties shall act immediately in accordance with the expert's determination and take the steps required by paragraphs 9.5.2 or 9.5.3, it being understood that by so doing neither party will jeopardize any claim the party may have to be reimbursed as provided by GC 9.5 – MOULD.

35. **GC 10.1**

Delete and replace with the following:

10.1.1 The *Contract Price* shall include all taxes and customs duties in effect at the time of the bid closing except for *Value Added Taxes* payable by the *Owner* to the *Construction Manager* as stipulated in Article A-8 of the Agreement – CONTRACT PRICE.

10.1.2 Any increase or decrease in costs to the *Construction Manager* due to changes in such included taxes and duties after exercising the stipulated price option shall increase or decrease the *Contract Price* accordingly.

36. **GC 10.2**

Delete and replace with the following:

10.2.1 The laws of the *Place of the Work* shall govern the *Work*.

10.2.2 The *Owner* shall obtain and pay for development approvals, building permit, permanent easements, rights of servitude, and all other necessary approvals and permits, except for the permits and fees referred to in paragraph 10.2.3 or which the *Contract Documents* specify as the responsibility of the *Construction Manager*.

10.2.3 The *Construction Manager* shall be responsible for the procurement of permits, licences, inspections and certificates which are necessary for the performance of the *Work* and customarily obtained by contractors in the jurisdiction of the *Place of the Work* after the issuance of the building permit. The *Contract Price* includes the cost of these permits, licences, inspections and certificates, and their procurement.

10.2.4 The *Construction Manager* shall give the required notices and comply with the laws, ordinances, rules, regulations, or codes which are or become in force during the performance of the *Work* and which relate to the *Work*, to the preservation of the public health, and to construction safety.

10.2.5 The *Construction Manager* shall not be responsible for verifying that the *Contract Documents* are in compliance with the applicable laws, ordinances, rules, regulations or codes relating to the *Work*. If the *Contract Documents* are at variance therewith, or if, subsequent to the time of bid closing, changes are made to the applicable laws, ordinances, rules, regulations or codes which require modification to the *Contract Documents*, the *Construction Manager* shall advise the *Consultant* in writing requesting direction immediately upon such variance or change becoming known. The *Consultant* will make the changes required to the *Contract Documents* as provided in GC 6.1 – OWNER'S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER and GC 6.3 – CHANGE DIRECTIVE.

10.2.6 If the *Construction Manager* fails to advise the *Consultant* in writing, fails to obtain direction as required in paragraph 10.2.5, and performs work knowing it to be contrary to any laws, ordinances, rules, regulations or codes; the *Construction Manager* shall be responsible for and shall correct the violations thereof; and shall bear the costs, expenses and damages attributable to the failure to comply with the provisions of such laws, ordinances, rules, regulations or codes.

37. **GC 10.3**

Delete and replace with the following:

10.3.1 The *Construction Manager* shall pay the royalties and patent licence fees required for the performance of the *Contract*. The *Construction Manager* shall hold the *Owner* harmless from and against claims, demands, losses, costs, damages, actions, suits or proceedings arising out of the *Construction Manager's* performance of the *Contract* which are attributable to an infringement or an alleged infringement of a patent of invention by the *Construction Manager* or anyone for whose acts the *Construction Manager* may be liable.

10.3.2 The *Owner* shall hold the *Construction Manager* harmless against claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of the *Construction Manager's* performance of the *Contract* which are attributable to an infringement or an alleged infringement of a patent of invention in executing anything for the purpose of the *Contract*, or any model, plan or design which was supplied to the *Construction Manager* as part of the *Contract*.

38. **GC 11.2**

Delete and replace with the following:

- 11.2.1 The *Construction Manager* shall, prior to commencement of the *Work* or within the specified time, provide to the *Owner* any *Contract* security required by this *Contract*.
- 11.2.2 If this *Contract* requires surety bonds to be provided, such bonds shall be issued by a duly licensed surety company authorized to transact a business of suretyship in the province or territory of the *Place of the Work* and shall be maintained in good standing until the fulfilment of this *Contract*. The form of such bonds shall be in accordance with the latest edition of the CCDC approved bond forms.

39. **GC 12.1**

Delete and replace with the following:

- 12.1.1 Without restricting the parties' obligation to indemnify as described in paragraphs 12.1.4 and 12.1.5, the *Owner* and the *Construction Manager* shall each indemnify and hold harmless the other from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings whether in respect to losses suffered by them or in respect to claims by third parties that arise out of, or are attributable in any respect to, their involvement as parties to this *Contract*, provided such claims are:

.1 caused by:

- (1) the negligent acts or omissions of the party from whom indemnification is sought or anyone for whose acts or omissions that party is liable, or
- (2) a failure of the party to the *Contract* from whom indemnification is sought to fulfill its terms or conditions; and

.2 made by *Notice in Writing* within a period of 6 years from the date of *Substantial Performance of the Work* as set out in the certificate of *Substantial Performance of the Work* issued pursuant to paragraph 5.5.2.2 of GC 5.5 – SUBSTANTIAL PERFORMANCE OF THE WORK or within such shorter period as may be prescribed by any limitation statute of the province or territory of the *Place of the Work*.

The parties expressly waive the right to indemnity for claims other than those provided for in this *Contract*.

- 12.1.2 The obligation of either party to indemnify as set forth in paragraph 12.1.1 shall be limited as follows:

- .1 In respect to losses suffered by the *Owner* and the *Construction Manager* for which insurance is to be provided by either party pursuant to GC 11.1 – INSURANCE, the insurance limit for the loss so covered as prescribed in GC 11.1 – INSURANCE.
- .2 In respect to losses suffered by the *Owner* and the *Construction Manager* for which insurance is not required to be provided by either party in accordance with GC 11.1 – INSURANCE, the greater of the *Contract Price* or \$2,000,000, but in no event shall the sum be greater than \$20,000,000.
- .3 In respect to claims by third parties for direct loss resulting from bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, the obligation to indemnify is without limit. In respect to all other claims for indemnity as a result of claims advanced by third parties, the limits of indemnity set forth in paragraphs 12.1.2.1 and 12.1.2.2 shall apply.

- 12.1.3 The obligation of either party to indemnify the other as set forth in paragraphs 12.1.1 and 12.1.2 shall be inclusive of interest and all legal costs.

- 12.1.4 The *Owner* and the *Construction Manager* shall indemnify and hold harmless the other from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of their obligations described in GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES.

- 12.1.5 The *Owner* shall indemnify and hold harmless the *Construction Manager* from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings:

- .1 as described in GC 10.3 – PATENT FEES, and
- .2 arising out of the *Construction Manager's* performance of the *Contract* which are attributable to a lack of or defect in title or an alleged lack of or defect in title to the *Place of the Work*.

- 12.1.6 In respect to any claim for indemnity or to be held harmless by the *Owner* or the *Construction Manager*:

- .1 *Notice in Writing* of such claim shall be given within a reasonable time after the facts upon which such claim is based became known;
- .2 should either party be required as a result of its obligation to indemnify the other pay or satisfy a final order, judgment or award made against the party entitled by this contract to be indemnified, then the indemnifying party upon assuming all liability for any costs that might result shall have the right to appeal in the name of the party against whom such final order or judgment has been made until such rights of appeal have been exhausted.

40. **GC 12.3**

Delete and replace with the following:

- 12.3.1 Except for extended warranties as described in paragraph 12.3.6, the warranty period under this *Contract* is one year from the date of *Substantial Performance of the Work*.
- 12.3.2 The *Construction Manager* shall be responsible for the proper performance of the *Work* to the extent that the design and the *Contract Documents* permit such performance.
- 12.3.3 The *Owner*, through the *Consultant*, shall promptly give the *Construction Manager Notice in Writing* of observed defects and deficiencies which occur during the one year warranty period.
- 12.3.4 Subject to paragraph 12.3.2, the *Construction Manager* shall correct promptly, at the *Construction Manager's* expense, defects or deficiencies in the *Work* which appear prior to and during the one year warranty period.
- 12.3.5 The *Construction Manager* shall correct or pay for damage resulting from corrections made under the requirements of paragraph 12.3.4.
- 12.3.6 Any extended warranties required beyond the one year warranty period as described in paragraph 12.3.1, shall be as specified in the *Contract Documents*. Extended warranties shall be issued by the warrantor to the benefit of the *Owner*. The *Construction Manager's* responsibility with respect to extended warranties shall be limited to obtaining any such extended warranties from the warrantor. The obligations under such extended warranties are solely the responsibilities of the warrantor.

TAB 3

MARSHALLZEHR GROUP INC.

-and-

LA PUE INTERNATIONAL INC.

Applicant

Respondent

Court File No. CV-23-00700695-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT
TORONTO

**MOTION RECORD
(Returnable March 7, 2025)**

CHAITONS LLP

5000 Yonge Street, 10th Floor
Toronto, Ontario M2N 7E9

Maya Poliak (LSO No. 54100A)

Tel: (416) 218-1161

E-mail: maya@chaitons.com

Laura Culleton (LSO No. 82428R)

Tel: (416) 218-1128

E-mail: laurac@chaitons.com

Lawyers for MarshallZehr Group Inc.