

**AMENDED AND RESTATED  
PROJECT AGREEMENT  
TO DESIGN, BUILD AND FINANCE  
THE 2015 PAN/PARAPAN AMERICAN GAMES  
ATHLETES' VILLAGE PROJECT  
(EXECUTION VERSION)**

**CONFIDENTIAL**

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## **SCHEDULES**

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Schedule 2	-	Completion Documents
Schedule 3	-	Revenue Sharing
Schedule 4	-	Lenders' Direct Agreement
Schedule 5	-	Construction Contractor's Direct Agreement
Schedule 6	-	Independent Certifier Agreement
Schedule 7	-	Security and Background Check Requirements
Schedule 8	-	Provincial Loan Agreement
Schedule 9	-	Key Individuals
Schedule 10	-	Review Procedure
Schedule 11	-	Design Quality Plan and Construction Quality Plan
Schedule 12	-	Refinancing
Schedule 13	-	Project Co Proposal Extracts
Schedule 14	-	Outline Commissioning Program
Schedule 15	-	Output Specifications
Schedule 16	-	Title Encumbrances
Schedule 17	-	Project Co Lands Agreements of Purchase and Sale
Schedule 18	-	Communications Protocol
Schedule 19	-	Heritage Guidelines and Protocols
Schedule 20	-	Payments and Holdbacks
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Schedule 27	-	Dispute Resolution Procedure
Schedule 28	-	Site
Schedule 29	-	Letters of Credit
Schedule 30	-	Insurance Trust Agreement
Schedule 31	-	Project Co Information
Schedule 32	-	Financial Model
Schedule 33	-	Trust Account Agreement
Schedule 34	-	Works Report Requirements
Schedule 35	-	List of Facilities
Schedule 36	-	Project Co Services Agreement
Schedule 37	-	Reports
Schedule 38	-	Project Co Stage 2 Lands Development Agreement
Schedule 39	-	Ontario New Home Warranties Plan Act Compliance Agreement
Schedule 40	-	WTEI, Diversity and Smoke Free Workplace Plans
Schedule 41	-	Agreement and Direction re Cost to Complete Cash Equity

**THIS AMENDED AND RESTATED PROJECT AGREEMENT** is made as of the \_\_\_\_ day of December, 2011.

**BETWEEN:**

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO** as represented by the Minister of Infrastructure, as represented by Ontario Infrastructure and Lands Corporation, a non-share capital corporation continued and amalgamated under the *Ontario Infrastructure and Lands Corporation Act*, 2011, S.O. 2011, c. 9, Schedule 32, as amended

(“**HMQ**”)

**AND:**

**DUNDEE KILMER DEVELOPMENTS L.P., [REDACTED]**

(“**Project Co**”)

**WHEREAS:**

- A. MHPS, with the assistance of HMQ, wishes to procure the design, construction and finance of the Project in order to further HMQ’s objective of having the Pan/Parapan American Games Athletes’ Village in operation for the Pan/Parapan American Games in 2015.
- B. Project Co will provide the Project Operations, which Project Operations include the design, construction and financing of the Facilities (the “**Project**”).
- C. HMQ and Project Co wish to enter into this amended and restated project agreement (the “**Project Agreement**”), which sets out the terms and conditions upon which Project Co shall perform the Project Operations.
- D. The Project will proceed as an alternative financing and procurement project and complies with the principles set out in MOI’s *Building a Better Tomorrow: An Infrastructure Planning, Financing and Procurement Framework for Ontario’s Public Sector* (the “**IPFP Framework**”).
- E. The IPFP Framework establishes 5 fundamental principles which guide the financing and procurement of public infrastructure projects in Ontario:
  - 1. The public interest is paramount.
  - 2. Value for money must be demonstrable.
  - 3. Appropriate public control/ownership must be preserved.
  - 4. Accountability must be maintained.

5. All processes must be fair, transparent and efficient.
- F. The IPFP Framework states that, consistent with the principle of appropriate public ownership/control, public ownership of assets will be preserved in the public sector.
- G. With a view to ensuring that both Parties are able to properly and effectively discharge their respective duties, functions and responsibilities under Applicable Law, it is the intent that HMQ and Project Co work collaboratively, responsibly and cooperatively throughout the Project Term.

**NOW THEREFORE** in consideration of the mutual covenants and agreements of the Parties hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

## **1. DEFINITIONS AND INTERPRETATION**

### **1.1 Definitions and Interpretation**

- (a) This Project Agreement shall be interpreted in accordance with Schedule 1 - Definitions and Interpretation.
- (b) This Project Agreement is comprised of this executed agreement and the following documents, all of which are hereby incorporated by reference into and form part of this Project Agreement:

<b>Schedule No.</b>	<b>Description</b>
Schedule 1	- Definitions and Interpretation
Schedule 2	- Completion Documents
Schedule 3	- Revenue Sharing
Schedule 4	- Lenders' Direct Agreement
Schedule 5	- Construction Contractor's Direct Agreement
Schedule 6	- Independent Certifier Agreement
Schedule 7	- Security and Background Check Requirements
Schedule 8	- Provincial Loan Agreement
Schedule 9	- Key Individuals
Schedule 10	- Review Procedure
Schedule 11	- Design Quality Plan and Construction Quality Plan
Schedule 12	- Refinancing
Schedule 13	- Project Co Proposal Extracts
Schedule 14	- Outline Commissioning Program
Schedule 15	- Output Specifications
Schedule 16	- Title Encumbrances
Schedule 17	- Project Co Lands Agreements of Purchase and Sale
Schedule 18	- Communications Protocol
Schedule 19	- Heritage Guidelines and Protocols

Schedule 20	-	Payments and Holdbacks
Schedule 21	-	HMQ Project Security
Schedule 22	-	Variation Procedure
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Schedule 26	-	Record Provisions
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Schedule 31	-	Project Co Information
Schedule 32	-	Financial Model
Schedule 33	-	Trust Account Agreement
Schedule 34	-	Works Report Requirements
Schedule 35	-	List of Facilities
Schedule 36	-	Project Co Services Agreement
Schedule 37	-	Reports
Schedule 38	-	Project Co Stage 2 Lands Development Agreement
Schedule 39	-	Ontario New Home Warranties Plan Act Compliance Agreement
Schedule 40	-	WTEI, Diversity and Smoke Free Workplace Plans
Schedule 41	-	Agreement and Direction re Cost to Complete Cash Equity

- (c) The documents comprising this Project Agreement are complementary and what is called for by any one of them shall be interpreted as if called for by all, except in the event of ambiguities, conflicts or inconsistencies, in which case Section 1.2 shall apply.
- (d) Except for those parts of Project Co's proposal which are incorporated by reference into this Project Agreement by the Project Co Proposal Extracts, on Financial Close, the Request for Proposals and Project Co's proposal shall be superseded entirely by this Project Agreement and rendered null and void, and shall not be relied upon or used by Project Co, HMQ or anyone else (including anyone pursuant to Schedule 27 - Dispute Resolution Procedure or any arbitral body or any court) in any way to interpret or qualify the scope of the Project Operations, any obligations or liabilities of Project Co, or anything else contained in this Project Agreement.
- (e) Unless it is specifically provided that a consent, approval or satisfaction is in the sole discretion of HMQ, no consent, approval or satisfaction of HMQ or the HMQ Representative shall be unreasonably withheld or delayed.
- (f) Unless it is specifically provided that a consent, approval or satisfaction is in the sole discretion of Project Co, no consent, approval or satisfaction of Project Co or the Project Co Representative shall be unreasonably withheld or delayed.

## **1.2 Conflict of Terms**

- (a) In the event of ambiguities, conflicts or inconsistencies between or among any of the provisions of this Project Agreement, the provisions shall govern in the following order of precedence with each taking precedence over those listed subsequently:
- (i) the provisions of amendments in writing to this Project Agreement signed by the Parties and Variation Confirmations shall govern and take precedence only over those specific provisions of this Project Agreement expressly amended thereby;
  - (ii) any provision establishing a higher standard of safety, reliability, durability, performance or service shall take precedence over a provision establishing a lower standard of safety, reliability, durability, performance or service;
  - (iii) the body of this Project Agreement;
  - (iv) Schedule 1 – Definitions and Interpretation;
  - (v) Schedule 27 – Dispute Resolution Procedure;
  - (vi) Schedule 7 – Security and Background Check Requirements;
  - (vii) Schedule 20 – Payments and Holdbacks;
  - (viii) Schedule 15 – Output Specifications (Parts 3 and 4);
  - (ix) Schedule 15 – Output Specifications (excluding Parts 3 and 4);
  - (x) Schedule 25 – Insurance and Performance Security Requirements;
  - (xi) Schedule 3 – Revenue Sharing;
  - (xii) Schedule 22 – Variation Procedure;
  - (xiii) Schedule 10 – Review Procedure;
  - (xiv) Schedule 14 – Outline Commissioning Program;
  - (xv) Schedule 11 – Design Quality Plan and Construction Quality Plan;
  - (xvi) Schedule 12 – Refinancing;
  - (xvii) Schedule 23 – Compensation on Termination;
  - (xviii) Schedule 26 – Record Provisions;
  - (xix) the other Schedules in the order in which they are listed in Section 1.1(b); and

- (xx) Schedule 13 – Project Co Proposal Extracts.
- (b) Subject to Section 1.2(a), if the ambiguity, conflict or inconsistency is between a provision of general application and a provision that applies only to a specific part of the Project Operations, the provision that applies to the specific part of the Project Operations shall govern for that specific part of the Project Operations.
- (c) If any ambiguity, conflict or inconsistency is not readily resolved by the foregoing provisions of this Section 1.2, then Project Co or HMQ, upon discovery of same, shall immediately give notice to the HMQ Representative. The HMQ Representative shall, within 10 Business Days after such notice, make a determination of which provision governs and give notice of such determination, in writing, to Project Co.
- (d) HMQ and Project Co shall comply with the determination of the HMQ Representative pursuant to this Section 1.2 unless HMQ or Project Co disputes the decision of the HMQ Representative in which event such Dispute may be referred for resolution in accordance with Schedule 27 - Dispute Resolution Procedure.

### **1.3 Conflict of Documents**

- (a) In the event of any ambiguity, conflict or inconsistency between the provisions of this Project Agreement and the Lenders' Direct Agreement, the provisions of the Lenders' Direct Agreement shall prevail and govern to the extent of such ambiguity, conflict or inconsistency.
- (b) In the event of any ambiguity, conflict or inconsistency between the provisions of this Project Agreement and the Provincial Loan Agreement, the provisions of this Project Agreement shall prevail and govern to the extent of such ambiguity, conflict or inconsistency.
- (c) In the event of any ambiguity, conflict or inconsistency between the provisions of this Project Agreement and either of the Project Co Lands Agreements of Purchase and Sale, the provisions of this Project Agreement shall prevail and govern to the extent of such ambiguity, conflict or inconsistency.
- (d) In the event of any ambiguity, conflict or inconsistency between the provisions of this Project Agreement and the Project Co Stage 2 Lands Development Agreement, the provisions of this Project Agreement shall prevail and govern to the extent of such ambiguity, conflict or inconsistency.
- (e) In the event of any ambiguity, conflict or inconsistency between the provisions of this Project Agreement and the Project Co Services Agreement, the provisions of this Project Agreement shall prevail and govern to the extent of such ambiguity, conflict or inconsistency.

## **2. COMMERCIAL CLOSE AND FINANCIAL CLOSE**

### **2.1 Effective Date**

- (a) The provisions of Sections 1 to 11, 13, 15 to 23, 27, 31, 34 to 36 and 47 to 60 of this Project Agreement and Schedules 1, 2, 7, 9 to 12, 13, 16 to 19, 21, 22, 25 to 27 and 29 will come into effect on the date of this Project Agreement. All other provisions of this Project Agreement will come into effect only on Financial Close. Subject to Section 45.8, the provisions of this Project Agreement will terminate on the Termination Date.
- (b) Project Co and HMQ acknowledge and agree that this amended and restated Project Agreement amends, supersedes and replaces the original Project Agreement entered into by the Parties on the date hereof effective immediately upon this amended and restated Project Agreement being executed and delivered by the Parties.

### **2.2 Standby Letter of Credit**

- (a) On the date of this Project Agreement, Project Co shall deliver, or cause to be delivered, to HMQ an unconditional and irrevocable standby letter of credit (the “**Standby Letter of Credit**”) in the amount of [REDACTED] (\$[REDACTED]) substantially in the form of Part A of Schedule 29 - Letters of Credit.
- (b) Unless the Standby Letter of Credit is drawn by HMQ in accordance with the provisions of this Project Agreement, HMQ shall release and deliver the Standby Letter of Credit to Project Co on Financial Close.
- (c) Project Co shall ensure that the Standby Letter of Credit (and any replacement therefor) is renewed prior to its expiry date if, as at such date, Financial Close will not, or may reasonably be expected not to, have occurred.

### **2.2A Contingency Equity Letter of Credit**

- (a) Before or on Financial Close, in order to secure the Equity Holder's contribution of the Contingency Equity into the Project, Project Co shall (or shall cause the Equity Holder to) procure the issue of, deliver to the Trustee and thereafter maintain (in accordance with Section 2.2A(d)), two unconditional and irrevocable standby letters of credit (collectively, the “**Contingency Equity Letter of Credit**”) in favour, and for the direct and exclusive benefit, of HMQ, the Lenders' Agent and Project Co from any one or more of the five largest (by assets) Schedule I Canadian chartered banks or any other financial institutions approved by HMQ in HMQ's sole and absolute discretion, in each case, whose current long-term issuer rating is at least “A” by Standard & Poor's and “A2” by Moody's Investor Services or an equivalent rating by another party acceptable to HMQ in its sole and absolute discretion and in a form (or forms) provided by Project Co to HMQ prior to Financial Close but acceptable to and approved by HMQ and the Lenders' Agent, acting reasonably. Project Co may at any time replace or substitute the Contingency Equity Letter of Credit (or any letter of credit comprising the Contingency Equity Letter of Credit) with other letters of credit

issued by any one or more such qualified financial institutions and in a form (or forms) acceptable to and approved by HMQ and the Lenders' Agent, each acting reasonably.

- (b) Subject to Section 2.2A(c), the Contingency Equity Letter of Credit shall be in an initial aggregate amount equal to \$[REDACTED].
- (c) Before or on Financial Close, the Contingency Equity Letter of Credit shall be delivered to the Trustee and shall be in an amount previously agreed to by HMQ and Project Co (which, for clarity, may be a greater, but not a lesser, amount than the amount set out in Section 2.2A(b)). No more than 3 Business Days following Financial Close, Project Co shall (or shall cause the Equity Holder to), if required, amend or replace the Contingency Equity Letter of Credit for the exclusive purpose of adjusting the aggregate amount of such Contingency Equity Letter of Credit to equal the amount set out in Section 2.2A(b).
- (d) In the event that the Contingency Equity Letter of Credit (or any letter of credit comprising the Contingency Equity Letter of Credit) must be renewed or replaced at any time, Project Co agrees to provide (or cause the Equity Holder to provide) to HMQ, the Lenders' Agent and the Trustee reasonable evidence of the renewal or replacement of such Contingency Equity Letter of Credit no later than 15 calendar days prior to the renewal or expiry date, if any, of such Contingency Equity Letter of Credit.
- (e) Subject to the Lenders' Direct Agreement, draws upon the Contingency Equity Letter of Credit shall only be requested by HMQ or Project Co, as the case may be, in accordance with the Trust Account Agreement:
  - (i) in the event of a Project Co Delay by Project Co in accordance with Section 20.4A(b);
  - (ii) in the event that a Project Co Event of Default arises and HMQ exercises its rights under Section 42.4(a)(iii);
  - (iii) in the event that a Project Co Event of Default arises and HMQ exercises its rights under Section 42.4(a)(vi);
  - (iv) in the event that a Project Co Event of Default arises and HMQ exercises its rights under Section 42.5(a); or
  - (v) in the event of the termination of the Project Agreement and HMQ exercises its rights under Section 42.7(b).

Notwithstanding the foregoing, the Lenders' Agent may, in accordance with the Trust Account Agreement and the Lenders' Direct Agreement, at any time request a draw (or cause Project Co to request a draw) on the Contingency Equity Letter of Credit in accordance with Section 20.4A(b) in the event of a Project Co Delay and if the Lenders' Agent exercises its rights under Section 20.4A(b).



- (f) Notwithstanding Section 2.2A(e), either HMQ or the Lenders' Agent shall be entitled to request a draw on the Contingency Equity Letter of Credit in accordance with the Trust Account Agreement:
- (i) upon the failure of Project Co to renew or replace the Contingency Equity Letter of Credit pursuant to Section 2.2A(d) (or any applicable letter of credit comprising the Contingency Equity Letter of Credit);
  - (ii) upon the bankruptcy or insolvency of Project Co or any Equity Holder, as the case may be;
  - (iii) upon the downgrading of any of the banks or other financial institutions that issued the Contingency Equity Letter of Credit (or any applicable letter of credit comprising the Contingency Equity Letter of Credit) below the thresholds set out in Section 2.2A(a) where such Contingency Equity Letter of Credit has not been replaced by Project Co or the Equity Holder, as the case may be, with a replacement Contingency Equity Letter of Credit in a form (or forms) acceptable to HMQ, acting reasonably, and issued by a bank or banks that meet the thresholds set out in Section 2.2A(a) within 30 calendar days of such downgrading; or
  - (iv) upon the bankruptcy or insolvency of any of the banks or other financial institutions that issued the Contingency Equity Letter of Credit (or any applicable letter of credit comprising the Contingency Equity Letter of Credit).

HMQ or the Lenders' Agent, as the case may be, shall provide Project Co, the Equity Holder and the Lenders' Agent or HMQ, as the case may be, at least two Business Days prior written notice before requesting a draw on the Contingency Equity Letter of Credit pursuant to this Section 2.2A(f). For clarity, in respect of Section 2.2A(f)(i), (iii) and (iv), a draw pursuant to any such Section shall only be requested on the letter(s) of credit comprising the Contingency Equity Letter of Credit affected by the event described in such Section and not on all letters of credit comprising the Contingency Equity Letter of Credit unless all are so affected.

- (g) In the event that the Contingency Equity Letter of Credit is drawn down in accordance with Section 2.2A(f), HMQ shall direct the Trustee to hold the cash proceeds thereof in accordance with the Trust Account Agreement and in a segregated bank account selected by Project Co (provided that such bank account shall be at a bank that meets the thresholds described in Section 2.2A(a)) and such cash proceeds shall thereupon stand in place of the Contingency Equity Letter of Credit (or, as the case may be, the affected letter of credit comprising the Contingency Equity Letter of Credit) until Project Co delivers (or causes the delivery of) a replacement Contingency Equity Letter of Credit (or, as the case may be, a replacement affected letter of credit comprising the Contingency Equity Letter of Credit) to the Trustee. All interest earned on such cash proceeds shall be for the benefit of Project Co. HMQ, the Lenders' Agent and Project Co shall be entitled to request withdrawals of such cash proceeds in the same manner that they are permitted to draw upon the Contingency Equity Letter of Credit under Section 2.2A(e). Upon the replacement of the Contingency

Equity Letter of Credit (or, as the case may be, the affected letter of credit comprising the Contingency Equity Letter of Credit) by Project Co or the Equity Holder, as the case may be, the Trustee shall return all remaining cash proceeds and all accrued interest thereon from such segregated bank account to Project Co or as Project Co may direct within five Business Days.

- (h) HMQ, the Lenders' Agent and Project Co may request multiple draws on the Contingency Equity Letter of Credit in accordance with this Section 2.2A and the Trust Account Agreement.
- (i) Within five Business Days of the earlier of the Project Substantial Completion Date and the date the outstanding balance of the Contingency Equity Letter of Credit is reduced to zero dollars, HMQ shall release its interest in the Contingency Equity Letter of Credit and the Contingency Equity Letter of Credit shall be returned to Project Co pursuant to the Trust Account Agreement.
- (j) For clarity, this Section 2.2A shall survive the termination of this Project Agreement.

## **2.2B Cost to Complete Letter of Credit**

- (a) Before or on Financial Close, in order to secure the Equity Holder's contribution of the Cost to Complete Equity into the Project, Project Co shall (or shall cause the Equity Holder to) procure the issue of, deliver to the Trustee and thereafter maintain (in accordance with Section 2.2B(d)), two unconditional and irrevocable standby letters of credit (collectively, the "**Cost to Complete Letter of Credit**") in favour, and for the direct and exclusive benefit, of HMQ, the Lenders' Agent and Project Co from any one or more of the five largest (by assets) Schedule I Canadian chartered banks or any other financial institutions approved by HMQ in HMQ's sole and absolute discretion, in each case, whose current long-term issuer rating is at least "A" by Standard & Poor's and "A2" by Moody's Investor Services or an equivalent rating by another party acceptable to HMQ in its sole and absolute discretion and in a form (or forms) provided by Project Co to HMQ prior to Financial Close but acceptable to and approved by HMQ and the Lenders' Agent, acting reasonably. Project Co may at any time replace or substitute the Cost to Complete Letter of Credit (or any letter of credit comprising the Cost to Complete Letter of Credit) with other letters of credit issued by any one or more such qualified financial institutions and in a form (or forms) acceptable to and approved by HMQ and the Lenders' Agent, each acting reasonably.
- (b) Subject to Section 2.2B(c), the Cost to Complete Letter of Credit shall be in an initial aggregate amount equal to \$[REDACTED].
- (c) Before or on Financial Close, the Cost to Complete Letter of Credit shall be delivered to the Trustee and shall be in an amount previously agreed to by HMQ and Project Co (which, for clarity, may be a greater, but not a lesser, amount than the amount set out in Section 2.2B(b)). No more than 3 Business Days following Financial Close, Project Co shall (or shall cause the Equity Holder to), if required, amend or replace the Cost to Complete Letter

of Credit for the exclusive purpose of adjusting the aggregate amount of such Cost to Complete Letter of Credit to equal the amount set out in Section 2.2B(b).

- (d) In the event that the Cost to Complete Letter of Credit (or any letter of credit comprising the Cost to Complete Letter of Credit) must be renewed or replaced at any time, Project Co agrees to provide (or cause the Equity Holder to provide) to HMQ, the Lenders' Agent and the Trustee reasonable evidence of the renewal or replacement of such Cost to Complete Letter of Credit no later than 15 calendar days prior to the renewal or expiry date, if any, of such Cost to Complete Letter of Credit.
- (e) Project Co and the Lenders' Agent may request draws upon the Cost to Complete Letter of Credit at any time and for any reason whatsoever for the purpose of funding the Project in accordance with the Trust Account Agreement. HMQ may request draws upon the Cost to Complete Letter of Credit in accordance with the Trust Account Agreement if the Project Agreement is terminated pursuant to Section 42.4(a)(i) and HMQ exercises its rights under Section 42.7(b).
- (f) Notwithstanding Section 2.2B(e), either HMQ or the Lenders' Agent shall be entitled to request a draw on the Cost to Complete Letter of Credit in accordance with the Trust Account Agreement:
  - (i) upon the failure of Project Co to renew or replace the Cost to Complete Letter of Credit pursuant to Section 2.2B(d) (or any applicable letter of credit comprising the Cost to Complete Letter of Credit);
  - (ii) upon the bankruptcy or insolvency of Project Co or any Equity Holder, as the case may be;
  - (iii) upon the downgrading of any of the banks or other financial institutions that issued the Cost to Complete Letter of Credit (or any applicable letter of credit comprising the Cost to Complete Letter of Credit) below the thresholds set out in Section 2.2B(a) where such Cost to Complete Letter of Credit has not been replaced by Project Co or the Equity Holder, as the case may be, with a replacement Cost to Complete Letter of Credit in a form (or forms) acceptable to HMQ, acting reasonably, and issued by a bank or banks that meet the thresholds set out in Section 2.2B(a) within 30 calendar days of such downgrading; or
  - (iv) upon the bankruptcy or insolvency of any of the banks or other financial institutions that issued the Cost to Complete Letter of Credit (or any applicable letter of credit comprising the Cost to Complete Letter of Credit).

HMQ or the Lenders' Agent, as the case may be, shall provide Project Co, the Equity Holder and the Lenders' Agent or HMQ, as the case may be, at least two Business Days prior written notice before requesting a draw on the Cost to Complete Letter of Credit pursuant to this Section 2.2B(f). For clarity, in respect of Section 2.2B(f)(i), (iii) and (iv), a draw pursuant to any such Section shall only be requested on the letter(s) of credit comprising the

Cost to Complete Letter of Credit affected by the event described in such Section and not on all letters of credit comprising the Cost to Complete Letter of Credit unless all are so affected.

- (g) In the event that the Cost to Complete Letter of Credit is drawn down in accordance with Section 2.2B(f), HMQ shall direct the Trustee to hold the cash proceeds thereof in accordance with the Trust Account Agreement and in a segregated bank account selected by Project Co (provided that such bank account shall be at a bank that meets the thresholds described in Section 2.2B(a)) and such cash proceeds shall thereupon stand in place of the Cost to Complete Letter of Credit (or, as the case may be, the affected letter of credit comprising the Cost to Complete Letter of Credit) until Project Co delivers (or causes the delivery of) a replacement Cost to Complete Letter of Credit (or, as the case may be, a replacement affected letter of credit comprising the Cost to Complete Letter of Credit) to the Trustee. All interest earned on such cash proceeds shall be for the benefit of Project Co. HMQ and the Lenders' Agent shall be entitled to request withdrawals of such cash proceeds in the same manner that they are permitted to draw upon the Cost to Complete Letter of Credit under Section 2.2B(e). Upon the replacement of the Cost to Complete Letter of Credit (or, as the case may be, the affected letter of credit comprising the Cost to Complete Letter of Credit) by Project Co or the Equity Holder, as the case may be, the Trustee shall return all remaining cash proceeds and all accrued interest thereon from such segregated bank account to Project Co or as Project Co may direct within five Business Days.
- (h) Project Co, the Lenders' Agent and HMQ may request multiple draws on the Cost to Complete Letter of Credit in accordance with this Section 2.2B and the Trust Account Agreement.
- (i) Within five Business Days of the earlier of the Project Substantial Completion Date and the date the outstanding balance of the Cost to Complete Letter of Credit is reduced to zero dollars, HMQ shall release its interest in the Cost to Complete Letter of Credit and the Cost to Complete Letter of Credit shall be returned to Project Co pursuant to the Trust Account Agreement.
- (j) For clarity, this Section 2.2B shall survive the termination of this Project Agreement.

#### **2.2B.1 Cost to Complete Cash Equity**

- (a) On or prior to Financial Close and in accordance with the Agreement and Direction re Cost to Complete Cash Equity, Project Co shall (or shall cause the Equity Holder to) fully contribute in cash the portion of the Cost to Complete Equity set out in Section 2.2B.1(b) (the "**Cost to Complete Cash Equity**"), which shall be used for the exclusive purpose of funding a part of the direct or indirect costs of completing the Project.
- (b) The Cost to Complete Cash Equity shall be in an aggregate amount of \$[REDACTED].

#### **2.2C HMQ Project Security**

- (a) Upon Financial Close, Project Co shall grant and deliver to HMQ duly executed copies of the HMQ Project Security and all such HMQ Project Security shall have been registered, filed and recorded in all Relevant Jurisdictions as required by Applicable Law or where HMQ considers it necessary, in its sole discretion, to do so.

### **2.3 Financial Close**

- (a) No later than 30 calendar days prior to the Financial Close Target Date, Project Co will deliver to HMQ drafts of all documents referred to in Section 1 of Schedule 2 - Completion Documents.
- (b) On or before the Financial Close Target Date:
  - (i) Project Co shall deliver to HMQ the documents referred to in Section 1 of Schedule 2 - Completion Documents; and
  - (ii) HMQ shall deliver to Project Co the documents referred to in Section 2 of Schedule 2 - Completion Documents.
- (c) If Project Co fails to deliver to HMQ any of the documents referred to in Section 1 of Schedule 2 - Completion Documents by the Financial Close Target Date (other than as a direct result of a breach by HMQ of its obligations under Section 2.3(b)(ii)) and HMQ does not waive such requirement, HMQ will be entitled to draw on the Standby Letter of Credit, in full or in part, to retain the proceeds thereof as liquidated damages and may terminate this Project Agreement in its entirety by written notice having immediate effect. The Parties agree that such liquidated damages are not a penalty but represent a genuine and reasonable pre-estimate of the damages that HMQ will suffer as a result of the happening of the specified event and it would be difficult or impossible to quantify such damages upon the happening of the specified event. Such payment shall constitute full and final settlement of any and all damages that may be claimed by HMQ as a result of Project Co not achieving Financial Close. The Parties agree that such liquidated damages shall be payable whether or not HMQ incurs or mitigates its damages, and that HMQ shall not have any obligation to mitigate any such damages.
- (d) As contemplated under Section 10.3.2 of the Request for Proposals, Project Co shall, no later than 10 calendar days following written instructions from HMQ given on or after Financial Close, pay the Design and Bid Fee amount plus, for clarity, any applicable HST to each of the eligible unsuccessful Proponents (as that term is defined in the Request for Proposals), as directed by HMQ. If Project Co is directed to pay the Design and Bid Fee to fewer than two Proponents, then Project Co shall revise the Financial Model prior to Financial Close to reflect such change.
- (e) If HMQ fails to deliver to Project Co any of the documents referred to in Section 2 of Schedule 2 - Completion Documents by the Financial Close Target Date (other than as a direct result of a breach by Project Co of its obligations under Section 2.3(b)(i)) and Project Co does not waive such requirement, Project Co will be entitled to the return of the Standby

Letter of Credit and to terminate this Project Agreement in its entirety by written notice having immediate effect.

## **2.4 Disruption in Financial Markets**

- (a) If Financial Close cannot be achieved by the Financial Close Target Date by reason solely of a Severe Market Disruption, subject to Project Co's obligation to renew the Standby Letter of Credit pursuant to Section 2.2, the Financial Close Target Date will be extended until the date falling 10 Business Days (or such other period as the Parties agree, acting reasonably) after the date on which such Severe Market Disruption ceases.
- (b) If a Severe Market Disruption exists, then, at any time before such Severe Market Disruption ceases and at any time after the Financial Close Target Date and before Financial Close, HMQ may in its sole discretion either:
  - (i) terminate this Project Agreement in its entirety by written notice having immediate effect; or
  - (ii) direct Project Co to assign to HMQ and HMQ will assume:
    - (A) the Project Agreement, and all of Project Co's right, title and interest in the Project Data, the Intellectual Property Rights and the Project Co Permits, Licences, Approvals and Agreements; and
    - (B) those contracts between Project Co and any Project Co Party which HMQ elects to be assigned.
- (c) If HMQ exercises its rights pursuant to Section 2.4(b), and, provided Project Co has, if directed, delivered the assignments provided for in (ii) (A) and (B) above, Project Co will be entitled to the return of its Standby Letter of Credit and to payment of an amount equal to the Design and Bid Fee plus, for clarity, any applicable HST on the Design and Bid Fee pursuant to Section 10.3.2 of the Request for Proposals plus [REDACTED]% of such fee. HMQ's obligation to return the Standby Letter of Credit and to pay such fee shall be contingent on the receipt of a waiver, in form and substance satisfactory to HMQ, that such fee represents full and final satisfaction of any obligation or liability of HMQ and any other Government Entity to Project Co and any Project Co Parties in connection with the Project Agreement and the Request for Proposals.

## **3. SCOPE OF AGREEMENT**

### **3.1 Scope of Agreement**

- (a) Project Co shall undertake the Project and perform the Project Operations in accordance with and subject to the provisions of this Project Agreement.

- (b) Project Co shall exercise its rights and perform its obligations at its own cost and risk without recourse to HMQ, except as otherwise provided in this Project Agreement, in which case Project Co's sole recourse with respect to the subject matter of this Project Agreement shall be to HMQ.

#### **4. INTENTIONALLY DELETED**

### **5. REPRESENTATIONS AND WARRANTIES**

#### **5.1 Project Co Representations and Warranties**

- (a) Project Co represents and warrants to HMQ that as of the date of this Project Agreement:
  - (i) Project Co is a [REDACTED] and has all the requisite power and authority to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Project Agreement and to perform its obligations hereunder;
  - (ii) [REDACTED];
  - (iii) [REDACTED];
  - (iv) Project Co and the Project Co Parties, collectively, have extensive experience and are knowledgeable in the design and construction of infrastructure projects similar to the Project in scale, scope and complexity and have the required ability, experience, skill and capacity to perform the Project Operations in a timely and professional manner as set out in this Project Agreement;
  - (v) Project Co has the requisite power, authority and capacity to execute and deliver and perform this Project Agreement, and to do all acts and things, and execute, deliver and perform all other agreements, instruments, undertakings and documents as are required by this Project Agreement to be done, executed, delivered or performed;
  - (vi) no steps or proceedings have been taken or are pending to supersede or amend the constating documents, articles or by-laws of Project Co in a manner that would impair or limit its ability to perform the obligations of Project Co under this Project Agreement;
  - (vii) this Project Agreement has been duly authorized, executed, and delivered by Project Co and constitutes a legal, valid, and binding obligation of Project Co, enforceable against Project Co in accordance with its terms, subject only to:
    - (A) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, moratorium, winding-up, arrangement, reorganization, fraudulent preference and conveyance and other laws of general application affecting the enforcement of creditors' rights generally; and

- (B) general equitable principles and the fact that the availability of equitable remedies is in the discretion of a court and that a court may stay proceedings or the execution of judgments;
- (viii) the execution, delivery, and performance by Project Co of this Project Agreement does not and will not violate or conflict with, or constitute a default under:
  - (A) its constating, formation or organizational documents, including any by-laws;
  - (B) any Applicable Law; or
  - (C) any covenant, contract, agreement, or understanding to which it is a party or by which it or any of its properties or assets is bound or affected;
- (ix) no Project Co Event of Default has occurred and is continuing;
- (x) all of the information regarding Project Co and [REDACTED] set out in Schedule 31 - Project Co Information is true and correct in all material respects;
- (xi) there are no actions, suits, proceedings, or investigations pending or threatened against Project Co or, to Project Co's knowledge, any Project Co Party at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets, or the condition, financial or otherwise, of Project Co or in any impairment of its ability to perform its obligations under this Project Agreement, and Project Co has no knowledge of any violation or default with respect to any order, writ, injunction, or decree of any Governmental Authority or arbitral body that could result in any such material adverse effect or impairment;
- (xii) Project Co has carefully reviewed the whole of this Project Agreement, and all other documents made available to Project Co by or on behalf of HMQ, and, to Project Co's knowledge, nothing contained herein or therein inhibits or prevents Project Co from completing the Works or performing the Project Operations in accordance with this Project Agreement in a good and safe manner so as to achieve and satisfy the requirements of this Project Agreement;
- (xiii) Project Co is able to meet its obligations as they generally become due;
- (xiv) Project Co is registered under Division V of Part IX of the *Excise Tax Act* (Canada) and its HST registration number is [REDACTED];
- (xv) [REDACTED];
- (xvi) [REDACTED];



- (xvii) the Scheduled Interim Completion Date, the Scheduled Project Substantial Completion Date, the Scheduled Project Co Stage 1 Conversion Substantial Completion Date and the Scheduled Third Party Facility Conversion Substantial Completion Dates are realistic dates and are achievable by Project Co performing the Works in accordance with this Project Agreement;
- (xviii) no Restricted Person has Direct or Indirect Power or Control over any member of the Project Co Group in relation to the decisions, management, actions or policies of Project Co or [REDACTED] or in relation to the operation, management and ownership of the Project; and
- (xix) no Restricted Person has directly or indirectly, an Economic Interest in Project Co, [REDACTED] or the Project.

## **5.2 HMQ Representations and Warranties**

- (a) HMQ represents and warrants to Project Co that as of the date of this Project Agreement:
  - (i) Ontario Infrastructure and Lands Corporation is a non-share capital corporation continued and amalgamated under the *Ontario Infrastructure and Lands Corporation Act*, 2011, S.O. 2011, c. 9, Schedule 32, as amended, and has all the requisite corporate power and authority to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Project Agreement as agent for the Province;
  - (ii) subject to Sections 5.2(a)(v)(C), (D), (E) and (F), OILC is entering into this Project Agreement as agent for the Province and has the requisite power, authority and capacity to execute and deliver this Project Agreement and to bind the Province to this Project Agreement, and Project Co is entitled to rely upon OILC's authority to bind the Province in respect of all other agreements, instruments, undertakings and documents executed and delivered by OILC as agent for the Province that are required by this Project Agreement to be executed and delivered by HMQ;
  - (iii) subject to Sections 5.2(a)(v)(C), (D), (E) and (F), HMQ has the requisite power, authority and capacity to perform its obligations under this Project Agreement and to do all acts and things and to execute, deliver and perform all other agreements, instruments, undertakings and documents as are required by this Project Agreement to be done, executed, delivered or performed;
  - (iv) HMQ has obtained all necessary approvals to enter into this Project Agreement;
  - (v) this Project Agreement has been duly authorized, executed, and delivered by HMQ and constitutes a legal, valid, and binding obligation of HMQ, enforceable against HMQ in accordance with its terms, subject only to:
    - (A) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, moratorium, winding up, arrangement, reorganization, fraudulent

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- preference and conveyance and other laws of general application affecting the enforcement of creditors' rights generally;
- (B) general equitable principles and the fact that the availability of equitable remedies such as specific performance and injunction are not available against the Province and that a court may stay proceedings or the execution of judgments;
  - (C) statutory limitations of general application respecting the enforceability of claims against the Province or its property;
  - (D) Section 11.3 of the *Financial Administration Act* (Ontario);
  - (E) any terms and conditions set out in the approval that has been provided in connection with this Project Agreement for the purposes of Section 28 of the *Financial Administration Act*; and
  - (F) the powers of the Minister of Finance to effect set offs against amounts owing by Ontario pursuant to Section 43 of the *Financial Administration Act*;
- (vi) the execution, delivery, and performance by HMQ of this Project Agreement does not and will not violate or conflict with, or constitute a default under:
- (A) the *Ministry of Infrastructure Act, 2011*, S.O. 2011, c.9, Schedule 27;
  - (B) the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c. 9, Schedule 32, as amended, or any regulations made in respect thereof;
  - (C) the *Executive Council Act* (Ontario);
  - (D) any Applicable Law; or
  - (E) any covenant, contract, agreement, or understanding to which it is a party or by which it or any of its properties or assets is bound or affected;
- (vii) no HMQ Event of Default has occurred and is continuing;
- (viii) HMQ is able to meet its obligations as they generally become due;
- (ix) HMQ has rights of use and access to, on and over the Site and the Facilities or has the requisite power to obtain such rights that are sufficient to enable HMQ to grant or to cause to be granted to Project Co the licence rights contemplated in Section 14.1; and
- (x) subject only to the Title Encumbrances, the Province is the registered owner of and has good title in fee simple to that portion of the Site constituting the Blocks and HMQ has the right to grant or cause to be granted such non-exclusive licence rights

of use and access to, on and over the Site and the Facilities as contemplated by Section 14.1(a).

## **6. BACKGROUND INFORMATION**

### **6.1 No Liability**

- (a) Except as expressly provided in Sections 6.4, 16.1A, 16.2, 16.2A and 16.3, none of HMQ or any other Province Person shall be liable to Project Co or any Project Co Party for, and Project Co or any Project Co Party shall not seek to recover from HMQ or any other Province Person, any damages, losses, costs, liabilities or expenses which may arise (whether in contract, tort or otherwise) from the adoption, use or application of the Background Information by, or on behalf of, Project Co or any Project Co Party.

### **6.2 No Warranty**

- (a) Except as expressly provided in Sections 6.4, 16.1A, 16.2, 16.2A and 16.3:
- (i) neither HMQ nor any other Province Person gives any warranty or undertaking of whatever nature in respect of the Background Information and, specifically (but without limitation), neither HMQ nor any other Province Person warrants that the Background Information represents all of the information in its possession or power (either during the conduct of the procurement process for the Project or at the time of execution and delivery of this Project Agreement) relevant or material to or in connection with the Project or the obligations of Project Co under this Project Agreement or under any of the Project Documents; and
  - (ii) neither HMQ nor any other Province Person shall be liable to Project Co or any Project Co Party in respect of any failure, whether before, on or after the execution and delivery of this Project Agreement:
    - (A) to disclose or make available to Project Co or any Project Co Party any information, documents or data;
    - (B) to review or update the Background Information; or
    - (C) to inform Project Co or any Project Co Party of any inaccuracy, error, omission, defect or inadequacy in the Background Information.

### **6.3 No Claims**

- (a) Project Co acknowledges and confirms that:
- (i) it has conducted its own analysis and review of the Background Information and has, before the execution and delivery of this Project Agreement, satisfied itself as to the

accuracy, completeness and fitness for purpose of any such Background Information upon which it places reliance; and

- (ii) except as expressly provided in Sections 6.4, 16.1A, 16.2, 16.2A and 16.3, it shall not be entitled to and shall not, and shall ensure that no Project Co Party shall, make any claim against HMQ or any Province Person (whether in contract, tort or otherwise), including, without limitation, any claim in damages, for extensions of time or for additional payments under this Project Agreement on the grounds:

- (A) of any misunderstanding or misapprehension in respect of the Background Information; or

- (B) that the Background Information was incorrect or insufficient,

nor shall Project Co be relieved from any of its obligations under this Project Agreement on any such ground.

## **6.4 Technical Reports**

- (a) HMQ agrees that, if at the date of this Project Agreement, except as disclosed in any Background Information or as otherwise disclosed by HMQ, any HMQ Party or any Government Entity or known by Project Co or any Project Co Party, any of the information in the Technical Reports is, to the actual knowledge of HMQ, incorrect or there is relevant information in the possession or control of HMQ that would make any of the information in the Technical Reports incorrect, then, to the extent that such incorrect information materially adversely interferes with Project Co's ability to perform the Project Operations or materially adversely affects Project Co's cost of performing the Project Operations, such incorrect information shall, subject to and in accordance with Schedule 22 - Variation Procedure, result in a Variation.
- (b) For purposes of Section 6.4(a), "to the actual knowledge of HMQ" means to the actual knowledge of the president and chief executive officer of HMQ or the project manager – Project Delivery for the Project.

## **7. PROJECT DOCUMENTS**

### **7.1 Project Documents**

- (a) Project Co shall perform its obligations under, and observe all of the provisions of, each of the Project Documents to which it is a party, and shall ensure that each Project Co Party shall perform its obligations under, and observe all of the provisions of, each of the Project Documents to which such Project Co Party is a party, so as to ensure that other parties to such Project Documents shall not be entitled to terminate same. In the event that Project Co receives a notice of default under any of the Project Documents, it shall promptly, and, in any event, no later than two Business Days after receipt thereof, deliver a copy of such notice of default to HMQ.

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## **7.2 Ancillary Documents**

- (a) Project Co shall not:
- (i) terminate or agree to the termination of all or part of any Ancillary Document, except pursuant to Sections 30.3, 56.3 and 57.2 or otherwise to prevent or cure a Project Co Event of Default (provided that commercially reasonable alternative measures would not prevent or cure such Project Co Event of Default);
  - (ii) make or agree to any amendment, restatement or other modification of any Ancillary Document that materially adversely affects Project Co's ability to perform its obligations under this Project Agreement or that has the effect of increasing any liability of HMQ, whether actual or potential;
  - (iii) breach its obligations (or waive or allow to lapse any rights it may have) or permit others to breach their obligations (or waive or allow to lapse any rights they may have) under any Ancillary Document, that materially adversely affect Project Co's ability to perform its obligations under this Project Agreement or that have the effect of increasing any liability of HMQ, whether actual or potential; or
  - (iv) enter into, or permit the entry into by any other person of, any agreement replacing all or part of any Ancillary Document, except in the circumstances referenced in Section 7.2(a)(i),

without the prior written consent of HMQ, not to be unreasonably withheld or delayed, provided that, where consent is requested pursuant to Section 7.2(a)(i) or 7.2(a)(iv), such consent shall not be withheld, and shall be provided within a reasonable time, where the relevant matter referred to in Section 7.2(a)(i) or 7.2(a)(iv) will not materially adversely affect Project Co's ability to perform its obligations under this Project Agreement or have the effect of increasing any liability of HMQ, whether actual or potential. In the event of termination or agreement to the termination of all or part of any Ancillary Document as described in Section 7.2(a)(i) or any agreement replacing all or part of any Ancillary Document as described in Section 7.2(a)(iv), Project Co shall, to the extent applicable, comply with all provisions herein applicable to changes in Project Co Parties, including Section 56.3.

## **7.3 Changes to Lending Agreements and Refinancing**

- (a) Subject to Section 7.3(b) and the terms of the Lenders' Direct Agreement, Project Co shall not terminate, amend or otherwise modify the Lending Agreements, or waive or exercise any of its rights under the Lending Agreements, if, at the time such action is contemplated and effected, it would materially adversely affect Project Co's ability to perform its obligations under this Project Agreement or the Project Documents or have the effect of increasing any liability of HMQ, whether actual or potential.

- (b) Project Co shall not permit, suffer to exist or enter into any Refinancing other than in accordance with Schedule 12 – Refinancing.

#### **7.4 Compliance with Lending Agreements**

- (a) Project Co shall keep the Lending Agreements in good standing to the extent necessary to perform its obligations under this Project Agreement and the Project Documents, and shall ensure that none of the terms and conditions of the Lending Agreements shall prevent Project Co from performing its obligations under this Project Agreement or the Project Documents.

### **8. HMQ RESPONSIBILITIES**

#### **8.1 General**

- (a) HMQ shall, at its own cost and risk:
  - (i) perform all of its obligations under, and observe all provisions of, this Project Agreement in compliance with Applicable Law;
  - (ii) obtain, maintain, and, as applicable, renew the HMQ Permits, Licences, Approvals and Agreements which may be required for the performance of the Project Operations;
  - (iii) comply with all Permits, Licences, Approvals and Agreements in accordance with their terms;
  - (iv) cooperate with Project Co in the fulfillment of the purposes and intent of this Project Agreement, provided, however, that HMQ shall not be under any obligation to perform any of Project Co's obligations under this Project Agreement; and
  - (v) timely pay all HMQ Security Deposits.
- (b) HMQ shall, and shall cause, all HMQ Parties, MHPS, Toronto 2015, Waterfront Toronto, the Third Party Owners and all other Province Persons to perform all of their respective obligations under this Project Agreement and to take reasonable steps to minimize undue interference with the provision of the Project Operations by Project Co or any Project Co Party.
- (c) Nothing in this Project Agreement shall in any way fetter the right, authority and discretion of HMQ or any other Province Person in fulfilling its statutory or other functions under Applicable Law, and Project Co understands and agrees that nothing in this Project Agreement shall preclude HMQ from performing, discharging or exercising its duties, responsibilities and powers under Applicable Law. Project Co further agrees that it shall comply, and shall cause all relevant Project Co Parties to comply, with all written directions issued by or on behalf of HMQ from time to time, subject to Section 36.1(b).

## **9. PROJECT CO RESPONSIBILITIES**

### **9.1 Other Business**

- (a) Project Co shall not engage in any activities which are not specifically related to, required by and conducted for the purpose of the Project or without the prior written consent of HMQ, in its sole discretion. Notwithstanding the foregoing and subject to Section 14.11, Sections 26.1(e) to 26.1(g) (inclusive) and Schedule 18 – Communications Protocol, Project Co shall (i) at all times have the right to Market, Sell and Develop the Project Co Stage 1 Condominium Facilities and to deliver Affordable Ownership Housing; and (ii) Market, Sell and Develop condominium facilities on the Project Co Stage 2 Lands.

### **9.2 General**

- (a) Project Co shall, at its own cost and risk:
- (i) perform all of its obligations under, and observe all provisions of, this Project Agreement in compliance with Applicable Law;
  - (ii) perform all Project Operations:
    - (A) in compliance with Applicable Law;
    - (B) in compliance with all Permits, Licences, Approvals and Agreements and so as to preserve the existence and continued effectiveness of any such Permits, Licences, Approvals and Agreements;
    - (C) so as to satisfy the Output Specifications;
    - (D) in accordance with Good Industry Practice;
    - (E) in a manner consistent with the Quality Plans and the Project Co Proposal Extracts;
    - (F) in a timely and professional manner;
    - (G) so as to ensure that Interim Completion is achieved on or before the Scheduled Interim Completion Date, Project Substantial Completion is achieved on or before the Scheduled Project Substantial Completion Date, that Project Co Stage 1 Conversion Substantial Completion is achieved on or before the Scheduled Project Co Stage 1 Conversion Substantial Completion Date, that Third Party Facility Conversion Substantial Completion is achieved in respect of each Third Party Facility on or before the applicable Scheduled Third Party Facility Conversion Substantial Completion Date, and that Project Final Completion is achieved on or before the Scheduled Project Final Completion Date;

- (H) with due regard to the health and safety of persons and property;
  - (I) subject to the other provisions of this Project Agreement, in a manner which will not impair the ability of HMQ or any Province Persons to comply with Applicable Law;
  - (J) in accordance with all other terms of this Project Agreement; and
- (iii) cooperate with HMQ in the fulfillment of the purposes and intent of this Project Agreement, provided however that Project Co shall not be under any obligation to perform any of HMQ's obligations under this Project Agreement.

### **9.3 Project Co Parties**

- (a) Project Co shall not be relieved of any liability or obligation under this Project Agreement by the appointment of any Project Co Party, and Project Co shall cause each Project Co Party, to the extent such Project Co Party performs or is specified hereunder to perform the Project Operations, to comply with the obligations of Project Co hereunder in the same manner and to the same extent as Project Co.

### **9.4 Permits, Licences, Approvals and Agreements**

- (a) Project Co shall, at its own cost and risk:
- (i) obtain, maintain, and, as applicable, renew all Project Co Permits, Licences, Approvals and Agreements which may be required for the performance of the Project Operations;
  - (ii) assume the obligations of Project Co under the HMQ Permits, Licences, Approvals and Agreements as set out in Appendix 1 – Permits, Licences Approvals and Agreements of Schedule 1 – Definitions and Interpretation, including, without limitation, the administration of all HMQ Security Deposits which are subject to being released and returned to HMQ and the administration of the renewal or replacement, on behalf of and for the account of HMQ, of the HMQ Security Deposits if and as required, and Project Co shall cooperate with HMQ and any other person, perform the obligations under the Permits, Licences, Approvals and Agreements for which Project Co is responsible which are conditions for the release to HMQ of any such HMQ Security Deposits, and take all such necessary actions to have such HMQ Security Deposits released and returned to HMQ; and
  - (iii) comply with all Permits, Licences, Approvals and Agreements in accordance with their terms.
- (b) Where any Permits, Licences, Approvals and Agreements have requirements that may impose any conditions, liabilities or obligations on HMQ or any Province Person, Project Co shall not obtain or renew such Permits, Licences, Approvals and Agreements without the prior written consent of HMQ not to be unreasonably withheld or delayed, provided that



neither HMQ nor any Province Person shall be responsible for obtaining or for the failure of Project Co to obtain any Permit, Licence, Approval or Agreement or for the failure of Project Co to renew any HMQ Permit, Licence, Approval or Agreement. HMQ shall comply, or shall require compliance, with any conditions, liabilities or obligations as are imposed on HMQ or any Province Person by the requirements of any Permit, Licence, Approval or Agreement obtained with HMQ's consent under this Section 9.4(b).

- (c) HMQ shall provide Project Co with such information and administrative assistance as Project Co may reasonably require in relation to the Permits, Licences, Approvals and Agreements. In respect of Sections 9.4(a)(i) and 9.4(a)(ii), HMQ shall: (i) provide Project Co with relevant information and copies of notices received under the applicable HMQ Permits, Licences, Approvals and Agreements and (ii) execute any documents under the applicable HMQ Permits, Licences, Approvals and Agreements, which Applicable Law dictates that only HMQ can execute.

## **9.5 Safety During the Works**

- (a) From Financial Close until the Toronto 2015 Turnover Date (LD Underlay Facilities) in respect to that portion of the Site contemplated thereby and until the Toronto 2015 Turnover Date (Remaining Facilities) in respect to the balance of the Site, and from each of the Pan/Parapan Am Games Site Turnback Dates in respect to the portions of the Site contemplated thereby until the Termination Date, Project Co shall:
  - (i) comply with the Safety Plan;
  - (ii) keep the Site, the Works and the Facilities in a safe and orderly state, as appropriate in accordance with Good Industry Practice, to avoid danger to persons on the Site, in the Facilities and in the immediate vicinity of the Site;
  - (iii) take such measures as are reasonable in accordance with Good Industry Practice to prevent access to the Site and the Facilities of any persons or creatures not entitled to be there;
  - (iv) comply with Applicable Law relating to health and safety, including without limitation the *Occupational Health and Safety Act* (Ontario) and all regulations thereto
  - (v) perform, or cause a Project Co Party to perform, all of the obligations of the "constructor", and indemnify HMQ and each Province Person against any and all of the liabilities of the "constructor", under the *Occupational Health and Safety Act* (Ontario) and all regulations thereto; and
  - (vi) provide HMQ with a certificate of good standing from WSIB or any successor thereto once every 90 calendar days.

### **9.5A Early Operational Term**

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- (a) In addition to Project Co's obligations under Section 9.5, during the Early Operational Term and, for clarity, until Project Co has turned over each part of the Site and each Facility to HMQ pursuant to Section 14.7(a), Project Co shall at its own cost and expense ensure that the Site and the Facilities are maintained in a good and substantial state of repair, as would a prudent owner of other similar Sites and Facilities, including, but not limited to, keeping the Site and the Facilities in such condition as to comply with the requirements of Applicable Law and any Governmental Authority having jurisdiction; regulating and operating each HVAC System in order to maintain reasonable conditions of temperature and humidity within the Facilities; providing all required maintenance, grounds-keeping and pest control services; and keeping the walkways and sidewalks free of ice, snow, debris and garbage.

## **9.6 Additional Works**

- (a) HMQ reserves the right to carry out Additional Works. HMQ may assign the methods and manner of construction (where applicable) of the Additional Works, the coordination and scheduling of the Additional Works and the safety training in respect of the Additional Works to Project Co.
- (b) In connection with the Additional Works, HMQ shall:
- (i) cause Additional Contractors to comply with the instructions of Project Co relating to matters of health and safety on the Site, methods and manner of construction (where applicable), and coordination and scheduling of the Additional Works with the Works during the performance of the Works;
  - (ii) enter into separate contracts with Additional Contractors under conditions of contract which are compatible with the conditions of this Project Agreement and provide for compliance by Additional Contractors with Section 9.6(c) and all directions of Project Co in respect of any matter regarding health and safety on the Site, methods and manner of construction (where applicable), and coordination and scheduling of the Additional Works during the performance of the Works;
  - (iii) ensure that insurance coverage is provided as would be required by a prudent owner similarly situated and coordinate such insurance with the insurance coverage of Project Co as it affects the Works and in any event, such insurance shall provide for liability insurance of not less than \$[REDACTED]; and
  - (iv) take all necessary steps to avoid labour disputes or other disputes on the Project arising from the Additional Works.
- (c) In connection with the Additional Works, Project Co shall, during the performance of the Works:
- (i) where HMQ has assigned to Project Co the matters referred to in Section 9.6(a) and subject to the performance by HMQ of its obligations under Section 9.6(b)(i) and 9.6(b)(ii), provide for the methods and manner of construction (where applicable) of

the Additional Works and the coordination and scheduling of the Additional Works with the Works to be performed under this Project Agreement;

- (ii) afford Additional Contractors reasonable opportunity to introduce and store their products and use their construction machinery and equipment to execute the Additional Works;
  - (iii) participate with HMQ and Additional Contractors in reviewing their construction schedules when directed to do so by HMQ;
  - (iv) where part of the Works is affected by or depends upon, for its proper execution, the Additional Works, promptly report to HMQ in writing and prior to proceeding with that part of the Works, any readily apparent deficiencies in the Additional Works. Failure by Project Co to so report shall invalidate any claims against HMQ by reason of such readily apparent deficiencies; and
  - (v) where HMQ has assigned to Project Co the matters referred to in Section 9.6(a) and subject to the performance by HMQ of its obligations under Sections 9.6(b)(i) and 9.6(b)(ii), for the Additional Contractors and in respect to such Additional Works, assume overall responsibility for compliance with all aspects of Applicable Law relating to health and safety, including all the responsibilities of the 'constructor' under the *Occupational Health and Safety Act* (Ontario) prior to Project Final Completion.
- (d) In the case of Additional Works carried out prior to Project Final Completion, if:
- (i) any Additional Contractors cause any damage to the Works;
  - (ii) Project Co incurs any additional costs or there is any delay in the Works Schedule as a result of any Additional Contractors not complying with the coordination, scheduling and safety instructions of Project Co; or
  - (iii) subject to the performance by Project Co of its obligations under Sections 9.6(c)(i), (ii), (iii) and (v), if Project Co incurs any additional costs or there is any delay in the Works Schedule as a result of any Additional Works (other than Additional Work that is required to meet the Output Specifications and provided such Additional Work is performed by such Additional Contractors in accordance with Good Industry Practice and in accordance with the terms of their respective contracts or engagements with HMQ),

then, any such delay in the Works Schedule or additional costs in respect of the Works shall, subject to and in accordance with Section 37, be treated as a Delay Event and, subject to and in accordance with Section 38, be treated as a Compensation Event.

- (e) Claims, disputes, and other matters in question between Project Co and Additional Contractors shall be dealt with in substantially the same manner as contemplated in Schedule 27 – Dispute Resolution Procedure, provided the Additional Contractors have reciprocal

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obligations and HMQ has made commercially reasonable efforts to ensure that such provisions are included in the contracts with the Additional Contractors. Project Co shall be deemed to have consented to arbitration of any dispute with any other contractor whose contract with HMQ contains a similar agreement to arbitrate.

- (f)
  - (i) Project Co shall have a period of 10 Business Days following notice from HMQ of HMQ's intention to carry out Additional Works including a reasonable description of such Additional Works to request a Variation if such Additional Works are (A) reasonably expected to make a warranty made in favour of Project Co from a Project Co Party or equipment supplier and given in accordance with Good Industry Practice, void, or (B) reasonably expected to have a material negative consequence on Project Co's ability to perform any of the Project Operations;
  - (ii) if Project Co has made a request for a Variation in accordance with Section 9.6(f)(i), HMQ shall, within 10 Business Days of such request, either issue a Variation Enquiry or give written notice to Project Co that it does not agree that a Variation is required;
  - (iii) either Party may refer the question of whether a Variation is required as the result of a warranty risk or risk in the performance of the Project Operations for resolution in accordance with Schedule 27 - Dispute Resolution Procedure; and
  - (iv) where HMQ has, under Section 9.6(f)(ii), given notice to Project Co that it does not agree that a Variation is required, HMQ shall, within 10 Business Days of a subsequent agreement or of a determination that a Variation is required, issue a Variation Enquiry and the relevant provisions of Schedule 22 - Variation Procedure shall apply except that:
    - (A) HMQ shall not be entitled to withdraw any such Variation Enquiry unless HMQ determines not to proceed with the Additional Works or to proceed only in a manner that the Additional Works will not result in a warranty becoming void (as contemplated in Section 9.6(f)(i)) or will not result in any material negative consequence on Project Co's ability to perform any of the Project Operations and Project Co has agreed with such conclusion or the Parties otherwise agree, and
    - (B) the Parties shall, without prejudice to their respective general obligations to comply with the terms of this Project Agreement, use commercially reasonable efforts to mitigate the adverse effects with respect to any void or voidable warranty and take commercially reasonable steps to minimize any increase in costs arising from any void warranty.
- (g) Placing, installing, applying or connecting the Additional Works performed by Additional Contractors, on and to the Works performed by Project Co will not relieve Project Co from its obligations under the Project Agreement with respect to the Works, except to the extent expressly described in any Variation Confirmation.

## **10. REPRESENTATIVES**

### **10.1 The HMQ Representative**

- (a) Subject to the limitations set out in Section 10.1(d), the HMQ Representative shall exercise the functions and powers identified in this Project Agreement as functions or powers to be performed by the HMQ Representative and such other functions and powers of HMQ under this Project Agreement as HMQ may notify Project Co from time to time.
- (b) HMQ may, from time to time by written notice to Project Co, change the HMQ Representative. Such change shall have effect on the later of the date of delivery of such notice and the date specified in such notice.
- (c) During any period when no HMQ Representative has been appointed, or when the HMQ Representative is unable, through illness, incapacity or any other reason whatsoever, to perform the HMQ Representative's functions under this Project Agreement, HMQ shall perform or may, by written notice to Project Co, promptly appoint an alternative HMQ Representative to perform the functions which would otherwise be performed by the HMQ Representative. Upon receipt of such written notice, Project Co and the Project Co Representative shall be entitled to treat any act of such alternative HMQ Representative which is permitted by this Project Agreement as being authorized by HMQ, and Project Co and the Project Co Representative shall not be required to determine whether authority has in fact been given.
- (d) The HMQ Representative shall not, except as otherwise provided in this Project Agreement, be entitled to modify or waive any provision of this Project Agreement or to authorize a Variation.
- (e) Subject to the limitations set out in Sections 10.1(a) and 10.1(d), unless otherwise notified in writing, Project Co and the Project Co Representative shall be entitled to treat any act of the HMQ Representative which is authorized by this Project Agreement as being authorized by HMQ, and Project Co and the Project Co Representative shall not be required to determine whether authority has in fact been given.

### **10.2 The Project Co Representative**

- (a) Subject to the limitations set out in Section 10.2(d), the Project Co Representative shall have full authority to act on behalf of Project Co for all purposes of this Project Agreement.
- (b) Project Co may change the Project Co Representative with the prior written consent of HMQ, not to be unreasonably withheld or delayed.
- (c) During any period when the Project Co Representative is unable, through illness, incapacity or any other reason whatsoever, to perform the Project Co Representative's functions under this Project Agreement, Project Co shall perform or may, by written notice to HMQ, promptly appoint an alternative Project Co Representative to perform the functions which would otherwise be performed by the Project Co Representative, provided that, Project Co

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must seek HMQ's consent in accordance with Section 10.2(b) if such alternative Project Co Representative is in place for more than 180 calendar days. Upon receipt of such written notice, HMQ and the HMQ Representative shall be entitled to treat any act of such alternative Project Co Representative which is permitted by this Project Agreement as being authorized by Project Co, and HMQ and the HMQ Representative shall not be required to determine whether authority has in fact been given.

- (d) The Project Co Representative shall not, except as otherwise provided in this Project Agreement, be entitled to modify or waive any provision of this Project Agreement.
- (e) Subject to the limitations set out in Section 10.2(d), unless otherwise notified in writing, HMQ and the HMQ Representative shall be entitled to treat any act of the Project Co Representative which is authorized by this Project Agreement as being authorized by Project Co, and HMQ and the HMQ Representative shall not be required to determine whether authority has in fact been given.

### **10.3 Communications to Representatives**

- (a) At the time that a Party appoints or changes the appointment of the HMQ Representative or the Project Co Representative, as applicable, that Party shall also provide the other Party with contact information for delivery of communications to such representative. Communications to such representative shall not constitute notices to the Party appointing such representative.

### **10.4 Key Individuals**

- (a) The individuals who are critical to the performance of the Works are identified in Schedule 9 - Key Individuals. Project Co shall use commercially reasonable efforts to ensure that such persons remain involved in the Works in the capacity set out in Schedule 9 - Key Individuals and, in particular, will not, for the duration of the Works, require or request any such person to be involved in any other project on behalf of Project Co or any Project Co Party if, in the opinion of HMQ, acting reasonably, such involvement would have a material adverse effect on the Works.
- (b) If Project Co considers it necessary to replace any individual identified in Schedule 9 - Key Individuals, Project Co shall provide HMQ with relevant information on the proposed replacement and shall consult with HMQ before finalizing the appointment of such replacement. Project Co shall not replace any of the individuals identified in Schedule 9 - Key Individuals without the prior written consent of HMQ, which consent shall not be withheld or delayed where the proposed replacement is suitably qualified and experienced.
- (c) If HMQ determines, acting reasonably, that it is in the best interests of HMQ that any individual identified in Schedule 9 - Key Individuals be replaced, HMQ shall notify Project Co (including a detailed explanation of the reasons for such determination), and, within 30 calendar days of receipt by Project Co of such notice, Project Co shall provide HMQ with relevant information on the proposed replacement and shall consult with HMQ before

finalizing the appointment of such replacement. Project Co shall not replace any of the individuals identified in Schedule 9 - Key Individuals without the prior written consent of HMQ, which consent shall not be withheld or delayed where the proposed replacement is suitably qualified and experienced.

## **11. WORKS COMMITTEE**

### **11.1 Establishment**

- (a) The Parties shall, within 30 calendar days following Financial Close, establish a committee (the “**Works Committee**”) consisting of:
  - (i) one representative appointed by Toronto 2015 from time to time;
  - (ii) one representative appointed by MHPS from time to time;
  - (iii) the following four representatives appointed by HMQ:
    - (A) the HMQ Representative; and
    - (B) three other representatives appointed by HMQ from time to time; and
  - (iv) the following three representatives appointed by Project Co:
    - (A) the Project Co Representative;
    - (B) one representative of the Construction Contractor; and
    - (C) such other representative appointed by Project Co from time to time.
- (b) The Independent Certifier and the Planning, Design & Compliance Consultant shall be entitled, but not required, to attend meetings as non-voting members of the Works Committee. Members of the Works Committee may invite, on prior notice to all members, such advisors and consultants as they require from time to time to attend meetings and provide briefings to the Works Committee.
- (c) The HMQ Representative shall be the chairperson of the Works Committee.

### **11.2 Function and Role**

- (a) The Works Committee shall assist the Parties by promoting cooperative and effective communication with respect to matters related to the Works.
- (b) The Works Committee shall be responsible for receiving and reviewing all matters related to the Works, including:
  - (i) any design, construction and commissioning issues;

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- (ii) the Works Schedule;
  - (iii) any issues arising from reports or documents provided by Project Co or the Independent Certifier;
  - (iv) any quality assurance and safety issues;
  - (v) the Works Reports;
  - (vi) any special matters referred to the Works Committee by HMQ, MHPS or Project Co;
  - (vii) any community and media relations issues in accordance with Schedule 18 - Communications Protocol;
  - (viii) monitoring the Project Substantial Completion Commissioning Program;
  - (ix) monitoring the Third Party Facility Conversion Substantial Completion Commissioning Program;
  - (x) monitoring the Project Co Stage 1 Conversion Substantial Completion Commissioning Program; and
  - (xi) any other issues pertaining to the Works.
- (c) Subject to Section 11.2(d), any unanimous decision of the Works Committee shall be final and binding on the Parties. If the Works Committee is unable to reach a unanimous decision, either Party may refer the matter for resolution in accordance with Schedule 27 - Dispute Resolution Procedure.
- (d) The Works Committee shall not have authority to make decisions with respect to or approve:
- (i) any amendment to or waiver of any provision of this Project Agreement;
  - (ii) any change to a Works Milestone, the Scheduled Interim Completion Date, the Scheduled Project Substantial Completion Date, the Scheduled Project Co Stage 1 Conversion Substantial Completion Date, the Scheduled Third Party Facility Conversion Substantial Completion Dates or the Scheduled Project Final Completion Date;
  - (iii) any Variation;
  - (iv) any change that may materially adversely affect Project Co's ability to achieve Interim Completion by the Scheduled Interim Completion Date, Project Substantial Completion by the Scheduled Project Substantial Completion Date, Project Co Stage 1 Conversion Substantial Completion by the Scheduled Project Co Stage 1 Conversion Substantial Completion Date, any Third Party Facility Conversion Substantial Completion Date by the applicable Scheduled Third Party Facility



Conversion Substantial Completion Date or Project Final Completion by the Scheduled Project Final Completion Date; or

- (v) any matter with respect to which HMQ has a right of consent or in respect of which HMQ may exercise discretion pursuant to this Project Agreement.

### **11.3 Term of Works Committee**

- (a) Unless otherwise agreed, the Works Committee shall operate only until the Project Final Completion Date.

### **11.4 Replacement of Committee Members**

- (a) MHPS and HMQ shall be entitled to replace any of their respective representatives on the Works Committee by written notice to Project Co. HMQ will use commercially reasonable efforts to deliver prior written notice of any such replacement to Project Co. Project Co may replace any of its representatives on the Works Committee with the prior written consent of HMQ, not to be unreasonably withheld or delayed.

### **11.5 Procedures and Practices**

- (a) The members of the Works Committee may:
  - (i) adopt such procedures and practices for the conduct of the activities of the Works Committee as they consider appropriate from time to time;
  - (ii) invite to any meeting of the Works Committee such other persons as the members of the Works Committee may agree;
  - (iii) exclude from any meeting of the Works Committee such persons as the members of the Works Committee may agree; and
  - (iv) receive and review reports from any person or organization agreed to by the members of the Works Committee.
- (b) Once established, the Works Committee shall meet at least once each month from Financial Close until the Project Final Completion Date, unless otherwise agreed by the members of the Works Committee or the Parties.
- (c) Any one of the Project Co Representative, the HMQ Representative and the MHPS representative on the Works Committee may convene a special meeting of the Works Committee at any time. Special meetings of the Works Committee may be convened on not less than five Business Days notice to all members of the Works Committee identifying the agenda items to be discussed at the special meeting, provided that, in an Emergency, a meeting may be called at any time on such notice as may be reasonable in the circumstances.

- (d) Unless otherwise agreed by the members of the Works Committee, the Works Committee shall meet at the Site, in the City of Toronto, Ontario, or in any other location in Toronto, Ontario. Meetings of the Works Committee may be held by means of such telephonic, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously. A person participating in a meeting by such means will be deemed to be present at such meeting, provided that each member of the Works Committee must attend in person at least once each calendar quarter.
- (e) Three representatives of HMQ (one of whom shall be the HMQ Representative) and two representatives of Project Co (one of whom shall be the Project Co Representative) shall constitute a quorum at any meeting of the Works Committee. A quorum of members may exercise all the powers of the Works Committee. The members shall not transact business at a meeting of the Works Committee unless a quorum is present.
- (f) Minutes of all meetings, recommendations and decisions of the Works Committee, including those made by telephone or other form of communication, shall be recorded and maintained by Project Co. Project Co shall circulate copies of such minutes within five Business Days of the holding of the meeting or the making of the recommendation or decision. Unless HMQ notifies Project Co within 20 Business Days of receipt of the minutes that HMQ disagrees with the contents of the minutes, Project Co, HMQ and MHPS shall be deemed to have approved such minutes. Project Co shall maintain a complete set of all minutes of the meetings of the Works Committee and shall make such minutes available for inspection by HMQ during regular business hours.

## **12. INTENTIONALLY DELETED**

## **13. QUALITY ASSURANCE**

### **13.1 Quality Plans and Systems**

- (a) Project Co shall cause all of the Project Operations to be the subject of quality management systems, which shall include (i) a Design Quality Plan, (ii) a Construction Quality Plan, (iii) a Waterfront Toronto Employment Initiative Plan, (iv) a Diversity Plan, and (v) a Smoke Free Workplace Plan, all of which may be incorporated into one or more documents (collectively, the “**Quality Plans**”).
- (b) All Quality Plans shall be consistent with the requirements of the Output Specifications, the Project Substantial Completion Commissioning Program, the Project Co Stage 1 Conversion Substantial Completion Commissioning Program, the Third Party Facility Conversion Substantial Completion Commissioning Program, or any equivalent standard which is generally recognized as having replaced any of them, but Project Co shall not require accreditation with such standard.
- (c) The Design Quality Plan is attached as part of Schedule 11 - Design Quality Plan and Construction Quality Plan.

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- (d) The Construction Quality Plan shall, at a minimum, comply with the requirements of the outline of the Construction Quality Plan attached as part of Schedule 11 - Design Quality Plan and Construction Quality Plan. Project Co shall submit its proposed Construction Quality Plan to HMQ within 60 calendar days following Financial Close.
- (e) The Waterfront Toronto Employment Initiative Plan, the Diversity Plan, and the Smoke Free Workplace Plan shall, at a minimum, each comply with the requirements of the applicable outline of each such Quality Plan attached as part of Schedule 40 – WTEI, Diversity and Smoke Free Workplace Plans. Project Co shall submit each proposed Waterfront Toronto Employment Initiative Plan, Diversity Plan, and Smoke Free Workplace Plan to HMQ within 60 calendar days following Financial Close.
- (f) All Quality Plans shall be subject to review by HMQ pursuant to Schedule 10 - Review Procedure, and Project Co shall not be entitled to implement or cause the implementation of any Quality Plan unless and until Project Co is entitled to proceed with such implementation pursuant to Schedule 10 - Review Procedure.
- (g) Project Co shall implement the Quality Plans, shall perform and cause to be performed the Project Operations in compliance with the Quality Plans, including by causing the Construction Contractor to implement the Quality Plans.
- (h) Where any aspect of the Project Operations is performed by more than one Project Co Party, then this Section 13, in so far as relevant or appropriate to the activities to be performed by such Project Co Party, shall apply in respect of each of them and references in this Section 13 to such Project Co Party, including the Construction Contractor, shall be construed accordingly.

### **13.2 Changes to Plans**

- (a) Project Co shall submit to HMQ, in accordance with Schedule 10 - Review Procedure, any changes to any of the Quality Plans required to comply with Section 13.1, and shall amend such Quality Plans as required pursuant to Schedule 10 - Review Procedure.

### **13.3 Quality Manuals and Procedures**

- (a) If any Quality Plan refers to, relies on or incorporates any quality manual or procedure, then such quality manual or procedure or the relevant parts of it shall be submitted to HMQ at the time that the relevant Quality Plan, or part thereof or change thereto, is submitted in accordance with Schedule 10 - Review Procedure, and the contents of such quality manual or procedure shall be taken into account in the consideration of the relevant Quality Plan, or part thereof or change thereto, in accordance with Schedule 10 - Review Procedure.

### **13.4 Quality Monitoring**

- (a) Without limiting HMQ's other rights pursuant to this Project Agreement, including Section 34, HMQ may, from time to time, directly or indirectly, perform periodic monitoring, spot checks and auditing of Project Co's quality management systems, including all relevant

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Quality Plans and any quality manuals and procedures. Project Co shall ensure that HMQ also has the right to perform periodic monitoring, spot checks and auditing of the Construction Contractor's quality management systems.

- (b) Project Co shall cooperate, and shall cause the Construction Contractor to cooperate, with HMQ in monitoring quality management systems and shall provide HMQ with all information and documentation reasonably required in connection with HMQ's rights under this Section 13.4.

## **14. LICENCE**

### **14.1 Licence to Site**

- (a) Effective from the date of Financial Close until the Termination Date and subject to this Section 14, HMQ hereby grants or has caused to be granted, and shall continuously until the Termination Date grant or cause to be granted, to Project Co and all Project Co Parties such non-exclusive licence rights of use and access to, on and over the Site and Facilities in accordance with the Enabling Works and Construction Access Sequence Diagrams, except such rights set out as a Project Co responsibility to obtain under the Permits, Licences, Approvals and Agreements as are required by Project Co and such Project Co Parties, sufficient (subject to Project Co performing any obligations set out as a Project Co responsibility to obtain and perform under the Permits, Licences, Approvals and Agreements) to allow Project Co and such Project Co Parties to perform the Project Operations and, subject to Sections 14.11 and 26.1(d) to 26.1(f) (inclusive) and to Schedule 18 – Communications Protocol, Market and/or Sell condominium facilities.
- (b) Project Co shall ensure that each Project Co Party shall at all times, when entering the Site and the Facilities, act in a manner consistent with the obligations of Project Co under the Project Agreement.
- (c) In consideration for the licence granted pursuant to Section 14.1(a), Project Co shall provide the Project Operations subject to and in accordance with this Project Agreement.
- (d) Without derogating from any of HMQ's rights hereunder, in particular, its rights of access to the Site prior to the Interim Completion Date, the Project Substantial Completion Date, the Project Co Stage 1 Conversion Substantial Completion Date and each Third Party Facility Conversion Substantial Completion Date for purposes of the HMQ Commissioning, HMQ acknowledges that, in respect of the Project Operations, Project Co and the Project Co Parties require, and HMQ shall provide, access to the Site and the Facilities in accordance with the Enabling Works and Construction Access Sequence Diagrams, without material interference by HMQ or any Province Person from the date of Financial Close until the Termination Date.
- (e) Except as may be provided in the Permits, Licences, Approvals and Agreements, none of the rights granted pursuant to this Section 14.1 shall extend beyond the boundaries of the Site, or

to any lands other than the Site, other than easements and similar interests of HMQ which benefit the Site, obtained after the date of this Project Agreement, to the extent the same are necessary for the Project Operations.

- (f) The licence provided in this Section 14.1 shall automatically terminate as of the Termination Date.
- (g) Project Co acknowledges that lands in the vicinity of the Site and owned by Her Majesty the Queen in Right of Ontario, as represented by the Minister of Infrastructure, are not included in the Site, such lands being improved by Her Majesty the Queen in Right of Ontario, as represented by the Minister of Infrastructure, for City of Toronto municipal works and that as such lands are being improved during the construction of the Works, that such lands will be designated as a separate construction site or sites and that road access to the Site by Project Co may be required to be shared with the other contractor(s) for such facility or facilities.
- (h) Project Co in exercising its rights of access under Section 14.1(a) will do so in a manner which does not materially interfere with the access to the lands described in Section 14.1(g) by other persons (“**Off-Site Third Parties**”), and Project Co and the Project Co Parties shall work co-operatively together with such Off-Site Third Parties to develop an access protocol to prevent material adverse interference with the access of either of them.
- (i) Without limiting the foregoing, Project Co and such Off-Site Third Parties shall be directed to cooperate and coordinate concurrent construction activities, in a commercially reasonable manner, including in respect of the phasing of construction works, access to services, air rights and crane swing, shoring and related matters. It is expressly acknowledged that neither Project Co nor such Off-Site Third Parties have, or shall have any presumptive rights over any adjacent sites, and accordingly each shall be required to inter-act in a commercially reasonable manner in the circumstances. In addition, Project Co acknowledges that the interaction with such Off-Site Third Parties as contemplated by the foregoing provisions, shall not, in any event, be cause for justifiable delay by Project Co in performance hereunder, nor support any claim for delay, compensation or a right to a Variation.
- (j) Without limiting Project Co’s obligations under Section 14.1(i), HMQ shall, and shall cause the HMQ Parties to, cause all Off-Site Third Parties under the control of HMQ and the HMQ Parties to cooperate and coordinate concurrent construction activities with Project Co and the Project Co Parties, in a commercially reasonable manner, including in respect of the phasing of construction works, access to services, air rights and crane swing, shoring and related matters.

## **14.2 Non-exclusive Licence/Development of Site**

- (a) Project Co acknowledges and agrees that the rights granted to Project Co and the Project Co Parties hereunder shall be non-exclusive and subject to the rights granted to HMQ and the Province Persons under this Project Agreement.

- (b) Subject to Section 14.10 and without limiting the provisions of Sections 14.1(f) to 14.1(j) inclusive, Project Co acknowledges that HMQ and/or other non-HMQ Party or Parties may from time to time use or develop (including by way of subdivision) or permit the use or development of all or part of the lands in the vicinity of the Site and that such use or development shall not give rise to any right of Project Co to claim any delay, compensation or a right to a Variation.

#### **14.3 Limited Access Areas**

- (a) For purposes related to security and confidentiality, effective upon the Project Substantial Completion Date and until the last Pan/Parapan Am Games Site Turnback Date and subject to Section 14.7(d), HMQ may limit or restrict Project Co's and each Project Co Party's access to designated portions of the Site or the Facilities unless a person seeking access obtains the prior written consent of HMQ, which consent may be subject to such reasonable conditions as are imposed by HMQ.

#### **14.4 Naming and Signage**

- (a) Project Co acknowledges and agrees that HMQ reserves and retains until the Project Co Lands Transfer Date and thereafter only in respect of the Third Party Facilities and the Municipal Works Facilities all rights to Signage in relation to the Site and the Facilities subject to the Project Co Signage Rights and the provisions of Schedule 18 – Communications Protocol.

#### **14.5 No Interest in Land**

- (a) Project Co agrees that, in accordance with the principles of the IPFP Framework, it acquires no estate, right, title or ownership interest in the Site or the Facilities or any other interest in land pursuant to this Project Agreement or otherwise, save and except for under the Project Co Lands Agreements of Purchase and Sale.

#### **14.6 Non-Disturbance Agreement**

- (a) If HMQ mortgages, charges or otherwise encumbers the Site, HMQ shall notify Project Co and, at the request of Project Co, provide Project Co with an agreement, in form satisfactory to Project Co, acting reasonably, executed by the mortgagee of the Site permitting Project Co and the Lenders' Agent to access and use the Site under the licence granted pursuant to this Section 14 and the Lenders' Direct Agreement, respectively, free from interference from the mortgagee or any person claiming by or through the mortgagee. This Section 14.6 shall not apply in respect of any portion of the Site used or developed pursuant to Section 14.2(b) if neither the licence granted pursuant to this Section 14 nor the Project Operations pertain to such portion of the Site.

#### **14.7 Turnover Process and Operational Term Commencement**

- (a) Project Co acknowledges that HMQ is obligated to complete the Turnover Process and to turn over to Toronto 2015:

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- (i) the Toronto 2015 LD Underlay Facilities on [REDACTED], which Toronto 2015 LD Underlay Facilities shall have either achieved Project Substantial Completion or, at a minimum, shall have been certified as meeting all of the requirements of Project Substantial Completion by the Independent Certifier in accordance with the Project Substantial Completion Commissioning Program by such date; and
- (ii) all Facilities other than the Toronto 2015 LD Underlay Facilities and the remaining portions of the Site on [REDACTED], which Facilities shall have achieved Project Substantial Completion by such date, and

that Toronto 2015 shall use the Site and the Facilities for and during the Operational Term. Project Co, accordingly, agrees to complete the Turnover Process and to turn over to HMQ:

- (A) the Toronto 2015 LD Underlay Facilities on [REDACTED], which Toronto 2015 LD Underlay Facilities shall have either achieved Project Substantial Completion or, at a minimum, shall have been certified as meeting all of the requirements of Project Substantial Completion by the Independent Certifier in accordance with the Project Substantial Completion Commissioning Program by such date; and
  - (B) all Facilities other than the Toronto 2015 LD Underlay Facilities and the remaining portions of the Site on [REDACTED], which Facilities shall have achieved Project Substantial Completion by such date.
- (b) For clarity, Project Co's failure or failures to complete the Turnover Process and to turn over to HMQ the applicable Facilities and Site on each of the Toronto 2015 Turnover Dates shall not in itself result in a Project Co Event of Default (unless a Project Co Event of Default has otherwise arisen independently or in connection with such failure or failures) but, in either or both events, shall instead result in Project Co's payment to HMQ of liquidated damages pursuant to and in accordance with Section 42.8.
  - (c) Project Co shall turn over the Site and the Facilities to HMQ in compliance with the Turnover Process.
  - (d) Subject to Section 14.7A, during the Operational Term, neither Project Co nor any Project Co Party shall have access to the Site or the Facilities except:
    - (i) as required for the performance of the Project Co Services under the Project Co Services Agreement; and
    - (ii) to correct Project Substantial Completion Minor Deficiencies in respect to Project Substantial Completion and to perform any warranty or seasonal work.

#### **14.7A Turnback Process**

- (a) Project Co acknowledges that Toronto 2015 shall turn back to HMQ:

- (i) Blocks 1, 2, 3, 4, 11, 12, 13, 14, 15 and 16 on the Pan/Parapan Am Games Site Turnback Date (Parapan Sites); and
  - (ii) West Blocks 3, 4 and 7, the West Block 7 Laneway, and Blocks 8, 9, 10, 20 and 32 on the Pan/Parapan Am Games Site Turnback Date (Remaining TO2015 Facilities).
- (b) After the turn back of the applicable portions of the Site (including, for clarity, the relevant Facilities on such portions of the Site) to HMQ by Toronto 2015 on the applicable Pan/Parapan Am Games Site Turnback Date, HMQ shall, on such date, provide written direction to Project Co to commence the Works on, in and to such portions of the Site and the applicable Facilities in accordance with the Project Agreement. Subject to the following sentence, HMQ shall not be liable to Project Co under this Project Agreement as a result of a failure by Toronto 2015 to turn back the applicable portions of the Site (including, for clarity, the relevant Facilities on such portions of the Site) to HMQ on the applicable Pan/Parapan Am Games Site Turnback Date. Notwithstanding the foregoing, to the extent that a failure by Toronto 2015 to turn back the applicable portions of the Site (including, for clarity, the relevant Facilities on such portions of the Site) to HMQ on the applicable Pan/Parapan Am Games Site Turnback Date causes a delay to Project Co in the Works Schedule or increases Project Co's costs of performing the Works, such failure shall, subject to and in accordance with Section 37, be treated as a Delay Event and, subject to and in accordance with Section 38, be treated as a Compensation Event.
- (c) Project Co acknowledges and agrees with HMQ that Project Co, HMQ and Toronto 2015 shall complete the Turnback Process in respect of the applicable portions of the Site and the Facilities on such portions of the Site before each Pan/Parapan Am Games Site Turnback Date in accordance with the Output Specifications and the Project Co Services Agreement.
- (d) Project Co acknowledges that Toronto 2015 shall pay to it the Toronto 2015 Third Party Facilities Compensation Payment pursuant to the Project Co Services Agreement. Project Co agrees to direct Toronto 2015 to pay the Toronto 2015 Third Party Facilities Compensation Payment into a trust account under the Trust Account Agreement. In accordance with the Trust Account Agreement, the Lenders' Technical Advisor shall be entitled to request withdrawals from such trust account as Project Co incurs costs to perform the Third Party Facility Conversion Work (each is a "**LTA Third Party Facility Games Damage Authorization Amount**"). All withdrawals from such trust account shall be initiated by the delivery by the Lenders' Technical Advisor to the Trustee of a Third Party Facility Games Damage Reduction Authorization and be otherwise in accordance with the Trust Account Agreement. For clarity, the payment of the Toronto 2015 Project Co Stage 1 Condominium Facilities Compensation Payment pursuant to the Project Co Services Agreement shall be paid by Toronto 2015 directly to Project Co (or as Project Co may direct).

#### **14.8 Reservation of Project Co Lands Licence**

- (a) For clarity, from the Project Co Lands Transfer Date until the Project Co Stage 1 Conversion Substantial Completion Date, HMQ, the Province Persons and the Independent Certifier



shall have a licence from Project Co to access and enter on to the Project Co Stage 1 Lands and/or into the Project Co Stage 1 Condominium Facilities at reasonable times for the purpose of making inspections in respect of the achievement of Project Co Stage 1 Conversion Substantial Completion, provided that:

- (i) such access and entry shall be subject to the rights of tenants, occupants and users of the Project Co Stage 1 Lands and the Project Co Stage 1 Condominium Facilities; and
- (ii) HMQ shall and shall cause the Province Persons and the Independent Certifier to:
  - (A) provide reasonable prior notice appropriate to the circumstances (other than for any offices or other facilities provided at the Site for HMQ's and Province Person's own use);
  - (B) comply with all relevant safety procedures and any reasonable directions with regard to site safety that may be issued by or on behalf of the Project Co Representative from time to time; and
  - (C) if required by Project Co, be accompanied by a representative of Project Co or a Project Co Party.

#### **14.9 Site and Facilities After the Project Co Lands Transfer Date**

- (a) For clarity, (i) upon the Project Co Lands Transfer Date, the Project Co Stage 2 Lands shall no longer be included in the Site and, (ii) upon the Project Co Stage 1 Conversion Substantial Completion Date, the Project Co Stage 1 Lands and the Project Co Stage 1 Condominium Facilities, shall no longer be included in the Site and the Facilities respectively.

#### **14.10 Restriction on HMQ Land Development and Condominium Marketing and Sales**

- (a) Until the earlier of the date:
  - (i) **[REDACTED]**% of the Project Co Stage 1 Condominium Facilities marketed for sale have been Sold;
  - (ii) **[REDACTED]**% of the Project Co Stage 1 Condominium Facilities have achieved closings in respect of such Sold condominium units and/or have been rented; and
  - (iii) the Provincial Loan Agreement is no longer in force and none of the Obligations (as defined in the Provincial Loan Agreement) remain outstanding,

HMQ shall not (and shall not cause another person to):

- (A) Develop lands owned by the Province in the West Don Lands for the purpose of constructing residential condominium units; or

- (B) Market or Sell any such residential condominium units to be Developed on or in such lands,

save and except for in respect of (I) the River City Project, (II) the Rekai Project, (III) the TCHC Project, and (IV) any other Affordable Rental Housing and Affordable Ownership Housing, provided that (1) the aggregate amount of any other such Affordable Rental Housing which is Marketed, rented and/or Developed by HMQ (or is caused to be Marketed, rented and/or Developed by HMQ) in the West Don Lands shall not exceed a maximum amount equal to [REDACTED]% of all of the residential units within the West Don Lands (assuming the completion of all of the residential units that are contemplated by the West Don Lands Precinct Plan (as defined in Schedule 38 – Project Co Stage 2 Lands Development Agreement)) and (2) the aggregate amount of any such Affordable Ownership Housing which is Marketed, Sold and/or Developed by HMQ (or is caused to be Marketed, Sold and/or Developed by HMQ) in the West Don Lands shall not exceed a maximum of [REDACTED] residential condominium units within the West Don Lands whether within one building or spread across multiple buildings.

#### **14.11 Condominium Sales Pavilion and Project Co Signage Rights**

- (a) Subject to Sections 26.1(f) and 26.1(g), Project Co shall be entitled to construct and operate a condominium sales pavilion on the Site for the purpose of Marketing and Selling condominium facilities in accordance with Schedule 18 – Communications Protocol and in a location to be selected by Project Co but subject to the prior written approval of HMQ, acting reasonably. Notwithstanding the foregoing, Project Co shall not operate any such condominium sales pavilion from the Toronto 2015 Turnover Date (LD Underlay Facilities) until the Pan/Parapan Am Games Site Turnback Date (Parapan Sites) unless Project Co first obtains the prior written approval of HMQ, in its sole discretion.
- (b) HMQ grants Project Co the right to erect Signage on the Site (the “**Project Co Signage Rights**”) in accordance with the Signage Plan approved by HMQ and subject to all other provisions of Appendix 1 - Project Co Signage Rights to Schedule 18 – Communications Protocol.

### **15. TITLE ENCUMBRANCES**

#### **15.1 Title Encumbrances**

- (a) Project Co shall perform all obligations under the Title Encumbrances for or on behalf of HMQ, other than:
- (i) obligations under any Title Encumbrance which Project Co is not legally capable of performing for or on behalf of HMQ;
- (ii) obligations under any Title Encumbrance added after the date of this Project Agreement unless such obligations are provided in the Output Specifications as

obligations of Project Co or the Parties agree that such obligations are obligations of Project Co;

- (iii) obligations under any Title Encumbrance which the applicable Governmental Authority may formally relieve or waive, with the consent of HMQ, with respect to any Development Approval; and
  - (iv) obligations under the Title Encumbrances that Appendix 1 – Permits, Licences Approvals and Agreements to Schedule 1 – Definitions and Interpretation require HMQ to perform or cause to be performed.
- (b) All Project Operations performed by or on behalf of Project Co, whether before, during or after the completion of the Works, shall be performed in a manner which does not breach the Title Encumbrances or any of the Development Approvals.
- (c) Subject to Encumbrances that Project Co shall remove pursuant to Section 15.2, no act or omission by Project Co or any Project Co Party shall give rise to a right for any person to obtain title to or any interest in the Site or the Facilities or any part of it, except in accordance with the terms of this Project Agreement.

## **15.2 No Site Encumbrances**

- (a) Project Co shall not create, incur, permit or suffer to exist any Encumbrance to be filed, issued or registered upon or against the Site or any part thereof or any interest therein due to an act or omission of Project Co or any Project Co Party, save and except for or in respect of the Project Co Lands after the Project Co Lands Transfer Date.
- (b) In the event that the Site or any part thereof or any interest therein becomes subject to any Encumbrance due to an act or omission of Project Co or any Project Co Party and has not been consented to in writing by HMQ, Project Co shall immediately take all steps necessary to remove, vacate or discharge such Encumbrance. If such Encumbrance is not removed, vacated or discharged within 10 Business Days of the filing, issuance or registration of such Encumbrance then, without prejudice to any other rights or remedies it may have, HMQ will be at liberty to take whatever steps it deems necessary and appropriate to remove, vacate or discharge the Encumbrance, including payment of any amount owing or claimed thereunder, and seek immediate recovery from Project Co of the amount of any such payment and any associated costs, including legal costs (on a full indemnity basis) all of which shall be payable on demand.

## **15.3 Construction Lien Act (Ontario)**

- (a) The Parties acknowledge that the foregoing provisions of Section 15.2 shall apply to claims for lien made upon or against the Site pursuant to the CLA and shall also apply to claims made against HMQ or for the holdback under the CLA as though such a claim were an Encumbrance against the Site as referred to therein.

- (b) Project Co shall withhold from each Subcontractor the holdbacks required under the CLA and shall deal with such holdbacks in accordance with the CLA and for the purposes of the CLA, the contracts entered into by and between Project Co and any Subcontractor in relation to the performance of the Works shall be considered a “contract” as defined in the CLA.
- (c) In furtherance of Section 15.3(b), Project Co shall, as a condition of final payment under any Subcontract for which lien rights or rights in respect of the holdback may be claimed under the CLA, require that a certificate of completion under Section 33(1) of the CLA for such Subcontract be issued and the relevant Subcontractor provide statutory declarations or other assurances confirming that all those engaged by the Subcontractor have been paid in accordance with Applicable Law.
- (d) Project Co shall follow the requirements of the CLA and Good Industry Practice for posting and advertising certificates of completion when issued.
- (e) The Parties acknowledge the provisions of Section 24.4(a.1).

#### **15.4 Prohibited Encumbrances**

- (a) In the event that the Sponsors under the Request for Proposals have been unable to remove any Prohibited Encumbrances identified by the Preferred Proponent before the date of this Project Agreement, then HMQ shall have such additional period of time as is reasonable following the date of this Project Agreement to remove and shall remove such Prohibited Encumbrances, including through the exercise of a Provincial right of expropriation if necessary, all at HMQ's sole cost and expense.

### **16. SITE CONDITION**

#### **16.1 Acceptance of Site Condition**

- (a) Subject to Sections 6.4, 16.1A, 16.2, 16.2A and 16.3, Project Co acknowledges and agrees that it has inspected all matters relating to the Site, including the Background Information, prior to executing this Project Agreement and agrees to accept the Site and the Site Conditions on an “as is, where is” basis. Without limiting the generality of the foregoing, but subject to Sections 6.4, 16.1A, 16.2, 16.2A and 16.3, Project Co shall not be entitled to make any claim of any nature whatsoever against HMQ or any Province Person on any grounds relating to the Site, including the fact that incorrect or insufficient information on any matter relating to the Site was given to it by any person, whether or not HMQ or a Province Person, unless the relevant person has given Project Co an express written entitlement to rely on information relating to the Site provided by such person to Project Co.
- (b) Subject to Sections 6.4, 16.1A, 16.2, 16.2A and 16.3, Project Co acknowledges and agrees that it has and shall be deemed to have:
  - (i) performed all necessary Site due diligence and investigations and inspected and examined the Site and its surroundings;

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- (ii) satisfied itself as to the nature of the Site Conditions, the ground and the subsoil, the level and quantity of groundwater, the form and nature of the Site, the loadbearing and other relevant properties of the Site, the risk of injury or damage to property affecting the Site, the nature of the materials (whether natural or otherwise) to be excavated and the nature of the design, work and materials necessary for the execution and delivery of the Works;
  - (iii) satisfied itself as to the presence of any Contamination on, in or under the Site, or migrating to or from the Site;
  - (iv) satisfied itself as to the adequacy of the rights of access to, from and through the Site and any accommodation it may require for the purposes of fulfilling its obligations under this Project Agreement;
  - (v) satisfied itself as to the possibility of interference by persons of any description whatsoever with access to or use of, or rights in respect of, the Site; and
  - (vi) satisfied itself as to the precautions, times and methods of working necessary to prevent any nuisance or interference, whether public or private, being caused to any third parties.
- (c) Project Co further acknowledges and agrees that, other than as referred to or contained in this Project Agreement, no representations or warranties have been made, nor documentation delivered to Project Co or any Project Co Party, which would indicate that Project Co would be unable to perform the Project Operations in a lawful manner.

#### **16.1A HMQ Responsibility for Site Conditions**

- (d) Notwithstanding Section 16.1, HMQ shall be solely responsible for all Site Conditions respecting the ground and the subsoil, the level and quantity of groundwater, the form and nature of the Site, the loadbearing and other relevant properties of the Site, the nature of the materials (whether natural or otherwise) to be excavated and any other Site Conditions, save and except for any such Site Conditions that were described in, or were properly inferable, readily apparent or readily discoverable from the Technical Reports. Upon the discovery of any Site Condition for which HMQ is responsible pursuant to this Section 16.1A, Project Co shall immediately inform the HMQ Representative and shall comply with Applicable Law in respect thereof and then, to the extent such Site Condition impacts the Works, such Site Condition shall, subject to and in accordance with Schedule 22 - Variation Procedure, result in a Variation at the sole cost of expense of HMQ.

#### **16.2 Contamination**

- (a) HMQ shall be responsible for Contamination on, in or under, or migrating to or from, the Site, except for any such Contamination:
- (i) that was described in, or was properly inferable, readily apparent or readily discoverable from the Technical Reports;

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- (ii) for which Project Co is responsible pursuant to Project Co's obligation to comply with and perform the conditions and requirements (including, but not limited to, monitoring requirements, if any) of the "Certificates of Property Use" more particularly described in Item 4.2 in Section 1.2.1 of Part 1 of the Output Specifications; or
  - (iii) that is caused by Project Co or any Project Co Party.
- (b) Upon the discovery of any Contamination for which HMQ is responsible pursuant to Section 16.2(a), Project Co shall immediately inform the HMQ Representative and shall comply with Applicable Law in respect thereof at HMQ's cost pursuant to Section 16.2(d).
- (c) In the event that HMQ wishes Project Co to perform actions which are in addition to any required pursuant to Section 16.2(b), then HMQ shall issue an instruction to Project Co specifying what action HMQ requires Project Co to take and Project Co shall promptly and diligently comply with all such instructions at HMQ's cost pursuant to Section 16.2(d).
- (d) If Sections 16.2(b) and 16.2(c) require Project Co to perform any alteration, addition, demolition, extension or variation in the Works as a result of Contamination for which HMQ is responsible pursuant to Section 16.2(a), and which would not otherwise be required under this Project Agreement, then any such alteration, addition, demolition, extension or variation in the Works shall, subject to and in accordance with Section 37, be treated as a Delay Event and, subject to and in accordance with Section 38, be treated as a Compensation Event.

#### **16.2A Limitation of Project Co's Liability for Contamination**

- (a) Notwithstanding Sections 16.1A(a) and 16.2(a)(i) but without limiting Project Co's responsibilities under Sections 16.2(a)(ii) and 16.2(a)(iii), Project Co shall only be responsible for the costs, liabilities, expenses and claims arising out of or relating to Contamination migrating to or from the Site, if any, for up to and not exceeding a maximum aggregate liability of \$[REDACTED], notwithstanding that such Contamination migrating to or from the Site, if any, was properly inferable, readily apparent or readily discoverable by Project Co from the Technical Reports. For clarity, HMQ shall be responsible for all costs, liabilities, expenses and claims arising out of or relating to such Contamination migrating to or from the Site, if any, in excess of \$[REDACTED].

#### **16.3 Items of Geological, Historical or Archaeological Interest or Value**

- (a) As between the Parties, all fossils, artefacts and other objects having artistic, historic, archaeological or monetary value, including human remains and burial sites, which may be found on or at the Site are or shall be the sole and absolute property of HMQ.
- (b) Upon the discovery of any item referred to in Section 16.3(a) during the course of the Works, Project Co shall:
  - (i) immediately inform the HMQ Representative of such discovery;

- (ii) take all steps not to disturb the item and, if necessary, cease any Works in so far as performing such Works would endanger the item or prevent or impede its excavation;
  - (iii) take all necessary steps to preserve and ensure the preservation of the item in the same position and condition in which it was found; and
  - (iv) comply, and ensure compliance by all Project Co Parties, with Applicable Law and all requirements of Governmental Authorities with respect to such discovery, including Schedule 19 - Heritage Guidelines and Protocols.
- (c) In the event that HMQ wishes Project Co to perform actions which are in addition to any required pursuant to Section 16.3(b), then HMQ shall issue an instruction to Project Co specifying what action HMQ requires Project Co to take and Project Co shall promptly and diligently comply with all such instructions.
- (d) If Sections 16.3(b) and 16.3(c) require Project Co to perform any alteration, addition, demolition, extension or variation in the Works as a result of such discovery and which would not otherwise be required under this Project Agreement, then any such alteration, addition, demolition, extension or variation in the Works shall, subject to and in accordance with Section 37, be treated as a Delay Event and, subject to and in accordance with Section 38, be treated as a Compensation Event.

## **17. GOVERNMENTAL AUTHORITIES AND THIRD PARTY FINANCIAL OBLIGATIONS**

### **17.1 Governmental Authorities and Third Party Financial Obligations**

- (a) Subject to Section 17.2, Project Co shall be responsible for all Financial Obligations under or in respect of all Permits, Licences, Approvals and Agreements, including to any Utility Company, any Governmental Authority or any other third party in respect of the Works, including:
- (i) any development charges relating to the Works, the Facilities or the Site;
  - (ii) in accordance with the Project Co Proposal Extracts;
  - (iii) any engineering administration and inspection fees required in respect of works or services required to be performed;
  - (iv) any security deposits required under any Project Co Permits, Licences, Approvals and Agreements; and
  - (v) any other amounts payable under any Permits, Licences, Approvals and Agreements.

- (b) The Parties agree that any refund, partial rebate or credit granted by any applicable Utility Company, any applicable Governmental Authority or any other third party relating to the Financial Obligations referred to in Section 17.1(a) shall be for the benefit of HMQ to the extent such Financial Obligations were paid by HMQ and shall be for the benefit of Project Co to the extent such Financial Obligations were paid by Project Co.

## **17.2 HMQ Financial Obligations**

- (a) HMQ shall be responsible for all Financial Obligations required under the HMQ Permits, Licences, Approvals and Agreements that are expressly described in Appendix 1 – Permits, Licences Approvals and Agreements of Schedule 1 – Definitions and Interpretation as being the responsibility of HMQ.

## **18. DESIGN AND CONSTRUCTION OBLIGATIONS**

### **18.1 Overall Responsibility**

- (a) Project Co shall perform and complete the Works:
  - (i) so as to satisfy the Output Specifications;
  - (ii) in accordance with the Project Co Proposal Extracts;
  - (iii) in accordance with the Design Data;
  - (iv) in accordance with the Works Schedule; and
  - (v) in accordance with the other terms and conditions of this Project Agreement.
- (b) **Intentionally Deleted.**

### **18.2 Complete and Operational Facilities**

- (a) Project Co shall design, engineer, construct and commission the Facilities so as to provide HMQ complete and operational Facilities in accordance with the Output Specifications and the Project Co Proposal Extracts, all in accordance with and subject to the terms of this Project Agreement.

### **18.3 Development of Design**

- (a) Project Co shall, at its own cost, develop and complete the design of the Facilities and all Design Data in accordance with the requirements of this Project Agreement, including Schedule 10 - Review Procedure and this Section 18.3.
- (b) The further development of the design and the process by which it is progressed must fully comply with the requirements of this Project Agreement.



- (c) In order to develop the detailed design of the Facilities and to achieve Design Functionality, Project Co shall consult with Toronto 2015, the Third Party Owners and the HMQ Design Team in an interactive process. The development of the detailed design based on user group and HMQ input shall in no way be considered a Variation save and except, for clarity, in the event that any accommodation of user group input by Project Co causes a change to the scope of the Works or an amendment to the Output Specifications, in which case, such change in the scope of the Works or amendment to the Output Specifications shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation.
- (d) The Parties agree that Appendix A to Schedule 10 - Review Procedure is an initial list of Design Data and other items that will require design review, which Design Data and other items shall include design, procurement and construction documentation (to a scale required by the HMQ Design Team) for each of the following:
  - (i) staged 50% and 100% design development documentation, being design development drawings, reports, schedules and specifications progressed from the date of this Project Agreement with extensive user group input, showing all architectural, engineering and landscape design information sufficient to allow for the development of working drawings (the “**Design Development Submittals**”);
  - (ii) 50% working drawing documentation, being construction drawings, reports, schedules and specifications progressed from the Design Development Submittals, showing all architectural, engineering and landscape design information in accordance with the requirements of this Project Agreement (the “**Construction Document Submittals**”);
  - (iii) Permits, Licences, Approvals and Agreements drawings (phased, if applicable); and
  - (iv) all other documentation required pursuant to Schedule 10 - Review Procedure.
- (e) Project Co shall submit to the HMQ Representative for review in accordance with Schedule 10 - Review Procedure all Design Data and other items listed in Section 18.3(d).
- (f) Project Co shall participate in weekly design meetings with the HMQ Design Team and frequent consultations with user groups, including on an interim and ad hoc basis, and as needed, in order to fully achieve Design Functionality for the Facilities.
- (g) The Design Data and other items listed in Section 18.3(d) must contain, at a minimum, the following additional information:
  - (i) identification of the stage of design or construction to which the documentation relates;
  - (ii) all design or construction drawings and specifications necessary to enable the HMQ Design Team to make an informed decision as to whether Project Co is permitted to proceed pursuant to Schedule 10 - Review Procedure;

- (iii) for each stage of the design or construction documentation, a schedule identifying all changes to the relevant documentation that has occurred from the previous stage of design or construction documentation; and
  - (iv) where changes have been submitted, an indication of how the changes meet the requirements of this Project Agreement.
- (h) All design review meetings held by Project Co with the HMQ Design Team shall be held in Toronto, Ontario unless HMQ otherwise agrees in writing.
- (i) If Project Co commences or permits the commencement of the next level of design or construction of any part or parts of the Facilities prior to being entitled to proceed in accordance with Schedule 10 - Review Procedure and it is subsequently determined in accordance with Schedule 10 - Review Procedure or Schedule 27 - Dispute Resolution Procedure that the design or construction does not comply with this Project Agreement, then Project Co shall forthwith, at its own cost and risk, undo, remove from the Site, replace and restore, as applicable, any parts of the design or construction that do not comply with this Project Agreement.
- (j) Subject to Section 18.6, neither HMQ nor any Province Person (including, for certainty, the Planning, Design & Compliance Consultant) will have any liability:
  - (i) if a document submitted by Project Co and reviewed by HMQ or the HMQ Representative results in non-compliance with this Project Agreement by Project Co or a breach by Project Co of Applicable Law; or
  - (ii) for any loss or claim arising due to some defect in any documents, drawings, specifications or certificates submitted by Project Co.
- (k) Project Co and HMQ will cooperate with each other in the design review process. Notwithstanding such cooperation by HMQ, such review shall not, except as provided in Section 18.6, constitute acceptance of the Works, and Project Co shall remain solely responsible for compliance in full with all requirements of this Project Agreement.
- (l) Project Co shall allow the HMQ Design Team, at any time, a reasonable opportunity to view any items of Design Data, which shall be made available to the HMQ Design Team as soon as practicable following receipt of a written request from the HMQ Representative.
- (m) Project Co shall cause the Construction Contractor to establish and maintain a computerized design database which Project Co and the HMQ Design Team may access remotely by computer to view drawings comprised within the Design Data and to electronically store and print copies of such Design Data.

#### **18.4 Start-Up Meeting**

- (a) Within 10 Business Days of Financial Close, Project Co and the Design Team shall attend a start up meeting (the “**Start-Up Meeting**”) with HMQ to set out the design development process in greater detail.
- (b) The agenda for the Start-Up Meeting shall include the following:
  - (i) Project Co’s plan to ensure that the Works are completed in accordance with the requirements set forth in this Project Agreement;
  - (ii) Project Co’s process to ensure optimum design quality;
  - (iii) Project Co’s approach to a fully integrated interior design process that includes every element of interior finishes;
  - (iv) a proposed schedule of Works Submittals which is consistent with the Works Schedule and which provides for a progressive and orderly flow of Works Submittals from Project Co to the HMQ Design Team to allow sufficient time for review of each Works Submittal by the HMQ Design Team, including allowing sufficient time for the HMQ Design Team to consult with users, as required, and taking into account both the resources available to the HMQ Design Team to conduct such review and whether delay in the review of the subject matter of the Works Submittal will have a material impact on Project Co’s ability to progress future anticipated Works Submittals and the Works in accordance with the Works Schedule;
  - (v) Project Co’s plan to successfully integrate feedback from Third Party Owners, Toronto 2015 and the HMQ Design Team; and
  - (vi) a communication process that includes an electronic data room and the use of a computerized document tracking system that has the capacity to report, on request, the status of all design and construction documentation, and that takes into account the document security protocol described in Section 49.5(h).

## **18.5 Design Review Meetings and Workshops**

- (a) In order to obtain input in the preparation of, and prior to submitting, the Design Development Submittals and the Construction Document Submittals, the Parties will hold design review meetings (the “**Design Review Meetings**”) with the HMQ Design Team and hold user group design workshops (the “**Design Workshops**”) beginning immediately after the date of this Project Agreement upon the following terms:
  - (i) the Project Co Representative shall arrange the Design Review Meetings and Design Workshops in consultation with the HMQ Representative;
  - (ii) all Design Review Meetings and all Design Workshops shall be held in Toronto, Ontario, unless HMQ agrees otherwise in writing;

- (iii) the Parties shall cooperate to develop a reasonable schedule for the Design Review Meetings and the Design Workshops and shall incorporate such schedule into the Works Schedule;
  - (iv) each Third Party Owner and Toronto 2015 shall require a minimum of two rounds of meetings prior to the 50% Design Development Submittal; a minimum of one meeting between 50% and 100% Design Development Submittal, and a minimum of one meeting between 100% Design Development Submittal and 50% Construction Document Submittal;
  - (v) there shall be a minimum of 10 Business Days between Design Review Meetings and Workshops involving the same Third Party Owner and Toronto 2015;
  - (vi) Project Co shall circulate to the HMQ Design Team an agenda for each of the Design Review Meetings and each of the Design Workshops no later than five Business Days prior to the relevant Design Review Meeting and/or Design Workshop;
  - (vii) the Design Review Meetings and Design Workshops shall be held in person, except where otherwise agreed by the Parties, acting reasonably;
  - (viii) Project Co shall maintain minutes of the Design Review Meetings and Design Workshops, including possible design solutions and changes in design, and, within two Business Days after each Design Review Meeting and Design Workshop, Project Co shall provide to the HMQ Design Team a copy of the minutes, together with a copy of any notes, comments, sketches, drawings, tracings, lay-outs, plans or diagrams prepared at the Design Review Meeting and Design Workshop;
  - (ix) HMQ and Project Co agree that the subject matter of the Design Review Meetings and Design Workshops shall not be regarded as Submittals to which Schedule 10 - Review Procedure applies, and that HMQ shall not be bound by the input provided in connection with the Design Review Meetings and Design Workshops;
  - (x) Project Co shall submit to HMQ the Design Development Submittals or the Construction Document Submittals, as applicable, for review pursuant to Schedule 10 - Review Procedure; and
  - (xi) the Parties agree that, with respect to the Design Development Submittals and the Construction Document Submittals, the period for review shall be 15 Business Days as prescribed in Section 2.2 of Schedule 10 - Review Procedure.
- (b) Prior to the 50% Design Development Submittals, the Parties will hold Design Review Meetings and/or Design Workshops (as required by HMQ) with respect to the following matters and any other Design Review Meetings and Design Workshops required by Project Co or HMQ, each acting reasonably:
- (i) functional programming and room layouts for the Pan/Parapan Am Games;

- (ii) space planning and room layouts for Third Party Facilities at Project Final Completion;
  - (iii) exterior elevations for all Project Co Lands;
  - (iv) exterior colour/material presentations for all Project Co Lands;
  - (v) interior colour/material presentation for all Third Party Facilities;
  - (vi) plant layouts and functionality for the Third Party Facilities;
  - (vii) civil engineering design;
  - (viii) site landscape design for all Project Co Lands;
  - (ix) information/communication technology for the Third Party Facilities;
  - (x) security systems for the YMCA Facility and the George Brown Facility;
  - (xi) Third Party Facilities' conversion strategies; and
  - (xii) future expansion and adaptability features.
- (c) Prior to the 100% Design Development Submittals, the Parties will hold Design Review Meetings and/or Design Workshops (as required by HMQ) with respect to the following matters and any other Design Review Meetings and Design Workshops required by Project Co or HMQ, each acting reasonably:
- (i) functional programming and room layouts for the Pan/Parapan Am Games;
  - (ii) space planning and room layouts for the Third Party Facilities at Project Final Completion;
  - (iii) exterior elevations for all Project Co Lands;
  - (iv) interior elevations for the Third Party Facilities;
  - (v) exterior colour/material presentations for all Project Co Lands;
  - (vi) interior colour/material presentation for all Third Party Facilities
  - (vii) millwork for the Third Party Facilities;
  - (viii) door/hardware functionality for the Pan/Parapan Am Games and the Third Party Facilities; and
  - (ix) civil engineering design.

- (d) Prior to the 50% Construction Documents Submittals, the Parties will hold Design Review Meetings and/or Design Workshops (as required by HMQ) with respect to the following matters and any other Design Review Meetings and/or Design Workshops required by Project Co or HMQ, each acting reasonably:
  - (i) millwork details for the Third Party Facilities;
  - (ii) equipment details for the Third Party Facilities; and
  - (iii) exterior material/finishes details.
- (e) The purpose of the Design Review Meetings and Design Workshops is to facilitate the incorporation of HMQ's, Toronto 2015's and the Third Party Owner's input, involvement and feedback into the Design Data prior to submission of such Design Data in accordance with Schedule 10 – Review Procedure.

#### **18.6 Performance of Design Obligations**

- (a) In the design and engineering of the Facilities, Project Co, its consultants and the Project Co Parties shall, at a minimum, exercise the standard of care normally exercised by licensed or registered professional architectural and engineering personnel having specialized knowledge and experience in performing design activities of a similar nature, scope and complexity.
- (b) Project Co shall ensure that all parts of the Works shall, as required by Applicable Law, be performed or reviewed by licensed or registered professional engineers and architects registered to practice in the Province of Ontario. Such architects and engineers shall certify and, if required by Applicable Law, sign and seal, all designs, drawings and technical reports confirming that they comply with all prevailing design standards and design practices for such work in the Province of Ontario, all other applicable standards, specifications and codes, and as otherwise required by Applicable Law.

#### **18.7 General Construction Obligations**

- (a) Project Co is responsible for all construction means, methods and techniques used to undertake the Works and must provide everything (including labour, plant, equipment and materials) necessary for the construction and commissioning of the Facilities, and other performance of the Works.
- (b) Project Co shall in a timely and professional manner and in accordance with the requirements of this Project Agreement:
  - (i) construct the Works diligently, expeditiously and in a thorough and workman-like manner and consistent with the Design Quality Plan and Construction Quality Plan;

- (ii) ensure that no works other than the Works under this Project Agreement are constructed on the Site by Project Co or any person for whom Project Co is responsible at law;
- (iii) protect the Works from all of the elements, casualty and damage;
- (iv) in respect of plant, equipment and materials incorporated in the Works, use plant, equipment and materials that:
  - (A) are of a kind that are consistent with the Output Specifications;
  - (B) are new, of good quality and are used, handled, stored and installed in accordance with Applicable Law and Good Industry Practice with respect to health and safety so as not to be hazardous or dangerous; and
  - (C) where they differ from the Output Specifications, have been substituted with HMQ's prior written consent in accordance with Section 18.8.
- (c) Without limiting Project Co's obligations pursuant to Section 9.5 or Project Co's indemnity pursuant to Section 53.1, Project Co shall, at all times throughout the progress of the Works, be responsible for maintaining and securing those portions of the Site and the Facilities occupied by Project Co from time to time for construction of the Works in accordance with the Enabling Works and Construction Access Sequence Diagrams to prevent access onto the Site and the Facilities of any persons not entitled to be there, and the licence granted to Project Co pursuant to Section 14.1 shall include rights for Project Co to do so.
- (d) At Financial Close Project Co shall provide two construction site offices located on the Site for use by HMQ and the HMQ Parties, which shall remain in place until Project Substantial Completion or such other time as may be mutually agreed by HMQ and Project Co. The site offices shall each satisfy the following requirements, in each case, in form and substance satisfactory to HMQ, acting reasonably:
  - (i) each site office shall be approximately 3000mm x 6000mm and equipped with 3 desks, 3 chairs, 1-5 tier lateral filing cabinet, 2 wall mounted shelves minimum 300mm deep and 1500mm wide, 1 photocopier/facsimile, 2 computers sufficient to operate CAD, complete with internet access (high-speed) and include proper lighting, minimum 4 duplex power outlets, 2 telephone lines and a dedicated internet connection; and
  - (ii) each site office shall include air conditioning and heating units.

## **18.8 Substitutions**

- (a) Whenever equipment, components, materials, supplies, tools, and other items are specified or otherwise described in this Project Agreement by using the name or catalogue or model number of a particular manufacturer, fabricator, vendor or distributor, or any other material name or description, the naming or identification of the item is intended to establish the type

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and the minimum function and quality required, and equipment, components, materials, supplies, tools, and other items of other manufacturers, fabricators, vendors or distributors shall not be substituted without the prior written consent of HMQ, in its sole discretion. When substitutions are proposed, Project Co shall provide all technical documentation demonstrating such substitutions' performance. At the request of HMQ and in HMQ's sole discretion, Project Co shall provide additional technical information and/or testing for Third Party Owners, as required.

### **18.9 Change in Standards**

- (a) Where this Project Agreement requires Project Co to comply with a technical standard in respect of the design and construction of the Facilities, and that standard has changed between the date of this Project Agreement and the date that such compliance is required, then Project Co shall give notice to HMQ of such change. If, after such notice, HMQ requires compliance with the changed standard (rather than the standard applicable as of the date of this Project Agreement), then, to the extent such change impacts the Works and would not have otherwise been taken into account by compliance with Good Industry Practice, such changed standard shall, subject to and in accordance with Schedule 22 - Variation Procedure, result in a Variation. If HMQ does not require compliance with the changed standard, then Project Co shall continue to comply with the standard applicable as of the date of this Project Agreement, without a Variation therefor. This Section 18.9 shall not apply where a change in a technical standard is also a Change in Law.

### **18.10 Works Submittals**

- (a) Any and all items, documents and anything else required or specified by this Project Agreement in respect of the Works to be submitted to, reviewed or otherwise processed by HMQ prior to Project Final Completion, including any and all subsequent revisions, amendments and changes thereto, shall be subject to review by HMQ pursuant to Schedule 10 - Review Procedure. The first document to be submitted by Project Co for review by HMQ pursuant to Schedule 10 – Review Procedure shall be the draft document control and security protocol described in Section 49.5(h).

### **18.11 Cash Allowance Items**

- (a) Project Co shall (i) open the Cash Allowance Account, (ii) out of its own funds deposit the Cash Allowance Amount into the Cash Allowance Account no later than the dates and in the amounts set out in the Financial Model at Financial Close, and (iii) manage the Cash Allowance Account in accordance with this Section 18.11.
- (b) The cash flow process applicable to the Cash Allowance Account will be as follows:
  - (i) Project Co shall deposit the Cash Allowance Amount into the Cash Allowance Account no later than the dates and in the amounts set out in the Financial Model at Financial Close;



- (ii) Project Co shall hold and manage all monies in the Cash Allowance Account and shall ensure that such monies earn a commercially reasonable rate of interest, having regard to the amount on deposit and the expected time of withdrawals;
  - (iii) interest earned on the Cash Allowance Account will accrue in the Cash Allowance Account;
  - (iv) Project Co shall provide a reconciliation of the Cash Allowance Account to HMQ on a monthly basis;
  - (v) subject to Project Co's obligation to fund the Cash Allowance Account pursuant to Section 18.11(b)(i), HMQ shall make deposits into the Cash Allowance Account in the event that the payment requirements for Cash Allowance Items, including applicable HST, for invoices approved by HMQ exceed the then balance of the Cash Allowance Account, for clarity, determined on an aggregate basis across all Cash Allowance Items, prior to approving any such invoices;
  - (vi) if, at Project Final Completion, there exists a positive balance in the Cash Allowance Account, such balance will be paid by Project Co to HMQ or as HMQ directs; and
  - (vii) the Parties agree to mutually review the operation of the Cash Allowance Account on a regular basis and make any appropriate modifications to ensure its efficient operation.
- (c) Project Co shall provide monthly reports to the HMQ Representative that include the following information:
- (i) itemized and aggregate amounts committed to date for all Cash Allowance Items;
  - (ii) itemized and aggregate amounts spent to date for all Cash Allowance Items; and
  - (iii) the projected cost of each remaining Cash Allowance Item and the projected effect of such cost on the Cash Allowance Account.
- (d) In addition to the monthly report described in Section 18.11(c), Project Co shall, on a monthly basis, provide to the HMQ Representative a request for payment approval (each, a "**Request for Payment Approval**") that includes the following information:
- (i) details of all vendor or Project Co Party invoices that are due for payment that month, including relevant supporting documentation, which shall include copies of all vendor and Project Co Party invoices;
  - (ii) evidence that the commitment by Project Co to purchase or perform, as applicable, the Cash Allowance Items has been approved by HMQ; and
  - (iii) any discounts, rebates, refunds, chargebacks, credits, price adjustments and other allowances available to Project Co in connection with the Cash Allowance Items.

- (e) HMQ shall, within 10 Business Days of receipt of a Request for Payment Approval, advise Project Co, in writing, whether or not payment of the invoices set out in such Request for Payment Approval is approved. HMQ shall only be permitted to withhold its approval if HMQ determines that the Request for Payment Approval does not contain the information that HMQ requires, acting reasonably, to discharge its obligations under this Section 18.11. If HMQ withholds its approval pursuant to this Section 18.11(e) and subsequently receives the information that HMQ requires, acting reasonably, to discharge its obligations under this Section 18.11, it shall, within 10 Business Days of its receipt of such information, provide to Project Co, in writing, HMQ's approval of the invoices set out in the aforementioned Request for Payment Approval.
- (f) If HMQ approves the payment of the invoices set out in a Request for Payment Approval, Project Co shall make payment to the relevant vendors or each Project Co Party from the Cash Allowance Account.
- (g) Project Co acknowledges and agrees that:
  - (i) neither it, nor any Project Co Party, shall be entitled to any mark-ups for profit, overhead or other costs associated with the Cash Allowance Items;
  - (ii) all discounts, rebates, refunds, chargebacks, credits, price adjustments and other allowances available to Project Co in connection with the Cash Allowance Items shall be attributed solely to and shall benefit the pricing of the Cash Allowance Items;
  - (iii) all costs and expenses related to the administration of the Cash Allowance Account, including, without limitation, the preparation of Requests for Payment Approval and any required reporting, shall be borne by Project Co and shall not be charged to the Cash Allowance Account; and
  - (iv) the Cash Allowance Amount will be deposited and the Cash Allowance Account will be managed in accordance with the Works Schedule and any costs, expenses or delays related to funding or managing the Cash Allowance Account are the responsibility of Project Co.

## **18.12 Design Functionality**

- (a) HMQ confirms that, as at the date of this Project Agreement, HMQ, Toronto 2015 and each of the Third Party Owners have reviewed the vertical stacking diagrams and the planning diagrams set out in Schedule 13 – Project Co Proposal Extracts in respect to each Facility and that, subject to any qualifications or comments noted thereon, such submittals satisfy the Output Specifications in respect of Design Functionality, so far as can reasonably be determined given the level of detail in the submittals.
- (b) With each of the Design Development Submittals, Project Co shall submit to HMQ, for the HMQ Design Team's review pursuant to Schedule 10 - Review Procedure, a draft report

(each a “**Design Functionality Report**”) to specifically identify, with reference to the Output Specifications, such matters of Design Functionality that Project Co wishes the HMQ Design Team to review and consider as part of the Design Development Submittals. Each Design Functionality Report shall demonstrate how the Output Specifications are satisfied in respect of Design Functionality.

- (c) With the Construction Document Submittals, Project Co shall submit to HMQ, for the HMQ Design Team's review pursuant to Schedule 10 - Review Procedure, a final Design Functionality Report, and HMQ shall confirm that, subject to any qualifications or comments noted thereon, such Construction Document Submittals satisfy the Output Specifications in respect of Design Functionality, so far as can reasonably be determined given the level of detail in the Construction Document Submittals.
- (d) Each Design Functionality Report must be prepared in accordance with any submission requirements provided by HMQ to Project Co prior to the date of this Project Agreement and must address the way in which the Design Data meets the requirements of Design Functionality.
- (e) Design Functionality shall be a salient factor of importance to HMQ and the other members of the HMQ Design Team at all stages of the development of the Facilities and shall be taken into account in the review of all Submittals submitted in accordance with the Review Procedure.

### **18.13 Construction Contractor's Direct Agreement**

- (a) On Financial Close, Project Co shall cause the Construction Contractor and the Construction Guarantor to enter into a construction contractor's direct agreement with HMQ and Project Co in the form attached as Schedule 5 – Construction Contractor's Direct Agreement.

### **18.14 Warranty Obligations**

- (a) As of each Third Party Facility Conversion Substantial Completion Date and for the purpose of this Section 18.14, Project Co represents, warrants and covenants that:
  - (i) the Works shall conform to the requirements of this Project Agreement, Good Industry Practice and Applicable Law;
  - (ii) the Works shall be free of defects, including design defects, errors and omissions; and
  - (iii) materials and equipment shall be of good quality and in compliance with this Project Agreement.
- (b) The following Sections 18.14(d) and 18.15 are only applicable in respect of the Third Party Facilities and the Third Party Facility Conversion Work.

- (c) Any deficiency, defect or error in the Works which occurs as a result of a failure by Project Co to comply with the Output Specifications or to otherwise comply with its obligations under this Project Agreement shall be referred to as a “**Construction Defect**”.
- (d) For a period of 1 year from each Third Party Facility Conversion Substantial Completion Date and subject to any extension of such period as set out in this Section 18.14(d) below (the “**Warranty Period**”), Project Co shall promptly at its expense correct and make good all Construction Defects arising in respect of the Works. Expiry of the Warranty Period shall not relieve Project Co from any remedial or related obligation under this Section 18.14 which accrues prior to the expiry of the Warranty Period. Where any Works are corrected and made good pursuant to this Section 18.14 (any such Works being “**Warranty Period Works**”), the Warranty Period for such Warranty Period Works shall be extended by an additional one year incremental warranty period commencing on the date such Warranty Period Works are completed (an “**Incremental Warranty Period**”) and ending one year following the date such Warranty Period Works are completed, provided, and for clarity, during the Incremental Warranty Period, Project Co shall correct and make good all Construction Defects arising in respect of such Warranty Period Works, in which event the Incremental Warranty Period for such further corrected Works shall continue until a period of one year passes where no further correction is required. For greater certainty, any Incremental Warranty Period in respect of any Warranty Period Works shall apply only with respect to such Warranty Period Works and shall not extend the Warranty Period with respect to any other component of the Works and shall not extend the Incremental Warranty Period applicable to any other Warranty Period Works.
- (e) In addition to the obligation to correct and make good Construction Defects during the Warranty Period, Project Co shall at its expense correct and make good any Construction Defects that could not reasonably have been ascertained by a competent person in accordance with Good Industry Practice during a visual inspection of the Works (“**Construction Latent Defect**”), provided HMQ gives Project Co written notice of the Construction Latent Defect within the time frame applicable to such Construction Latent Defect pursuant to the *Limitations Act* (Ontario).
- (f) Project Co acknowledges that the timely performance of warranty work is critical to the ability of HMQ to maintain effective operations of the Facilities. Project Co further acknowledges that if HMQ is unable to contact Project Co and/or obtain the corrective work within such time period required by HMQ that HMQ’s own forces may take such emergency steps as are reasonable and appropriate to correct such defects, deficiencies or non-compliant items in the Works, at Project Co’s sole cost and expense, and except in the case of damage caused by HMQ’s own forces, such emergency steps taken by HMQ’s own forces shall not invalidate any warranties in respect of such portion of the Works affected by such corrective actions of HMQ’s own forces.
- (g) The warranties described in this Section 18.14 shall cover labour and material, including the costs of removal and replacement of covering materials. Such warranties shall not limit extended warranties in respect to the Works or any part thereof called for in the Output Specifications or otherwise provided by any Subcontractor. Project Co shall ensure that any

extended warranties called for in the Output Specifications are provided by the applicable Subcontractors and Project Co shall, in accordance with the provisions of Section 18.14(h), assign to the Third Party Owners all such extended warranties and any extended warranties in respect to the Works or any part thereof otherwise provided by any Subcontractor.

- (h) Effective as of each Third Party Facility Conversion Substantial Completion Date:
- (i) all guarantees and warranties provided by Subcontractors regarding the Works in respect of the applicable Third Party Facility or any part thereof shall be assigned by Project Co to the applicable Third Party Owner, and Project Co shall deliver a written assignment of same to the applicable Third Party Owner with the applicable Third Party Facility Conversion Substantial Completion Notice; and
  - (ii) the warranties described in Sections 18.14(d) and 18.14(e) shall be assigned by HMQ to the applicable Third Party Owner, and HMQ shall deliver a written assignment of same to the applicable Third Party Owner with the applicable Third Party Facility Conversion Substantial Completion Notice.

Such assignments by Project Co shall expressly reserve the right of Project Co to make any claims under such guarantees and/or warranties for the repair or replacement of any part of the Works in respect of the applicable Third Party Facility and such assignment shall in no way prejudice any rights of or benefits accruing to Project Co pursuant to such guarantees and/or warranties.

### **18.15 Security for Warranties**

- (a) Without limiting any of Project Co's obligations under Section 18.14, no later than 30 calendar days before the first Scheduled Third Party Facility Conversion Substantial Completion Date, Project Co shall deliver, or shall cause the applicable Subcontractor(s) to deliver, to HMQ, on behalf of the Third Party Owners, either:
- (i) the Warranties Guarantee, provided that the Warranties Guarantee must be delivered by a Subcontractor or by a Subcontractor's parent, which entity must have a balance sheet acceptable to HMQ, as determined by HMQ in its sole discretion; or
  - (ii) both the Warranties Letter of Credit and the Warranties Construction Latent Defect Guarantee.
- (b) The Warranties Letter of Credit shall be an unconditional and irrevocable standby letter of credit (the "**Warranties Letter of Credit**") from any one or more of the five largest (by assets) Schedule I Canadian chartered banks or any other financial institutions approved by HMQ in HMQ's sole and absolute discretion, in each case, whose current long-term issuer rating is at least "A" by Standard & Poor's and "A2" by Moody's Investor Services or an equivalent rating by another party acceptable to HMQ in its sole and absolute discretion, in favour, and for the direct and exclusive benefit, of HMQ and the Third Party Owners, in a form provided by Project Co to HMQ no fewer than 60 days prior to the first Scheduled

Third Party Facility Conversion Substantial Completion Date but acceptable to and approved by HMQ, acting reasonably, and in an amount of [REDACTED]% of the value of the Third Party Facility Conversion Work as determined by the Independent Certifier. The Warranties Letter of Credit shall secure Project Co's warranty obligations under Section 18.14(d) until the Warranties Letter of Credit Release Date.

- (c) If Project Co fails to comply with such warranty obligations under Section 18.14:
  - (i) HMQ or the applicable Third Party Owner may provide notice to Project Co of Project Co's failure to comply with such warranty obligations and, if Project Co has not commenced to remedy the matter causing such failure within five Business Days after receipt of such notice and is not continuing to diligently remedy such failure to the satisfaction of HMQ and the applicable Third Party Owner at any time thereafter, then
  - (ii) HMQ or the applicable Third Party Owner may engage others to perform the work necessary to remedy such failure, at the risk and cost of Project Co, and draw on the Warranties Letter of Credit as reimbursement for such costs.
- (d) HMQ and/or the Third Party Owners may make multiple calls on the Warranties Letter of Credit.
- (e) Project Co shall continuously maintain, replace or renew the Warranties Letter of Credit (or shall cause the continuous maintenance, replacement or renewal of the Warranties Letter of Credit) until the Warranties Letter of Credit Release Date.
- (f) In the event that Project Co does not renew (or does not cause the renewal of) the Warranties Letter of Credit, and does not provide (or cause the provision of) proof of such renewal to HMQ, no later than 20 calendar days before the Warranties Letter of Credit's expiry date, HMQ shall draw upon the full amount of the Warranties Letter of Credit and deposit the cash proceeds thereof in a segregated bank account selected by Project Co (provided that such bank account must be at a bank that meets the thresholds described in Section 18.15(b)) and such cash proceeds shall thereupon stand in place of the Warranties Letter of Credit until Project Co delivers (or causes the delivery of) a replacement Warranties Letter of Credit to HMQ. All interest earned on such cash proceeds shall be for the benefit of Project Co. HMQ and/or the Third Party Owners shall be entitled to withdraw such cash proceeds in the same manner that they are permitted to draw upon the Warranties Letter of Credit under this Section 18.15(f). Upon the delivery of a replacement Warranties Letter of Credit by Project Co to HMQ, all remaining cash proceeds and all accrued interest thereon from such segregated bank account shall be returned to Project Co or as Project Co may direct within five Business Days.
- (g) If the Warranties Letter of Credit Release Date is later than the date the initial one year Warranty Period would have expired, then upon the date the initial one year Warranty Period would have expired, the Warranties Letter of Credit shall be reduced to an amount equal to [REDACTED]% of the cost incurred to correct and make good all Warranty Period Works

arising during the initial one year Warranty Period, as certified by the Independent Certifier. In such an event, after the expiry of each Incremental Warranty Period, the Warranties Letter of Credit shall be reduced by a further amount equal to [REDACTED]% of the cost incurred to correct and make good the applicable Warranty Period Works (as certified by the Independent Certifier).

- (h) The Warranties Letter of Credit (or such remainder portion thereof) shall be returned to Project Co within five Business Days of the Warranties Letter of Credit Release Date.
- (i) The Warranties Guarantee shall be an irrevocable guarantee of the applicable Subcontractor or the Subcontractor parent (the “**Warranties Guarantee**”) to HMQ and the Third Party Owners in a form satisfactory to HMQ, acting reasonably, guaranteeing the warranty obligations of Project Co under Sections 18.14(d) and 18.14(e).
- (j) The Warranties Construction Latent Defect Guarantee shall be an irrevocable Subcontractor parent guarantee (the “**Warranties Construction Latent Defect Guarantee**”) to HMQ and the Third Party Owners in a form satisfactory to HMQ, acting reasonably, guaranteeing the obligations of Project Co under Section 18.14(e).
- (k) This Section 18.15 shall survive the termination of this Project Agreement.

#### **18.16 Intelligent Community**

- (a) Project Co shall not enter into any agreement to permit any telecommunications infrastructure and/or content supplier of broadband, cable, wireless telecommunications, internet services or comparable services to have exclusive rights (including exclusive marketing rights) in respect of such services in any of the Facilities. HMQ has designated Beanfield MetroConnect Inc. as a designated service provider (the “**Designated Provider**”) of such services to Project Co for the Project Co Stage 1 Condominium Facilities and the Affordable Housing Facilities.
- (b) Project Co shall pay to the Designated Provider a connection fee related to such services of \$[REDACTED] for each residential unit (other than Affordable Rental Housing units) in the Project, payable at issuance of the first City of Toronto’s Notice of Approval Conditions for the Facilities.
- (c) Project Co shall cause each condominium corporation to enter into a 10 year service contract, beginning at initial occupancy, with the Designated Provider which will obligate the Designated Provider to provide network and ultra-broadband internet access to the residential units in the Project (other than the Affordable Rental Housing units) in exchange for a fixed fee of \$[REDACTED] per unit per month.
- (d) Project Co shall perform the Works as described in Section 1.3.3 (Intelligent Community) of Part 1 of Schedule 15 – Output Specifications and shall provide the related Works Submittals as described in Schedule 10 – Review Procedure.

#### **18.17 Third Party Facility Conversion Costs Letter of Credit**

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- (a) No later than the Project Co Lands Transfer Date and as a condition of the transfer of the Project Co Lands from HMQ to Project Co and in order to secure Project Co's performance of the Third Party Facility Conversion Work, Project Co shall (or shall cause the Construction Contractor to) procure the issue of, deliver to HMQ, and thereafter maintain (in accordance with Section 18.17(d)), an unconditional and irrevocable standby letter of credit (the "**Third Party Facility Conversion Costs LC**") in favour, and for the direct and exclusive benefit, of HMQ and the Lenders' Agent and in the amount described in Section 18.17(b) from any one or more of the five largest (by assets) Schedule I Canadian chartered banks or any other financial institutions approved by HMQ in HMQ's sole and absolute discretion, in each case, whose current long-term issuer rating is at least "A" by Standard & Poor's and "A2" by Moody's Investor Services or an equivalent rating by another party acceptable to HMQ in its sole and absolute discretion and in a form provided by Project Co to HMQ no fewer than 60 days prior to the Project Co Lands Transfer Date but acceptable to and approved by HMQ and the Lenders' Agent, acting reasonably. Project Co may at any time replace or substitute the Third Party Facility Conversion Costs LC with another letter of credit issued by any one or more such qualified financial institutions and in a form acceptable to and approved by HMQ and the Lenders' Agent, each acting reasonably.
- (b) The Third Party Facility Conversion Costs LC shall be in an initial amount equal to **[REDACTED]**% of the Cost of the Work in respect of the Third Party Facility Conversion Work as determined by the Independent Certifier. The Third Party Facility Conversion Costs LC shall only be reduced (i) by **[REDACTED]** the amount of each of the Construction Contractor's monthly draws under the Construction Contract in respect of the Third Party Facility Conversion Work as certified by the Lenders' Technical Advisor (the "**LTA Monthly Third Party Facility Conversion Authorization Amount**"), provided that at no time before the last Third Party Facility Conversion Substantial Completion shall the outstanding balance of the Third Party Facility Conversion Costs LC be reduced below an amount equal to **[REDACTED]**% of the Cost of the Work in respect of the Third Party Facility Conversion Work as determined by the Independent Certifier. After the last Third Party Facility Conversion Substantial Completion Date, the Third Party Facility Conversion Costs LC shall be reduced to an amount equal to **[REDACTED]**% of the aggregate value of (A) all of the Third Party Facility Conversion Substantial Completion Minor Deficiencies as determined by the Independent Certifier plus (B) all of the seasonal work described in Section 25.11(g) as determined by the Independent Certifier. All of the aforementioned reductions in the Third Party Conversion Costs LC pursuant to this Section 18.17(b) shall be initiated by the delivery by the Lenders' Technical Advisor to the Trustee of the Third Party Facility Conversion Costs LC Reduction Authorization and otherwise in accordance with the Trust Account Agreement.
- (c) Immediately after and on the same day as the Third Party Facility Conversion Costs LC is delivered to HMQ under Section 18.17(a), the Third Party Facility Conversion Costs LC shall be delivered by HMQ to the Trustee.
- (d) In the event that the Third Party Facility Conversion Costs LC must be renewed at any time, Project Co agrees to provide (or cause the Construction Contractor to provide) to HMQ, the Lenders' Agent and the Trustee reasonable evidence of the renewal of such Third Party



Facility Conversion Costs LC no later than 15 calendar days prior to the renewal date, if any, of such Third Party Facility Conversion Costs LC.

- (e) Subject to the Lenders' Direct Agreement, in the event that the Third Party Facility Conversion Work has not been completed by [REDACTED], HMQ or the Lenders' Agent, as the case may be, may engage others to perform the work necessary to complete the Third Party Conversion Work at the risk and cost of Project Co and HMQ or the Lenders' Agent, as the case may be, may fund the cost of completing such work by requesting a draw against the Third Party Facility Conversion Costs LC in accordance with the Trust Account Agreement.
- (f) Subject to the Lenders' Direct Agreement, in the event that Project Co has failed to complete and rectify any Third Party Facility Conversion Substantial Completion Minor Deficiency specified in a Third Party Facility Conversion Substantial Completion Minor Deficiencies List in respect of a Third Party Facility in accordance with Section 25.10, HMQ or the Lenders' Agent, as the case may be, may engage others to perform the work necessary to complete and rectify any such Third Party Facility Conversion Substantial Completion Minor Deficiency at the risk and cost of Project Co and HMQ or the Lenders' Agent, as the case may be, may fund the cost of completing such work by requesting a draw against the Third Party Facility Conversion Costs LC in accordance with the Trust Account Agreement.
- (g) Subject to the Lenders' Direct Agreement, if Project Co fails to complete the seasonal work described in Section 25.11(g) and HMQ or the Lenders' Agent, as the case may be, engages others to perform the work necessary to complete such seasonal work, then HMQ or the Lenders' Agent, as the case may be, may fund the cost of completing such work by requesting a draw against the Third Party Facility Conversion Costs LC in accordance with the Trust Account Agreement.
- (h) Subject to the Lender's Direct Agreement, draws upon the Third Party Facility Conversion Costs LC may be requested by HMQ in accordance with the Trust Account Agreement:
  - (i) in the event that a Project Co Event of Default arises and HMQ exercises its rights under Section 42.4(a)(iii); and
  - (ii) in the event that a Project Co Event of Default arises and HMQ exercises its rights under Section 42.4(a)(vi).

Notwithstanding the foregoing, the Lenders' Agent may, in accordance with the Trust Account Agreement, at any time request a draw on the Third Party Facility Conversion Costs LC for the sole purpose of funding the performance of the Third Party Facility Conversion Work.

- (i) Notwithstanding Sections 18.17(e), (f), (g) and (h), either HMQ or the Lenders' Agent shall be entitled to request a draw on the Third Party Facility Conversion Costs LC in accordance with the Trust Account Agreement:

- (i) upon the failure of Project Co to renew the Third Party Facility Conversion Costs LC pursuant to Section 18.17(d);
- (ii) upon the bankruptcy or insolvency of Project Co or the Construction Contractor, as the case may be;
- (iii) upon the downgrading of any of the banks or other financial institutions that issued the Third Party Facility Conversion Costs LC below the thresholds set out in Section 18.17(a) where such Third Party Facility Conversion Costs LC has not been replaced by Project Co or the Construction Contractor, as the case may be, with a replacement Third Party Facility Conversion Costs LC in a form acceptable to HMQ, acting reasonably, and issued by a bank or banks that meet the thresholds set out in Section 18.17(a) within 30 calendar days of such downgrading; or
- (iv) upon the bankruptcy or insolvency of any of the banks or other financial institutions that issued the Third Party Facility Conversion Costs LC.

HMQ or the Lenders' Agent, as the case may be, shall provide Project Co, the Construction Contractor and the Lenders' Agent or HMQ, as the case may be, at least two Business Days prior written notice before requesting a draw on the Third Party Facility Conversion Costs LC pursuant to this Section 18.17(i).

- (j) In the event that the Third Party Facility Conversion Costs LC is drawn down in accordance with Section 18.17(i), HMQ shall direct the Trustee to hold the cash proceeds thereof in accordance with the Trust Account Agreement and in a segregated bank account selected by Project Co (provided that such bank account must be at a bank that meets the thresholds described in Section 18.17(a)) and such cash proceeds shall thereupon stand in place of the Third Party Facility Conversion Costs LC until Project Co delivers (or causes the delivery of) a replacement Third Party Facility Conversion Costs LC to the Trustee. All interest earned on such cash proceeds shall be for the benefit of Project Co. HMQ and the Lenders' Agent shall be entitled to request withdrawals of such cash proceeds in the same manner that they are permitted to draw upon the Third Party Facility Conversion Costs LC under Sections 18.17(e), (f), (g) or (h). Upon the replacement of the Third Party Facility Conversion Costs LC by Project Co or the Construction Contractor, as the case may be, the Trustee shall return all remaining cash proceeds and all accrued interest thereon from such segregated bank account to Project Co or as Project Co may direct within five Business Days.
- (k) HMQ and the Lenders' Agent may request multiple calls on the Third Party Facility Conversion Costs LC in accordance with this Section 18.17 and the Trust Account Agreement.
- (l) Within five Business Days of the later of (i) the date that all Third Party Facility Conversion Substantial Completion Minor Deficiencies have been completed and (ii) the date that all seasonal work in respect of the Third Party Facilities has been completed or within five Business Days after the outstanding balance of the Third Party Facility Conversion Costs LC

has been reduced to zero dollars, HMQ shall release its interest in the Third Party Facility Conversion Costs LC and the Third Party Facility Conversion Costs LC shall be returned to Project Co pursuant to the Trust Account Agreement.

- (m) For clarity, this Section 18.17 shall survive the termination of this Project Agreement.

#### **18.18 Municipal Works Letter of Credit**

- (a) No later than the Project Co Lands Transfer Date and as a condition of the transfer of the Project Co Lands from HMQ to Project Co and in order to secure the Municipal Works Facilities Maintenance Period Work, Project Co shall (or shall cause the Construction Contractor to) procure the issue of, deliver to HMQ, and thereafter maintain (in accordance with Section 18.18(c)), an unconditional and irrevocable standby letter of credit (the “**Municipal Works Letter of Credit**”) in favour, and for the direct and exclusive benefit, of HMQ and in the amount described in Section 18.18(b) from any one or more of the five largest (by assets) Schedule I Canadian chartered banks or any other financial institutions approved by HMQ in HMQ’s sole and absolute discretion, in each case, whose current long-term issuer rating is at least “A” by Standard & Poor’s and “A2” by Moody’s Investor Services or an equivalent rating by another party acceptable to HMQ in its sole and absolute discretion and in a form provided by Project Co to HMQ no fewer than 60 days prior to the Project Co Lands Transfer Date but acceptable to and approved by HMQ, acting reasonably.
- (b) The Municipal Works Letter of Credit shall be in an amount equal to [REDACTED]% of the Cost of the Work in respect of the Municipal Works Facilities as determined by the Independent Certifier and shall only be reduced (i) after a Municipal Works Facility has been assumed by the City of Toronto in accordance with the Subdivision Agreement and, as required, under the Site Plan Agreements and (ii) by the amount of [REDACTED]% of the Cost of the Work in respect of such assumed Municipal Works Facility as determined by the Independent Certifier.
- (c) In the event that the Municipal Works Letter of Credit must be renewed at any time, Project Co agrees to provide (or cause the Construction Contractor to provide) to HMQ reasonable evidence of the renewal of such Municipal Works Letter of Credit no later than 15 calendar days prior to the renewal date, if any, of such Municipal Works Letter of Credit.
- (d) If Project Co fails to perform any Municipal Works Facilities Maintenance Period Work, then HMQ shall provide notice to Project Co of Project Co’s failure to perform such Municipal Works Facilities Maintenance Period Work and, if Project Co has not commenced to remedy the matter causing such failure within 30 calendar days after receipt of such notice and is not continuing to diligently remedy such failure to the satisfaction of HMQ and the City of Toronto, HMQ may engage others to perform the Municipal Works Facilities Maintenance Period Work necessary to remedy such failure, at the risk and cost of Project Co, and may draw on the Municipal Works Letter of Credit as reimbursement for such costs.
- (e) Notwithstanding Section 18.18(d), HMQ shall be entitled to draw on the Municipal Works Letter of Credit:

- (i) upon the failure of Project Co to renew the Municipal Works Letter of Credit pursuant to Section 18.18(c);
- (ii) upon the bankruptcy or insolvency of Project Co or the Construction Contractor, as the case may be;
- (iii) upon the downgrading of any of the banks or other financial institutions that issued the Municipal Works Letter of Credit below the thresholds set out in Section 18.18(a) where such Municipal Works Letter of Credit has not been replaced by Project Co or the Construction Contractor, as the case may be, with a replacement Municipal Works Letter of Credit in a form acceptable to HMQ, acting reasonably, and issued by a bank or banks that meet the thresholds set out in Section 18.18(a) within 30 calendar days of such downgrading; or
- (iv) upon the bankruptcy or insolvency of any of the banks or other financial institutions that issued the Municipal Works Letter of Credit.

HMQ shall provide Project Co and the Construction Contractor at least two Business Days prior written notice before drawing on the Municipal Works Letter of Credit pursuant to this Section 18.18(e).

- (f) In the event that the Municipal Works Letter of Credit is drawn down in accordance with Section 18.18(e), HMQ shall hold the cash proceeds thereof in a segregated bank account selected by Project Co (provided that such bank account must be at a bank that meets the thresholds described in Section 18.18(a)) and such cash proceeds shall thereupon stand in place of the Municipal Works Letter of Credit until Project Co delivers (or causes the delivery of) a replacement Municipal Works Letter of Credit to HMQ. All interest earned on such cash proceeds shall be for the benefit of Project Co. HMQ shall be entitled to withdraw such cash proceeds in the same manner that it is permitted to draw upon the Municipal Works Letter of Credit under Section 18.18(d). Upon the replacement of the Municipal Works Letter of Credit by Project Co or the Construction Contractor, as the case may be, HMQ shall return all remaining cash proceeds and all accrued interest thereon from such segregated bank account to Project Co or as Project Co may direct within five Business Days.
- (g) HMQ may have multiple draws on the Municipal Works Letter of Credit in accordance with this Section 18.18.
- (h) Within five Business Days of the earlier of (i) the date that the Independent Certifier certifies that the City of Toronto has assumed the last Municipal Works Facility and (ii) the outstanding balance of the Municipal Works Letter of Credit is reduced to zero dollars, HMQ shall release its interest in the Municipal Works Letter of Credit and shall return the Municipal Works Letter of Credit to Project Co.
- (i) For clarity, this Section 18.18 shall survive the termination of this Project Agreement.

**18.19 Intentionally Deleted.**

**18.20 Ontario New Home Warranties Plan Act Obligations**

- (a) Project Co shall perform the Works so as ensure that the Project Co Stage 1 Condominium Facilities satisfy the requirements of Section 18.20(b).
- (b) In consideration of HMQ's payment to Project Co of the Tarion Payment, Project Co shall (and shall cause the applicable Project Co Parties) to (i) register with Tarion and thereafter maintain such registration, which continued registration, for clarity, includes the provision of any security required by Tarion; (ii) enrol the Project Co Stage 1 Condominium Facilities for warranty coverage under the *Ontario New Home Warranties Plan Act* ((i) and (ii) are, collectively, the "**Tarion Registration and Enrolment Obligations**"); and (iii) after such registrations and enrolment, comply with all Applicable Law in respect of such Tarion Registration and Enrolment Obligations and the warranty program under the *Ontario New Home Warranties Plan Act*. For clarity, Project Co and the applicable Project Co Parties shall solely be responsible for all costs and fees associated with satisfying such Tarion Registration and Enrolment Obligations and any other costs relating to the Project Co Stage 1 Condominium Facilities' warranty coverage under the *Ontario New Home Warranties Plan Act* and HMQ's only obligation and liability in respect of all such costs shall be the Tarion Payment.
- (c) On Financial Close, HMQ, Tarion, Project Co and the Construction Contractor shall execute and deliver the Ontario New Home Warranties Plan Act Compliance Agreement in the form attached as Schedule 39 - Ontario New Home Warranties Plan Act Compliance Agreement.

**19. HMQ ACCESS AND MONITORING**

**19.1 HMQ Access During the Works**

- (a) Subject to Section 19.1(b) but without limiting any of HMQ's rights in respect of the Site, Project Co acknowledges and agrees that HMQ and the Province Persons shall, prior to Project Final Completion, have unrestricted access to the Site, the Facilities and any workshop where materials, plant or equipment are being manufactured, prepared or stored at all reasonable times during normal working hours.
- (b) In exercising their access rights under Section 19.1(a), HMQ and the Province Persons shall:
  - (i) provide reasonable prior notice appropriate to the circumstances (other than for any offices or other facilities provided at the Site for HMQ and Province Person's own use);
  - (ii) comply with all relevant safety procedures and any reasonable directions with regard to site safety that may be issued by or on behalf of the Project Co Representative from time to time; and

- (iii) if required by Project Co, be accompanied by a representative of Project Co or a Project Co Party.

## **19.2 Intentionally Deleted**

## **19.3 Increased Monitoring**

- (a) If, at any stage, HMQ is of the opinion, acting reasonably, that there are defects in the Works or that Project Co has failed to comply, in any material respect, with the requirements of this Project Agreement (including the Output Specifications and the Project Co Proposal Extracts), HMQ may, without prejudice to any other right or remedy available to it, by notice to Project Co, increase the level of monitoring of Project Co from that set out in this Project Agreement to such level as HMQ considers reasonable taking into account the nature of the relevant defect or failure, the severity of the relevant defect or failure, the related impact on the Works Schedule, and/or any impact on the needs and/or uses of HMQ until such time as Project Co shall have demonstrated, to HMQ's satisfaction, that it is capable of performing and will perform, in all material respects, its obligations related to the Works under this Project Agreement. Project Co will compensate HMQ for any reasonable costs incurred as a result of such increased monitoring.

## **19.4 Right to Open Up**

- (a) HMQ shall have the right, at any time prior to the Project Final Completion Date, to request Project Co to open up and inspect (or allow HMQ to inspect) any part or parts of the Works, or to require testing of any part or parts of the Works, where HMQ reasonably believes that such part or parts of the Works is or are defective or that Project Co has failed to comply with the requirements of this Project Agreement (including the Output Specifications, the Project Co Proposal Extracts and the Design Data), relevant to such part or parts of the Works, and Project Co shall comply with such request. When HMQ makes such a request, HMQ shall include reasonably detailed reasons with such request.
- (b) If the inspection shows that the relevant part or parts of the Works is or are defective or that Project Co has failed to comply with the requirements of this Project Agreement (including the Output Specifications, the Project Co Proposal Extracts and the Design Data), relevant to such part or parts of the Works, Project Co shall rectify all such defects and non-compliance diligently and at no cost to HMQ and Project Co shall not be entitled to any additional compensation or extension of time in relation thereto.
- (c) If the inspection shows that the relevant part or parts of the Works is or are not defective and that Project Co has complied with the requirements of this Project Agreement (including the Output Specifications, the Project Co Proposal Extracts and the Design Data), relevant to such part or parts of the Works, the exercise by HMQ of its rights pursuant to this Section 19.4 shall, subject to and in accordance with Section 37, be treated as a Delay Event and, subject to and in accordance with Section 38, be treated as a Compensation Event.

- (d) For clarity, this Section 19.4 shall not apply in respect of any building or improvement on the Project Co Lands after the Project Co Stage 1 Conversion Substantial Completion Date.

## **19.5 No Relief from Obligations**

- (a) The Parties acknowledge that the exercise by HMQ or the HMQ Representative of the rights under this Section 19 shall in no way affect the obligations of Project Co under this Project Agreement except as set out in this Section 19.

## **20. WORKS SCHEDULE AND WORKS REPORT**

### **20.1 Completion of Works**

- (a) Project Co shall complete the Works in accordance with this Project Agreement and achieve:
  - (i) Interim Completion by the Scheduled Interim Completion Date;
  - (ii) Project Substantial Completion by the Scheduled Project Substantial Completion Date;
  - (iii) Third Party Facility Conversion Substantial Completion in respect of each Third Party Facility by the applicable Scheduled Third Party Facility Conversion Substantial Completion Date;
  - (iv) Project Co Stage 1 Conversion Substantial Completion by the Scheduled Project Co Stage 1 Conversion Substantial Completion Date; and
  - (v) Project Final Completion by the Scheduled Project Final Completion Date.

### **20.2 The Works Schedule**

- (a) Within 45 calendar days after the date of Financial Close, Project Co shall prepare and submit to HMQ and the Independent Certifier a detailed, computerized draft schedule using Primavera 5.0 or other software compatible with Primavera 5.0 that supports the completion of the Works in accordance with Section 20.1.
- (b) HMQ shall provide Project Co with comments on the draft schedule in accordance with Schedule 10 - Review Procedure, provided that the period for review of such draft schedule shall be 20 Business Days rather than the 10 Business Days prescribed in Section 2.2 of Schedule 10 - Review Procedure. Project Co shall revise the draft schedule to the extent required by Schedule 10 - Review Procedure within 30 calendar days of receipt of any comments from HMQ.
- (c) When agreed by the Parties, the draft schedule shall become the “**Works Schedule**”.

- (d) The Works Schedule shall be prepared in accordance with Good Industry Practice for a large complex project and shall be in sufficient detail so as to enable the HMQ Representative and, if applicable, the Independent Certifier, to monitor the progress of the Works, including all commissioning activities, and the likely future progress of the Works. Given the size and complexity of the Project, the Works Schedule shall include no fewer than the aggregate number of activities set out in the draft Works Schedule described in Section 1(b) of Schedule 13 – Project Co Proposal Extracts plus any number of additional activities reasonably requested by HMQ after Financial Close.
- (e) Without limiting the generality of Section 20.2(d), the Works Schedule shall, at a minimum, include:
- (i) major milestone events, which shall include at a minimum the Works Milestones;
  - (ii) the dates that key decisions must be made by HMQ to support the progress of the Works;
  - (iii) a detailed and editable procurement, delivery, installation, training and commissioning schedule for all Equipment;
  - (iv) all design related activities, including the proposed date for each Design Workshops;
  - (v) the proposed date for each Works Submittal;
  - (vi) all construction activities, including subcontract work and cash allowance work, both on and off the Site;
  - (vii) all procurement activities undertaken by the Construction Contractor with respect to materials and equipment, including timelines for Shop Drawings, manufacturing periods and dates of delivery to the Site;
  - (viii) all Project Substantial Completion Project Co Commissioning and Project Substantial Completion HMQ Commissioning activities;
  - (ix) all Project Co Stage 1 Conversion Substantial Completion Project Co Commissioning activities;
  - (x) all Third Party Facility Conversion Substantial Completion Project Co Commissioning and Third Party Facility Conversion Substantial Completion HMQ Commissioning activities;
  - (xi) the manpower requirements for each activity, including subcontract work;
  - (xii) a manpower histogram, both overall and by trade;



- (xiii) a cumulative "S"-curve showing planned percent completion for each month from the commencement of the Works until the Scheduled Project Final Completion Date; and
- (xiv) projected Construction Contract cash flows.

### **20.3 Intentionally Deleted**

### **20.4 Failure to Maintain Schedule**

- (a) Without limiting any other provision of this Project Agreement but subject to Section 37, if, at any time:
  - (i) the actual progress of the Works has significantly fallen behind the Works Schedule, including, for clarity, any failure of Project Co to achieve a Works Milestone; or
  - (ii) HMQ is of the opinion that:
    - (A) the actual progress of the Works has significantly fallen behind the Works Schedule;
    - (B) Project Co will not achieve Interim Completion by the Scheduled Interim Completion Date;
    - (C) Project Co will not achieve Project Substantial Completion by the Scheduled Project Substantial Completion Date;
    - (D) Project Co will not achieve Project Substantial Completion by the Longstop Date;
    - (E) Project Co will not achieve Project Co Stage 1 Conversion Substantial Completion by the Scheduled Project Co Stage 1 Conversion Substantial Completion Date;
    - (F) Project Co will not achieve a Third Party Facility Conversion Substantial Completion Date by the applicable Scheduled Third Party Facility Conversion Substantial Completion Date; or
    - (G) Project Co will not achieve Project Final Completion by the Scheduled Project Final Completion Date,

Project Co shall be required:

- (iii) within five Business Days of receipt of notice from HMQ, to produce and deliver to each of the HMQ Representative and the Independent Certifier:
  - (A) a report identifying the reasons for the delay; and

- (B) a plan showing the steps that are to be taken by Project Co to eliminate or reduce the delay to (as applicable):
  - (I) achieve Interim Completion by the Scheduled Interim Completion Date;
  - (II) achieve Project Substantial Completion by the Scheduled Project Substantial Completion Date;
  - (III) if Project Substantial Completion will not be achieved by the Scheduled Project Substantial Completion Date, achieve Project Substantial Completion by the Longstop Date;
  - (IV) achieve Project Co Stage 1 Conversion Substantial Completion by the Scheduled Project Co Stage 1 Conversion Substantial Completion Date;
  - (V) achieve Third Party Facility Conversion Substantial Completion in respect of a Third Party Facility by the applicable Scheduled Third Party Facility Conversion Substantial Completion Date; or
  - (VI) achieve Project Final Completion by the Scheduled Project Final Completion Date; and
- (iv) to bring the progress of the Works back on schedule in accordance with the plan delivered under Section 20.4(a)(iii)(B) and approved by the HMQ Representative.
- (b) Project Co shall notify the HMQ Representative if, at any time, the actual progress of the Works is significantly ahead of the Works Schedule.

#### **20.4A Project Co Delay**

- (a) Notwithstanding Section 20.4 and without limiting any other provision of this Project Agreement but subject to Section 37, before Project Substantial Completion, if at any time:
  - (i) the actual progress of the Works has fallen behind the Works Schedule by a period of 30 calendar days;
  - (ii) Project Co fails to achieve a Works Milestone; or
  - (iii) HMQ is of the opinion that:
    - (A) the actual progress of the Works has fallen behind the Works Schedule by a period of 30 calendar days; or
    - (B) Project Co will fail to achieve a Works Milestone,

Project Co shall be required:

- (iv) within five Business Days of receipt of notice from HMQ, to produce and deliver to each of the HMQ Representative and the Independent Certifier:
    - (A) a report identifying the reasons for such delay or failure;
    - (B) a plan showing the steps that are to be taken by Project Co to eliminate or reduce the delay or to achieve the Works Milestone;
    - (C) confirm that Project Co can achieve Project Substantial Completion by the Scheduled Project Substantial Completion Date; and
    - (D) confirm that Project Co can achieve Project Substantial Completion by the Longstop Date; and
  - (v) to bring the progress of the Works back on schedule in accordance with the plan delivered under Section 20.4A(a)(iv)(B) and approved by the HMQ Representative.
- (b) If Project Co does not, as determined by the Independent Certifier, bring the progress of the Works back on schedule in accordance with the plan delivered under Section 20.4A(a)(iv)(B), HMQ may, in its sole discretion, concurrently issue to Project Co and the Lenders' Agent a "**Project Co Delay Notice**" and, upon the issuance of such notice, a "**Project Co Delay**" shall arise. In the event of a Project Co Delay, subject to the prior rights of the Lenders' Agent under the Lenders' Direct Agreement, HMQ shall, as its sole and exclusive remedy for a Project Co Delay, direct Project Co to accelerate the performance of the Works to bring the progress of the Works back on schedule in accordance with the plan delivered under Section 20.4A(a)(iv)(B) or otherwise achieve the Works Milestone and/or eliminate or significantly reduce the delay described in Section 20.4A(a) to the satisfaction of the Independent Certifier and Project Co agrees that in performing such acceleration of the Works, unless Project Co funds the costs of the acceleration through other means, Project Co or the Lenders' Agent, as the case may be, shall request a drawdown from the Contingency Equity Letter of Credit in accordance with the Trust Account Agreement to fund such acceleration costs. The Project Co Delay shall end upon Project Co bringing the progress of the Works back on schedule in accordance with the plan delivered under Section 20.4A(a)(iv)(B) or otherwise achieving the Works Milestone and/or eliminating or significantly reducing the delay described in Section 20.4A(a) to the satisfaction of the Independent Certifier. For greater clarity, the issuance of a Project Co Delay Notice or the occurrence of a Project Co Delay shall not constitute a Project Co Event of Default.

**20.4B Notification of Early Interim Completion**

- (a) Project Co shall advise HMQ if, and as soon as, it expects to be able to achieve Interim Completion prior to the Scheduled Interim Completion Date. In such an event, the HMQ Representative shall be entitled to require Project Co to produce and submit to the HMQ Representative a revised Works Schedule showing the manner and the periods in which the Works shall be performed and what the revised date for Interim Completion would be.

**20.5 Notification of Early Project Substantial Completion**

- (a) Project Co shall advise HMQ if, and as soon as, it expects to be able to achieve Project Substantial Completion prior to the Scheduled Project Substantial Completion Date. In such an event, the HMQ Representative shall be entitled to require Project Co to produce and submit to the HMQ Representative a revised Works Schedule showing the manner and the periods in which the Works shall be performed and what the revised date for Project Substantial Completion would be.

**20.5A Notification of Early Project Co Stage 1 Conversion Substantial Completion**

- (a) Project Co shall advise HMQ if, and as soon as, it expects to be able to achieve Project Co Stage 1 Conversion Substantial Completion prior to the Scheduled Project Co Stage 1 Conversion Substantial Completion Date. In such an event, the HMQ Representative shall be entitled to require Project Co to produce and submit to the HMQ Representative a revised Works Schedule showing the manner and the periods in which the Works shall be performed and what the revised date for Project Co Stage 1 Conversion Substantial Completion would be.

**20.5B Notification of Early Third Party Facility Conversion Substantial Completion**

- (a) Project Co shall advise HMQ if, and as soon as, it expects to be able to achieve Third Party Facility Conversion Substantial Completion prior to the applicable Scheduled Third Party Facility Conversion Substantial Completion Date. In such an event, the HMQ Representative shall be entitled to require Project Co to produce and submit to the HMQ Representative a revised Works Schedule showing the manner and the periods in which the Works shall be performed and what the revised date for the applicable Third Party Facility Conversion Substantial Completion would be.

**20.6 Notification of Early Project Final Completion**

- (a) Project Co shall advise HMQ if, and as soon as, it expects to be able to achieve Project Final Completion prior to the Scheduled Project Final Completion Date. In such an event, the HMQ Representative shall be entitled to require Project Co to produce and submit to the HMQ Representative a revised Works Schedule showing the manner and the periods in which the Works shall be performed and what the revised date for Project Final Completion would be.

## **20.7 Works Report**

- (a) Project Co shall continuously monitor the progress of the Works in relation to the Works Schedule and, within five Business Days following the end of each calendar month from (A) Financial Close until the Project Substantial Completion Date and then (B) from the first Pan/Parapan Am Games Site Turnback Date until the later of the Project Final Completion Date and the Project Co Stage 1 Conversion Substantial Completion Date, Project Co shall provide to the HMQ Representative and the Independent Certifier a monthly works report (each, a “**Works Report**”), which will include:
- (i) an executive summary describing the general status of the Works and progress made over the relevant month;
  - (ii) an updated Works Schedule, in both summary and detailed formats;
  - (iii) a narrative description of any Disputes related to the Works, including any action that has taken place over the relevant month to resolve such Disputes;
  - (iv) in accordance with Section 22.3, a LEED progress report; and
  - (v) an update on those matters set out in Schedule 34 – Works Report Requirements;
- all in form and substance satisfactory to HMQ, acting reasonably. For greater certainty, for all updates and revisions to the Works Schedule, Project Co must provide a revised critical path reflecting the updated/revised Works Schedule.
- (b) HMQ will be establishing an On-line (web-based) Project Management (“**OCPM**”) software system prior to Financial Close. The Project shall be used to establish and verify the various components/modules of the OCPM. In addition to the Web Based Project Management System to be established by Project Co in accordance with Section 3.2 of Schedule 10 – Review Procedure, Project Co shall use and interact with, and ensure that the Construction Contractor uses and interacts with, the OCPM software system specified by HMQ. It is contemplated that the OCPM software system will automate aspects of the processes identified in Schedule 10 - Review Procedure, Schedule 11 – Design Quality Plan and Construction Quality Plan, Schedule 22 - Variation Procedure, and Schedule 34 - Works Report Requirements and other processes as HMQ may require.

## **21. EQUIPMENT**

### **21.1 Project Co's Equipment Responsibilities**

- (a) Project Co shall be responsible for:
- (i) finalizing the plan to procure, install and commission all Equipment;

- (ii) providing structural, mechanical and electrical information and communications technology and building systems services for all Equipment, as applicable;
  - (iii) expediting, delivering, unpacking, offloading, handling and storing all Equipment;
  - (iv) coordinating, scheduling and completing the installation of all Equipment in accordance with manufacturer's instructions, this Section 21, the Works Schedule, and Schedule 15 – Output Specifications;
  - (v) testing and calibrating any Equipment not tested and calibrated by equipment vendors and coordinate the acceptance testing of all Equipment; and
  - (vi) coordinating, scheduling and completing the commissioning of all Equipment in accordance with the Third Party Facility Conversion Substantial Completion Commissioning Program.
- (b) Project Co shall, at its sole cost and expense, purchase the Equipment.
- (c) For the purpose of achieving Project Final Completion in respect of the Site, all Equipment must be successfully commissioned by Project Co in accordance with the Third Party Facility Conversion Substantial Completion Commissioning Program. If, in respect of any item of Equipment, Project Co is unable to complete the installation or commissioning of such item of Equipment referred to in this Section 21.1(c) due to a delay in the performance of any of its obligations by an Equipment vendor or manufacturer, HMQ may, at its discretion, waive the requirements set out in the Third Party Facility Conversion Substantial Completion Commissioning Program.
- (d) Project Co shall, at its sole cost and expense, install or cause an equipment vendor to install, the Equipment. For greater certainty, where Equipment necessarily requires an equipment vendor, manufacturer or supplier installation to maintain warranties, Project Co shall be responsible for such costs subject to any requirements in Section 21.3.

## **21.2 Additional Project Co Equipment**

- (a) HMQ may, subject to Section 21.2(b), require Project Co to purchase Additional Project Co Equipment as determined by HMQ, and Project Co shall, in accordance with Section 21.3, be responsible for procuring all Additional Project Co Equipment and for coordinating and completing the installation thereof in accordance with this Section 21.
- (b) Where HMQ requires Project Co to purchase Additional Project Co Equipment, HMQ shall issue a Variation Enquiry in relation to the purchase and installation costs of such Additional Project Co Equipment, including the cost of any mechanical and electrical rough-ins for, and services to, the Additional Project Co Equipment and the relevant provisions of Schedule 22 – Variation Procedure shall apply.

### **21.3 Project Co Warranty Responsibilities**

- (a) Project Co shall ensure that the benefits of all manufacturers' warranties with respect to all Equipment are freely assignable to HMQ and the Third Party Owners on the earlier of Project Final Completion or the earlier termination of this Project Agreement. Project Co shall not enter into any purchase order or contract with respect to any Equipment where the benefits of such warranties are not assignable in accordance with this Section 21.3 without HMQ's prior consent, which consent may be withheld in HMQ's sole discretion.

### **21.4 Standards for Project Co Equipment**

- (a) All Equipment purchased by or on behalf of Project Co pursuant to and in accordance with this Project Agreement shall be:
  - (i) of the type specified in, and required to satisfy, the Output Specifications;
  - (ii) new and of good quality;
  - (iii) maintained in a safe, serviceable and clean condition in accordance with the Output Specifications and Good Industry Practice;
  - (iv) in compliance with all Applicable Law; and
  - (v) delivered and installed in accordance with the Works Schedule and the Output Specifications.
- (b) Project Co shall, as soon as practicable after receiving a request from the HMQ Representative, supply to the HMQ Representative evidence to demonstrate its compliance with this Section 21.4.

### **21.5 Scheduling of Equipment Installation**

- (a) Project Co shall, in consultation with HMQ and the Third Party Owners, prepare a schedule for the installation and commissioning of all Equipment in respect of the Third Party Facilities and shall incorporate the timing of installation and commissioning of all such Equipment into the Works Schedule and the Third Party Facility Conversion Substantial Completion Commissioning Program.

### **21.6 Equipment Training**

- (a) For and in respect of each item of Equipment purchased by or on behalf of Project Co and operated by the Third Party Owners, Project Co shall, in accordance with Schedule 14 – Outline Commissioning Program, provide or arrange for adequate, appropriate and timely training in the item's proper operation and maintenance for all Third Party Owners' staff.

- (b) HMQ shall cause the Third Party Owners' to make its staff available for training purposes in accordance with the Works Schedule and the Third Party Facility Conversion Substantial Completion Commissioning Program.

## **22. LEADERSHIP IN ENERGY & ENVIRONMENTAL DESIGN**

### **22.1 LEED Design and Construction Obligations**

- (a) Project Co shall perform the Works so as to achieve the prerequisites and credits required to achieve the LEED Gold Rating for the LEED Facilities and Project Co may, in its sole discretion, determine which additional credits to pursue.

### **22.2 Intentionally Deleted.**

### **22.3 LEED Progress Reports**

- (a) As part of each Works Report, Project Co shall submit a progress report comparing actual construction and procurement activities with LEED Gold Rating requirements.

### **22.4 LEED Gold Rating**

- (a) Project Co shall register the Project with CaGBC within 60 calendar days following Financial Close.
- (b) If there is a change in the requirements for achievement of the LEED Gold Rating under the LEED Rating System, and Project Co is required by the CaGBC to comply with such change, then Project Co shall notify HMQ of such change and such change shall, subject to and in accordance with Schedule 22 - Variation Procedure, result in a Variation.
- (c) Project Co shall apply to the CaGBC to obtain LEED Gold Rating for the LEED Facilities as soon as possible.
- (d) In the event that a LEED Gold Rating is not obtained for any or all of the LEED Facilities within 24 months after the Project Final Completion Date other than as a direct result of any act or omission of HMQ or any HMQ Party, Project Co shall pay to HMQ the following:
  - (i) a one time \$[REDACTED] liquidated damages amount if Project Co fails to achieve a LEED Gold Rating in respect of any LEED Facility; plus (and, for clarity, in addition to the foregoing)
  - (ii) a \$[REDACTED] liquidated damages amount in respect of any LEED Facility or LEED Facilities that fail to obtain a LEED Gold Rating on any one Block comprising the LEED Lands and, for clarity, only one \$[REDACTED] liquidated damages amount will be payable by Project Co to HMQ in respect of any one applicable Block notwithstanding that more than one LEED Facility on such Block failed to achieve a LEED Gold Rating;



provided that all such liquidated damages (“**LEED Liquidated Damages**”) will not exceed an aggregate amount of \$[REDACTED]. For the purposes of this Section 22.4 only, Block 1 and Block 14 will be construed to be one single Block. The Parties agree that such LEED Liquidated Damages are not a penalty but represent a genuine and reasonable pre-estimate of the damages that HMQ will suffer as a result of the happening of the specified events and would be difficult or impossible to quantify upon the happening of the specified events. Such payment shall constitute full and final settlement of any and all damages that may be claimed by HMQ as a result of a failure by Project Co to achieve the specified LEED Gold Ratings and, for greater certainty, a failure by Project Co to achieve one or more LEED Gold Ratings shall not result in a Project Co Event of Default. The Parties agree that such LEED Liquidated Damages shall be payable whether or not HMQ incurs or mitigates its damages, and that HMQ shall not have any obligation to mitigate any such damages.

## **22.5 LEED Letter of Credit**

- (a) No later than the Project Co Lands Transfer Date and as a condition of the transfer of the Project Co Lands from HMQ to Project Co and in order to secure Project Co’s payment of any LEED Liquidated Damages, Project Co shall (or shall cause the Construction Contractor) to procure the issue of, deliver to HMQ, and thereafter maintain (in accordance with Section 22.5(d)), an unconditional and irrevocable standby letter of credit (the “**LEED Letter of Credit**”) in favour, and for the direct and exclusive benefit, of HMQ and in the amount described in Section 22.5(b) from any one or more of the five largest (by assets) Schedule I Canadian chartered banks or any other financial institutions approved by HMQ in HMQ’s sole and absolute discretion, in each case, whose current long-term issuer rating is at least “A” by Standard & Poor’s and “A2” by Moody’s Investor Services or an equivalent rating by another party acceptable to HMQ in its sole and absolute discretion and in a form provided by Project Co to HMQ no fewer than 60 days prior to the Project Co Lands Transfer Date but acceptable to and approved by HMQ and the Lenders’ Agent, acting reasonably.
- (b) The LEED Letter of Credit shall be in an initial amount equal to \$[REDACTED]. The LEED Letter of Credit shall only be reduced by the Block Reduction Amount as set out in Section 22.5(c) once all LEED Facilities on any one Block comprising the LEED Lands have obtained a LEED Gold Rating. Once the determination has been made as to whether a LEED Gold Rating has been obtained for all LEED Facilities on all Blocks comprising the LEED Lands save and except for the last Block, and the amount, if any, of LEED Liquidated Damages have been paid by Project Co to HMQ in respect thereof out of the LEED Letter of Credit, then after the determination of the amount, if any, of LEED Liquidated Damages payable in respect to the last Block has been made and such LEED Liquidated Damages have been paid out of the LEED Letter of Credit, HMQ shall release its interest in the LEED Letter of Credit.
- (c) The Block Reduction Amount shall be the amount of \$[REDACTED].
- (d) In the event that the LEED Letter of Credit must be renewed at any time, Project Co agrees to provide (or cause the Construction Contractor to provide) to HMQ reasonable evidence of

the renewal of such LEED Letter of Credit no later than 15 calendar days prior to the renewal date, if any, of such LEED Letter of Credit.

- (e) In the event that (i) any LEED Liquidated Damages are payable by Project Co to HMQ pursuant to Section 22.4(d), as certified by the Independent Certifier, and (ii) such LEED Liquidated Damages have not been paid by Project Co to HMQ within 30 calendar days of Project Co's receipt of a written notice of non-payment from HMQ, then upon the expiry of such 30 calendar day period HMQ shall be entitled to draw on the LEED Letter of Credit for the full amount of such LEED Liquidated Damages.
- (f) Notwithstanding Section 22.5(e), HMQ shall be entitled to draw on the LEED Letter of Credit:
  - (i) upon the failure of Project Co to renew the LEED Letter of Credit pursuant to Section 22.5(d);
  - (ii) upon the bankruptcy or insolvency of Project Co or the Construction Contractor, as the case may be;
  - (iii) upon the downgrading of any of the banks or other financial institutions that issued the LEED Letter of Credit below the thresholds set out in Section 22.5(a) where such LEED Letter of Credit has not been replaced by Project Co or the Construction Contractor, as the case may be, with a replacement LEED Letter of Credit in a form acceptable to HMQ, acting reasonably, and issued by a bank or banks that meet the thresholds set out in Section 22.5(a) within 30 calendar days of such downgrading; or
  - (iv) upon the bankruptcy or insolvency of any of the banks or other financial institutions that issued the LEED Letter of Credit.

HMQ shall provide Project Co and the Construction Contractor at least two Business Days prior written notice before drawing on the LEED Letter of Credit pursuant to this Section 22.5(f).

- (g) In the event that the LEED Letter of Credit is drawn down in accordance with Section 22.5(f), HMQ shall hold the cash proceeds thereof in a segregated bank account selected by Project Co (provided that such bank account shall be at a bank that meets the thresholds described in Section 22.5(a)) and such cash proceeds shall thereupon stand in place of the LEED Letter of Credit until Project Co delivers (or causes the delivery of) a replacement LEED Letter of Credit to HMQ. All interest earned on such cash proceeds shall be for the benefit of Project Co. HMQ shall be entitled to request withdrawals of such cash proceeds in the same manner that it is permitted to draw upon the LEED Letter of Credit under Sections 22.5(e). Upon the replacement of the LEED Letter of Credit by Project Co or the Construction Contractor, as the case may be, HMQ shall return all remaining cash proceeds and all accrued interest thereon from such segregated bank account to Project Co or as Project Co may direct within five Business Days.

- (h) HMQ may have multiple draws on the LEED Letter of Credit in accordance with this Section 22.5.
- (i) Within five Business Days of the date HMQ's interest in the LEED Letter of Credit is released pursuant to Section 22.5(b), HMQ shall return the LEED Letter of Credit to Project Co.
- (j) For clarity, Section 22.4 and this Section 22.5 shall survive the termination of this Project Agreement.

## **22.6 Greenhouse Gas Credits**

- (a) In respect of the Project Co Facilities, any greenhouse gas credits which may be guaranteed as a result of the Project shall be owned by Project Co and HMQ shall have no entitlement to any of such credits whatsoever.
- (b) In respect of all Facilities other than the Project Co Facilities, any greenhouse gas credits which may be guaranteed as a result of the Project shall be owned by HMQ and Project Co shall have no entitlement to any of such credits whatsoever.

## **23. INDEPENDENT CERTIFIER**

### **23.1 Appointment**

- (a) On or prior to Financial Close, the Parties shall appoint an independent and suitably qualified and experienced consultant to act as the Independent Certifier for the purposes of this Project Agreement and shall enter into an agreement with the Independent Certifier substantially in the form of Schedule 6 - Independent Certifier Agreement. If the Parties are unable to agree upon the Independent Certifier within such period of time, then the determination of the Independent Certifier shall be made in the same manner as the identification of a replacement Independent Certifier under Section 23.7(b).
- (b) Neither Party shall, without the prior written consent of the other Party, enter into any agreement with the Independent Certifier in connection with the Project other than the Independent Certifier Agreement, and Project Co shall ensure that no Project Co Party enters into any separate agreement with the Independent Certifier in connection with the Project.

### **23.2 Role of Independent Certifier**

- (a) The general role, obligations and functions of the Independent Certifier are described in Schedule 6 - Independent Certifier Agreement.

### **23.3 Changes to Terms of Appointment**

- (a) Neither HMQ nor Project Co shall without the other's prior written approval (not to be unreasonably withheld or delayed):

- (i) waive, settle, compromise or otherwise prejudice any rights or claims which the other may from time to time have against the Independent Certifier; or
  - (ii) vary the terms of the Independent Certifier Agreement or the service performed or to be performed by the Independent Certifier.
- (b) The Parties shall perform their respective obligations arising under or in connection with the Independent Certifier Agreement.

#### **23.4 Right to Change Appointment**

- (a) The Parties acknowledge that the Independent Certifier shall provide certain services and reports to Project Co, the Lenders and the Project Co Parties in addition to performing the functions of the Independent Certifier under this Project Agreement. The Parties may agree to terminate the Independent Certifier Agreement upon 30 calendar days notice to the Independent Certifier. If such notice is given, then, pursuant to Section 23.7, a new Independent Certifier will be appointed. The Parties agree that, notwithstanding the 30 calendar days' notice of termination, the Independent Certifier shall continue on a day-to-day basis thereafter until a new Independent Certifier is appointed.

#### **23.5 Cooperation**

- (a) The Parties agree to cooperate with each other generally in relation to all matters within the scope of or in connection with the Independent Certifier Agreement. All instructions and representations issued or made by either of the Parties to the Independent Certifier shall be simultaneously copied to the other and both Parties shall be entitled to attend all inspections performed by or meetings involving the Independent Certifier.

#### **23.6 Payment of Independent Certifier**

- (a) Project Co and HMQ shall share equally the responsibility for the payment of all fees and costs of the Independent Certifier.

#### **23.7 Replacement**

- (a) In the event of the Independent Certifier's engagement being terminated otherwise than for full performance, the Parties shall liaise and cooperate with each other in order to appoint a replacement consultant to act as the Independent Certifier as soon as reasonably practicable. The identity of any such replacement shall be as agreed by the Parties and the terms of his/her appointment shall, unless otherwise agreed, be as set out in the Independent Certifier Agreement.
- (b) In the event the Parties fail to agree upon the identity of a replacement Independent Certifier within five Business Days of the original Independent Certifier's appointment being terminated, then a replacement Independent Certifier shall be chosen as follows:

- (i) each Party shall, within five Business Days thereafter, select 3 suitably qualified and experienced replacements that would be acceptable to that Party, and shall provide notice thereof to the other Party, with a ranking of preference for replacements;
- (ii) if the Parties have both selected a common replacement, then such common replacement shall be the Independent Certifier, and if there is more than one common replacement, then the common replacement with the highest overall ranking (calculated by adding together the ordinal rank assigned by both Parties) shall be selected, and in the event of a tie, the lowest-cost of such tied replacements shall be selected; and
- (iii) if the Parties have not selected a common replacement, then the determination of the new replacement may be referred for resolution in accordance with Schedule 27 - Dispute Resolution Procedure.

### **23.8 Security and Background Checks**

- (a) Each employee and representative of the Independent Certifier attending at the Site and involved in the Project (collectively, the “**IC’s Representatives**” and individually, an “**IC Representative**”) shall submit to a Security and Background Check. In the event that any of the events specified in Sections 1.1(h) and 1.3(a) of Schedule 7 - Security and Background Check Requirements have occurred in respect of the IC’s Representatives, HMQ may, in its sole discretion, terminate the Independent Certifier’s appointment unless (i) any such IC Representative’s employment or engagement by the Independent Certifier is immediately terminated and evidence of termination thereof has been provided to HMQ in writing within five Business Days of the occurrence of any of the events described in Sections 1.1(h) and 1.3(a) of Schedule 7 - Security and Background Check Requirements; or (ii) the Independent Certifier has satisfied HMQ, acting reasonably, that such IC Representative is no longer involved in the Project and is no longer involved in providing any of the “Functions” described in the Independent Certifier’s Contract. If for reasons specified in this Section 23.8(a), HMQ terminates the Independent Certifier, Project Co agrees that it shall not permit any of the IC’s Representatives to have access to the Site.

## **23A. INTERIM COMPLETION**

### **23A.1 Interim Completion Certificate**

- (a) Project Co shall give the Independent Certifier and the HMQ Representative at least 10 Business Days’ notice prior to the date upon which Project Co anticipates all requirements for Interim Completion shall be satisfied.
- (b) Project Co shall give the Independent Certifier and the HMQ Representative notice (the “**Interim Completion Notice**”) upon the satisfaction of all requirements for Interim Completion, which Interim Completion Notice shall describe, in reasonable detail, the satisfaction of the requirements for Interim Completion, together with Project Co’s opinion

as to whether the conditions for issuance of the Interim Completion Certificate have been satisfied.

- (c) HMQ shall, within five Business Days after receipt of the Interim Completion Notice, provide the Independent Certifier and Project Co with HMQ's opinion as to whether the conditions for issuance of the Interim Completion Certificate have been satisfied and, if applicable, any reasons as to why it considers that the Interim Completion Certificate should not be issued.
- (d) Within five Business Days after Project Co's receipt of HMQ's opinion pursuant to Section 23A.1(c), the Parties shall cause the Independent Certifier to determine whether the conditions for issuance of the Interim Completion Certificate have been satisfied, having regard for the opinions of both Project Co and HMQ, and to issue to HMQ and to Project Co either:
  - (i) the Interim Completion Certificate, setting out in such certificate the Interim Completion Date; or
  - (ii) a report detailing the matters that the Independent Certifier considers are required to be performed by Project Co to satisfy the conditions for issuance of the Interim Completion Certificate.
- (e) Where the Independent Certifier has issued a report in accordance with Section 23A.1(d)(ii) and Project Co has not referred a Dispute in relation thereto for resolution in accordance with Schedule 27 - Dispute Resolution Procedure, Project Co shall, within five Business Days after receipt of such report, provide the Independent Certifier and the HMQ Representative with:
  - (i) a detailed list indicating the rectification actions proposed for all matters raised in such report; and
  - (ii) the schedule for completion of all such rectification actions,and Project Co shall perform all such additional rectification actions in a timely manner. Upon completion thereof, Project Co may give a further Interim Completion Notice and Sections 23A.1(c) to (e), inclusive, shall be repeated until the Interim Completion Certificate has been issued.
- (f) The Independent Certifier's decision to issue or not to issue the Interim Completion Certificate shall be final and binding on the Parties solely in respect of determining the Interim Completion Payment Date, and a Dispute in relation to the Interim Completion Payment Date shall not be subject to resolution pursuant to the Dispute Resolution Procedure, provided, however, that any other Dispute in relation to the Independent Certifier's decision to issue or not to issue the Interim Completion Certificate may be referred for resolution pursuant to the Dispute Resolution Procedure.

### **23A.2 Interim Completion Countdown Notice**

- (a) Project Co shall deliver a notice (the “**Interim Completion Countdown Notice**”) to HMQ and the Independent Certifier specifying the date (which, for greater certainty, will be on or before the Scheduled Interim Completion Date) on which Project Co anticipates that Interim Completion will be achieved (the “**Anticipated Interim Completion Date**”).
- (b) The Interim Completion Countdown Notice shall be delivered not less than 180 calendar days prior to the Anticipated Interim Completion Date. If Project Co fails to deliver the Interim Completion Countdown Notice not less than 180 calendar days prior to the Scheduled Interim Completion Date, the Anticipated Interim Completion Date shall be deemed to be the same date as the Scheduled Interim Completion Date.
- (c) Subject to and in accordance with Section 20.4B(a), the Anticipated Interim Completion Date may be earlier than the Scheduled Interim Completion Date.

### **23A.3 Effect of Certificate**

- (a) The issue of the Interim Completion Certificate shall, in no way:
  - (i) limit the obligations of Project Co under this Project Agreement including in respect of any defects, deficiencies or items of outstanding work existing or discovered prior to or after the date of any of such certificates; or
  - (ii) be construed as an approval by HMQ of the Works or the way in which they have been carried out.

## **24. PROJECT SUBSTANTIAL COMPLETION AND COMMISSIONING**

### **24.1 Project Substantial Completion Commissioning Activities**

- (a) Project Co shall perform all Project Substantial Completion Project Co Commissioning, and shall facilitate the performance of all Project Substantial Completion HMQ Commissioning, pursuant to the Project Substantial Completion Commissioning Program.
- (b) For clarity, unless otherwise required for the achievement of Project Substantial Completion under this Project Agreement or by the Independent Certifier, none of the activities and requirements described in this Section 24 shall be duplicative of the activities and requirements required to achieve Interim Completion.

### **24.2 Project Substantial Completion Commissioning Program**

- (a) Project Co shall prepare a draft of the Project Substantial Completion Commissioning Program in respect of the Project Substantial Completion Project Co Commissioning and the Project Substantial Completion HMQ Commissioning and shall provide a copy thereof to the

Independent Certifier, the HMQ Commissioning Agent and the HMQ Representative not less than 270 calendar days prior to the Scheduled Project Substantial Completion Date.

- (b) The Project Substantial Completion Commissioning Program shall:
- (i) describe the requirements, and the timing and sequence of such requirements, necessary in order that the Project Substantial Completion Project Co Commissioning shall be completed to achieve:
    - (A) Project Substantial Completion on or before the Scheduled Project Substantial Completion Date;
  - (ii) describe the requirements, and the timing and sequence of such requirements, of the Project Substantial Completion HMQ Commissioning activities;
  - (iii) comply with all requirements of the Outline Commissioning Program and include all details, including for all appendices, required to be completed in the Outline Commissioning Program;
  - (iv) be consistent with the Outline Commissioning Program and impose no greater or more onerous obligations on HMQ than those set out in the Outline Commissioning Program, unless otherwise agreed to by HMQ;
  - (v) include the names of the individuals or companies proposed to perform all Project Substantial Completion Project Co Commissioning;
  - (vi) include a schedule of each of the Project Substantial Completion Project Co Commissioning Tests and the Project Substantial Completion HMQ Commissioning Tests proposed to be performed and the timeframe for completion, with start and end dates;
  - (vii) include a schedule of meetings to be held between the Parties to coordinate the performance of the Project Substantial Completion Project Co Commissioning and the Project Substantial Completion HMQ Commissioning;
  - (viii) provide for the re-verification of systems following the Project Substantial Completion HMQ Commissioning; and
  - (ix) list the approvals required from any Governmental Authority, manufacturer or other person that are necessary to meet the requirements of the Project Substantial Completion Commissioning Program or Applicable Law.
- (c) HMQ shall provide Project Co with comments on the draft Project Substantial Completion Commissioning Program in accordance with Schedule 10 - Review Procedure, and Project Co shall revise the draft Project Substantial Completion Commissioning Program to the extent required by Schedule 10 - Review Procedure within 30 calendar days of receipt of any comments from HMQ.



- (d) When agreed by the Parties, the Project Substantial Completion Commissioning Program shall replace the Outline Commissioning Program. Any failure of the Parties to arrive at such an agreement shall be resolved in accordance with Schedule 27 - Dispute Resolution Procedure.

#### **24.3 Commencement of Project Substantial Completion Project Co Commissioning**

- (a) Project Co shall give 30 days' written notice to the Independent Certifier, the HMQ Commissioning Agent and the HMQ Representative of the proposed commencement of the Project Substantial Completion Project Co Commissioning.
- (b) Project Co shall give at least five Business Days' notice to, and shall invite, the Independent Certifier, the HMQ Commissioning Agent and the HMQ Representative to witness, and to comment on, each aspect of the Project Substantial Completion Project Co Commissioning. Project Co shall, together with such notice, provide all information that the Independent Certifier, the HMQ Commissioning Agent and the HMQ Representative may reasonably require in relation thereto, including:
  - (i) tests proposed;
  - (ii) test methodology; and
  - (iii) expected test results.

#### **24.4 Project Substantial Completion Certificate**

- (a) Project Co shall give the Independent Certifier and the HMQ Representative at least 10 Business Days' notice prior to the date upon which Project Co anticipates all requirements for Project Substantial Completion shall be satisfied.
- (a.1) For the purpose of determining (i) substantial performance in accordance with Section 2(1) of the CLA and (ii) the achievement of Project Substantial Completion in accordance with Section 2(2) of the CLA, the Parties have agreed not to expeditiously complete the Toronto 2015 Additional Work, the Toronto 2015 Project Co Work, the Project Co Stage 1 Conversion Work and the Third Party Facility Conversion Work. The Parties have agreed that the price of the services or materials to be supplied, and required, to complete the Toronto 2015 Additional Work, the Toronto 2015 Project Co Work, the Project Co Stage 1 Conversion Work and the Third Party Facility Conversion Work shall be deducted from the total cost of the Works in determining substantial performance under Section 2(1) of the CLA.
- (b) Project Co shall give the Independent Certifier and the HMQ Representative notice (the "**Project Substantial Completion Notice**") upon the satisfaction of all requirements for Project Substantial Completion, which Project Substantial Completion Notice shall describe, in reasonable detail, the satisfaction of the requirements for Project Substantial Completion, together with Project Co's opinion as to whether the conditions for issuance of the Project Substantial Completion Certificate have been satisfied.

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- (c) HMQ shall, within five Business Days after receipt of the Project Substantial Completion Notice, provide the Independent Certifier and Project Co with HMQ's opinion as to whether the conditions for issuance of the Project Substantial Completion Certificate have been satisfied and, if applicable, any reasons as to why it considers that the Project Substantial Completion Certificate should not be issued.
- (d) Within five Business Days after Project Co's receipt of HMQ's opinion pursuant to Section 24.4(c), the Parties shall cause the Independent Certifier to determine whether the conditions for issuance of the Project Substantial Completion Certificate have been satisfied, having regard for the opinions of both Project Co and HMQ, to determine whether any Project Substantial Completion Minor Deficiencies exist, and to issue to HMQ and to Project Co either:
  - (i) the Project Substantial Completion Certificate, setting out in such certificate the Project Substantial Completion Date and the Project Substantial Completion Minor Deficiencies List (if applicable) in accordance with Section 24.8; or
  - (ii) a report detailing the matters that the Independent Certifier considers are required to be performed by Project Co to satisfy the conditions for issuance of the Project Substantial Completion Certificate.
- (e) Where the Independent Certifier has issued a report in accordance with Section 24.4(d)(ii) and Project Co has not referred a Dispute in relation thereto for resolution in accordance with Schedule 27 - Dispute Resolution Procedure, Project Co shall, within five Business Days after receipt of such report, provide the Independent Certifier and the HMQ Representative with:
  - (i) a detailed list indicating the rectification actions proposed for all matters raised in such report;
  - (ii) the schedule for completion of all such rectification actions; and
  - (iii) any additional Project Substantial Completion Project Co Commissioning that needs to be undertaken as a result of the rectification actions,and Project Co shall perform all such additional rectification actions and Project Substantial Completion Project Co Commissioning in a timely manner. Upon completion thereof, Project Co may give a further Project Substantial Completion Notice and Sections 24.4(c) to (e), inclusive, shall be repeated until the Project Substantial Completion Certificate has been issued.
- (f) The Independent Certifier's decision to issue or not to issue the Project Substantial Completion Certificate shall be final and binding on the Parties solely in respect of determining the Project Substantial Completion Payment Date, and a Dispute in relation to the Project Substantial Completion Payment Date shall not be subject to resolution pursuant to the Dispute Resolution Procedure, provided, however, that any other Dispute in relation to

the Independent Certifier's decision to issue or not to issue the Project Substantial Completion Certificate may be referred for resolution pursuant to the Dispute Resolution Procedure.

#### **24.5 Intentionally Deleted**

#### **24.6 Project Substantial Completion HMQ Commissioning**

- (a) The Parties acknowledge that the Project Substantial Completion HMQ Commissioning shall be performed both before and after the Project Substantial Completion Date. Prior to Project Substantial Completion, Project Co shall give HMQ full access to the Site and all relevant parts thereof at such times as may be set out in the Project Substantial Completion Commissioning Program to enable HMQ to undertake the Project Substantial Completion HMQ Commissioning in accordance with the Project Substantial Completion Commissioning Program. HMQ shall comply, and shall ensure that all HMQ Parties comply, with the directions, procedures and safety guidelines established by Project Co for the Site and shall use commercially reasonable efforts to minimize disruption to the Project Operations in performing the Project Substantial Completion HMQ Commissioning.
- (b) HMQ acknowledges that, during the Project Substantial Completion HMQ Commissioning Period, Project Co and each Project Co Party will be active in the Facilities in both the rectification of Project Substantial Completion Minor Deficiencies and the completion of Project Substantial Completion Project Co Commissioning, and HMQ shall take commercially reasonable steps to allow such activities to proceed in accordance with the Project Substantial Completion Commissioning Program.
- (c) Project Co acknowledges that, prior to and during the Project Substantial Completion HMQ Commissioning Period, Project Co and each Project Co Party shall cooperate with HMQ and all HMQ Parties and use commercially reasonable efforts to ensure that all requirements, and the timing and sequence of such requirements, of the Project Substantial Completion HMQ Commissioning activities are able to be completed in the timeframe for completion set out in the Project Substantial Completion Commissioning Program.

#### **24.7 Project Substantial Completion Countdown Notice**

- (a) Project Co shall deliver a notice (the "**Project Substantial Completion Countdown Notice**") to HMQ and the Independent Certifier specifying the date (which, for greater certainty, will be on or before the Scheduled Project Substantial Completion Date) on which Project Co anticipates that Project Substantial Completion will be achieved (the "**Anticipated Project Substantial Completion Date**").
- (b) The Project Substantial Completion Countdown Notice shall be delivered not less than 180 calendar days prior to the Anticipated Project Substantial Completion Date. If Project Co fails to deliver the Project Substantial Completion Countdown Notice not less than 180 calendar days prior to the Scheduled Project Substantial Completion Date, the Anticipated

Project Substantial Completion Date shall be deemed to be the same date as the Scheduled Project Substantial Completion Date.

- (c) Project Co acknowledges and agrees that HMQ requires a minimum of 180 calendar days notice prior to the Anticipated Project Substantial Completion Date to prepare for the Project Substantial Completion HMQ Commissioning.
- (d) Subject to and in accordance with Section 20.5(a), the Anticipated Project Substantial Completion Date may be earlier than the Scheduled Project Substantial Completion Date.

#### **24.8 Project Substantial Completion Minor Deficiencies**

- (a) In the event that Project Substantial Completion Minor Deficiencies exist when Project Co gives the Project Substantial Completion Notice, the Independent Certifier, in consultation with Project Co and HMQ, shall prepare a list of all Project Substantial Completion Minor Deficiencies (the “**Project Substantial Completion Minor Deficiencies List**”) identified at that time and an estimate of the cost and the time for rectifying such Project Substantial Completion Minor Deficiencies.
- (b) The Project Substantial Completion Minor Deficiencies List will contain the schedule for the completion and rectification of the Project Substantial Completion Minor Deficiencies. In determining the relevant time for rectifying Project Substantial Completion Minor Deficiencies, Project Co shall schedule the completion and rectification of Project Substantial Completion Minor Deficiencies so as to minimize, to the greatest extent reasonably possible, any impairment of HMQ’s and Toronto 2015’s use and enjoyment of the Facilities or disruption of the activities being carried out at the Facilities during the Operational Term.
- (c) The Independent Certifier must prepare the Project Substantial Completion Minor Deficiencies List before the Project Substantial Completion Certificate is issued, but shall not withhold the Project Substantial Completion Certificate by reason solely that there are Project Substantial Completion Minor Deficiencies.
- (d) HMQ may, in its sole discretion, waive any requirement for Project Substantial Completion, including with respect to any related Equipment, and the failure to meet any such requirement shall constitute a Project Substantial Completion Minor Deficiency.

#### **24.9 Rectification of Project Substantial Completion Minor Deficiencies**

- (a) Project Co shall, in consultation with the HMQ Representative and so as to minimize, to the greatest extent reasonably possible, any disruption to the activities being carried out at the Facilities during the Operational Term, complete and rectify all Project Substantial Completion Minor Deficiencies within 45 calendar days of the issuance of the Project Substantial Completion Minor Deficiencies List or such other period as the Independent Certifier may specify in the Project Substantial Completion Minor Deficiencies List.

- (b) Project Co acknowledges and agrees that the completion and rectification of Project Substantial Completion Minor Deficiencies may require work outside of normal working hours in order to accommodate the efficient operation of the Facilities.

#### **24.10 Failure to Rectify Project Substantial Completion Minor Deficiencies**

- (a) HMQ shall withhold from the Project Substantial Completion Payment otherwise due to Project Co a holdback amount that is [REDACTED]% of the amount estimated by the Independent Certifier for HMQ to complete and rectify all Project Substantial Completion Minor Deficiencies (the “**HMQ Project Substantial Completion Minor Deficiencies Holdback**”), which HMQ Project Substantial Completion Minor Deficiencies Holdback shall be held in an interest bearing account of HMQ.
- (b) If Project Co has failed to complete and rectify any Project Substantial Completion Minor Deficiencies specified in the Project Substantial Completion Minor Deficiencies List:
  - (i) within 75 calendar days of the issuance of such Project Substantial Completion Minor Deficiencies List for all Project Substantial Completion Minor Deficiencies where no time for rectification or completion has been specified by the Independent Certifier, or
  - (ii) within 30 calendar days after the time for completion and rectification of any Project Substantial Completion Minor Deficiencies where such a time has been specified in such Project Substantial Completion Minor Deficiencies List by the Independent Certifier,

HMQ may:

- (iii) engage others to perform the work necessary to complete and rectify any such Project Substantial Completion Minor Deficiencies, at the risk and cost of Project Co, and HMQ may deduct such cost from the amount of the HMQ Project Substantial Completion Minor Deficiencies Holdback and interest earned thereon.
- (c) Upon completion and rectification of each Project Substantial Completion Minor Deficiency, HMQ shall release to Project Co the amount of the HMQ Project Substantial Completion Minor Deficiencies Holdback related to such Project Substantial Completion Minor Deficiency. Upon completion and rectification of all Project Substantial Completion Minor Deficiencies, HMQ shall release to Project Co the then remaining amount of the HMQ Project Substantial Completion Minor Deficiencies Holdback, together with all interest accrued thereon. Where HMQ exercises its rights pursuant to Section 24.10(b)(iii), if the cost of such completion and rectification exceeds the amount of such HMQ Project Substantial Completion Minor Deficiencies Holdback and interest, then Project Co shall reimburse HMQ for all such excess cost.

#### **24.11 Effect of Certificate**

- (a) The issue of the Project Substantial Completion Certificate, any taking over or use by HMQ of any part of the Facilities under the terms of this Project Agreement, shall, in no way:
  - (i) limit the obligations of Project Co under this Project Agreement including in respect of any defects, deficiencies or items of outstanding work existing or discovered prior to or after the date of any of such certificates or the date of the Project Substantial Completion Minor Deficiencies List; or
  - (ii) be construed as an approval by HMQ of the Works or the way in which they have been carried out.

## **24A. PROJECT CO STAGE 1 CONVERSION SUBSTANTIAL COMPLETION**

### **24A.1 Commissioning Activities**

- (a) Project Co shall perform all Project Co Stage 1 Conversion Substantial Completion Project Co Commissioning pursuant to the Project Co Stage 1 Conversion Substantial Completion Commissioning Program.

### **24A.2 Project Co Stage 1 Conversion Substantial Completion Commissioning Program**

- (a) Project Co shall prepare a draft of the Project Co Stage 1 Conversion Substantial Completion Commissioning Program in respect to the Project Co Stage 1 Conversion Substantial Completion Project Co Commissioning and shall provide a copy thereof to the Independent Certifier, the HMQ Commissioning Agent and the HMQ Representative not less than 365 calendar days prior to the Scheduled Project Co Stage 1 Conversion Substantial Completion Date.
- (b) The Project Co Stage 1 Conversion Substantial Completion Commissioning Program shall:
  - (i) describe the requirements, and the timing and sequence of such requirements, necessary in order that the Project Co Stage 1 Conversion Substantial Completion Project Co Commissioning shall be completed to achieve Project Co Stage 1 Conversion Substantial Completion on or before the Scheduled Project Co Stage 1 Conversion Substantial Completion Date;
  - (ii) **Intentionally Deleted;**
  - (iii) comply with all requirements of the Outline Commissioning Program and include all details, including for all appendices, required to be completed in the Outline Commissioning Program;
  - (iv) be consistent with the Outline Commissioning Program and impose no greater or more onerous obligations on HMQ than those set out in the Outline Commissioning Program, unless otherwise agreed to by HMQ;

- (v) include the names of the individuals or companies proposed to perform all Project Co Stage 1 Conversion Substantial Completion Project Co Commissioning;
  - (vi) include a schedule of each of the Project Co Stage 1 Conversion Substantial Completion Project Co Commissioning Tests proposed to be performed and the timeframe for completion, with start and end dates;
  - (vii) include a schedule of meetings to be held between the Parties to coordinate the performance of the Project Co Stage 1 Conversion Substantial Completion Project Co Commissioning; and
  - (viii) **Intentionally Deleted**
  - (ix) list the approvals required from any Governmental Authority, manufacturer or other person that are necessary to meet the requirements of the Project Co Stage 1 Conversion Substantial Completion Commissioning Program or Applicable Law.
- (c) HMQ shall provide Project Co with comments on the draft Project Co Stage 1 Conversion Substantial Completion Commissioning Program in accordance with Schedule 10 - Review Procedure, and Project Co shall revise the draft Project Co Stage 1 Conversion Substantial Completion Commissioning Program to the extent required by Schedule 10 - Review Procedure within 30 calendar days of receipt of any comments from HMQ.
- (d) When agreed by the Parties, the Project Co Stage 1 Conversion Substantial Completion Commissioning Program shall replace the Outline Commissioning Program. Any failure of the Parties to arrive at such an agreement shall be resolved in accordance with Schedule 27 - Dispute Resolution Procedure.

**24A.3 Commencement of Project Co Stage 1 Conversion Substantial Completion Project Co Commissioning**

- (a) Project Co shall give 30 calendar days' written notice to the Independent Certifier, the HMQ Commissioning Agent and the HMQ Representative of the proposed commencement of the Project Co Stage 1 Conversion Substantial Completion Project Co Commissioning.
- (b) Project Co shall give at least five Business Days' notice to, and shall invite, the Independent Certifier, the HMQ Commissioning Agent and the HMQ Representative to witness, and to comment on, each aspect of the Project Co Stage 1 Conversion Substantial Completion Project Co Commissioning. Project Co shall, together with such notice, provide all information that the Independent Certifier, the HMQ Commissioning Agent and the HMQ Representative may reasonably require in relation thereto, including:
- (i) tests proposed;
  - (ii) test methodology; and
  - (iii) expected test results.

#### **24A.4 Project Co Stage 1 Conversion Substantial Completion Certificate**

- (a) Project Co shall give the Independent Certifier and the HMQ Representative at least 10 Business Days' notice prior to the date upon which Project Co anticipates all requirements for Project Co Stage 1 Conversion Substantial Completion shall be satisfied.
- (b) Project Co shall give the Independent Certifier and the HMQ Representative notice (the "**Project Co Stage 1 Conversion Substantial Completion Notice**") upon the satisfaction of all requirements for Project Co Stage 1 Conversion Substantial Completion, which Project Co Stage 1 Conversion Substantial Completion Notice shall describe, in reasonable detail, the satisfaction of the requirements for Project Co Stage 1 Conversion Substantial Completion, together with Project Co's opinion as to whether the conditions for issuance of the Project Co Stage 1 Conversion Substantial Completion Certificate have been satisfied.
- (c) HMQ shall, within five Business Days after receipt of a Project Co Stage 1 Conversion Substantial Completion Notice, provide the Independent Certifier and Project Co with HMQ's opinion as to whether the conditions for issuance of the Project Co Stage 1 Conversion Substantial Completion Certificate have been satisfied and, if applicable, any reasons as to why it considers that the Project Co Stage 1 Conversion Substantial Completion Certificate should not be issued.
- (d) Within five Business Days after Project Co's receipt of HMQ's opinion pursuant to Section 24A.4(c), the Parties shall cause the Independent Certifier to determine whether the conditions for issuance of the Project Co Stage 1 Conversion Substantial Completion Certificate have been satisfied, having regard for the opinions of both Project Co and HMQ, to determine whether any Project Co Stage 1 Conversion Substantial Completion Minor Deficiencies exist, and to issue to HMQ and to Project Co either:
  - (i) the Project Co Stage 1 Conversion Substantial Completion Certificate, setting out in such certificate the Project Co Stage 1 Conversion Substantial Completion Date and the Project Co Stage 1 Conversion Substantial Completion Minor Deficiencies List (if applicable) in accordance with Section 24A.8; or
  - (ii) a report detailing the matters that the Independent Certifier considers is required to be performed by Project Co to satisfy the conditions for issuance of the Project Co Stage 1 Conversion Substantial Completion Certificate.
- (e) Where the Independent Certifier has issued a report in accordance with Section 24A.4(d)(ii) and Project Co has not referred a Dispute in relation thereto for resolution in accordance with Schedule 27 - Dispute Resolution Procedure, Project Co shall, within five Business Days after receipt of such report, provide the Independent Certifier and the HMQ Representative with:
  - (i) a detailed list indicating the rectification actions proposed for all matters raised in such report;



- (ii) the schedule for completion of all such rectification actions; and
- (iii) any additional Project Co Stage 1 Conversion Substantial Completion Project Co Commissioning that needs to be undertaken as a result of the rectification actions,

and Project Co shall perform all such additional rectification actions and Project Co Stage 1 Conversion Substantial Completion Project Co Commissioning in a timely manner. Upon completion thereof, Project Co may give a further Project Co Stage 1 Conversion Substantial Completion Notice and Sections 25A.4(c) to (e), inclusive, shall be repeated until the applicable Project Co Stage 1 Conversion Substantial Completion Certificate has been issued.

- (f) Any dispute in relation to the Independent Certifier's decision to issue or not to issue a Project Co Stage 1 Conversion Substantial Completion Certificate may be referred for resolution pursuant to the Dispute Resolution Procedure.

#### **24A.5 Intentionally Deleted**

#### **24A.6 Intentionally Deleted**

#### **24A.7 Project Co Stage 1 Conversion Substantial Completion Countdown Notice**

- (a) Project Co shall deliver a notice (the "**Project Co Stage 1 Conversion Substantial Completion Countdown Notice**") to HMQ and the Independent Certifier specifying the date (which, for greater certainty, will be on or before the Scheduled Project Co Stage 1 Conversion Substantial Completion Date) on which Project Co anticipates that Project Co Stage 1 Conversion Substantial Completion will be achieved (the "**Anticipated Project Co Stage 1 Conversion Substantial Completion Date**").
- (b) The Project Co Stage 1 Conversion Substantial Completion Countdown Notice shall be delivered not less than 60 calendar days prior to the Anticipated Project Co Stage 1 Conversion Substantial Completion Date. If Project Co fails to deliver the Project Co Stage 1 Conversion Substantial Completion Countdown Notice not less than 60 calendar days prior to the Scheduled Project Co Stage 1 Conversion Substantial Completion Date, the Anticipated Project Co Stage 1 Conversion Substantial Completion Date shall be deemed to be the same date as the Scheduled Project Co Stage 1 Conversion Substantial Completion Date.
- (c) **Intentionally Deleted**
- (d) Subject to and in accordance with Section 20.5A(a), the Anticipated Project Co Stage 1 Conversion Substantial Completion Date may be earlier than the Scheduled Project Co Stage 1 Conversion Substantial Completion Date.

#### **24A.8 Project Co Stage 1 Conversion Substantial Completion Minor Deficiencies**

- (a) In the event that Project Co Stage 1 Conversion Substantial Completion Minor Deficiencies exist when Project Co gives the Project Co Stage 1 Conversion Substantial Completion Notice, the Independent Certifier, in consultation with Project Co and HMQ, shall prepare a list of all Project Co Stage 1 Conversion Substantial Completion Minor Deficiencies (the **"Project Co Stage 1 Conversion Substantial Completion Minor Deficiencies List"**) identified at that time and an estimate of the cost and the time for rectifying such Project Co Stage 1 Conversion Substantial Completion Minor Deficiencies.
- (b) The Project Co Stage 1 Conversion Substantial Completion Minor Deficiencies List will contain the schedule for the completion and rectification of the Project Co Stage 1 Conversion Substantial Completion Minor Deficiencies. In determining the relevant time for rectifying Project Co Stage 1 Conversion Substantial Completion Minor Deficiencies, Project Co shall schedule the completion and rectification of Project Co Stage 1 Conversion Substantial Completion Minor Deficiencies so as to minimize, to the greatest extent reasonably possible, any impairment of HMQ's use and enjoyment of the Project Co Stage 1 Condominium Facilities or disruption of the Project Operations.
- (c) The Independent Certifier must prepare the Project Co Stage 1 Conversion Substantial Completion Minor Deficiencies List before the Project Co Stage 1 Conversion Substantial Completion Certificate is issued, but shall not withhold the Project Co Stage 1 Conversion Substantial Completion Certificate by reason solely that there are Project Co Stage 1 Conversion Substantial Completion Minor Deficiencies.
- (d) HMQ may, in its sole discretion, waive any requirement for Project Co Stage 1 Conversion Substantial Completion, and the failure to meet any such requirement shall constitute a Project Co Stage 1 Conversion Substantial Completion Minor Deficiency.

**24A.9 Rectification of Project Co Stage 1 Conversion Substantial Completion Minor Deficiencies**

- (a) Project Co shall, in consultation with the HMQ Representative complete and rectify all Project Co Stage 1 Conversion Substantial Completion Minor Deficiencies within 45 calendar days of the issuance of the Project Co Stage 1 Conversion Substantial Completion Minor Deficiencies List or such other period as the Independent Certifier may specify in the Project Co Stage 1 Conversion Substantial Completion Minor Deficiencies List.

**24A.10 Intentionally Deleted.**

**24A.11 Intentionally Deleted.**

**24A.12 Effect of Certificates/Use**

- (a) The issue of a Project Co Stage 1 Conversion Substantial Completion Certificate and any taking over or use by HMQ of any part of the Project Co Stage 1 Condominium Facilities under the terms of this Project Agreement, shall, in no way:

- (i) limit the obligations of Project Co under this Project Agreement including in respect of any defects, deficiencies or items of outstanding work existing or discovered prior to or after the date of any of such certificates or the date of the Project Co Stage 1 Conversion Substantial Completion Minor Deficiencies List; or
- (ii) be construed as an approval by HMQ or any other Government Entity of the Works or the way in which they have been carried out.

## **25. THIRD PARTY FACILITY CONVERSION SUBSTANTIAL COMPLETION AND COMMISSIONING AND PROJECT FINAL COMPLETION**

### **25.1 Commissioning Activities**

- (a) Project Co shall perform all Third Party Facility Conversion Substantial Completion Project Co Commissioning, and shall facilitate the performance of all Third Party Facility Conversion Substantial Completion HMQ Commissioning, pursuant to the Third Party Facility Conversion Substantial Completion Commissioning Program.
- (b) The Parties acknowledge that Third Party Facility Conversion Substantial Completion will occur on a facility-by-facility basis and that a Third Party Facility Conversion Substantial Completion Certificate will be issued in respect to each Third Party Facility individually.
- (c) The Parties acknowledge that HMQ shall consult and seek input from each of the Third Party Owners in respect of all matters concerning the Third Party Facility Conversion Substantial Completion Project Co Commissioning and the Third Party Facility Conversion Substantial Completion HMQ Commissioning.

### **25.2 Third Party Facility Conversion Substantial Completion Commissioning Program**

- (a) For each Third Party Facility, Project Co shall prepare a draft of the Third Party Facility Conversion Substantial Completion Commissioning Program in respect to the Third Party Facility Conversion Substantial Completion Project Co Commissioning and the Third Party Facility Conversion Substantial Completion HMQ Commissioning applicable to each Third Party Facility and shall provide a copy thereof to the Independent Certifier, the HMQ Commissioning Agent, the HMQ Representative and the applicable Third Party Owner not less than 365 calendar days prior to the Scheduled Third Party Facility Conversion Substantial Completion Date for the applicable Third Party Facility.
- (b) The Third Party Facility Conversion Substantial Completion Commissioning Program shall:
  - (i) describe the requirements, and the timing and sequence of such requirements, necessary in order that the Third Party Facility Conversion Substantial Completion Project Co Commissioning shall be completed to achieve:
    - (A) Third Party Facility Conversion Substantial Completion in respect of each Third Party Facility on or before the Scheduled Third Party Facility

Conversion Substantial Completion Date for the applicable Third Party Facility; and

- (B) Project Final Completion on or before the Scheduled Project Final Completion Date;
- (ii) describe the requirements, and the timing and sequence of such requirements, of the Third Party Facility Conversion Substantial Completion HMQ Commissioning activities;
  - (iii) comply with all requirements of the Outline Commissioning Program and include all details, including for all appendices, required to be completed in the Outline Commissioning Program;
  - (iv) be consistent with the Outline Commissioning Program and impose no greater or more onerous obligations on HMQ than those set out in the Outline Commissioning Program, unless otherwise agreed to by HMQ;
  - (v) include the names of the individuals or companies proposed to perform all Third Party Facility Conversion Substantial Completion Project Co Commissioning;
  - (vi) include a schedule of each of the Third Party Facility Conversion Substantial Completion Project Co Commissioning Tests and the Third Party Facility Conversion Substantial Completion HMQ Commissioning Tests proposed to be performed and the timeframe for completion, with start and end dates;
  - (vii) include a schedule of meetings to be held between the Parties and the applicable Third Party Owner to coordinate the performance of the Third Party Facility Conversion Substantial Completion Project Co Commissioning and the Third Party Facility Conversion Substantial Completion HMQ Commissioning;
  - (viii) provide for the re-verification of systems following the Third Party Facility Conversion Substantial Completion HMQ Commissioning; and
  - (ix) list the approvals required from any Governmental Authority, manufacturer or other person that are necessary to meet the requirements of the Third Party Facility Conversion Substantial Completion Commissioning Program or Applicable Law.
- (c) HMQ shall provide Project Co with comments on the draft Third Party Facility Conversion Substantial Completion Commissioning Program (which comments shall, for clarity, include the comments of the applicable Third Party Owner) in accordance with Schedule 10 - Review Procedure, and Project Co shall revise the draft Third Party Facility Conversion Substantial Completion Commissioning Program to the extent required by Schedule 10 - Review Procedure within 30 calendar days of receipt of any such comments from HMQ.
- (d) When agreed by the Parties, the Third Party Facility Conversion Substantial Completion Commissioning Program shall replace the Outline Commissioning Program. Any failure of

the Parties to arrive at such an agreement shall be resolved in accordance with Schedule 27 - Dispute Resolution Procedure.

**25.3 Commencement of Third Party Facility Conversion Substantial Completion Project Co Commissioning**

- (a) Project Co shall give 30 calendar days' written notice to the Independent Certifier, the HMQ Commissioning Agent, the HMQ Representative and the applicable Third Party Owner of the proposed commencement of the Third Party Facility Conversion Substantial Completion Project Co Commissioning.
- (b) Project Co shall give at least 5 Business Days' notice to, and shall invite, the Independent Certifier, the HMQ Commissioning Agent, the HMQ Representative and the applicable Third Party Owner to witness, and to comment on, each aspect of the Third Party Facility Conversion Substantial Completion Project Co Commissioning. Project Co shall, together with such notice, provide all information that the Independent Certifier, the HMQ Commissioning Agent, the HMQ Representative and the applicable Third Party Owners may reasonably require in relation thereto, including:
  - (i) tests proposed;
  - (ii) test methodology; and
  - (iii) expected test results.

**25.4 Third Party Facility Conversion Substantial Completion Certificate**

- (a) Project Co shall give the Independent Certifier, the HMQ Representative and the applicable Third Party Owner at least 10 Business Days' notice prior to the date upon which Project Co anticipates all requirements for the Third Party Facility Conversion Substantial Completion of a Third Party Facility shall be satisfied.
- (b) Project Co shall give the Independent Certifier, the HMQ Representative and the applicable Third Party Owner notice (the "**Third Party Facility Conversion Substantial Completion Notice**") upon the satisfaction of all requirements for Third Party Facility Conversion Substantial Completion in respect of a Third Party Facility, which Third Party Facility Conversion Substantial Completion Notice shall describe, in reasonable detail, the satisfaction of the requirements for Third Party Facility Conversion Substantial Completion of the applicable Third Party Facility, together with Project Co's opinion as to whether the conditions for issuance of the Third Party Facility Conversion Substantial Completion Certificate in respect of the applicable Third Party Facility have been satisfied.
- (c) HMQ shall, within five Business Days after receipt of a Third Party Facility Conversion Substantial Completion Notice, provide the Independent Certifier and Project Co with HMQ's opinion as to whether the conditions for issuance of the Third Party Facility Conversion Substantial Completion Certificate in respect of the Third Party Facility to which the Third Party Facility Conversion Substantial Completion Notice pertains, have been

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satisfied and, if applicable, any reasons as to why it considers that the Third Party Facility Conversion Substantial Completion Certificate should not be issued in respect of that Third Party Facility.

- (d) Within five Business Days after Project Co's receipt of HMQ's opinion pursuant to Section 25.4(c), the Parties shall cause the Independent Certifier to determine whether the conditions for issuance of a Third Party Facility Conversion Substantial Completion Certificate in respect of the applicable Third Party Facility have been satisfied, having regard for the opinions of both Project Co and HMQ, to determine whether any Third Party Facility Conversion Substantial Completion Minor Deficiencies exist, and to issue to HMQ and to Project Co either:
  - (i) the Third Party Facility Conversion Substantial Completion Certificate for the applicable Third Party Facility, setting out in such certificate the Third Party Facility Conversion Substantial Completion Date and the Third Party Facility Conversion Substantial Completion Minor Deficiencies List (if applicable) in accordance with Section 25.8; or
  - (ii) a report detailing the matters that the Independent Certifier considers is required to be performed by Project Co to satisfy the conditions for issuance of the Third Party Facility Conversion Substantial Completion Certificate for the applicable Third Party Facility.
- (e) Where the Independent Certifier has issued a report in accordance with Section 25.4(d)(ii) and Project Co has not referred a Dispute in relation thereto for resolution in accordance with Schedule 27 - Dispute Resolution Procedure, Project Co shall, within five Business Days after receipt of such report, provide the Independent Certifier and the HMQ Representative with:
  - (i) a detailed list indicating the rectification actions proposed for all matters raised in such report;
  - (ii) the schedule for completion of all such rectification actions; and
  - (iii) any additional Third Party Facility Conversion Substantial Completion Project Co Commissioning that needs to be undertaken as a result of the rectification actions,

and Project Co shall perform all such additional rectification actions and Third Party Facility Conversion Substantial Completion Project Co Commissioning in a timely manner. Upon completion thereof, Project Co may give a further Third Party Facility Conversion Substantial Completion Notice and Sections 25.4(c) to (e), inclusive, shall be repeated until the applicable Third Party Facility Conversion Substantial Completion Certificate has been issued.

- (f) Any dispute in relation to the Independent Certifier's decision to issue or not to issue a Third Party Facility Conversion Substantial Completion Certificate may be referred for resolution pursuant to the Dispute Resolution Procedure.

**25.5 Intentionally Deleted.**

**25.6 Third Party Facility Conversion Substantial Completion HMQ Commissioning**

- (a) The Parties acknowledge that the Third Party Facility Conversion Substantial Completion HMQ Commissioning shall be performed both before and after the Third Party Facility Conversion Substantial Completion Date in respect of a Third Party Facility. Prior to Third Party Facility Conversion Substantial Completion in respect of a Third Party Facility, Project Co shall give HMQ full access to the applicable portions of the Site, the applicable Third Party Facility and all relevant parts thereof at such times as may be set out in the Third Party Facility Conversion Substantial Completion Commissioning Program to enable HMQ to undertake the Third Party Facility Conversion Substantial Completion HMQ Commissioning in accordance with the Third Party Facility Conversion Substantial Completion Commissioning Program. HMQ shall comply, and shall ensure that all HMQ Parties comply, with the directions, procedures and safety guidelines established by Project Co for the applicable portions of the Site and shall use commercially reasonable efforts to minimize disruption to the Project Operations in performing the Third Party Facility Conversion Substantial Completion HMQ Commissioning.
- (b) HMQ acknowledges that, during the Third Party Facility Conversion Substantial Completion HMQ Commissioning Period, Project Co and each Subcontractor will be active in each Third Party Facility in both the rectification of the applicable Third Party Facility Conversion Substantial Completion Minor Deficiencies and the completion of Third Party Facility Conversion Substantial Completion Project Co Commissioning, and HMQ shall take commercially reasonable steps to allow such activities to proceed in accordance with the Third Party Facility Conversion Substantial Completion Commissioning Program.
- (c) Project Co acknowledges that, prior to and during the Third Party Facility Conversion Substantial Completion HMQ Commissioning Period, Project Co and each Subcontractor shall cooperate with HMQ and all HMQ Parties and use commercially reasonable efforts to ensure that all requirements, and the timing and sequence of such requirements, of the Third Party Facility Conversion Substantial Completion HMQ Commissioning activities are able to be completed in the timeframe for completion set out in the Third Party Facility Conversion Substantial Completion Commissioning Program.

**25.7 Third Party Facility Conversion Substantial Completion Countdown Notice**

- (a) In respect of each Third Party Facility, Project Co shall deliver a notice (each a "**Third Party Facility Conversion Substantial Completion Countdown Notice**") to HMQ, the applicable Third Party Owner and the Independent Certifier specifying the date (which, for greater certainty, will be on or before the Scheduled Third Party Facility Conversion Substantial Completion Date for that Third Party Facility) on which Project Co anticipates

that the Third Party Facility Conversion Substantial Completion in respect of that Third Party Facility will be achieved (each an “**Anticipated Third Party Facility Conversion Substantial Completion Date**”).

- (b) The Third Party Facility Conversion Substantial Completion Countdown Notice shall be delivered not less than 60 calendar days prior to each Anticipated Third Party Facility Conversion Substantial Completion Date. If Project Co fails to deliver the Third Party Facility Conversion Substantial Completion Countdown Notice not less than 60 calendar days prior to the Scheduled Third Party Facility Conversion Substantial Completion Date for a Third Party Facility, the Anticipated Third Party Facility Conversion Substantial Completion Date for that Third Party Facility shall be deemed to be the same date as the Scheduled Third Party Facility Conversion Substantial Completion Date.
- (c) Project Co acknowledges and agrees that HMQ and the applicable Third Party Owner require a minimum of 60 calendar days notice prior to each Anticipated Third Party Facility Conversion Substantial Completion Date to prepare for the Third Party Facility Conversion Substantial Completion HMQ Commissioning in respect of the applicable Third Party Facility.
- (d) Subject to and in accordance with Section 20.5B(a), the Anticipated Third Party Facility Conversion Substantial Completion Date for a Third Party Facility may be earlier than the applicable Scheduled Third Party Facility Conversion Substantial Completion Date.

#### **25.8 Third Party Facility Conversion Substantial Completion Minor Deficiencies**

- (a) In the event that Third Party Facility Conversion Substantial Completion Minor Deficiencies exist in respect of a Third Party Facility when Project Co gives a Third Party Facility Conversion Substantial Completion Notice, the Independent Certifier, in consultation with Project Co and HMQ, shall prepare a list of all Third Party Facility Conversion Substantial Completion Minor Deficiencies (the “**Third Party Facility Conversion Substantial Completion Minor Deficiencies List**”) identified at that time and an estimate of the cost and the time for rectifying such Third Party Facility Conversion Substantial Completion Minor Deficiencies.
- (b) Each Third Party Facility Conversion Substantial Completion Minor Deficiencies List will contain the schedule for the completion and rectification of the Third Party Facility Conversion Substantial Completion Minor Deficiencies in respect of the applicable Third Party Facility. In determining the relevant time for rectifying Third Party Facility Conversion Substantial Completion Minor Deficiencies, Project Co shall schedule the completion and rectification of Third Party Facility Conversion Substantial Completion Minor Deficiencies so as to minimize, to the greatest extent reasonably possible, any impairment of HMQ’s and the applicable Third Party Owner’s use and enjoyment of the Facilities or disruption of the Project Operations.
- (c) The Independent Certifier must prepare the Third Party Facility Conversion Substantial Completion Minor Deficiencies List in respect of a Third Party Facility before the Third



Party Facility Conversion Substantial Completion Certificate is issued, but shall not withhold the Third Party Facility Conversion Substantial Completion Certificate by reason solely that there are Third Party Facility Conversion Substantial Completion Minor Deficiencies.

- (d) HMQ may, in its sole discretion, waive any requirement for any Third Party Facility Conversion Substantial Completion, including with respect to Equipment and the failure to meet any such requirement shall constitute a Third Party Facility Conversion Substantial Completion Minor Deficiency.

**25.9 Rectification of Third Party Facility Conversion Substantial Completion Minor Deficiencies**

- (a) Project Co shall, in consultation with the HMQ Representative and so as to minimize, to the greatest extent reasonably possible, any disruption of the Project Operations, complete and rectify all Third Party Facility Conversion Substantial Completion Minor Deficiencies in respect of a Third Party Facility within 45 calendar days of the issuance of the Third Party Facility Conversion Substantial Completion Minor Deficiencies List for that Facility or such other period as the Independent Certifier may specify in that Third Party Facility Conversion Substantial Completion Minor Deficiencies List.
- (b) Project Co acknowledges and agrees that the completion and rectification of Third Party Facility Conversion Substantial Completion Minor Deficiencies may require work outside of normal working hours in order to accommodate the efficient operation of the Third Party Facilities.

**25.10 Failure to Rectify Third Party Facility Conversion Substantial Completion Minor Deficiencies**

- (a) If Project Co has failed to complete and rectify any Third Party Facility Conversion Substantial Completion Minor Deficiency specified in a Third Party Facility Conversion Substantial Completion Minor Deficiencies List in respect of a Third Party Facility:
  - (i) within 75 calendar days of the issuance of the Third Party Facility Conversion Substantial Completion Minor Deficiencies List for all Third Party Facility Conversion Substantial Completion Minor Deficiencies in respect of such Third Party Facility where no time for rectification or completion has been specified by the Independent Certifier, or
  - (ii) within 30 calendar days after the time for completion and rectification of any Third Party Facility Conversion Substantial Completion Minor Deficiency where such a time has been specified in the Third Party Facility Conversion Substantial Completion Minor Deficiencies List by the Independent Certifier,

HMQ or the Lenders' Agent, as the case may be, may exercise their rights set out in Section 18.17(f). For clarity, all Third Party Facility Conversion Substantial Completion Minor Deficiencies for all Third Party Facilities must be completed by no later than the outside date

for the Project Final Completion Date, being April 15, 2016 (as such date may be extended pursuant to Section 37 of the Project Agreement).

## **25.11 Project Final Completion Certificate**

- (a) Project Co shall give the Independent Certifier and the HMQ Representative at least 10 Business Days' notice prior to the date upon which Project Co anticipates all requirements for Project Final Completion shall be satisfied.
- (b) Project Co shall give the Independent Certifier and the HMQ Representative notice (the "**Project Final Completion Notice**") upon the satisfaction of all requirements for Project Final Completion, which Project Final Completion Notice shall describe, in reasonable detail, the satisfaction of the requirements for Project Final Completion, including the completion and rectification of all Third Party Facility Conversion Substantial Completion Minor Deficiencies and the time for completion of all seasonal work, together with Project Co's opinion as to whether the conditions for issuance of the Project Final Completion Certificate have been satisfied.
- (c) HMQ shall, within five Business Days after receipt of the Project Final Completion Notice, provide the Independent Certifier and Project Co with HMQ's opinion as to whether the conditions for issuance of the Project Final Completion Certificate have been satisfied and, if applicable, any reasons as to why it considers that the Project Final Completion Certificate should not be issued.
- (d) Within five Business Days after Project Co's receipt of HMQ's opinion pursuant to Section 25.11(c), the Parties shall cause the Independent Certifier to determine whether the conditions for issuance of the Project Final Completion Certificate have been satisfied, having regard for the opinions of both Project Co and HMQ, and to issue to HMQ and to Project Co either:
  - (i) the Project Final Completion Certificate, setting out in such certificate the Project Final Completion Date; or
  - (ii) a report detailing the matters that the Independent Certifier considers are required to be performed by Project Co to satisfy the conditions for issuance of the Project Final Completion Certificate.
- (e) Where the Independent Certifier has issued a report in accordance with Section 25.11(d)(ii) and Project Co has not referred a Dispute in relation thereto for resolution in accordance with Schedule 27 - Dispute Resolution Procedure, Project Co shall, within five Business Days after receipt of such report, provide the Independent Certifier and the HMQ Representative with:
  - (i) a detailed list indicating the rectification actions proposed for all matters raised in such report;
  - (ii) the schedule for completion of all such rectification actions; and

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- (iii) any additional Project Co Commissioning that needs to be undertaken as a result of the rectification actions,

and Project Co shall perform all such additional rectification actions and Project Co Commissioning in a timely manner. Upon completion thereof, Project Co may give a further Project Final Completion Notice and Sections 25.11 (c) to (e), inclusive, shall be repeated until the Project Final Completion Certificate has been issued.

- (f) Any Dispute in relation to the Independent Certifier's decision to issue or not to issue the Project Final Completion Certificate may be referred for resolution in accordance with Schedule 27 - Dispute Resolution Procedure.
- (g) If, within 30 calendar days after the time specified in the Project Final Completion Notice for completion of seasonal work, Project Co has failed to complete such seasonal work, HMQ may engage others to perform the work necessary to complete the seasonal work, at the risk and cost of Project Co.

#### **25.12 Effect of Certificates/Use**

- (a) The issue of a Third Party Facility Conversion Substantial Completion Certificate and the Project Final Completion Certificate, and any taking over or use by HMQ of any part of the Facilities under the terms of this Project Agreement, shall, in no way:
  - (i) limit the obligations of Project Co under this Project Agreement including in respect of any defects, deficiencies or items of outstanding work existing or discovered prior to or after the date of any of such certificates or the date of the Third Party Facility Conversion Substantial Completion Minor Deficiencies List; or
  - (ii) be construed as an approval by HMQ or any other Government Entity of the Works or the way in which they have been carried out.

#### **25A. Municipal Works Facilities Maintenance Period Work**

- (a) In accordance with Appendix 1 – Permits, Licences Approvals and Agreements of Schedule 1 – Definitions and Interpretation, Project Co shall perform all warranty work during the two year maintenance period under the Subdivision Agreement and, as required, under the Site Plan Agreements in respect of the Municipal Works Facilities (the “**Municipal Works Facilities Maintenance Period Work**”) under the City of Toronto's applicable warranty program until the expiry of the applicable warranty periods.
- (b) On the Project Substantial Completion Date, all guarantees and warranties provided by Subcontractors regarding the Works in respect of Municipal Works Facilities or any part thereof, including the right to make a claim in respect to any Construction Latent Defects in respect to the Municipal Works Facilities, shall be assigned by Project Co to the City of Toronto, and Project Co shall deliver a written assignment of same to the City of Toronto. Such assignment by Project Co shall expressly reserve the right of Project Co and HMQ to make any claims under such guarantees and warranties for the repair or replacement of any

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part of the Works in respect of the Municipal Works Facilities and such assignment shall in no way prejudice any rights of or benefits accruing to Project Co pursuant to such guarantees and warranties.

## **26. PROJECT CO LANDS AND THIRD PARTY LANDS AGREEMENTS**

### **26.1 Project Co Lands Agreements of Purchase and Sale and Development Agreement**

- (a) On Financial Close, Project Co and HMQ shall enter into an agreement of purchase and sale (the “**Project Co Stage 1 Lands Agreement of Purchase and Sale**”) in a form substantially similar to that provided in Part A of Schedule 17 – Project Co Lands Agreements of Purchase and Sale, under which the Project Co Stage 1 Lands shall be conveyed to Project Co on the Project Co Lands Transfer Date subject to HMQ reserving a temporary licence for HMQ, the Province Persons and the Independent Certifier to access and enter on to the Project Co Stage 1 Lands and/or into the Project Co Stage 1 Condominium Facilities at reasonable times for the purpose of making inspections in respect of the achievement of Project Co Stage 1 Conversion Substantial Completion, provided that:
  - (i) such access and entry shall be subject to the rights of tenants, occupants and users of the Project Co Stage 1 Lands and the Project Co Stage 1 Condominium Facilities; and
  - (ii) HMQ shall and shall cause the Province Persons and the Independent Certifier to:
    - (A) provide reasonable prior notice appropriate to the circumstances (other than for any offices or other facilities provided at the Site for HMQ’s and Province Person’s own use);
    - (B) comply with all relevant safety procedures and any reasonable directions with regard to site safety that may be issued by or on behalf of the Project Co Representative from time to time; and
    - (C) if required by Project Co, be accompanied by a representative of Project Co or a Project Co Party.
- (b) On Financial Close, Project Co shall enter into (or shall cause to be entered into) an agreement of purchase and sale (the “**Project Co Stage 2 Lands Agreement of Purchase and Sale**”) with HMQ in a form substantially similar to that provided in Part B of Schedule 17 – Project Co Lands Agreements of Purchase and Sale under which the Project Co Stage 2 Lands will be conveyed to Project Co on the Project Co Lands Transfer Date.
- (c) On Financial Close, Project Co shall enter into (or shall cause to be entered into) a development agreement (the “**Project Co Stage 2 Lands Development Agreement**”) with Waterfront Toronto in a form substantially similar to that provided in Schedule 38 – Project Co Stage 2 Lands Development Agreement.

- (d) Project Co shall identify the Affordable Rental Housing Sites within the Project Co Stage 1 Lands and ensure that such Affordable Rental Housing Sites are available for the delivery of Affordable Rental Housing equivalent in aggregate to [REDACTED]% of all residential units within the Project Co Lands up to a maximum of [REDACTED] units, which Affordable Rental Housing shall be constructed on and in the Project Co Stage 1 Lands. For clarity, the construction of Affordable Rental Housing is a component of the Project Substantial Completion Works.
- (e) Project Co is responsible for delivering Affordable Ownership Housing in respect of [REDACTED]% of all residential units within the Project Co Lands for up to a maximum of [REDACTED] units which are to be delivered on and in the Project Co Stage 1 Lands.
- (f) Project Co shall undertake to diligently Market and Sell the Project Co Stage 1 Condominium Facilities and shall not Market, Sell or Develop any condominium facilities on or in any of the Project Co Stage 2 Lands without the prior written consent of HMQ, which consent may be withheld in its sole discretion, for so long as the Provincial Loan Agreement is in force and any Obligations (as defined in the Provincial Loan Agreement) remain outstanding. Notwithstanding the foregoing, after Project Co Sells [REDACTED]% of the Project Co Stage 1 Condominium Facilities, it may begin Marketing (but, for clarity, not Selling) in respect of condominium facilities to be Developed on and in the Project Co Stage 2 Lands.
- (g) Subject to Section 26.1(f), Project Co shall not Develop the Project Co Stage 2 Lands until after the Project Co Lands Transfer Date.
- (h) Project Co shall not seek rezoning or minor variances for height for the purpose of achieving additional storeys beyond the number of storeys contemplated by the Block Plan for the Project Co Lands. Project Co may proceed with other minor variances subject to the consent of HMQ, not to be unreasonably withheld. Notwithstanding the foregoing, Project Co may seek rezoning or minor variances for the purpose of increasing the height and density of the buildings to be constructed on Block 13, and, in such an event, HMQ and Waterfront Toronto shall not object to any requests by Project Co for such increases for up to a [REDACTED]% increase in density and shall cooperate with Project Co with respect to the filing of any required applications related thereto, provided that all risks and costs related to any of Project Co's desired increases in the height and density of the buildings to be constructed on Block 13 shall be exclusively borne by Project Co.

## **26.2 Determination of Project Co Stage 1 Lands and Third Party Lands**

- (a) The development of the design of the Facilities under Section 18 and Schedule 10 – Review Procedure will identify the locations of the Project Co Stage 1 Condominium Facilities and the Third Party Facilities on the Project Co Stage 1 Lands and the Third Party Lands respectively as well as the identification of the Project Co Stage 1 Lands, the Project Co Stage 1 Facility Lands, the Third Party Lands and the Third Party Facility Lands. Once the Project Co Stage 1 Lands, the Project Co Stage 1 Facility Lands, the Third Party Lands and the Third Party Facility Lands have been identified in accordance with the foregoing process,

Project Co shall cause the preparation of reference plans (the “**Reference Plans**”) of the Project Co Stage 1 Lands, the Project Co Stage 1 Facility Lands (for each applicable Project Co Stage 1 Condominium Facility), the Third Party Lands, and the Third Party Facility Lands (in respect of each Third Party Facility). In addition Project Co shall cause the preparation of legal descriptions based on the Reference Plans for the Project Co Stage 1 Lands, each Project Co Stage 1 Facility Lands parcel, the Third Party Lands and each Third Party Facility Lands parcel (the “**Legal Descriptions**”). The Reference Plans and the Legal Descriptions shall be subject to the provisions of Schedule 10 – Review Procedure. Project Co shall be responsible for ensuring that the Reference Plans and the Legal Descriptions have been approved by the land registrar for registration purposes.

### **26.3 Reciprocal Rights and Easements for Integrated Use**

- (a) Project Co acknowledges that if any of the Project Co Stage 1 Condominium Facilities and the Third Party Facilities form a part of another building or buildings and lands on a basis which requires the provision of reciprocal rights and easements for the integrated use and occupation of the different strata portions of the building or buildings under ownership of Project Co and a Third Party Owner, Project Co and each Third Party Owner will (and HMQ shall cause such Third Party Owner to) negotiate in good faith and enter into a Reciprocal Agreement as more particularly provided under the Project Co Stage 1 Lands Agreement of Purchase and Sale.

### **26.4 Transfer of Third Party Lands and Third Party Facilities**

- (a) Project Co acknowledges that 20 Business Days after a Third Party Facility achieves Third Party Facility Conversion Substantial Completion, such Third Party Facility and the relevant Third Party Facility Lands shall be transferred by HMQ to the applicable Third Party Owner subject to HMQ reserving a temporary licence for:
  - (i) Project Co and the Project Co Parties to access and enter on to the relevant Third Party Facility Lands and/or into such Third Party Facilities to complete and rectify any Third Party Facility Conversion Substantial Completion Minor Deficiencies and to perform any required warranty, maintenance or seasonal work; and
  - (ii) HMQ, the Province Persons and the Independent Certifier to access and enter on to the relevant Third Party Facility Lands and/or into such Third Party Facilities for the purpose of making inspections in respect of Project Co’s completion and rectification of any Third Party Facility Conversion Substantial Completion Minor Deficiencies and Project Co’s performance of any required warranty, maintenance or seasonal work,

provided that:

- (A) any access by such persons shall be subject to the rights of tenants, occupants and users of the relevant Third Party Facility Lands and such Third Party Facilities and be at reasonable times; and

- (B) Project Co shall and shall cause the Project Co Parties and HMQ shall and shall cause the Province Persons and the Independent Certifier to:
  - (I) provide reasonable prior notice appropriate to the circumstances (other than for any offices or other facilities provided at the Third Party Facility Lands for such person's own use);
  - (II) comply with all relevant safety procedures and any reasonable directions with regard to site safety that may be issued by or on behalf of the applicable Third Party Owner from time to time; and
  - (III) if required by the applicable Third Party Owner, be accompanied by a representative of the applicable Third Party Owner.

## **27. SECURITY AND BACKGROUND CHECKS**

### **27.1 Security and Background Check Requirements**

- (a) Project Co shall comply with the requirements of Schedule 7 – Security and Background Check Requirements and Project Co shall cause every Project Co Party that is not an individual and every Designated Project Co Employee to comply with the requirements of Schedule 7 – Security and Background Check Requirements.

## **28. PROVINCIAL LOAN AGREEMENT**

### **28.1 Provincial Loan Agreement**

- (a) Project Co, as one of the Loan Parties, together with the other Loan Parties, and with the Provincial Lender, shall execute and deliver the Provincial Loan Agreement in the form set out in Schedule 8 – Provincial Loan Agreement at Financial Close.

## **29. PROJECT CO SERVICE OBLIGATIONS**

### **29.1 Overall Responsibility**

- (a) On Financial Close, Project Co and HMQ shall enter into the Project Co Services Agreement in the form set out in Schedule 36 – Project Co Services Agreement.
- (b) Project Co's obligations for the performance of the Project Co Services arise solely under the Project Co Services Agreement and, for clarity, Project Co's only obligation under this Project Agreement with respect to the Project Co Services is to enter into the Project Co Services Agreement in accordance with Section 29.1(a).

### **29.2 Operational Term**

- (a) For clarity, Project Co shall provide the Project Co Services during the Operational Term at its own cost and expense and shall not be entitled to any fee or payment for the performance of such Project Co Services.

### **30. HMQ'S REMEDIAL RIGHTS**

#### **30.1 Exercise of Remedial Rights**

- (a) HMQ may exercise all rights set out in this Section 30 at any time and from time to time if:
- (i) HMQ, acting reasonably, considers that a breach by Project Co of any obligation under this Project Agreement, or any act or omission on the part of Project Co or any Project Co Party:
- (A) does or can reasonably be expected to create a serious threat to the health, safety or security of any user of any part of or the whole of the Facilities, including Province Persons, staff and Visitors to the Facilities and members of the public; or
- (B) may potentially compromise the reputation or integrity of HMQ or any other Government Entity,

provided that:

- (C) in respect of a breach by Project Co of any obligation under this Project Agreement, or any act or omission on the part of Project Co or any Project Co Party, which can reasonably be expected to cause any of the consequences set out in Section 30.1(a)(i)(A) HMQ shall not exercise its rights under this Section 30 unless Project Co has failed to cure the relevant breach, act or omission within five Business Days of notice from HMQ or, if such breach, act or omission cannot reasonably be cured within such five Business Day period, Project Co thereafter fails to diligently and continuously pursue such cure and to cure such breach, act or omission within a reasonable period thereafter, provided that Project Co shall not be entitled to a cure period if any of the consequences set out in Section 30.1(a)(i)(A) actually occur; and
- (D) in respect of Section 30.1(a)(i)(B), HMQ shall not exercise its rights under this Section 30 unless Project Co has failed to cure the relevant breach, act or omission within five Business Days of notice from HMQ or, if such breach, act or omission cannot reasonably be cured within such five Business Day period, Project Co thereafter fails to diligently and continuously pursue such cure and to cure such breach, act or omission within a reasonable period thereafter;

#### **30.2 Emergency**

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- (a) Notwithstanding that Project Co is not in breach of its obligations under this Project Agreement, HMQ may exercise all of the rights set out in this Section 30 at any time and from time to time following Project Substantial Completion if HMQ, acting reasonably, considers the circumstances to constitute an Emergency.

### **30.3 Rectification**

- (a) Without prejudice to HMQ's rights under Section 42 and any other rights under this Project Agreement, in any of the circumstances set out in Sections 30.1 or 30.2, HMQ may, by written notice, require Project Co to take such steps as HMQ, acting reasonably, considers necessary or expedient to mitigate, rectify or protect against such circumstance, including, if applicable, the termination and replacement of each Subcontractor, and Project Co shall use commercially reasonable efforts to comply with HMQ's requirements as soon as reasonably practicable.
- (b) If HMQ gives notice to Project Co pursuant to Section 30.3(a) and either:
  - (i) Project Co does not either confirm, within five Business Days of such notice or such shorter period as is appropriate in the case of an Emergency that it is willing to take the steps required in such notice or present an alternative plan to HMQ to mitigate, rectify and protect against such circumstances that HMQ may accept or reject acting reasonably; or
  - (ii) Project Co fails to take the steps required in such notice or accepted alternative plan within such time as set out in such notice or accepted alternative plan or within such longer time as HMQ, acting reasonably, shall think fit,

then HMQ may take such steps as it considers to be appropriate, acting reasonably, including, if applicable, requiring the termination and replacement of each Subcontractor, either itself or by engaging others (including a third party) to take any such steps, and may perform or obtain the performance of the relevant Project Operations to the standards required by this Project Agreement.

- (c) Notwithstanding the foregoing provisions of this Section 30.3, in the event of an Emergency, the notice under Section 30.3(a) shall be given as promptly as possible having regard to the nature of the Emergency and HMQ may, prior to Project Co's confirmation under Section 30.3(b)(i), take such steps as are appropriate having regard to the nature of the Emergency.

### **30.4 Costs and Expenses**

- (a) Subject to HMQ's obligations pursuant to Sections 30.5 and 30.6:
  - (i) Project Co shall bear all costs and expenses incurred by Project Co in relation to the exercise of HMQ's rights pursuant to this Section 30; and
  - (ii) Project Co shall reimburse HMQ for all reasonable costs and expenses incurred by HMQ in relation to the exercise of HMQ's rights pursuant to this Section 30.

### **30.5 Reimbursement Events**

- (a) In this Section 30.5, a “**Reimbursement Event**” means:
- (i) an act or omission of Project Co or any Project Co Party or a breach of any obligation under this Project Agreement, but only to the extent such act, omission or breach is caused by HMQ or a Province Person;
  - (ii) a labour dispute involving employees of HMQ or any Province Person that materially affects or can reasonably be expected to materially affect the Project Operations; or
  - (iii) an Emergency.
- (b) If HMQ either takes steps itself or requires Project Co to take steps in accordance with this Section 30 as a result of a Reimbursement Event:
- (i) HMQ shall reimburse Project Co for the reasonable costs and expenses incurred by Project Co in relation to the exercise of HMQ’s rights pursuant to this Section 30 that would not otherwise have been incurred by Project Co in the proper performance of its obligations under this Project Agreement; and
  - (ii) HMQ shall bear all costs and expenses incurred by HMQ in relation to the exercise of HMQ’s rights pursuant to this Section 30.

### **30.6 Reimbursement if Improper Exercise of Rights**

- (a) If HMQ exercises its rights pursuant to this Section 30, but HMQ was not entitled to do so, HMQ shall reimburse Project Co for the reasonable costs and expenses directly incurred by Project Co over and above those that would otherwise have been incurred by Project Co in the proper performance of its obligations under this Project Agreement and that are directly and reasonably incurred by Project Co in complying with those written requirements of HMQ issued as a result of HMQ having exercised such rights.
- (b) Project Co acknowledges and agrees that Project Co has no right to require a determination of whether or not HMQ is entitled to exercise its rights pursuant to this Section 30 before taking any such action that HMQ may require and Project Co shall comply with all of HMQ’s requirements. Only concurrently with or after complying with HMQ’s requirements shall Project Co be entitled to refer any Dispute for resolution in accordance with Schedule 27 - Dispute Resolution Procedure.

## **31. PAYMENT**

### **31.1 Guaranteed Third Party Price and Adjustments**

- (a) Project Co represents and warrants that the Guaranteed Third Party Price for each of the Third Party Facilities (each of which, for clarity, is exclusive of HST) is as follows:

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- (i) \$[REDACTED] in respect of the YMCA Facility;
- (ii) \$[REDACTED] in respect of the George Brown Facility;
- (iii) \$[REDACTED] in respect of Affordable Housing Facility 1; and
- (iv) \$[REDACTED] in respect of Affordable Housing Facility 2,

and in each case is equal to the Cost of the Work in respect of the relevant Third Party Facility. The Cost of the Work for each of the Third Party Facilities is set out in the Financial Model. The sum of the Guaranteed Third Party Prices in respect of all of the Third Party Facilities is \$[REDACTED] (the “**Total Guaranteed Third Party Price**”).

- (b) The Parties agree that each Guaranteed Third Party Price will only be subject to adjustment as a result of a Variation in accordance with Schedule 22 – Variation Procedure or as a result of a Compensation Event.

### **31.2 Interim Completion Payment and Project Substantial Completion Payment**

- (a) Subject to and in accordance with this Project Agreement, HMQ shall pay Project Co the Interim Completion Payment (which, for clarity, excludes HST and includes an amount in respect of each Guaranteed Third Party Price for each of the Third Party Facilities) in accordance with Schedule 20 – Payments and Holdbacks.
- (b) Subject to and in accordance with this Project Agreement, HMQ shall pay Project Co the Project Substantial Completion Payment (which, for clarity, excludes HST and includes an amount in respect of each Guaranteed Third Party Price for each of the Third Party Facilities) in accordance with Schedule 20 – Payments and Holdbacks.

### **31.3 Tarion Payment**

- (a) Within 20 Business Days of the later of the Project Substantial Completion Payment Date and the date on which Project Co has provided satisfactory evidence to HMQ that Project Co has satisfied the Tarion Registration and Enrolment Obligations, HMQ shall pay to Project Co the Tarion Payment.

## **32. TAXES**

### **32.1 Taxes**

- (a) Project Co shall pay all Taxes in effect during the performance of the Works. The amount incurred (excluding HST) has been included in the Cost of the Work.
- (b) The Interim Completion Payment and the Project Substantial Completion Payment shall exclude HST.

- (c) For clarity, HMQ shall be responsible for paying, when due and payable, (i) HST to Project Co pursuant to and in accordance with Section 1.9 of Schedule 20 – Payments and Holdbacks; and (ii) all property taxes or payments in lieu of property taxes applicable to the Site and the Facilities until the completion of the transfer of the Project Co Lands to Project Co by HMQ.

### **32.2 Changes in Scope of HST**

- (a) If, as a result of a Change in Law, the provision of any goods or services by Project Co in connection with the performance of the Project Operations that was not subject to HST as at the date of this Project Agreement becomes subject to HST, HMQ will pay to Project Co the amount of such HST as may be exigible from time to time thereafter in connection with the provision of such goods or services by Project Co.

### **32.3 Changes in Rates**

- (a) Any increase or decrease in costs to Project Co due to changes in such included Taxes after the Submission Deadline shall increase or decrease the Cost of the Work accordingly, except for changes announced before the Submissions Deadline and to take effect at some time thereafter, which shall, except as expressly set forth in Section 32.1, be deemed to have been taken into account in the Cost of the Work.

### **32.4 Mark Up**

- (a) Project Co is not entitled to any mark-up for profit, overhead or otherwise, due to an increase in any Taxes included in the Cost of the Work. Project Co shall be entitled to claim for the increase in cost equal to the amount of such included Tax on the uncompleted Cost of the Work. HMQ will be entitled to withhold payment to Project Co of a sum equal to the amount of any reduction in such included Tax on the uncompleted portion of the Works, only if HMQ has not already benefited from said reduction in such included Tax by a decrease in the Cost of the Work in accordance with Section 32.2.

### **32.5 Exemptions**

- (a) When an exemption or recovery of Taxes included in the Cost of the Work is applicable to this Project Agreement, Project Co shall, at the request of HMQ, assist, join in, or make application for an exemption, recovery or refund of all such included Taxes and all amounts recovered or exemptions obtained shall be for the sole benefit of HMQ. Project Co agrees to endorse over to HMQ any cheques received from the federal or provincial governments as may be required to implement the foregoing, failing which, HMQ is hereby authorized to deduct the amount from any payment that is then or may thereafter become due to Project Co hereunder.

### **32.6 Records**

- (a) Project Co shall maintain and make available to the Independent Certifier accurate records, tabulating equipment and component costs showing Taxes.

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### **32.7 Land Transfer Taxes**

- (a) Subject to the other terms and conditions of this Project Agreement and the Project Co Lands Agreements of Purchase and Sale, on the Project Co Lands Transfer Date, HMQ shall pay to Project Co an amount on account of the land transfer taxes payable in respect of the transfer of the Project Co Lands from HMQ to Project Co (the “**Land Transfer Taxes Amount**”). If a Governmental Authority determines that the amount on account of such land transfer taxes payable by Project Co is greater than the Land Transfer Taxes Amount, then HMQ shall pay to Project Co the difference between such greater amount and the Land Transfer Taxes Amount, together with any penalties and interest thereon.
- (b) HMQ reserves the right (but has no obligation) to, at its sole cost and expense, appeal any Land Transfer Tax Amount determined by the City of Toronto. HMQ shall have sole and exclusive control of any such appeal and, if the appeal is successful, HMQ shall be exclusively entitled to receive any amounts refunded by the City of Toronto on account of any paid Land Transfer Tax Amount.
- (c) For clarity, this Section 32.7 shall survive the termination of this Project Agreement.

## **33. FINANCIAL MODEL**

### **33.1 Intentionally Deleted.**

### **33.2 Delivery and Use of Financial Model**

- (a) In accordance with Schedule 2 - Completion Documents, Project Co shall deliver copies of the Financial Model (1 printed copy and 2 copies on CD-Rom) to HMQ.
- (b) HMQ shall, in its sole discretion, approve any amendments to the Financial Model by Project Co and, following such approval, Project Co shall promptly deliver copies of the revised Financial Model, in the same form as the original Financial Model (or such other form as may be agreed by the Parties from time to time), to HMQ.
- (c) Project Co hereby grants to HMQ an irrevocable, royalty free perpetual, non-exclusive and transferable licence, including the right to grant sub-licences, to use the Financial Model or any revised Financial Model for any purpose in connection with this Project Agreement, whether during or after the Project Term.
- (d) For greater certainty, Project Co acknowledges and agrees that HMQ shall not be liable to Project Co for, and Project Co shall not seek to recover from HMQ, any HMQ Party or any Government Entity, any damages, losses, costs, liabilities or expenses which may arise (whether in contract, tort or otherwise) as a result of any errors in the Financial Model.

## **34. RECORDS, INFORMATION AND AUDIT**

### **34.1 Records Provisions**

- (a) Project Co shall comply with Schedule 26 - Record Provisions.

### **34.2 Information and General Audit Rights**

- (a) Project Co shall provide and shall cause the Subcontractors to provide, to HMQ all information, reports, documents, records and the like, including as referred to in Schedule 26 - Record Provisions, in the possession of, or available to, Project Co as HMQ may reasonably require from time to time for any purpose in connection with this Project Agreement, other than Sensitive Information. Project Co shall use commercially reasonable efforts to ensure that, for such purpose, all such information, reports, documents, records and the like in the possession of, or available to, the Construction Contractor shall be available to Project Co and Project Co shall include relevant terms in all Subcontracts to this effect.
- (b) Project Co shall also provide to HMQ, and shall require each Subcontractor, including the Construction Contractor to provide, to HMQ (at HMQ's reasonable cost), all information, reports, documents, records and the like required to be provided pursuant to Section 34.2(a) which subsequently come into the possession of, or become available to, Project Co or each Subcontractor, as HMQ may reasonably require from time to time to enable HMQ to provide reports, notices, returns and the like pursuant to Applicable Law, including information and documentation pertaining to the physical condition of the Facilities, security, health and safety, fire safety, emergency preparedness, environmental matters, employees and human resources related matters, other than Sensitive Information.
- (c) Project Co shall promptly after receipt provide HMQ with a copy of any material notice, order, direction, requirement or other similar communication received by it or by any Subcontractor from any Governmental Authority in relation to any of the Project Operations or the Facilities, and Project Co shall include relevant terms in all Subcontracts to this effect.
- (d) Project Co shall promptly notify HMQ of any actions, suits, proceedings, or investigations commenced, pending or threatened against Project Co or, to Project Co's knowledge, any Subcontractor at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets or the condition, financial or otherwise, of Project Co or in any impairment of its ability to perform its obligations under this Project Agreement.
- (e) All information, reports, documents and records in the possession of, or available to, Project Co, including as referred to in Schedule 26 - Record Provisions, which are required to be provided to or available to HMQ hereunder, shall be subject and open to inspection and audit by HMQ at any time and from time to time, which inspection and audit shall take place during normal business hours and at Project Co's normal places of business unless HMQ and Project Co otherwise agree. HMQ shall also have the right to monitor and audit the

performance of any and all parts of the Works wherever located, and Project Co shall cooperate with, and shall require each Subcontractor to cooperate with, and provide access to the representatives of HMQ monitoring and auditing such parts of the Works, including providing them with access and copies (at HMQ's reasonable cost) of all relevant information, reports, documents and records pertaining to the performance of such parts of the Works. Except as otherwise provided herein, all of HMQ's costs for the inspections, audits and monitoring shall be borne by HMQ.

- (f) In conducting an audit of Project Co under Section 34.2(e) or as otherwise provided under this Project Agreement, HMQ shall have all rights necessary or incidental to conducting an audit, including the right to have access to and inspect and take copies (at HMQ's reasonable cost) of all books and records of Project Co required to be provided to or available to HMQ hereunder, upon reasonable notice and at reasonable times. Project Co shall fully cooperate with HMQ and its auditors in the conduct of any audits, including by making available all such records and accounts (other than Sensitive Information) in existence at that time as they may require to perform a full and detailed audit, and Project Co further agrees to promptly review and settle with HMQ all matters arising from such audits, including the refunding of monies to HMQ where applicable. At the reasonable request of HMQ's auditors, Project Co shall provide such information, reports, documents and records as HMQ's auditors may reasonably require, other than Sensitive Information.
- (g) HMQ's rights pursuant to this Section 34.2 shall be in addition to, and shall not limit, any other audit, information, inspection or similar rights under this Project Agreement.
- (h) HMQ's rights pursuant to this Section 34.2 shall not limit or restrict any Governmental Authority's right of review, audit, information or inspection under Applicable Law.

### **34.3 Intentionally Deleted.**

## **35. CHANGES IN LAW**

### **35.1 Performance after Change in Law**

- (a) Following any and all Changes in Law, Project Co shall perform the Project Operations in accordance with the terms of this Project Agreement, including in compliance with Applicable Law.

### **35.2 Works Change in Law**

- (a) On the occurrence of a Works Change in Law:
  - (i) either Party may give notice to the other of the need for a Variation as a result of such Works Change in Law;
  - (ii) the Parties shall meet within 10 Business Days of such notice to consult with respect to the effect of the Works Change in Law and to reach an agreement on whether a

Variation is required as a result of such Works Change in Law, and, if the Parties have not, within 10 Business Days of this meeting, reached an agreement, either Party may refer the question of whether a Works Change in Law has occurred or the effect of any Works Change in Law for resolution in accordance with Schedule 27 - Dispute Resolution Procedure; and

- (iii) HMQ shall, within 10 Business Days of agreement or determination that a Variation is required, issue a Variation Enquiry and the relevant provisions of Schedule 22 - Variation Procedure shall apply except that:
  - (A) Project Co may only object to any such Variation Enquiry on the grounds that the implementation of the Variation would not enable it to comply with the Works Change in Law;
  - (B) Project Co shall be responsible for obtaining all Development Approvals and Project Co Permits, Licences, Approvals and Agreements required in respect of the Variation;
  - (C) HMQ shall not be entitled to withdraw any such Variation Enquiry unless the Parties otherwise agree;
  - (D) Project Co shall proceed to implement the Variation within such period as will enable it to comply with the Works Change in Law as soon as reasonably practicable;
  - (E) Project Co shall not be entitled to any payment or other compensation or relief from performance of its obligations under this Project Agreement in respect of any Works Change in Law or associated Variation other than as established pursuant to Schedule 22 - Variation Procedure; and
  - (F) HMQ shall be responsible for obtaining all HMQ Permits, Licences, Approvals and Agreements required in respect of the Variation.

### **35.3 Relevant Change in Law**

- (a) On the occurrence of a Relevant Change in Law, either Party shall be entitled to seek compensation for any increase or decrease (as the case may be) in the net cost to Project Co of performing the Project Operations so as to put such Party in no better and no worse position than it would have been in had the Relevant Change in Law not occurred. Any such compensation shall be calculated in accordance with this Section 35.3.
- (b) On the occurrence of a Relevant Change in Law:
  - (i) either Party may give notice to the other of the need for a Variation as a result of such Relevant Change in Law;



- (ii) the Parties shall meet within 10 Business Days of such notice to consult with respect to the effect of the Relevant Change in Law and to reach an agreement on whether a Variation is required as a result of such Relevant Change in Law, and, if the Parties have not, within 10 Business Days of this meeting, reached an agreement, either Party may refer the question of whether a Relevant Change in Law has occurred or the effect of any Relevant Change in Law for resolution in accordance with Schedule 27 - Dispute Resolution Procedure; and
- (iii) HMQ shall, within 10 Business Days of agreement or determination that a Variation is required, issue a Variation Enquiry and the relevant provisions of Schedule 22 - Variation Procedure shall apply except that:
  - (A) Project Co may only object to any such Variation Enquiry on the grounds that the implementation of the Variation would not enable it to comply with the Relevant Change in Law;
  - (B) Project Co shall be responsible for obtaining all Development Approvals and Project Co Permits, Licences, Approvals and Agreements required in respect of the Variation;
  - (C) HMQ shall not be entitled to withdraw any such Variation Enquiry unless the Parties otherwise agree;
  - (D) Project Co shall proceed to implement the Variation within such period as will enable it to comply with the Relevant Change in Law as soon as reasonably practicable;
  - (E) the Parties shall, without prejudice to their respective general obligations to comply with the terms of this Project Agreement:
    - (I) use commercially reasonable efforts to mitigate the adverse effects of any Relevant Change in Law and take commercially reasonable steps to minimize any increase in costs arising from such Relevant Change in Law; and
    - (II) use commercially reasonable efforts to take advantage of any positive or beneficial effects of any Relevant Change of Law and take commercially reasonable steps to maximize any reduction in costs arising from such Relevant Change in Law; and
  - (F) any entitlement to compensation payable shall be in accordance with this Section 35.3, and any calculation of compensation shall take into consideration, inter alia:
    - (I) any failure by a Party to comply with Section 35.3(b)(iii)(E);

- (II) any increase or decrease in its costs resulting from such Relevant Change in Law; and
  - (III) any amount which Project Co recovers under any insurance policy (or would recover if it complied with its obligations to insure under this Project Agreement or the terms of any policy of insurance required under this Project Agreement) which amount, for greater certainty, shall not include the amount of any excess or deductibles or any amount above the maximum insured amount applicable to any such insurance policy.
- (c) Project Co shall not be entitled to any payment or compensation or, except as provided in Section 37 or otherwise in this Project Agreement, relief in respect of any Relevant Change in Law, or the consequences thereof, other than in accordance with this Section 35.3, and Section 38 shall be construed accordingly.
- (d) In relation to a Relevant Change in Law that results in a net increase or decrease in costs incurred by Project Co in delivery of the Project Operations, taking into consideration, inter alia, Section 35.3(b)(iii)(E), if the cost impact of such Relevant Change in Law in a given Contract Year (in aggregate with all other such Relevant Changes in Law that have a cost impact in the same Contract Year) amounts to less than \$[REDACTED] (index linked) in that Contract Year, neither HMQ nor Project Co shall be entitled to any payment or compensation pursuant to this Section 35.3 or otherwise in respect of the cost impact of that Relevant Change in Law in that Contract Year, or, except as provided in Section 37 or otherwise in this Project Agreement, any other relief in respect of such Relevant Change in Law in that Contract Year.

## **36. VARIATIONS**

### **36.1 Variation Procedure**

- (a) Except as otherwise expressly provided in this Project Agreement, Schedule 22 - Variation Procedure shall apply in respect of Variations.
- (b) For greater certainty, Project Co shall, subject to and in accordance with Schedule 22 - Variation Procedure, be entitled to a Variation if a written direction issued by or on behalf of HMQ to Project Co or any Project Co Party results in a variation, addition, reduction, substitution, omission, modification, deletion, removal or other change to the whole or any part of the Project Operations, including in relation to the whole or any part of the Works.
- (c) Without limiting Project Co's obligations pursuant to Section 9.3 and Schedule 22 - Variation Procedure, Project Co shall include in each Subcontract, or shall otherwise cause each Project Co Party to comply with, the Variation Procedure, to the extent that the Variation Procedure requires Project Co to minimize the cost and impact of Variations.

### **37. DELAY EVENTS**

#### **37.1 Definition**

- (a) For the purposes of this Project Agreement, “**Delay Event**” means any of the following events or circumstances only to the extent, in each case, that it causes a delay in achieving (A) any Works Milestone by the applicable date for completion of such Works Milestone set out in the Works Schedule; (B) the certification of the Toronto 2015 LD Underlay Facilities as meeting all of the requirements of Project Substantial Completion by the Independent Certifier in accordance with the Project Substantial Completion Commissioning Program by the Toronto 2015 Turnover Date (LD Underlay Facilities); (C) Project Substantial Completion by the Toronto 2015 Turnover Date (Remaining Facilities); (D) Interim Completion by the Scheduled Interim Completion Date; (E) Project Substantial Completion by the Scheduled Project Substantial Completion Date; (F) Project Co Stage 1 Conversion Substantial Completion by the Scheduled Project Co Stage 1 Conversion Substantial Completion Date; (G) Third Party Facility Conversion Substantial Completion in respect of a Third Party Facility by the applicable Scheduled Third Party Facility Conversion Substantial Completion Date; or (H) Project Final Completion by the Scheduled Project Final Completion Date:
- (i) the implementation of a Variation to the extent Project Co has identified such delay in its Estimate and such delay has been documented in the Variation Confirmation;
  - (ii) any breach by HMQ of any of HMQ’s obligations under this Project Agreement (including any delay by HMQ in giving access to the Site pursuant to Section 14.1, any obstruction of the rights afforded to Project Co under Section 14.1, any delay by HMQ in carrying out its obligations set forth in Schedule 10 - Review Procedure or any delay by HMQ in obtaining any HMQ Permits, Licences, Approvals and Agreements by the dates set out in Appendix 1 – Permits, Licences Approvals and Agreements of Schedule 1 – Definitions and Interpretation), except to the extent that any such breach is caused, or contributed to, by Project Co or any Project Co Party;
  - (iii) an opening up of the Works pursuant to Section 19.4 where such Works are not subsequently found to be defective or not in compliance with the requirements of this Project Agreement (including the Output Specifications, the Project Co Proposal Extracts and the Design Data), unless such opening up of the Works was reasonable in the light of other defects or non-compliance previously discovered by HMQ in respect of the same or a similar component of the Works or subset of the Works;
  - (iv) a requirement pursuant to Sections 16.2(b) or 16.2(c) for Project Co to perform any alteration, addition, demolition, extension or variation in the Works, or to suspend or delay performance of the Works, upon the discovery of Contamination, which alteration, addition, demolition, extension or variation in the Works, or suspension or delay in the performance of the Works, would not otherwise be required under this Project Agreement;

- (v) a requirement pursuant to Sections 16.3(b) or 16.3(c) for Project Co to perform any alteration, addition, demolition, extension or variation in the Works, or to suspend or delay performance of the Works, upon the discovery of any fossils, artefacts and other objects having artistic, historic, archaeological or monetary value, including human remains and burial sites, which alteration, addition, demolition, extension or variation in the Works, or suspension or delay in the performance of the Works, would not otherwise be required under this Project Agreement;
- (vi) subject to the provisions of Section 9.6, the execution of Additional Works on the Site by Additional Contractors;
- (vii) a requirement pursuant to Section 13.1 of Schedule 27 - Dispute Resolution Procedure for Project Co to proceed in accordance with the direction of HMQ during the pendency of a Dispute, which Dispute is subsequently determined in Project Co's favour;
- (viii) an event of Force Majeure;
- (ix) a Relief Event;
- (x) a Relevant Change in Law; or
- (xi) in accordance with Section 14.7A(b), a failure by Toronto 2015 to turn back the applicable portions of the Site (including, for clarity, the relevant Facilities on such portions of the Site) to HMQ on the applicable Pan/Parapan Am Games Site Turnback Dates.

### **37.2 Consequences of a Delay Event**

- (a) Project Co shall provide written notice to the HMQ Representative and the Independent Certifier within five Business Days of becoming aware of the occurrence of Delay Event. Project Co shall, within 10 Business Days after such notification, provide further written details to the HMQ Representative and the Independent Certifier which shall include:
  - (i) a statement of which Delay Event the claim is based upon;
  - (ii) details of the circumstances from which the Delay Event arises;
  - (iii) details of the contemporary records which Project Co shall maintain to substantiate its claim for extra time;
  - (iv) details of the consequences (whether direct or indirect, financial or non-financial) which such Delay Event may have upon (A) the date for the completion of any applicable Works Milestone, (B) the Toronto 2015 Turnover Date (LD Underlay Facilities), (C) the Toronto 2015 Turnover Date (Remaining Facilities), (D) the Scheduled Interim Completion Date, (E) the Scheduled Project Substantial Completion Date, (F) the Scheduled Project Co Stage 1 Conversion Substantial

Completion Date, (G) the Scheduled Third Party Facility Conversion Substantial Completion Date or (H) the Scheduled Project Final Completion Date, as applicable; and

- (v) details of any measures which Project Co proposes to adopt to mitigate the consequences of such Delay Event.
- (b) As soon as possible but in any event within three Business Days of Project Co receiving, or becoming aware of, any supplemental information which may further substantiate or support Project Co's claim, Project Co shall submit further particulars based on such information to the HMQ Representative and the Independent Certifier.
- (c) The HMQ Representative shall, after receipt of written details under Section 37.2(a), or of further particulars under Section 37.2(b), be entitled by written notice to require Project Co to provide such further supporting particulars as the HMQ Representative may reasonably consider necessary. Project Co shall afford the HMQ Representative and the Independent Certifier reasonable facilities for investigating the validity of Project Co's claim, including, without limitation, on-site inspection.
- (d) Subject to the provisions of this Section 37, the HMQ Representative shall allow Project Co an extension of time equal to the delay caused by the Delay Event and shall fix a revised (A) date for the completion of any applicable Works Milestone, (B) Toronto 2015 Turnover Date (LD Underlay Facilities), (C) Toronto 2015 Turnover Date (Remaining Facilities), (D) Scheduled Interim Completion Date; (E) Scheduled Project Substantial Completion Date, (F) Scheduled Project Co Stage 1 Conversion Substantial Completion Date, (G) Scheduled Third Party Facility Conversion Substantial Completion Date or (H) Scheduled Project Final Completion Date, as applicable, as soon as reasonably practicable and in any event within 10 Business Days of the later of:
  - (i) the date of receipt by the HMQ Representative of Project Co's notice given in accordance with Section 37.2(a) and the date of receipt of any further particulars (if such are required under Section 37.2(c)), whichever is later; and
  - (ii) the date of receipt by the HMQ Representative of any supplemental information supplied by Project Co in accordance with Section 37.2(b) and the date of receipt of any further particulars (if such are required under Section 37.2(c)), whichever is later.
- (e) **Intentionally Deleted**
- (f) If:
  - (i) the HMQ Representative declines to fix a revised (A) date for the completion of any applicable Works Milestone, (B) Toronto 2015 Turnover Date (LD Underlay Facilities), (C) Toronto 2015 Turnover Date (Remaining Facilities), (D) Scheduled Interim Completion Date, (E) Scheduled Project Substantial Completion Date, (F)

Scheduled Project Co Stage 1 Conversion Substantial Completion Date, (G) Scheduled Third Party Facility Conversion Substantial Completion Date or (H) Scheduled Project Final Completion Date, as applicable;

- (ii) Project Co considers that a different (A) date for the completion of any applicable Works Milestone, (B) Toronto 2015 Turnover Date (LD Underlay Facilities), (C) Toronto 2015 Turnover Date (Remaining Facilities), (D) Scheduled Interim Completion Date, (E) Scheduled Project Substantial Completion Date, (F) Scheduled Project Co Stage 1 Conversion Substantial Completion Date, (G) Scheduled Third Party Facility Conversion Substantial Completion Date or (H) Scheduled Project Final Completion Date, as applicable, should be fixed; or
- (iii) there is a dispute as to whether a Delay Event has occurred,

then Project Co shall be entitled to refer the matter for determination by the Independent Certifier. The decision of the Independent Certifier may be disputed by either Party and referred for resolution in accordance with Schedule 27 - Dispute Resolution Procedure.

### **37.3 Mitigation**

- (a) If Project Co is (or claims to be) affected by a Delay Event, Project Co shall, and shall require all Project Co Parties to, take and continue to take commercially reasonable steps:
  - (i) to eliminate or mitigate the consequences of such event upon the performance of its obligations under this Project Agreement;
  - (ii) to continue to perform its obligations under this Project Agreement to the extent possible notwithstanding the Delay Event; and
  - (iii) to resume performance of its obligations under this Project Agreement affected by the Delay Event as soon as practicable.
- (b) If Project Co is (or claims to be) affected by a Delay Event, HMQ may require Project Co to accelerate the performance of the Works at the cost of HMQ by issuing a Variation Directive.
- (c) Without prejudice to Project Co's rights in respect of a Delay Event, in the event that there is a potential Delay Event or a Delay Event (which, for clarity, may affect or does affect the Scheduled Project Substantial Completion Date), HMQ shall provide Project Co with written notice (a "**Delay Event Acceleration Notice**") to accelerate the Works in order to minimize the impact, or avoid the occurrence, of such potential or actual Delay Event if, in the sole discretion of the Independent Certifier, such Delay Event is capable of being remedied by acceleration of the Works. No later than five Business Days after the receipt of a Delay Event Acceleration Notice, Project Co shall produce and deliver to each of the HMQ Representative and the Independent Certifier a plan (a "**Delay Event Acceleration Plan**")

- (i) setting out the steps that are to be taken by Project Co using its best efforts to minimize the impact, or avoid the occurrence, of the potential or actual Delay Event and/or to achieve any relevant Works Milestone; and
- (ii) confirming that, if such Delay Event Acceleration Plan is implemented, Project Co can achieve Project Substantial Completion by the Scheduled Project Substantial Completion Date in spite of the potential or actual Delay Event; and

if the Independent Certifier and the HMQ Representative are satisfied, in their sole discretion, with the Delay Event Acceleration Plan, then such Delay Event Acceleration Plan shall be implemented by a Variation, subject to and in accordance with Schedule 22 – Variation Procedure, at the sole cost of expense of HMQ.

- (d) To the extent that Project Co does not comply with its obligations under this Section 37.3, such failure shall be taken into account in determining Project Co's entitlement to an extension of time pursuant to this Section 37.

#### **37.4 Impact of Delay Events on the Longstop Date**

- (a) Notwithstanding any other provision in this Project Agreement but not limiting any obligations of the Parties under this Section 37, if solely as a result of a Delay Event or Delay Events:
  - (i) Project Co fails to achieve Project Substantial Completion on or before the Longstop Date; or
  - (ii) Project Co
    - (A) delivers a rectification plan under Section 20.4(a)(iii)(B) which indicates that Project Co will not achieve Project Substantial Completion by the Longstop Date; or
    - (B) delivers a rectification plan under Section 20.4(a)(iii)(B) that is not acceptable to the Independent Certifier, acting reasonably, as to the matters set out in Section 20.4(a)(iii)(B)(III);

then none of the events described in Section 37.4(a)(i) and Section 37.4(a)(ii) shall constitute a Project Co Event of Default and HMQ shall issue a Variation, subject to and in accordance with Schedule 22 – Variation Procedure, in respect of the modifications to the Project Operations which are required as a result of such Delay Event or Delay Events and which Variation shall be at the sole cost and expense of HMQ.

## **38. COMPENSATION EVENTS**

### **38.1 Definition**

- (a) For the purposes of this Project Agreement, “**Compensation Event**” means any event referred to in Sections 37.1(a)(ii), 37.1(a)(iii), 37.1(a)(iv), 37.1(a)(v), 37.1(a)(vi), 37.1(a)(vii) and 37.1(a)(xi) as a direct result of which Project Co has incurred loss or expense, whether or not any of these events has also caused a delay.

### **38.2 Consequences of a Compensation Event**

- (a) If a Compensation Event occurs, Project Co’s sole right to compensation shall be as set out in this Section 38. For greater certainty, except as aforesaid, no other Delay Event shall entitle Project Co to receive any compensation, except as otherwise provided in:
- (i) Schedule 22 - Variation Procedure, in the case of a Delay Event referred to in Section 37.1(a)(i), including, for greater clarity, compensation provided to Project Co as a result of the implementation of a Delay Event Acceleration Plan pursuant to Section 37.3(c);
  - (ii) Section 41, in the case of a Delay Event referred to in Section 37.1(a)(viii);
  - (iii) Section 40, in the case of a Delay Event referred to in Section 37.1(a)(ix); and
  - (iv) Section 35, in the case of a Delay Event referred to in Section 37.1(a)(x).
- (b) Subject to Sections 38.3 and 38.4, if it is agreed, or determined in accordance with Schedule 27 - Dispute Resolution Procedure, that there has been a Compensation Event, Project Co shall be entitled to such compensation as would place Project Co in no better and no worse position than it would have been in had the relevant Compensation Event not occurred. For greater certainty, in respect of a Compensation Event that is also a Delay Event, such compensation will include amounts which, but for the Delay Event, would have been paid by HMQ to Project Co. Project Co shall promptly provide the HMQ Representative with any information the HMQ Representative may require in order to determine the amount of such compensation.
- (c) If HMQ is required to compensate Project Co pursuant to this Section 38.2, then HMQ may either pay such compensation as a lump sum payment or payments at times and in a manner to be agreed with Project Co, acting reasonably.

### **38.3 Mitigation**

- (a) If Project Co is (or claims to be) affected by a Compensation Event, Project Co shall, and shall require all Project Co Parties to, take and continue to take commercially reasonable steps to minimize the amount of compensation due in accordance with this Section 38 in relation to any Compensation Event.



- (b) To the extent that Project Co does not comply with its obligations under this Section 38.3, such failure shall be taken into account in determining Project Co's entitlement to relief pursuant to this Section 38.

#### **38.4 Insured Exposure**

- (a) The compensation payable to Project Co pursuant to this Section 38 shall be reduced by any amount which Project Co or a Project Co Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Project Agreement in respect of insurance or the terms of any policy of insurance required under this Project Agreement, which amount, for greater certainty, shall not include any excess or deductibles or any amount over the maximum amount insured under any such insurance policy.

### **39. INTENTIONALLY DELETED**

### **40. RELIEF EVENTS**

#### **40.1 Definition**

- (a) For the purposes of this Project Agreement, "**Relief Event**" means any of the following events or circumstances to the extent, in each case, that it causes any failure by a Party to perform any of its obligations under this Project Agreement:
- (i) fire, explosion, lightning, storm, tempest, hurricane, tornado, flood, bursting or overflowing of water tanks, apparatus or pipes, ionizing radiation (to the extent it does not constitute Force Majeure), earthquake, riot or civil commotion;
  - (ii) failure by any Utility Company, local authority or other like body to perform works or provide services;
  - (iii) accidental loss or damage to the Works and/or the Facilities or any roads servicing the Site;
  - (iv) without prejudice to any obligation of Project Co to provide stand-by power facilities in accordance with this Project Agreement, failure or shortage of power, fuel or transport;
  - (v) blockade or embargo falling short of Force Majeure;
  - (vi) any official or unofficial strike, lockout, work to rule or other labour-related action generally affecting the Facilities, construction, building maintenance or facilities management industry (or a significant sector of that industry) in the Province of Ontario; or
  - (vii) any civil disobedience, riot, civil commotion or protest action, including any action taken by any person or persons protesting or demonstrating against the carrying out

of any part of the Project Operations, the conduct of the Pan/Parapan Am Games or the construction and/or operation of international athletics events facilities in general,

provided, in each case, that such event does not arise (directly or indirectly) as a result of any act or omission of the Party claiming relief and/or (A) in the case of Project Co claiming relief, as a result of any act or omission of any Project Co Party and (B) in the case of HMQ claiming relief, as a result of any act or omission of any Province Person.

#### **40.2 Consequences of a Relief Event**

- (a) Subject to Section 40.3, no right of termination, other than either Party's right to terminate this Project Agreement pursuant to Section 44.1, shall arise under this Project Agreement by reason of any failure by a Party to perform any of its obligations under this Project Agreement but only to the extent that such failure to perform is caused by the occurrence of a Relief Event (it being acknowledged and agreed by the Parties that all other rights and obligations of the Parties under this Project Agreement remain unaffected by the occurrence of a Relief Event).
- (b) In respect of a Relief Event that is also a Delay Event pursuant to Section 37.1(a)(ix):
  - (i) Project Co shall only be relieved of its obligations under this Project Agreement to the extent, if any, provided for in Section 37;
  - (ii) occurring prior to the Interim Completion Date and referred to in Section 40.1(a)(v), Section 40.1(a)(vi) or Section 40.1(a)(vii), on the earlier of (A) the Interim Completion Date and (B) the date of payment of the Default Termination Payment, the Non-Default Termination Sum, the Relief Event and Force Majeure Termination Sum or the Prohibited Acts Termination Sum (and as a part thereof) in accordance with Schedule 23 - Compensation on Termination, HMQ shall pay to Project Co an amount equal to the Debt Service Amount accrued and paid or that became payable in accordance with the Lending Agreements during the period of delay by Project Co or any Project Co Party to the Lenders up to and including such date, together with interest thereon at the rate or rates payable on the Debt Amount; and
  - (iii) occurring prior to the Project Substantial Completion Date and referred to in Section 40.1(a)(v), Section 40.1(a)(vi) or Section 40.1(a)(vii), on the earlier of (A) the Project Substantial Completion Date and (B) the date of payment of the Default Termination Payment, the Non-Default Termination Sum, the Relief Event and Force Majeure Termination Sum or the Prohibited Acts Termination Sum (and as a part thereof) in accordance with Schedule 23 - Compensation on Termination, HMQ shall pay to Project Co an amount equal to the Debt Service Amount accrued and paid or that became payable in accordance with the Lending Agreements during the period of delay by Project Co or any Project Co Party to the Lenders up to and including such date, together with interest thereon at the rate or rates payable on the Debt Amount.

- (c) Subject to Section 46, Project Co's sole right to payment or otherwise in relation to the occurrence of a Relief Event shall be as provided in this Section 40.

#### **40.3 Mitigation and Process**

- (a) Where a Party is (or claims to be) affected by a Relief Event, such Party shall take commercially reasonable steps to mitigate the consequences of the Relief Event upon the performance of its obligations under this Project Agreement, shall resume performance of its obligations affected by the Relief Event as soon as practicable and shall use commercially reasonable efforts to remedy its failure to perform.
- (b) To the extent that the Party claiming relief does not comply with its obligations under this Section 40.3, such failure shall preclude such Party's entitlement to relief pursuant to this Section 40.
- (c) The Party claiming relief shall give written notice to the other Party within five Business Days of such Party becoming aware of the relevant Relief Event. Such initial notice shall give sufficient details to identify the particular event claimed to be a Relief Event.
- (d) A subsequent written notice shall be given by the Party claiming relief to the other Party within a further five Business Days of the initial notice, which notice shall contain such relevant information relating to the failure to perform (or delay in performing) as is available, including, without limitation, the effect of the Relief Event on the ability of the Party to perform, the action being taken in accordance with Section 40.3(a), the date of the occurrence of the Relief Event, and an estimate of the period of time required to overcome the Relief Event and/or its effects.
- (e) The Party claiming relief shall notify the other as soon as the consequences of the Relief Event have ceased and of when performance of its affected obligations can be resumed.
- (f) If, following the issue of any notice referred to in Section 40.3(d), the Party claiming relief receives or becomes aware of any further information relating to the Relief Event and/or any failure to perform, such Party shall submit such further information to the other Party as soon as reasonably possible.

#### **40.4 Insured Exposure**

- (a) The compensation payable to Project Co pursuant to this Section 40 shall be reduced by any amount which Project Co or a Project Co Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Project Agreement in respect of insurance or the terms of any policy of insurance required under this Project Agreement, which amount, for greater certainty, shall not include any excess or deductibles or any amount over the maximum amount insured under any such insurance policy.

## **41. FORCE MAJEURE**

### **41.1 Definition**

- (a) For the purposes of this Project Agreement, “**Force Majeure**” means any of the following events or circumstances which directly causes either Party to be unable to perform all or a material part of its obligations under this Project Agreement:
- (i) war, civil war, armed conflict, terrorism, acts of foreign enemies or hostilities;
  - (ii) nuclear or radioactive contamination of the Works, the Facilities and/or the Site, unless Project Co or any Project Co Party is the source or cause of the contamination;
  - (iii) chemical or biological contamination of the Works, the Facilities and/or the Site from any event referred to in Section 41.1(a)(i);
  - (iv) pressure waves caused by devices traveling at supersonic speeds; or
  - (v) the discovery of any fossils, artefacts and other objects having artistic, historic, archaeological or monetary value, including human remains and burial sites, which, as a result of Applicable Law, requires the Works to be abandoned.

### **41.2 Consequences of Force Majeure**

- (a) Subject to Section 41.3, the Party claiming relief shall be relieved from liability under this Project Agreement to the extent that, by reason of the Force Majeure, it is not able to perform its obligations under this Project Agreement.
- (b) In respect of an event of Force Majeure that is also a Delay Event pursuant to Section 37.1(a)(viii):
- (i) Project Co shall only be relieved of its obligations under this Project Agreement to the extent, if any, provided for in Section 37;
  - (ii) on the earlier of (A) the Interim Completion Date and (B) the date of payment of the Default Termination Payment, the Non-Default Termination Sum, the Relief Event and Force Majeure Termination Sum or the Prohibited Acts Termination Sum (and as a part thereof) in accordance with Schedule 23 – Compensation on Termination, HMQ shall pay to Project Co an amount equal to the Debt Service Amount accrued and paid or that became payable in accordance with the Lending Agreements during the period of delay by Project Co or any Project Co Party to the Lenders up to and including such date, together with interest thereon at the rate or rates payable on the principal amount of debt funded under the Lending Agreements; and
  - (iii) on the earlier of (A) the Project Substantial Completion Date and (B) the date of payment of the Default Termination Payment, the Non-Default Termination Sum, the Relief Event and Force Majeure Termination Sum or the Prohibited Acts

Termination Sum (and as a part thereof) in accordance with Schedule 23 – Compensation on Termination, HMQ shall pay to Project Co an amount equal to the Debt Service Amount accrued and paid or that became payable in accordance with the Lending Agreements during the period of delay by Project Co or any Project Co Party to the Lenders up to and including such date, together with interest thereon at the rate or rates payable on the principal amount of debt funded under the Lending Agreements.

- (c) Subject to Section 46, Project Co's sole right to payment or otherwise in relation to the occurrence of an event of Force Majeure shall be as provided in this Section 41.

### **41.3 Mitigation and Process**

- (a) Where a Party is (or claims to be) affected by an event of Force Majeure, such Party shall take commercially reasonable steps to mitigate the consequences of such event of Force Majeure upon the performance of its obligations under this Project Agreement, shall resume performance of its obligations affected by the event of Force Majeure as soon as practicable and shall use commercially reasonable efforts to remedy its failure to perform. Such efforts of mitigation and remediation shall include commercially reasonable efforts to minimize any negative impact of the event of Force Majeure on the Works Schedule.
- (b) To the extent that the Party claiming relief does not comply with its obligations under Section 41.3(a), such failure shall be taken into account in determining such Party's entitlement to relief pursuant to this Section 41.
- (c) The Party claiming relief shall give written notice to the other Party within five Business Days of such Party becoming aware of the relevant event of Force Majeure. Such initial notice shall give sufficient details to identify the particular event claimed to be an event of Force Majeure.
- (d) A subsequent written notice shall be given by the Party claiming relief to the other Party within a further five Business Days of the initial notice, which notice shall contain such relevant information relating to the failure to perform (or delay in performing) as is available, including, without limitation, the effect of the event of Force Majeure on the ability of the Party to perform, the action being taken in accordance with Section 41.3(a), the date of the occurrence of the event of Force Majeure, and an estimate of the period of time required to overcome the event of Force Majeure and its effects.
- (e) The Party claiming relief shall notify the other as soon as the consequences of the event of Force Majeure have ceased and of when performance of its affected obligations can be resumed.
- (f) If, following the issue of any notice referred to in Section 41.3(d), the Party claiming relief receives or becomes aware of any further information relating to the event of Force Majeure and/or any failure to perform, such Party shall submit such further information to the other Party as soon as reasonably possible.

#### **41.4 Insured Exposure**

- (a) The compensation payable to Project Co pursuant to this Section 41 shall be reduced by any amount which Project Co or a Project Co Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Project Agreement in respect of insurance or the terms of any policy of insurance required under this Project Agreement, which amount, for greater certainty, shall not include any excess or deductibles or any amount over the maximum amount insured under any such insurance policy.

#### **41.5 Modifications**

- (a) The Parties shall use commercially reasonable efforts to agree to any modifications to this Project Agreement which may be equitable having regard to the nature of an event or events of Force Majeure. Schedule 27 - Dispute Resolution Procedure shall not apply to a failure of HMQ and Project Co to reach agreement pursuant to this Section 41.5.

### **42. PROJECT CO DEFAULT**

#### **42.1 Project Co Events of Default**

- (a) Subject to Section 37.4(a), for the purposes of this Project Agreement, “**Project Co Event of Default**” means any one or more of the following events or circumstances:
  - (i) the occurrence of any of the following events other than as a consequence of a breach by HMQ of its payment obligations hereunder:
    - (A) Project Co admits in writing its inability to pay its debts generally as they become due, or makes a general assignment for the benefit of creditors, or a receiver, manager, administrator, administrative receiver, receiver and manager, trustee, custodian or other similar official or any other like person is appointed by or on behalf of or at the instance of a creditor of Project Co with respect to Project Co or any of the property, assets or undertaking of Project Co, or any creditor of Project Co takes control, or takes steps to take control, of Project Co or any of Project Co's assets, or any proceedings are instituted against Project Co that result in Project Co being declared or ordered bankrupt or in administration, liquidation, winding-up, reorganization, compromise, arrangement, adjustment, protection, relief or composition of it or with respect to it or its debts or obligations, or any such proceedings are instituted by Project Co seeking any such result, or any such proceedings are instituted by a person other than Project Co, HMQ, an HMQ Party or a person related to any of them seeking such result and such proceedings have or will have a material adverse effect on the performance of the Works (where such proceedings have not been withdrawn, stayed, discharged, or are otherwise of no further effect, within 90 calendar days of being instituted),

- under any Applicable Law (including the *Bankruptcy and Insolvency Act* (Canada) and the *Companies' Creditors Arrangement Act* (Canada)) relating to bankruptcy, insolvency or reorganization of or relief with respect to debtors or debtors' obligations or assets or other similar matters, or seeking the appointment of a receiver, manager, administrator, administrative receiver, receiver and manager, trustee, custodian or other similar official or like person for it or with respect to any of its assets, or any resolutions are passed or other corporate actions of Project Co are taken to authorize any of the actions set forth in this Section 42.1(a)(i)(A);
- (B) Project Co ceases performing a substantial portion of its business, or a substantial portion of such business is suspended or is not being performed, whether voluntarily or involuntarily, that has or will have a material adverse effect on Project Co's ability to perform its obligations under this Project Agreement;
  - (C) if any execution, sequestration, extent or other process of any court becomes enforceable against Project Co or if a distress or analogous process is levied against any property of Project Co that materially adversely affects Project Co's ability to perform its obligations hereunder; or
  - (D) Project Co shall suffer any event, or any event or set of circumstances occurs or comes about, analogous to the foregoing events or sets of circumstances set out this Section 42.1(a)(i) in any jurisdiction in which it is incorporated or resident and such event or set of circumstances would, if set out in Section 42.1(a)(i)(A), (B) or (C), constitute a Project Co Event of Default;
- (ii) Project Co failing to achieve Project Substantial Completion on or before [REDACTED] (the "Longstop Date");
  - (iii) Project Co either:
    - (A) failing to deliver a rectification plan under Section 20.4(a)(iii)(B) and Project Co does not deliver such rectification plan within an additional five calendar day period;
    - (B) delivering a rectification plan under Section 20.4(a)(iii)(B) which indicates that Project Co will not achieve Project Substantial Completion by the Longstop Date; or
    - (C) delivering a rectification plan under Section 20.4(a)(iii)(B) that is not acceptable to the Independent Certifier, acting reasonably, as to the matters set out in Section 20.4(a)(iii)(B)(II) and a revised rectification plan acceptable to the Independent Certifier, acting reasonably, is not delivered within an additional five calendar day period after the date Project Co has

received a written notice from the Independent Certifier that the rectification plan under Section 20.4(a)(iii)(B) is not acceptable;

- (iv) Project Co making any representation or warranty herein that is false or misleading when made, and that has or will have at any time a material adverse effect on the performance of Project Operations, or that may compromise the Province's reputation or integrity, and, in the case of a false or misleading representation or warranty that is capable of being remedied, such breach is not remedied within 10 Business Days of receipt of notice of the same from HMQ;
- (v) Project Co committing a breach of Sections 49 or 50 or a breach of its obligations under this Project Agreement (other than a breach that is otherwise referred to in Sections 42.1(a)(i) to 42.1(a)(iv) inclusive or 42.1(a)(vi) to 42.1(a)(xvii) inclusive) which has or will have a material adverse effect on the performance of the Pan/Parapan Am Games, other than where such breach is a consequence of a breach by HMQ of its obligations under this Project Agreement, and upon becoming aware of such breach Project Co failing to remedy such breach in accordance with all of the following:
  - (A) Project Co shall:
    - (I) immediately commence and thereafter diligently continue to remedy the breach and to mitigate any adverse effects on HMQ and/or the performance of the Pan/Parapan Am Games;
    - (II) put forward, within five Business Days of receipt of notice of such breach from HMQ, a reasonable plan and schedule for diligently remedying the breach and mitigating its effect, which plan and schedule shall specify in reasonable detail the manner in which, and the latest date by which, such breach is proposed to be remedied, which latest date shall in any event be within 60 calendar days of notice of such breach, or if such breach is not capable of being rectified in such period then such longer period as is reasonable in the circumstances; and
    - (III) thereafter perform its obligations to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations thereunder; and
  - (B) upon Project Co failing to comply with any of the provisions of Section 42.1(a)(v)(A):
    - (I) Project Co shall continue to diligently remedy the breach and to mitigate any adverse effects on HMQ and/or the performance of the Pan/Parapan Am Games;



- (II) Project Co shall, within three Business Days after notice from HMQ, submit a plan and schedule, which HMQ shall have no obligation to accept, for remedying the breach and mitigating its effect within such period, if any, acceptable to HMQ, in its sole discretion, and thereafter perform its obligations to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations thereunder; and
- (III) for greater certainty, Project Co failing to comply with any of the provisions of this Section 42.1(a)(v)(B), or HMQ, in its sole discretion, not accepting the plan and schedule submitted by Project Co pursuant to that Section, shall constitute a Project Co Event of Default;
- (vi) Project Co wholly abandoning the Works for a period which exceeds three Business Days from receipt by Project Co of a written request to return to the Site, other than as a consequence of a breach by HMQ of its obligations under this Project Agreement;
- (vii) **Intentionally Deleted**
- (viii) Project Co failing to comply with Sections 56.1 or 56.3;
- (ix) the occurrence of any Change in Ownership or Change in Control which is prohibited by Section 56.4;
- (x) **Intentionally Deleted**
- (xi) **Intentionally Deleted**
- (xii) Project Co failing to remove an Encumbrance that arose due to an act or omission of Project Co or any Project Co Party (other than a Title Encumbrance and any Encumbrance derived through HMQ) within 45 calendar days of the earlier of the date on which, acting reasonably, Project Co or any Project Co Party knew or ought to have known, about the existence of the Encumbrance;
- (xiii) Project Co failing to pay any sum or sums due to HMQ under this Project Agreement, which sum or sums are not being disputed by Project Co in accordance with Schedule 27 - Dispute Resolution Procedure and which sum or sums, either singly or in aggregate, exceed(s) \$[REDACTED] (index linked), and such failure continues for 30 calendar days from receipt by Project Co of a notice of non-payment from HMQ;
- (xiv) Project Co failing to comply with Section 57;
- (xv) Project Co failing to comply with Section 7.3 or Schedule 12 - Refinancing;

- (xvi) Project Co failing to obtain any bond, security or insurance required to be obtained by or on behalf of Project Co pursuant to this Project Agreement or any such bond, security or insurance being vitiated or otherwise ceasing to be in full force and effect or in material compliance with the requirements set out in this Project Agreement, other than as a consequence of a breach by HMQ of its obligations under this Project Agreement, and:
  - (A) in respect of insurance, such breach by Project Co is not remedied within 10 Business Days of the occurrence of the breach; and
  - (B) in respect of a bond or security, such breach by Project Co is not remedied within five Business Days of Project Co becoming aware of such breach; and
- (xvii) Project Co failing to comply with any determination, order or award made against Project Co in accordance with Schedule 27 - Dispute Resolution Procedure.
- (b) For greater clarity, a "Default Event" under the Project Co Services Agreement shall not constitute a Project Co Event of Default under this Project Agreement.

#### **42.2 Notification of Occurrence**

- (a) Project Co shall, promptly upon Project Co becoming aware of the occurrence, notify HMQ of the occurrence, and details, of any Project Co Event of Default and of any event or circumstance which is likely, with the passage of time, giving of notice, determination of any condition, or otherwise, to constitute or give rise to a Project Co Event of Default.

#### **42.3 Right to Termination**

- (a) On the occurrence of a Project Co Event of Default, or at any time after HMQ becomes aware of a Project Co Event of Default, and, if the occurrence of a Project Co Event of Default is disputed by Project Co in good faith, then following confirmation in accordance with Schedule 27 - Dispute Resolution Procedure that a Project Co Event of Default has occurred, HMQ may, subject to Section 42.3A and Section 42.4, terminate this Project Agreement in its entirety by written notice having immediate effect, such notice to be given to Project Co, and to any person specified in the Lenders' Direct Agreement to receive such notice. Notwithstanding the foregoing, Project Co shall not be entitled to dispute the occurrence of a Project Co Event of Default which arises under Section 42.1(a)(ii) or Section 42.1(a)(iii).

#### **42.3A Remedy Provisions**

- (a) In the case of a Project Co Event of Default referred to in Sections 42.1(a)(i)(B), 42.1(a)(i)(C), 42.1(a)(i)(D) (where the Project Co Event of Default referred to in Section 42.1(a)(i)(D) is analogous to a Project Co Event of Default referred to in Section 42.1(a)(i)(B) or 42.1(a)(i)(C)), 42.1(a)(iv), 42.1(a)(vi), 42.1(a)(viii), 42.1(a)(ix) (where the Project Co Event of Default referred to in Section 42.1(a)(ix) is capable of being remedied), 42.1(a)(xii), 42.1(a)(xiii), 42.1(a)(xv), 42.1(a)(xvi) (where the Project Co Event of Default

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referred to in Section 42.1(a)(xvi) is not in respect of insurance or the Works Performance Security) or 42.1(a)(xvii), HMQ shall, prior to being entitled to terminate this Project Agreement, give notice of default to Project Co, and to any person specified in the Lenders' Direct Agreement to receive such notice, and Project Co shall:

- (i) within five Business Days of such notice of default, put forward a reasonable plan and schedule for diligently remedying the Project Co Event of Default, which schedule shall specify in reasonable detail the manner in, and the latest date by which, such Project Co Event of Default is proposed to be remedied, which latest date shall, in any event, be within 30 calendar days of the notice of default, or if such breach is not capable of being remedied in such period then such longer period as is acceptable to HMQ, acting reasonably, provided that such plan must always be acceptable to the Independent Certifier, acting reasonably, in respect of the matters set out in Section 20.4(a)(iii)(B)(II); and
  - (ii) thereafter, perform its obligations to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations thereunder.
- (b) If a Project Co Event of Default, of which a notice of default was given under Section 42.3A(a), occurs and:
- (i) Project Co fails to immediately commence and thereafter diligently continue to remedy the Project Co Event of Default and to mitigate any adverse effects on HMQ; or
  - (ii) Project Co fails to put forward a plan and schedule pursuant to Section 42.3A(a)(i); or
  - (iii) such Project Co Event of Default is not remedied within 30 calendar days of such notice of default or such longer period as is established pursuant to the plan and schedule established pursuant to Section 42.3A(a); or
  - (iv) where Project Co puts forward a plan and schedule pursuant to Section 42.3A(a)(i) and Project Co fails to perform its obligations thereunder necessary to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations,

then HMQ may terminate this Project Agreement in its entirety by written notice with immediate effect pursuant to Section 42.4(a)(i), such notice to be given to Project Co, and to any person specified in the Lenders' Direct Agreement to receive such notice.

- (c) Upon the occurrence of any of the Project Co Events of Default described in Section 42.3A(a) and notwithstanding that HMQ may give the notice referred to in Sections 42.3A(a), and without prejudice to the other rights of HMQ in Sections 42.3A or 42.4, at any time during which such Project Co Event of Default is continuing, HMQ may, at Project

Co's risk and expense, exercise any of its rights under Section 42.4 other than terminating this Project Agreement pursuant to Section 42.4(a)(i).

- (d) Upon the occurrence of a Project Co Event of Default described in Section 42.3A(a) that Project Co has remedied pursuant to this Section 42.4, such occurrence of a Project Co Event of Default shall thereafter cease to be a Project Co Event of Default and HMQ shall not be entitled to terminate this Project Agreement for that occurrence of such Project Co Event of Default.

#### **42.4 Remedies**

- (a) Upon the occurrence of a Project Co Event of Default and subject to the Lenders' Direct Agreement and the rights of Project Co and the obligations of HMQ under Section 42.3A and Section 42.3(a), and provided that HMQ has given prior written notice to Project Co of the occurrence of the Project Co Event of Default, HMQ may do any or all of the following as it in its sole discretion shall determine:
  - (i) terminate this Project Agreement in its entirety by written notice having immediate effect, such notice to be given to Project Co, and to any person specified in the Lenders' Direct Agreement to receive such notice;
  - (ii) if Project Co is in default under this Project Agreement by reason of its failure to pay any monies, HMQ may (without obligation to do so) make payment on behalf of Project Co of such monies and Project Co shall thereafter indemnify HMQ as provided in Section 53.1(e) in respect of any damages suffered or incurred on such monies on the basis that the due date for the payment of such monies was the relevant payment date in an amount equivalent to the Payment Compensation Amount until the date of payment by Project Co, and all of such monies shall be payable by Project Co to HMQ on demand;
  - (iii) without termination of this Project Agreement, cure or attempt to cure the Project Co Event of Default (but this shall not obligate HMQ to cure or attempt to cure the Project Co Event of Default, or after having commenced to cure or attempt to cure such Project Co Event of Default, to continue to do so or to cure or attempt to cure any subsequent Project Co Event of Default) and all costs and expenses incurred by HMQ in curing or attempting to cure the Project Co Event of Default shall be payable by Project Co to HMQ on demand. In respect of any amounts spent by HMQ for the costs and expenses of curing or attempting to cure the Project Co Event of Default, Project Co shall thereafter indemnify HMQ as provided in Section 53.1(e) in respect of any damages suffered or incurred on such amounts on the basis that the due date for the payment of such amounts was the date upon which the relevant cost and expense was incurred by HMQ in an amount equivalent to the Payment Compensation Amount until the date of payment by Project Co. No such action by HMQ shall be deemed to be a termination of this Project Agreement and HMQ shall not incur any liability to Project Co for any act or omission of HMQ in the course of curing or attempting to cure any such Project Co Event of Default. Without limiting

the foregoing, in order to fund the costs and expenses of curing or attempting to cure the Project Co Event of Default and in accordance with the Trust Account Agreement and the other terms of this Project Agreement, HMQ may: (i) prior to the Project Substantial Completion Date request a draw against the Contingency Equity Letter of Credit; and (ii) after the first Pan/Parapan Am Games Site Turnback Date request a draw against the Third Party Facility Conversion Costs LC, the Toronto 2015 Third Party Facilities Compensation Payment and/or the Municipal Works Letter of Credit, as applicable;

- (iv) bring any proceedings in the nature of specific performance, injunction or other equitable remedy, it being acknowledged that damages at law may be an inadequate remedy for a Project Co Event of Default;
  - (v) bring any action at law as may be necessary or advisable in order to recover damages and costs, subject to Section 54.4;
  - (vi) take possession of the Site, the Works, the Facilities utilize the construction machinery and equipment (subject to the rights of third parties and to the payment of reasonable rental fees in respect of construction machinery and equipment owned by Project Co), and finish the Works by whatever method HMQ may consider expedient. In order to fund the costs and expenses of finishing or attempting to finish the Works and in accordance with the Trust Account Agreement and the other terms of this Project Agreement, HMQ may: (i) prior to the Project Substantial Completion Date request a draw against the Contingency Equity Letter of Credit; and (ii) after the first Pan/Parapan Am Games Site Turnback Date request a draw against on the Third Party Facility Conversion Costs LC, the Toronto 2015 Third Party Facilities Compensation Payment and/or the Municipal Works Letter of Credit, as applicable; and
  - (vii) exercise any of its other rights and remedies provided for under this Project Agreement or otherwise available to it.
- (b) Upon the occurrence of a Project Co Event of Default that has been remedied pursuant to this Section 42.4 and, for clarity, this Project Agreement has not been terminated pursuant to Section 42.4(a)(i), such occurrence of a Project Co Event of Default shall thereafter cease to be a Project Co Event of Default and HMQ shall not be entitled to terminate this Project Agreement for that occurrence of such Project Co Event of Default.

#### **42.5 Acceleration**

- (a) In addition to the remedies set out in Section 42.4 and, for clarity, subject to the prior rights of the Lenders' Agent under the Lenders' Direct Agreement, upon the occurrence of a Project Co Event of Default under Section 42.1(a)(iv), HMQ may direct Project Co to accelerate the performance of the Works so as to achieve Project Substantial Completion by the Scheduled Project Substantial Completion Date, provided that if Project Substantial Completion cannot be achieved by the Scheduled Project Substantial Completion Date, then

to achieve Project Substantial Completion as soon as possible thereafter and, in any event, by the Longstop Date. Subject to the Lenders' Direct Agreement, Project Co agrees that in performing such acceleration of the Works, unless Project Co funds the costs of the acceleration through other means, Project Co shall request a drawdown of the Contingency Equity Letter of Credit in accordance with the Trust Account Agreement to fund such costs.

**42.6 Intentionally Deleted**

**42.7 Exercise of HMQ Rights Following Project Agreement Termination**

- (a) If this Project Agreement is terminated for any reason whatsoever prior to Project Substantial Completion, HMQ shall have the right to exercise the HMQ Project Security in order to allow HMQ to acquire full benefit of and complete the Project.
- (b) If this Project Agreement is terminated prior to Project Substantial Completion as a result of a Project Co Event of Default and not limiting or prejudicing any right of HMQ under this Project Agreement (including, for clarity, under Section 42.4), immediately following the termination of this Project Agreement and in accordance with the Trust Account Agreement, HMQ may fund all costs to complete the Project first by requesting draws against the undrawn amount of the Contingency Equity Letter of Credit, second by requesting draws against the undrawn amount of the Cost to Complete Letter of Credit and then by self-funding the balance of costs to complete the Project.
- (c) Project Co acknowledges and agrees that in the event of the termination of this Project Agreement for any reason whatsoever before Project Substantial Completion, the Project Co Lands shall not be transferred by HMQ to Project Co and the Project Co Lands Agreements of Purchase and Sale shall terminate.
- (d) In the event of the cancellation of the Pan/Parapan Am Games, HMQ may initiate a Variation to remove the Pan/Parapan Am Games scope of work from the Project, while allowing for the completion of the remainder of the Project.
- (e) If this Project Agreement is terminated after the Project Co Lands Transfer Date as a result of a Project Co Event of Default and not limiting or prejudicing any right of HMQ under this Project Agreement (including, for clarity, under Section 42.4), immediately following the termination of this Project Agreement and in accordance with the Trust Account Agreement, HMQ may (i) fund all costs to complete the Third Party Facility Conversion Work by requesting a draw against the undrawn amount of the Third Party Facility Conversion Costs Letter of Credit and the Toronto 2015 Third Party Facilities Compensation Payment and (ii) fund all costs to complete the Works in respect of the Municipal Works Facilities by requesting a draw against the undrawn amount of the Municipal Works Letter of Credit.
- (f) For clarity, the exercise of the rights by HMQ under Sections 42.7(a) to 42.7(c) (inclusive) and 42.7(e) are subject to Section 46 and Schedule 23 – Compensation on Termination.
- (g) For clarity, this Section 42.7 shall survive the termination of this Project Agreement.

#### **42.8 Liquidated Damages for Delay**

- (a) If Project Co fails to have the Toronto 2015 LD Underlay Facilities certified as meeting all of the requirements of Project Substantial Completion by the Independent Certifier in accordance with the Project Substantial Completion Commissioning Program by the Toronto 2015 Turnover Date (LD Underlay Facilities), then Project Co shall pay \$[REDACTED] per day to HMQ as liquidated damages beginning on the day after the Toronto 2015 Turnover Date (LD Underlay Facilities) and ending upon the day the Toronto 2015 LD Underlay Facilities are certified as meeting all of the requirements of Project Substantial Completion by the Independent Certifier in accordance with the Project Substantial Completion Commissioning Program. Such liquidated damages shall compensate HMQ for payments to Toronto 2015 on account of acceleration costs and other related costs that would be incurred by Toronto 2015 to complete the Toronto 2015 LD Underlay Facilities for the commencement of the Pan/Parapan Am Games. The Parties agree that such liquidated damages are not a penalty, but represent a genuine and reasonable pre-estimate of the damages that HMQ will suffer as a result of the happening of the specified event and it would be difficult or impossible to quantify such damages upon the happening of the specified event. Such payment shall constitute full and final settlement of any and all damages that may be claimed by HMQ as a result of such acceleration costs and other related costs. The Parties agree that such liquidated damages shall be payable whether or not HMQ incurs or mitigates its damages, and that HMQ shall not have any obligation to mitigate any such damages.
- (b) If Project Co fails to achieve Project Substantial Completion of all of the Facilities by the Toronto 2015 Turnover Date (Remaining Facilities), then Project Co shall pay (for clarity, in addition to the liquidated damages amounts set out in Section 42.8(a)) \$[REDACTED] per day to HMQ as liquidated damages beginning on the day after the Toronto 2015 Turnover Date (Remaining Facilities) and ending upon the day the last Facility achieves Project Substantial Completion. Such liquidated damages shall compensate HMQ for payments to Toronto 2015 on account of acceleration costs and other related costs that would be incurred by Toronto 2015 to complete the Facilities for the commencement of the Pan/Parapan Am Games. The Parties agree that such liquidated damages are not a penalty, but represent a genuine and reasonable pre-estimate of the damages that HMQ will suffer as a result of the happening of the specified event and it would be difficult or impossible to quantify such damages upon the happening of the specified event. Such payment shall constitute full and final settlement of any and all damages that may be claimed by HMQ as a result of such acceleration costs and other related costs. The Parties agree that such liquidated damages shall be payable whether or not HMQ incurs or mitigates its damages, and that HMQ shall not have any obligation to mitigate any such damages.

#### **42.9 HMQ's Costs**

- (a) Project Co shall reimburse HMQ for all reasonable costs (including all applicable Taxes and all legal or professional services, legal costs being on a full indemnity basis) properly incurred by HMQ in exercising its rights under this Section 42, including any relevant

increased administrative expenses. HMQ shall take commercially reasonable steps to mitigate such costs.

#### **42.10 No other Rights to Terminate**

- (a) HMQ shall have no right or entitlement to terminate this Project Agreement, or to accept any repudiation of this Project Agreement, and shall not purport to exercise any such right or entitlement except as set forth in Sections 42 and 44.

### **43. HMQ DEFAULT**

#### **43.1 HMQ Events of Default**

- (a) For the purposes of this Project Agreement, “**HMQ Event of Default**” means any one or more of the following events or circumstances:
  - (i) HMQ failing to pay any sum or sums due to Project Co under this Project Agreement, which sum or sums are not being disputed by HMQ in accordance with Schedule 27 - Dispute Resolution Procedure and which sum or sums, either singly or in aggregate, exceed(s) \$[REDACTED] (index linked), and:
    - (A) in respect of the Interim Completion Payment, the Project Substantial Completion Payment or the Land Transfer Taxes Amount, such failure continues for 10 Business Days; or
    - (B) in respect of any other payment due and payable by HMQ to Project Co under this Project Agreement, such failure continues for 90 calendar days,in any such case, from receipt by HMQ of a notice of non-payment from or on behalf of Project Co;
  - (ii) HMQ committing a material breach of its obligations under Section 14 (other than as a consequence of a breach by Project Co of its obligations under this Project Agreement), which breach materially adversely affects the ability of Project Co to perform its obligations under this Project Agreement for a continuous period of not less than 60 calendar days;
  - (iii) an act of any Governmental Authority which renders it impossible for Project Co to perform all or substantially all of its obligations under this Project Agreement (other than as a consequence of a breach by Project Co of its obligations under this Project Agreement) for a continuous period of not less than 60 calendar days (for greater certainty, the non issuance of, or the imposition of any conditions or limitations in, any of the Project Co Permits, Licences, Approvals and Agreements shall not constitute an “act of any Governmental Authority”); or



- (iv) either (A) HMQ committing a material breach of its obligation to transfer the subject lands under the Project Co Stage 1 Lands Agreement of Purchase and Sale (other than as a consequence of a breach by Project Co of its obligations under such Agreement) for a continuous period of not less than 60 calendar days or (B) the Project Co Stage 1 Lands Agreement of Purchase and Sale is terminated in accordance with Sections 8.4(e), 8.5(b) or 13.4 thereof.

#### **43.2 Project Co's Options**

- (a) On the occurrence of an HMQ Event of Default and while the same is continuing, Project Co may give notice to HMQ of the occurrence of such HMQ Event of Default, which notice will specify the details thereof, and, at Project Co's option and without prejudice to its other rights and remedies under this Project Agreement, may:
  - (i) suspend performance of the Works until such time as HMQ has remedied such HMQ Event of Default; or
  - (ii) if such HMQ Event of Default has not been remedied within 30 calendar days of receipt by HMQ of notice of the occurrence of such HMQ Event of Default, terminate this Project Agreement in its entirety by notice in writing having immediate effect.
- (b) Where HMQ has disputed the alleged HMQ Event of Default set out in the Notice under Section 43.2(a), the remedies available to Project Co as set out in Section 43.2(a) shall be suspended and not available to Project Co until such time as the dispute has been resolved pursuant to Schedule 27 – Dispute Resolution Procedure. If the dispute is resolved in favour of Project Co, HMQ shall remedy the HMQ Event of Default within the applicable time period to remedy set out in Section 43.1 which time period shall commence on the issue of the decision of the adjudicator. Notwithstanding the foregoing, in the event that the decision of the adjudicator affirms the Independent Certifier's certification in furtherance of which a sum is payable by HMQ to Project Co pursuant to this Project Agreement, HMQ shall only have 10 Business Days from the issuance of the decision of the adjudicator to make such payment and for greater certainty, if HMQ fails to make such payment within such 10 Business Day period, such failure shall constitute and shall be deemed to be an HMQ Event of Default for all purposes under this Project Agreement and Project Co shall thereafter be entitled to exercise the remedies set forth in Section 43.2(a) .

#### **43.3 Project Co's Costs**

- (a) HMQ shall reimburse Project Co for all reasonable costs (including all applicable Taxes and all legal or professional services, legal costs being on a full indemnity basis) properly incurred by Project Co in exercising its rights under this Section 43, including any relevant increased administrative expenses. Project Co shall take commercially reasonable steps to mitigate such costs.

#### **43.4 No Other Rights to Terminate**

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- (a) Project Co shall have no right or entitlement to terminate this Project Agreement, nor to accept any repudiation of this Project Agreement, and shall not exercise, nor purport to exercise, any such right or entitlement except as expressly set forth in this Project Agreement.

#### **44. NON-DEFAULT SUSPENSION AND TERMINATION**

##### **44.1 Termination for Relief Event**

- (a) If a Relief Event occurs and the effects of the Relief Event continue for 180 calendar days from the date on which the Party affected gives notice to the other Party pursuant to Section 40.3(c), either Party may, at any time thereafter, terminate this Project Agreement by written notice to the other Party having immediate effect, provided that the effects of the Relief Event continue during such period to prevent either Party from performing a material part of its obligations under this Project Agreement.

##### **44.2 Suspension**

- (a) HMQ may order Project Co in writing to suspend or interrupt all or any part of the Works for such period of time as HMQ may determine to be appropriate for the convenience of HMQ. This right of HMQ to suspend or interrupt the Works shall not give rise to any duty on the part of HMQ to exercise this right for the benefit of Project Co or any other person or entity. In the event of an HMQ - ordered suspension of the Works not resulting from Project Co or a Project Co Party not performing its obligations under this Project Agreement, such suspension shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation. The Independent Certifier is not authorized to order a suspension of the Works. The Works shall only be suspended by written notice from HMQ to Project Co.
- (b) If the Works are stopped for any reason, Project Co shall provide protection for any part of the Works likely to become damaged during the Works stoppage. HMQ shall pay the costs of such protection only if stoppage occurs due to the occurrence of a Delay Event.

##### **44.3 Termination for Force Majeure**

- (a) If an event of Force Majeure occurs and the Parties, having used commercially reasonable efforts, have failed to reach agreement on any modification to this Project Agreement pursuant to Section 41.5 within 180 calendar days from the date on which the Party affected gives notice to the other Party as set out therein, either Party may, at any time thereafter, terminate this Project Agreement by written notice to the other Party having immediate effect, provided that the effects of the event of Force Majeure continue during such period to prevent either Party from performing a material part of its obligations under this Project Agreement.

##### **44.4 Termination for Convenience**

- (a) HMQ shall, in its sole discretion and for any reason whatsoever, be entitled to terminate this Project Agreement at any time on 180 calendar days' written notice to Project Co. Such written notice shall include confirmation that HMQ has, in respect of such termination, obtained the prior written consent of MHPS.
- (b) In the event of notice being given by HMQ in accordance with this Section 44.4, HMQ shall, at any time before the expiration of such notice, be entitled to direct Project Co to refrain from commencing, or allowing any third party to commence, the Works, or any part or parts of the Works, where such Works have not yet been commenced.

#### **44.5 Automatic Expiry on Expiry Date**

- (a) This Project Agreement shall terminate automatically on the Expiry Date.
- (b) Project Co shall not be entitled to any compensation due to termination of this Project Agreement on expiry of the Project Term on the Expiry Date.

### **45. EFFECT OF TERMINATION**

#### **45.1 Termination**

- (a) Notwithstanding any provision of this Project Agreement, upon the service of a notice of termination or termination on the Expiry Date pursuant to Section 44.5, this Section 45 shall apply in respect of such termination.

#### **45.2 Continued Effect - No Waiver**

- (a) Notwithstanding any breach of this Project Agreement by a Party, the other Party may elect to continue to treat this Project Agreement as being in full force and effect and to enforce its rights under this Project Agreement without prejudice to any other rights which such other Party may have in relation to such breach. The failure of either Party to exercise any right under this Project Agreement, including any right to terminate this Project Agreement and any right to claim damages, shall not be deemed to be a waiver of such right for any continuing or subsequent breach.

#### **45.3 Continuing Performance**

- (a) Subject to any exercise by HMQ of its rights to perform, or to seek, pursuant to this Project Agreement, a third party to perform, the obligations of Project Co, the Parties shall continue to perform their obligations under this Project Agreement (including, if applicable, pursuant to Schedule 23 – Compensation on Termination) notwithstanding the giving of any notice of default or notice of termination, until the termination of this Project Agreement becomes effective in accordance with this Section 45.

#### **45.4 Effect of Notice of Termination**

- (a) On the service of a notice of termination, or termination on the Expiry Date pursuant to Section 44.5:
- (i) if termination is prior to the Project Final Completion Date, in so far as any transfer shall be necessary to fully and effectively transfer such property to HMQ as shall not already have been transferred to HMQ pursuant to Section 52.1, Project Co shall transfer to, and there shall vest in, HMQ, free from all Encumbrances (other than the Title Encumbrances and any Encumbrances derived through HMQ), such part of the Works and Facilities as shall have been constructed and such items of the Plant and Equipment as shall have been procured by Project Co, and, if HMQ so elects:
    - (A) all plant, equipment and materials (other than those referred to in Section 45.4(a)(i)(B)) on or near to the Site shall remain available to HMQ for the purposes of completing the Works; and
    - (B) all construction plant and equipment shall remain available to HMQ for the purposes of completing the Works, subject to payment by HMQ of the Construction Contractor's reasonable charges;
  - (ii) if termination is prior to the Project Final Completion Date, Project Co shall deliver to HMQ (to the extent such items have not already been delivered to HMQ) one complete set of all Project Data and Intellectual Property relating to the design, construction and completion of the Works and the Facilities;
  - (iii) in so far as title shall not have already passed to HMQ pursuant to Section 52.1 or Section 45.4(a)(i), Project Co shall hand over to, and there shall vest in, HMQ, free from all Encumbrances (other than the Title Encumbrances and any Encumbrances derived through HMQ), the Facilities together with all other assets and rights capable of being transferred that are necessary for the performance of the Project and the Project Operations and all facilities and equipment, including the Equipment, and to the extent that any such assets or rights are not capable of being transferred by Project Co to HMQ, Project Co shall enter into agreements or make other arrangements in order to permit the use of the assets or rights by HMQ in order to enable it, or its designated agents or subcontractors, to continue to perform the activities which would have otherwise been performed by Project Co if this Project Agreement had not been terminated;
  - (iv) if HMQ so elects, Project Co shall ensure that any of the Subcontracts between Project Co and each Subcontractor (including the Construction Contract), any other instrument entered into between any such Subcontractor and Project Co for securing the performance by such Subcontractor of its obligations in respect of the Project Operations or to protect the interests of Project Co, shall be novated or assigned to HMQ or its nominee, provided that where termination occurs other than as a result of a Project Co Event of Default, the consent of the relevant Subcontractor shall be required, and further provided that any such novation or assignment of a Subcontract

with the Construction Contractor shall be made by HMQ pursuant to, and subject to, the terms of the Construction Contractor's Direct Agreement;

- (v) Project Co shall, or shall ensure that any Project Co Party shall, offer to sell (and if HMQ so elects, execute such sale) to HMQ at a fair value (determined as between a willing vendor and willing purchaser, with any Disputes as to such fair value being resolved in accordance with Schedule 27 - Dispute Resolution Procedure), free from all Encumbrances (other than the Title Encumbrances and any Encumbrances derived through HMQ), all or any part of the stocks of material and other assets, road vehicles, spare parts and other moveable property owned by Project Co or any Project Co Parties and dedicated to or predominantly used in respect of the Facilities, and reasonably required by HMQ in connection with the operation of the Facilities;

Project Co shall deliver to HMQ (to the extent such items have not already been delivered to HMQ) one complete set of the most recent As Built Drawings in the format that HMQ, acting reasonably, considers most appropriate at the time;

- (vi) Project Co shall use commercially reasonable efforts to assign, or otherwise transfer, to HMQ, free from all Encumbrances (other than the Title Encumbrances and any Encumbrances derived through HMQ), the benefit of all manufacturers' warranties, including all documentation in respect thereof, in respect of mechanical and electrical plant and equipment used or made available by Project Co under this Project Agreement and included in the Facilities;
- (vii) Project Co shall deliver to HMQ all information, reports, documents, records and the like referred to in Section 34, including as referred to in Schedule 26 - Record Provisions, except where such are required by Applicable Law to be retained by Project Co or the Project Co Parties (in which case complete copies shall be delivered to HMQ); and
- (viii) Project Co shall make commercially reasonable efforts to facilitate an orderly transition and shall comply with Applicable Law and contractual requirements.

#### **45.5 Ownership of Information**

- (a) Subject to Section 48, all information obtained by Project Co, including the As Built Drawings and other technical drawings and data, supplier agreements and contracts, utilities consumption information, environmental and technical reports, static building information, lease, licence and subletting data and contracts, asset condition data, standard operating procedures, processes and manuals and all other information directly related to the Project Operations accumulated over the course of the Project Term shall be the property of HMQ and upon termination of this Project Agreement shall be provided or returned to HMQ, as applicable, in electronic format acceptable to HMQ, acting reasonably, where it exists in electronic format, and in its original format, when not in electronic format.

#### **45.6 Provision in Subcontracts**

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- (a) Project Co shall make provision in all Subcontracts to which it is a party (including requiring the relevant Project Co Parties to make such provision and to require other Project Co Parties to make such provision) to ensure that HMQ shall be in a position to exercise its rights, and Project Co shall be in a position to perform its obligations, under this Section 45.

#### **45.7 Termination upon Aforesaid Transfer**

- (a) On completion of Project Co's obligations pursuant to this Section 45, this Project Agreement shall terminate and, except as provided in Section 45.8, all rights and obligations of HMQ and Project Co under this Project Agreement shall cease and be of no further force and effect.

#### **45.8 Survival**

- (a) Except as otherwise provided in this Project Agreement, termination of this Project Agreement shall be without prejudice to, and shall not affect:
- (i) all representations, warranties and indemnities under this Project Agreement; and
  - (ii) Sections 1.2, 1.3, 2.2A, 2.2B, 5, 6, 7, 15.2, 16.1, 16.1A, 16.2(a), 16.2A, 16.3(a), 18.14, 18.15, 18.16(c), 18.17, 18.18, 18.20, 22.4, 22.5, 23.6, 25.12, 25A, 26.1, 31, 32.7, 34, 42.7, 42.9, 43.3, 44.5, 45, 46, 47, 49, 50, 52, 53, 54, 55, 57.3, 58.1, 59.4, 59.8, 59.9, 59.10, 59.11 and 59.12 of this Project Agreement, Appendix 1 – Permits, Licences Approvals and Agreements of Schedule 1 – Definitions and Interpretation, Schedule 3 – Revenue Sharing, Schedule 21 – HMQ Project Security, Schedule 23 - Compensation on Termination, Schedule 25 – Insurance and Performance Security Requirements, Sections 1.2 to 1.8 of Schedule 26 - Record Provisions, Schedule 27 - Dispute Resolution Procedure, and any other provisions of this Project Agreement which are expressed to survive termination or which are required to give effect to such provisions which survive termination or to such termination or the consequences of such termination,

all of which shall survive the termination of this Project Agreement, including for termination on the Expiry Date pursuant to Section 44.5.

#### **45.9 Application of Project Agreement**

- (a) For clarity, the survival of the provisions of this Project Agreement set out in Section 45.8(a) is only as applicable to the Project, subject only to Article 5 of the Project Co Stage 2 Lands Agreement of Purchase and Sale, and does not create any right in favour of Project Co or any Project Co Party, or any of their respective successors and assigns, in respect to any circumstance or matter which arises following the Project Final Completion Date.

### **46. COMPENSATION ON TERMINATION**

#### **46.1 Compensation on Termination**

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- (a) If this Project Agreement is terminated in accordance with the terms hereof, then Schedule 23 - Compensation on Termination shall apply and HMQ shall pay Project Co any applicable compensation on termination.

#### **46.2 Full and Final Settlement**

- (a) Except as otherwise provided in Section 46.2(b), any compensation paid pursuant to this Section 46, including pursuant to Schedule 23 - Compensation on Termination in the total amount owing thereunder, shall be in full and final settlement of any claims, demands and proceedings of Project Co and HMQ, and each shall be released from all liability to the other in relation to any breaches or other events leading to such termination of this Project Agreement, and the circumstances leading to such breach or termination, and Project Co and HMQ shall be precluded from exercising all other rights and remedies in respect of any such breach or termination whether in contract, tort, restitution, statute, at common law or otherwise.
- (b) Section 46.2(a) shall be without prejudice to:
- (i) any liability of either Party to the other, including under the indemnities contained in this Project Agreement, that arose prior to the Termination Date (but not from the termination itself or the events leading to such termination) to the extent such liability has not already been set off pursuant to Section 1.10 of Schedule 20 – Payments and Holdbacks or taken into account in calculating the relevant Compensation Payment;
  - (ii) any liabilities arising under or in respect of any breach by either Party of their obligations under Section 45.8 of this Project Agreement, or the Sections referred to therein, which did not lead to such termination and which arises or continues after the Termination Date; and
  - (iii) any amount owing to HMQ in relation to:
    - (A) taxes or tax withholdings, including all workers' compensation levies;
    - (B) fines, penalties or restitution orders by a court under any Federal or Provincial statute;
    - (C) any order made by a court under the *Civil Remedies Act*, S.O. 2001, c.28; and
    - (D) any fraud or other criminal offence committed against HMQ.

### **47. REVENUE SHARING**

#### **47.1 Revenue Sharing**

- (a) Project Co shall pay to HMQ the Excess Revenue Share in accordance with Schedule 3 – Revenue Sharing.

## **48. INTELLECTUAL PROPERTY**

### **48.1 Representation and Warranty**

- (a) Project Co represents, warrants and covenants to HMQ and agrees that:
  - (i) Project Co is and shall be the sole and exclusive owner of the Project Data and the Intellectual Property Rights or has and shall have the right to provide the licences granted to HMQ and the Third Party Owners herein;
  - (ii) Project Co has and shall have the right to provide the assignments granted to HMQ and the Third Party Owners herein; and
  - (iii) the Project Data and the Intellectual Property Rights and their use by HMQ, the HMQ Parties and the Third Party Owners do not and shall not infringe, and are not and shall not be a misappropriation of, any third party Intellectual Property Rights, and, as of the date of this Project Agreement, Project Co has not received any alleged infringement or misappropriation notices from third parties regarding the Project Data or the Intellectual Property Rights.

### **48.2 Delivery of Project Data and Intellectual Property Rights**

- (a) Project Co shall make all Project Data and Intellectual Property Rights available to, and upon request shall deliver to, HMQ and the Third Party Owners free of charge all Project Data, and shall obtain all necessary licences, permissions and consents to ensure that Project Co shall make the Project Data and Intellectual Property Rights available to and deliver the Project Data to HMQ and the Third Party Owners on the aforesaid terms of this Section 48.2 and Section 48.3, for any and all of the Approved Purposes.

### **48.3 Licence of Project Data and Intellectual Property Rights**

- (a) Project Co:
  - (i) hereby grants to HMQ and the Third Party Owners an irrevocable, worldwide, royalty free, perpetual, non-exclusive and transferable licence, including the right to grant sub-licences, to use the Project Data and the Intellectual Property Rights for any and all of the Approved Purposes;
  - (ii) shall, at Project Co's cost, where any Intellectual Property Rights are or become vested in the Construction Contractor, obtain the grant of an equivalent licence to that referred to in Section 48.3(a)(i), provided that such licence may, in respect of the Construction Contractor's Intellectual Property Rights that are proprietary and subject to trademark or copyright, be limited to the term of the relevant Subcontract; and



- (iii) shall, at Project Co's cost, where any Intellectual Property Rights are or become vested in a third party (other than the Construction Contractor), obtain the grant of an equivalent licence to that referred to in Section 48.3(a)(i), provided that Project Co is able to obtain such licence from such third party on reasonable commercial terms and conditions.
- (b) In this Section 48.3 and 48.6(a), "use" includes any and all acts of copying, modifying, adapting, translating, incorporating with other materials, creating derivative works and otherwise using the Project Data and Intellectual Property Rights.

#### **48.4 Jointly Developed Materials**

- (a) To the extent any data, documents, drawings, reports, plans, software, formulae, calculations or designs or any other materials are developed jointly by Project Co and HMQ pursuant to this Project Agreement or in relation to the Facilities, the Site or Project Operations (the "**Jointly Developed Materials**"), then the Parties hereby acknowledge and agree that HMQ shall be the sole and exclusive owner of all right, title and interest in and to the Jointly Developed Materials, any Intellectual Property associated therewith and any and all improvements, modifications and enhancements thereto. Project Co shall, at the request of HMQ, execute such further agreements and cause the Project Co Parties to execute any and all assignments, waivers of moral rights and other documents as may be reasonably required to fulfill the intent of this provision.
- (b) HMQ hereby grants Project Co a royalty free, non-exclusive and non-transferable licence, with a right to grant sub-licences to each Subcontractor, to use the Jointly Developed Materials during the Project Term for the sole purposes of Project Co or any Subcontractor performing its obligations under this Project Agreement or its Subcontract, as applicable.
- (c) Upon termination of this Project Agreement, all rights and licences whatsoever granted to Project Co in the Jointly Developed Materials shall automatically terminate, and Project Co shall return any and all Jointly Developed Materials in the custody or possession of Project Co to HMQ.

#### **48.5 Restrictions**

- (a) The Parties hereby agree that either Party may use the Project Know How for any purpose, provided, however, that neither Project Co nor any Project Co Party shall use the Project Know How to the extent that such Project Know How incorporates, references or is otherwise based on the Project Data, the Intellectual Property Rights, the Jointly Developed Material, the Intellectual Property of a Government Entity or a Third Party Owner or the Confidential Information of a Government Entity or a Third Party Owner, including, without limitation, the Output Specifications unless such use is otherwise permitted pursuant to this Project Agreement in order to enable Project Co and the Project Co Parties to meet Project Co's obligations under this Project Agreement.

- (b) Project Co hereby covenants and agrees that it will not make any commercial use, including, without limitation, use in any other request for proposal or similar procurement process, of the Project Data, the Intellectual Property Rights, the Jointly Developed Material, the Intellectual Property of a Government Entity or a Third Party Owner or the Confidential Information of a Government Entity or a Third Party Owner, including, without limitation, the Output Specifications, or any other drawings, reports, documents, plans, formulae, calculations, manuals, or other data that was created specifically for the Project or was based upon the Project Data, the Intellectual Property Rights, the Jointly Developed Material, the Intellectual Property of a Government Entity or a Third Party Owner or the Confidential Information of a Government Entity or a Third Party Owner, including, without limitation, the Output Specifications.

#### **48.6 Maintenance of Data**

- (a) To the extent that any of the data, materials and documents referred to in this Section 48 are generated by, or maintained on, a computer or similar system, Project Co shall procure for the benefit of HMQ, either at no charge or at the lowest reasonable fee, the grant of a licence or sub-licence for any relevant software to enable HMQ or a Third Party Owner or its nominee to access and otherwise use (as such term is defined in Section 48.3(b), subject to the payment by HMQ of any relevant fee) such data, materials and documents for the Approved Purposes.
- (b) Without limiting the obligations of Project Co under Section 48.6(a), Project Co shall ensure the back up and storage in safe custody of the data, materials and documents referred to in this Section 48 in accordance with Good Industry Practice. Project Co shall submit to the HMQ Representative Project Co's proposals for the back up and storage in safe custody of such data, materials and documents and HMQ shall be entitled to object if the same is not in accordance with Good Industry Practice. Project Co shall comply, and shall cause all Project Co Parties to comply, with all procedures to which the HMQ Representative has not objected. Project Co may vary its procedures for such back up and storage subject to submitting its proposals for change to the HMQ Representative, who shall be entitled to object on the basis set out above. Any Disputes in connection with the provisions of this Section 48.6(b) may be referred for resolution in accordance with Schedule 27 - Dispute Resolution Procedure with reference to Good Industry Practice.

#### **48.7 Claims**

- (a) Where a demand, claim, action or proceeding is made or brought against HMQ or any Province Person which arises out of the alleged infringement or misappropriation of any third party rights in or to Project Data or Intellectual Property Rights or the use thereof by HMQ, a Province Person or a Third Party Owner or because the use of any materials, Plant, Works, machinery or equipment in connection with the Project Operations infringes any rights in or to any Intellectual Property of a third party then, unless such infringement has arisen out of the use of any Project Data or Intellectual Property Rights by HMQ or a Third Party Owner otherwise than in accordance with the terms of this Project Agreement, Project

Co shall indemnify, defend and hold harmless HMQ or a Third Party Owner from and against all such demands, claims, actions and proceedings and Section 53.3 shall apply.

#### **48.8 HMQ and Toronto 2015 Intellectual Property**

- (a) Project Co shall not use any Intellectual Property of HMQ or the Intellectual Property of a Government Entity without obtaining a licence on terms and conditions satisfactory to HMQ (or the relevant Government Entity) in their sole discretion. Project Co acknowledges that it has no right to use any Toronto 2015 Intellectual Property without the express written consent of Toronto 2015 on terms satisfactory to Toronto 2015 in its sole discretion.

#### **48.9 Confidential Information**

- (a) It is expressly acknowledged and agreed that nothing in this Section 48 shall be deemed to create or convey to a Party any right, title, or interest in and/or to the Confidential Information of the other Party.

#### **48.10 Government Use of Documents**

- (a) The Parties hereby disclaim any right, title or interest of any nature whatsoever they each may have in or to this Project Agreement that might prohibit or otherwise interfere with a Government Entity's ability to use this Project Agreement in any manner desired by such Government Entity.
- (b) Each of the Parties hereby consents to the use by each Government Entity of this Project Agreement, and any portion thereof, subject to compliance with FIPPA and to the removal by HMQ (in consultation with Project Co) of any information supplied in confidence to a Government Entity by either Party in circumstances where disclosure may be refused under section 17(1) of FIPPA.

### **49. CONFIDENTIALITY/COMMUNICATIONS**

#### **49.1 Disclosure**

- (a) Subject to Sections 49.1(b), 49.1(c) and 49.2, but notwithstanding anything else in this Project Agreement to the contrary, Project Co acknowledges and agrees that, in accordance with the transparency and accountability principles of the IPFP Framework, HMQ has a right to disclose or publish (including on websites) this Project Agreement, any or all terms hereof, including any or all contractual submissions and other records kept in accordance with this Project Agreement, any information related to the performance of Project Co (or any Project Co Party) or any information derived from this Project Agreement or the information related to the performance of Project Co (or any Project Co Party) as HMQ, in its sole discretion, may consider appropriate. In exercising its discretion, HMQ will be guided by the principles set out in Sections 49.1(b) and 49.1(c).

- (b) HMQ will not disclose portions of this Project Agreement, any terms hereof, including any contractual submissions or other records kept in accordance with this Project Agreement, any information related to the performance of Project Co (or any Project Co Party) or any information derived from this Project Agreement or the information related to the performance of Project Co (or any Project Co Party) which would be exempt from disclosure under section 17(1) of FIPPA.
- (c) Notwithstanding Section 49.1(b), but subject to Section 49.2, where a compelling public interest in the disclosure of the information clearly outweighs the public interest in limiting the disclosure of the information supplied by Project Co (or any Project Co Party), HMQ may disclose such information.

#### **49.2 Redaction**

- (a) Prior to disclosing or publishing this Project Agreement, any terms hereof, including any contractual submissions or other records kept in accordance with this Project Agreement, any information related to the performance of Project Co (or any Project Co Party) or any information derived from this Project Agreement or the information related to the performance of Project Co (or any Project Co Party), HMQ shall provide to Project Co a redacted version of this Project Agreement or other documents or information to be disclosed or published, on the basis that the information so redacted constitutes information which should not be disclosed pursuant to Section 49.1(b).
- (b) If Project Co, acting in good faith, contends that any of the information not redacted constitutes information that falls within the scope of Section 49.1(b) and, accordingly, would be exempt from disclosure under FIPPA, the dispute may be referred for resolution in accordance with Schedule 27 - Dispute Resolution Procedure, and HMQ shall not disclose any information in dispute until a determination is made. Any such determination shall be made with reference to the text and principles of FIPPA.

#### **49.3 Disclosure to Government**

- (a) Project Co acknowledges and agrees that HMQ will be free to disclose any information, including Confidential Information, to each Government Entity, and, subject to compliance with FIPPA, each Government Entity will be free to use, disclose or publish (including on websites) the information on such terms and in such manner as such Government Entity sees fit.
- (b) For greater certainty, the Parties acknowledge and agree that, subject only to the removal of any information which the Parties are (or would be) entitled to refuse to disclose pursuant to section 17(1) of FIPPA, this Project Agreement, any contractual submissions or other records kept in accordance with this Project Agreement, any information related to the performance of Project Co (or Project Co Party) or any information derived from this Project Agreement or the information related to the performance of Project Co (or any Project Co Party) are public documents and information and, as such, may be disclosed by each Government Entity.

**49.4 Freedom of Information and Protection of Privacy Act**

- (a) The Parties acknowledge and agree that FIPPA applies to each Government Entity, and that each Government Entity is required to fully comply with FIPPA.

**49.5 Use and Disclosure of Confidential Information**

- (a) Except as authorized hereunder, each Party shall hold in confidence, not disclose and not permit any person any manner of access to, whether directly or indirectly, any Confidential Information of the other Party, provided that this Section 49 shall not restrict either Party from disclosing such Confidential Information to its professional advisors, to the extent necessary, to enable that Party to perform, to cause to be performed, or to enforce, its rights or obligations under this Project Agreement.
- (b) Except as authorized hereunder, Project Co shall hold in confidence, not disclose and not permit any person any manner of access to, whether directly or indirectly, any Confidential Information of any Government Entity, provided that this Section 49 shall not restrict Project Co from disclosing such Confidential Information to its professional advisors, to the extent necessary, to enable Project Co to perform, to cause to be performed, or to enforce, its rights or obligations under this Project Agreement.
- (c) Project Co may:
  - (i) disclose in confidence to the Lenders and prospective Lenders, including any trustee of the Lenders, and their respective professional advisors such Confidential Information as is reasonably required by the Lenders in connection with the raising or syndication of the financing or any sub-participation in the financing of the Project Operations or which Project Co is obliged to supply by the terms of the Lending Agreements; and
  - (ii) disclose in confidence to any Project Co Party and their professional advisors, such Confidential Information as is necessary for the performance by that Project Co Party of that Project Co Party's obligations under this Project Agreement.
- (d) Project Co acknowledges that each Government Entity may use the Confidential Information of Project Co for purposes not specific to the Project, but for other general governmental purposes, such as development of HMQ's alternate procurement and financing policies and framework. A Government Entity will advise Project Co prior to using any Confidential Information of Project Co for non-Project purposes.
- (e) Subject to the foregoing, neither Party shall use, or directly or indirectly cause, authorize or permit any other person to use, any Confidential Information of the other Party except for the purposes of this Project Agreement, as permitted by this Project Agreement or as authorized by the disclosing Party in writing.
- (f) Each Party shall protect all Confidential Information of the disclosing Party with the same degree of care as it uses to prevent the unauthorized use, disclosure, publication, or

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dissemination of its own confidential information of a similar nature or character, but in no event less than a reasonable degree of care.

- (g) All Project Operations that involve or may involve the use, storage, processing or any other handling of Confidential Information of a Government Entity shall be performed by Project Co and each Project Co Party within Canada except to the extent that Project Co obtains prior approval from HMQ, which approval may be withheld in HMQ's sole discretion; for clarity, no such approval shall be given with respect to Personal Information. Subject to Section 50.1(d) of this Project Agreement, Project Co may, and each Project Co Party may, use, store, process or handle other Confidential Information (excluding, for certainty, Confidential Information of a Government Entity) outside Canada only to the extent that use, storage, processing or other handling of such other Confidential Information outside Canada is reasonably necessary for the performance of the Project Operations provided that Project Co gives HMQ concurrent notice thereof. Project Co shall not, and shall cause each Project Co Party to, not store, process, communicate, transfer, access or permit or enable direct or remote access to any Confidential Information of a Government Entity outside of Canada except to the extent that Project Co obtains prior approval from HMQ, which approval may be withheld in HMQ's sole discretion; for certainty, no such approval shall be given with respect to Personal Information. Subject to Section 50.1(d) of this Project Agreement, Project Co may, and may permit each Project Co Party to, store, process, communicate, transfer, access or permit or enable direct or remote access to other Confidential Information (excluding, for certainty, Confidential Information of a Government Entity) outside of Canada only to the extent that storage, processing, communicating, transferring, accessing or permitting or enabling direct or remote access to such other Confidential Information outside Canada is reasonably necessary for the performance of the Project Operations provided that Project Co gives HMQ concurrent notice thereof.
- (h) Without limiting the generality of Section 49.5, Project Co shall comply with the document control and security protocol submitted by Project Co pursuant to Section 18.10 and approved by HMQ, which protocol shall prescribe limitations on the use, disclosure and storage of this Project Agreement and any other Confidential Information specified by HMQ.

#### **49.6 Exceptions**

- (a) Information of a Party (the "**Proprietor**"), other than Government Sensitive Information and other than Personal Information, will not be considered to be Confidential Information in the following circumstances:
  - (i) the Proprietor advises the other Party to whom the information has been disclosed (the "**Confidant**") that the information is not required to be treated as Confidential Information;
  - (ii) the information is as of the date of this Project Agreement, or becomes at any time thereafter, generally available to or accessible by the public through no fault or wrongdoing of the Confidant;

- (iii) the information is a matter of public record or in the public domain;
- (iv) the information was in the possession of the Confidant prior to its disclosure and the Confidant came into possession of such information without being in breach of this Project Agreement;
- (v) the information is received by the Confidant on a non-confidential basis from a source other than the Proprietor, provided that to the best of the Confidant's knowledge such source is not bound by a confidentiality agreement with the Proprietor or otherwise prohibited from disclosing the information to the Confidant by a contractual, legal or fiduciary obligation;
- (vi) the information was independently developed by the Confidant without access to the Confidential Information, as evidenced by written records;
- (vii) the information is required to be disclosed pursuant to Applicable Law, provided that the Confidant provides the Proprietor with reasonable notification and an opportunity to contest such requirement prior to disclosure;
- (viii) the information is disclosed to HMQ upon a termination of this Project Agreement, pursuant to Section 45 or is otherwise required by HMQ for the purposes of performing (or having performed) the Project Operations, including the design or construction of the Facilities, or any other operations the same as, or similar to, the Project Operations; or
- (ix) the information would not be exempt from disclosure under FIPPA.

#### **49.7 Period of Survival**

- (a) The obligations of HMQ and Project Co in Sections 49.1 to Section 49.6 will cease on the date that is 3 years after the Termination Date and accordingly shall survive the termination of this Project Agreement.

#### **49.8 Communications Protocol**

- (a) The Parties shall comply with the provisions of Schedule 18 – Communications Protocol.

### **50. PERSONAL INFORMATION**

#### **50.1 General**

- (a) Project Co acknowledges the importance of maintaining the confidentiality and privacy of Personal Information.
- (b) Project Co shall, and shall require each Project Co Party to, only collect, hold, process, use, store and disclose Personal Information with the prior consent of HMQ to the extent

necessary to perform Project Co's obligations under this Project Agreement and shall not disclose Personal Information or otherwise permit access to or make Personal Information available to any person except as expressly permitted or instructed by HMQ.

- (c) Project Co shall, and shall require each Project Co Party to, at all times treat Personal Information as strictly confidential and shall comply with all applicable requirements of the Output Specifications and the requirements of Applicable Law, including FIPPA and the *Personal Information Protection and Electronic Documents Act* (Canada) and any other Canadian federal or provincial legislation now in force or that may in the future come into force governing the collection, use, disclosure and protection of personal information applicable to Project Co, each Project Co Party or to the Project Operations.
- (d) All Project Operations that involve or may involve the collection, use, storage, processing or any other handling of Personal Information shall be performed by Project Co and each Project Co Party within Canada, and Project Co shall, and shall cause each Project Co Party to, not store, process, communicate, transfer, access or permit or enable direct or remote access to any Personal Information outside of Canada.
- (e) Project Co shall, and shall cause each Project Co Party to, implement, maintain and adhere to appropriate policies, procedures and controls to ensure that Personal Information is not stored or processed in, communicated or transferred to, or accessed from, outside of Canada, and that the requirements of this Section 50 are otherwise complied with.
- (f) Project Co shall take all necessary and appropriate action, and shall require each Project Co Party to take all necessary and appropriate action, against any person who fails to comply with this Section 50.
- (g) Project Co shall allow HMQ on reasonable notice to inspect any Personal Information in the custody or possession of Project Co or a Project Co Party and to audit Project Co and each Project Co Party's compliance with this Section 50 including, without limitation, the measures used by Project Co and each Project Co Party to protect Personal Information, and otherwise promptly and properly respond to all reasonable inquiries of HMQ with respect to Project Co or each Project Co Party's handling of Personal Information.
- (h) Project Co shall not subcontract or delegate to any third party any of the Project Operations that involve or may involve the collection, use, storage, processing or any other handling of Personal Information without the express consent of HMQ and without obtaining written contractual commitments of such third party substantially the same as those of this Section 50.

## **50.2 Protection of Personal Information**

- (a) Project Co shall implement and use, and shall require each Project Co Party to implement and use, appropriate technical and organizational and physical security measures to protect Personal Information against loss, theft and unauthorized access, disclosure, copying, use, modification or disposal, and shall otherwise ensure and shall require each Project Co Party



- to take all necessary steps and to include provisions in Subcontracts to require their subcontractors to take all necessary steps, such that Project Co, the Project Co Parties, and its and their staff shall protect, secure and keep confidential any Personal Information.
- (b) Project Co shall keep confidential and shall require each Project Co Party to keep confidential all Personal Information, and shall restrict and shall require each Project Co Party to restrict access to Personal Information to only those authorized employees and permitted Project Co Parties that require access to such information to fulfil their job requirements in connection with the Project Operations and that are subject to obligations of confidentiality and Personal Information protection no less stringent than those of this Section 50 and to include provisions in all Subcontracts to require all Project Co Parties and all of their subcontractors to keep confidential, all Personal Information that any of them may encounter or obtain during the course of their duties.
  - (c) Upon termination of this Project Agreement or upon request of HMQ, whichever comes first, Project Co shall immediately cease all use of and return to HMQ or, at the direction of HMQ, dispose of, destroy or render permanently anonymous all Personal Information, in each case using appropriate technical, organizational and physical security measures to protect Personal Information against loss, theft and unauthorized access, disclosure, copying, use or modification.
  - (d) To the extent that any of the Project Operations involve or may involve destruction or disposal of Personal Information, including any disposal or destruction pursuant to (c) above, such activities shall include, at a minimum, irreversible destruction, shredding or pulverizing of all documents, records or media containing Personal Information to a size or state that ensures that the document, record or other medium is permanently destroyed and that no information contained therein can be read, reconstructed or deciphered.
  - (e) Project Co shall immediately inform HMQ of any actual or suspected loss, theft or accidental or unauthorized access, disclosure, copying, use, modification or destruction of Personal Information by Project Co or any Project Co Party or any other breach of this Section 50.
  - (f) HMQ may from time to time require that Project Co and any Project Co Party or members of its or their staff execute and deliver within two Business Days of such request an agreement satisfactory to HMQ, acting reasonably, requiring such person to keep Personal Information confidential.
  - (g) Project Co shall provide, and shall cause each Project Co Party to provide, in a timely manner, all necessary and reasonable information and co-operation to HMQ and to any regulatory or other governmental bodies or authorities with jurisdiction or oversight over Applicable Laws governing the collection, use, disclosure and protection of Personal Information in connection with any investigations, audits or inquiries made by any such bodies or authorities under such legislation.
  - (h) This Section 50.2 shall not limit Section 50.1.

### **50.3 Conflict and Survival**

- (a) The obligations in this Section 50 shall survive the termination of this Project Agreement.
- (b) To the extent of any conflict or inconsistency between this Section 50 and any other provision of this Project Agreement, this Section 50 shall prevail.

## **51. INSURANCE AND PERFORMANCE SECURITY**

### **51.1 General Requirements**

- (a) Project Co and HMQ shall comply with the provisions of Schedule 25 - Insurance and Performance Security Requirements.

### **51.2 No Relief from Liabilities and Obligations**

- (a) Neither compliance nor failure to comply with the insurance provisions of this Project Agreement shall relieve Project Co or HMQ of their respective liabilities and obligations under this Project Agreement.

## **52. TITLE**

### **52.1 Title**

- (a) Title to each item and part of the Facilities and the Equipment, including any materials, supplies, equipment, facilities, parts and any other deliverable or component items, but not the risk of loss or damage or destruction thereto or thereof, shall pass to HMQ (or as HMQ may direct) upon the receipt of such item on the Site, provided however that title to items of tangible personal property (personal property that can be seen, weighed, measured, felt or touched or that is in any way perceptible to the senses and includes computer programs, natural gas and manufactured gas) that comprise the Facilities or are to be affixed or attached to the Facilities prior to Project Final Completion shall pass to HMQ (or as HMQ may direct) at the time that such items are included in the Facilities or affixed or attached to the Facilities.

## **53. INDEMNITIES**

### **53.1 Project Co Indemnities to HMQ**

- (a) Project Co shall indemnify and save harmless HMQ, the Province Persons and each of their respective directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, or arising out of any one or more of the following:

- (i) a failure by Project Co to achieve Project Substantial Completion by the Scheduled Project Substantial Completion Date;
- (ii) a failure by Project Co to achieve Third Party Facility Conversion Substantial Completion in respect of any Third Party Facility by the applicable Scheduled Third Party Facility Conversion Substantial Completion Date;
- (iii) any physical loss of or damage to all or any part of the Site and the Facilities, or to any equipment, assets or other property related thereto;
- (iv) the death or personal injury of any person;
- (v) any physical loss of or damage to property or assets of any third party; or
- (vi) any other loss or damage of any third party,

in each case, arising, directly or indirectly, out of, or in consequence of, or involving or relating to, the performance or any breach of this Project Agreement by Project Co or any act or omission of Project Co or any Project Co Party, except to the extent caused, or contributed to, by:

- (vii) the breach of this Project Agreement by HMQ; or
  - (viii) in respect of Section 53.1(a)(i) or 53.1(a)(ii), any deliberate or negligent act or omission of HMQ or any Province Person; or
  - (ix) in respect of Sections 53.1(a)(iii), 53.1(a)(iv), 53.1(a)(v) or 53.1(a)(vi), any act or omission of HMQ or any Province Person.
- (b) Project Co shall indemnify and save harmless HMQ, each Government Entity and each of their respective directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, or arising out of any breach of a representation or warranty by Project Co herein.
- (c) Project Co shall indemnify and save harmless HMQ, each Province Person and each of their respective directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, arising out of, or involving or relating to any one or more of the following:
- (i) the performance by Project Co of this Project Agreement not in accordance with or in breach of the requirements of any Project Co Permits, Licences, Approvals and Agreements, Applicable Law or requirements of Governmental Authorities, or the failure of Project Co to obtain all necessary Project Co Permits, Licences, Approvals and Agreements in accordance with this Project Agreement; or

- (ii) any Contamination on, in or under, or migrating to or from, the Site, except for Contamination for which HMQ is responsible pursuant to Section 16.2(a) and Section 16.2A,

except to the extent that such Direct Losses are caused, or contributed to, by the breach of this Project Agreement by HMQ or by any act or omission of HMQ, any HMQ Party or any Government Entity.

- (d) Without prejudice to HMQ's rights under Section 42 and any other rights under this Project Agreement, if HMQ exercises its step-in rights under the Construction Contractor's Direct Agreement, Project Co shall indemnify HMQ for all obligations of Project Co assumed by HMQ under the Construction Contract, as the case may be, and for all reasonable costs and expenses incurred by HMQ in relation to the exercise of HMQ's rights.
- (e) Project Co shall indemnify HMQ for damages suffered or incurred on account of (i) any payment not duly made by Project Co pursuant to the terms of this Project Agreement on the due date; (ii) any overpayment to or underpayment by Project Co; or (iii) an amount determined as payable by Project Co to HMQ under Schedule 27 – Dispute Resolution Procedure, by payment of an amount equal to the Payment Compensation Amount calculated from day to day at a rate per annum from the day after the date on which payment was due, the day on which overpayment was made by HMQ, or from the date identified (if any) applicable to an amount determined as payable by Project Co to HMQ under Schedule 27 – Dispute Resolution Procedure, up to and including the date of payment.
- (f) For clarity, any indemnity for Direct Losses paid by Project Co to HMQ under Section 53.1(a)(i) shall not be duplicative of any liquidated damages paid by Project Co to HMQ under Section 42.8, which liquidated damages, for clarity, constitute full and final settlement of any and all damages that may be claimed by HMQ as a result of the acceleration costs and other related costs described in Section 42.8.

### **53.2 HMQ Indemnities to Project Co**

- (a) HMQ shall indemnify and save harmless Project Co and the Project Co Parties and each of their respective directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, or arising out of any one or more of the following:
  - (i) the death or personal injury of any person arising, directly or indirectly, out of, or in consequence of, or involving or relating to, the performance or breach of this Project Agreement by HMQ or any act or omission of HMQ or any Province Person, except to the extent caused, or contributed to, by the breach of this Project Agreement by Project Co or by any act or omission of Project Co or any Project Co Party;
  - (ii) any physical loss of or damage to all or any part of any property or assets of Project Co or any Project Co Party, arising, directly or indirectly, out of, or in consequence of, or involving or relating to, breach of this Project Agreement by HMQ or any

deliberate or negligent act or omission of HMQ or any Province Person, except to the extent caused, or contributed to, by the breach of this Project Agreement by Project Co or by any act or omission of Project Co or any Project Co Party; and

- (iii) any physical loss of or damage to property or assets of any third party, or any other loss or damage of any third party, arising, directly or indirectly, out of, or in consequence of, or involving or relating to, breach of this Project Agreement by HMQ or any deliberate or negligent act or omission of HMQ or any Province Person, except to the extent caused, or contributed to, by the breach of this Project Agreement by Project Co or by any act or omission of Project Co or any Project Co Party,

provided that there shall be excluded from the indemnity given by HMQ any liability for the occurrence of risks against which Project Co is required to insure under this Project Agreement to the extent of the proceeds available or that should have been available but for a failure by Project Co to comply with its obligations to properly insure under this Project Agreement.

- (b) HMQ shall indemnify and save harmless Project Co and its directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, or arising out of any breach of a representation or warranty by HMQ herein.
- (c) HMQ shall indemnify Project Co for damages suffered or incurred on account of (i) any payment not duly made by HMQ pursuant to the terms of this Project Agreement on the due date; (ii) any overpayment to or underpayment by HMQ; or (iii) an amount determined as payable by HMQ to Project Co under Schedule 27 – Dispute Resolution Procedure, by payment of an amount equal to the Payment Compensation Amount calculated from day to day at a rate per annum from the day after the date on which payment was due, the day on which overpayment was made by Project Co, or from the date identified (if any) applicable to an amount determined as payable by HMQ to Project Co under Schedule 27 – Dispute Resolution Procedure, up to and including the date of payment.
- (d) HMQ shall, in accordance with Section 16.2A(a), indemnify and save harmless Project Co for all costs, liabilities, expenses and claims incurred by Project Co arising out of or relating to Contamination migrating to or from the Site in excess of \$[REDACTED].

### **53.3 Conduct of Claims**

- (a) This Section 53.3 shall apply to the conduct of claims, made by a third person against a party having, or claiming to have, the benefit of an indemnity pursuant to this Project Agreement. The party having, or claiming to have, the benefit of the indemnity is referred to as the “**Beneficiary**” and the Party giving the indemnity is referred to as the “**Indemnifier**”.
- (b) If the Beneficiary receives any notice, demand, letter or other document concerning any claim for which it appears that the Beneficiary is, or may become entitled to, indemnification

under this Section 53, the Beneficiary shall give written notice to the Indemnifier as soon as reasonably practicable and in any event within 10 Business Days of receipt of the same. Such notice shall specify with reasonable particularity, to the extent that information is available, the factual basis for the claim and the amount of the claim.

- (c) Subject to Sections 53.3(d), 53.3(e) and 53.3(f), on the giving of such notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all, but not part only, of the liability arising out of the claim, the Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to the Beneficiary's reasonable satisfaction against all costs and expenses that the Beneficiary may incur by reason of such action) be entitled to dispute the claim in the name of the Beneficiary at the Indemnifier's own expense and take conduct of any defence, dispute, compromise, or appeal of the claim and of any incidental negotiations. The Beneficiary shall give the Indemnifier all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim. The Beneficiary shall have the right to employ separate counsel in respect of such claim and the reasonable fees and expenses of such counsel shall be to the account of the Indemnifier only where representation of both the Indemnifier and Beneficiary by common counsel would be inappropriate due to any actual or potential conflicting interests between the Indemnifier and Beneficiary.
- (d) With respect to any claim conducted by the Indemnifier:
  - (i) the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the claim;
  - (ii) the Indemnifier shall not bring the name or reputation of the Beneficiary into disrepute;
  - (iii) the Indemnifier shall not pay, compromise or settle such claims without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed;
  - (iv) the Indemnifier shall not admit liability or fault to any third party without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and
  - (v) the Indemnifier shall use commercially reasonable efforts to have the Beneficiary named as a beneficiary under any release given by the persons bringing the claim to which this Section 53.3 relates.
- (e) The Beneficiary shall be free to pay or settle any such claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Project Agreement if:
  - (i) the Indemnifier is not entitled to take conduct of the claim in accordance with Section 53.3(c);
  - (ii) the Indemnifier fails to notify the Beneficiary of its intention to take conduct of the relevant claim as soon as reasonably practicable and in any event within 10 Business

Days of the notice from the Beneficiary under Section 53.3(b) or notifies the Beneficiary that the Indemnifier does not intend to take conduct of the claim; or

- (iii) the Indemnifier fails to comply in any material respect with Section 53.3(d).
- (f) The Beneficiary shall be free at any time to give notice to the Indemnifier that the Beneficiary is retaining or taking over, as the case may be, the conduct of any defence, dispute, compromise or appeal of any claim, or of any incidental negotiations, to which Section 53.3(c) applies. For greater certainty, Project Co acknowledges and agrees that where HMQ is the Beneficiary, HMQ may retain or take over such conduct in any matter involving Personal Information or any matter involving public policy. On receipt of such notice the Indemnifier shall promptly take all steps necessary to transfer the conduct of such claim to the Beneficiary, and shall provide to the Beneficiary all relevant documentation and all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim. If the Beneficiary gives any notice pursuant to this Section 53.3(f), then the Indemnifier shall be released from any liabilities arising under the applicable indemnity hereunder in respect of the applicable claim.
- (g) If the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers, whether by payment, discount, credit, saving, relief or other benefit or otherwise, a sum or anything else of value (the “**Recovery Amount**”) which is directly referable to the fact, matter, event or circumstances giving rise to the claim under the indemnity, the Beneficiary shall forthwith repay to the Indemnifier whichever is the lesser of:
  - (i) an amount equal to the Recovery Amount less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering the same; and
  - (ii) the amount paid to the Beneficiary by the Indemnifier in respect of the claim under the relevant indemnity,provided that there shall be no obligation on the Beneficiary to pursue any Recovery Amount and that the Indemnifier is repaid only to the extent that the Recovery Amount, aggregated with any sum recovered from the Indemnifier, exceeds the loss sustained by the Beneficiary except, however, that if the Beneficiary elects not to pursue a Recovery Amount, the Indemnifier shall be entitled to require an assignment to it of the right to do so.
- (h) Any person taking any of the steps contemplated by this Section 53.3 shall comply with the requirements of any insurer who may have an obligation to provide an indemnity in respect of any liability arising under this Project Agreement.

#### **53.4 Mitigation - Indemnity Claims**

- (a) For greater certainty, Section 59.4 applies to any indemnity given under this Project Agreement and any such indemnity shall not extend to Direct Losses which could have been reduced or avoided by the Beneficiary complying with such Section.

## **54. LIMITS ON LIABILITY**

### **54.1 Indirect Losses**

- (a) Subject to Section 54.1(b), without prejudice to HMQ's rights under Schedule 20 – Payments and Holdbacks, or the Parties' rights in respect of payments provided for herein, the indemnities under this Project Agreement shall not apply and there shall be no right to claim damages for breach of this Project Agreement, in tort or on any other basis whatsoever, to the extent that any loss claimed by either Party is:
- (i) for punitive, exemplary or aggravated damages;
  - (ii) for loss of profits, loss of use, loss of production, loss of business or loss of business opportunity; or
  - (iii) is a claim for consequential loss or for indirect loss of any nature suffered or allegedly suffered by either Party,
- (collectively, "**Indirect Losses**").
- (b) With respect to the indemnity in Section 53.1(a)(i) only, the exceptions in Sections 54.1(a)(ii) and 54.1(a)(iii) shall not apply as a result of, or in relation to, HMQ's loss of use of the Facilities or a portion thereof, which for the purposes of Section 53.1(a)(i), shall be Direct Losses.

### **54.2 No Liability in Tort**

- (a) Subject to the indemnities provided herein, none of HMQ or any Province Person, shall be liable in tort to Project Co or any Project Co Party, and neither Project Co nor any Project Co Party shall be liable in tort to HMQ or any Province Person in respect of any negligent act or omission of any such person relating to or in connection with this Project Agreement and no such person shall bring such a claim.

### **54.3 Sole Remedy**

- (a) Notwithstanding any other provision of this Project Agreement, and except to the extent recovered under any of the insurances required pursuant to Schedule 25 - Insurance and Performance Security Requirements, neither Party shall be entitled to recover compensation or make a claim under this Project Agreement, or any other agreement in relation to the Project, in respect of any loss that it has incurred (or any failure of the other Party) to the extent that the Party has already been compensated in respect of that loss or failure pursuant to this Project Agreement, or otherwise.

### **54.4 Maximum Liability**

- (a) Subject to Section 54.4(b), the maximum aggregate liability of each Party in respect of all claims under Section 53 shall not exceed \$[REDACTED]. This limit shall be index linked



and shall be exclusive of any insurance or performance security proceeds received or which will be received pursuant to performance security or policies maintained in accordance with Schedule 25 - Insurance and Performance Security Requirements. This limit shall not apply in cases of wilful misconduct, deliberate acts of wrongdoing or to the determination of the Default Termination Payment by HMQ to Project Co under Section 2.1 of Schedule 23 – Compensation on Termination.

- (b) Project Co's maximum aggregate liability in respect of all claims under Section 53.1(a)(ii) shall not exceed \$[REDACTED]. This limit shall be index linked and shall be exclusive of any insurance or performance security proceeds received or which will be received pursuant to performance security or policies maintained in accordance with Schedule 25 - Insurance and Performance Security Requirements. This limit shall not apply in cases of wilful misconduct or deliberate acts of wrongdoing.
- (c) Nothing in this Section 54.4 shall restrict, limit, prejudice or in any other way impair the rights and/or remedies of the Parties under any other provision of this Project Agreement.

## **55. DISPUTE RESOLUTION PROCEDURE**

- (a) All Disputes shall be resolved in accordance with, and the Parties shall comply with, Schedule 27 - Dispute Resolution Procedure.

## **56. ASSIGNMENT, SUBCONTRACTING AND CHANGES IN CONTROL**

### **56.1 Project Co Assignment**

- (a) Project Co shall not sell, assign, transfer, charge, mortgage, encumber, dispose of or otherwise alienate all or any part of any interest, whether legal or beneficial, in this Project Agreement or any Ancillary Document without the prior written consent of HMQ, which consent may be withheld or delayed in the sole discretion of HMQ.
- (b) Section 56.1(a) shall not apply to:
  - (i) the grant of any security for any loan made to Project Co under the Lending Agreements provided that any grantee of such security shall enter into the Lenders' Direct Agreement in relation to the exercise of its rights, if HMQ so requires; or
  - (ii) any Subcontract or sub-subcontract entered into by Project Co, the Project Co Parties or any sub-subcontractor in connection with the Project; or
  - (iii) subject to Section 7.3(a), the grant of any security for any loan made to Project Co after the Project Co Lands Transfer Date in respect of the development of the Project Co Lands.

### **56.2 HMQ Assignment**

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- (a) HMQ may assign, transfer, dispose of or otherwise alienate any interest in this Project Agreement or any agreement in connection with this Project Agreement to which Project Co and HMQ are parties:
  - (i) to the Province;
  - (ii) in circumstances other than those described in Section 56.2(a)(i), as may be required to comply with Applicable Law;
  - (iii) to any minister of the Crown;
  - (iv) to a Crown agency having the legal capacity, power, authority and ability to become a party to and to perform the obligations of HMQ under this Project Agreement provided that such person confirms in writing to Project Co that it will perform all of HMQ's obligations hereunder and under the other Project Documents to which HMQ is a party in respect of the period from and after the assignment; and
  - (v) in circumstances other than those described in Sections 56.2(a)(i) to 56.2(a)(iv), with the prior written consent of Project Co, not to be unreasonably withheld or delayed; provided that the person to whom any such assignment, transfer, disposition or other alienation is made has the capacity to perform, and confirms in writing to Project Co that it will perform all the obligations of HMQ hereunder and under any agreement in connection with this Project Agreement to which Project Co and HMQ are parties in respect of the period from and after the assignment.
- (b) HMQ shall not be released of any of its obligations under this Project Agreement except upon an assignment, transfer, disposition or other alienation of its interest in this Project Agreement in accordance with this Section 56.2.

### **56.3 Subcontracting**

- (a) Project Co shall not subcontract any interest in this Project Agreement or the Construction Contract, and shall not permit the Construction Contractor to subcontract any interest in the Construction Contract, to a Restricted Person, or any Affiliate thereof, or a person whose standing or activities are inconsistent with the Province's reputation or integrity.
- (b) Project Co shall not terminate, agree to the termination of or replace the Construction Contractor unless Project Co has complied with Sections 7.2(a), 56.3(c) and 56.3(d) or received the prior written consent of HMQ, not to be unreasonably withheld or delayed.
- (c) Subject to Section 56.3(d), if the Construction Contract shall at any time lapse, terminate or otherwise cease to be in full force and effect, whether by reason of expiry, default or otherwise, with the effect that the Construction Contractor shall cease to act in relation to the Project, Project Co shall forthwith appoint a replacement, subject to HMQ's prior written consent, acting reasonably, as to the suitability of the replacement.

- (d) It is a condition of replacement of the Construction Contractor that, and Project Co shall require that, any replacement enter into a contract upon the same or substantially similar terms as the person so replaced and into a direct agreement on the same terms as the Construction Contractor's Direct Agreement entered into by the person so replaced, unless any material variations are approved by HMQ, acting reasonably.

#### **56.4 Changes in Ownership and Control**

- (a) No Change in Ownership of Project Co, or any person owning, directly or indirectly, beneficially or otherwise, any of the shares or units or any other ownership interest in Project Co or any such person, shall be permitted:
  - (i) where the person acquiring the ownership interest is a Restricted Person or a person whose standing or activities are inconsistent with the Province's reputation or integrity; or
  - (ii) if such Change in Ownership would have a material adverse effect on the performance of the Project Operations.
- (b) Prior to the earlier of:
  - (i) the third anniversary following the Project Substantial Completion Date; and
  - (ii) the later of the Project Substantial Completion Date and the date Project Co provides a full release of the Provincial Loan requirement,

HMQ shall be entitled to receive a [REDACTED] per cent share of any Excess Equity Gain arising from a Change in Ownership of Project Co.

- (c) Subject to Sections 56.4(a) and 56.4(b), no Change in Control of Project Co, or any person owning, directly or indirectly, beneficially or otherwise, any of the shares or units or any other ownership interest in Project Co or any such person, shall be permitted without the prior written consent of HMQ, not to be unreasonably withheld or delayed.
- (d) This Section 56.4 shall not apply to a Change in Ownership or Change in Control of persons whose equity securities or ownership units or any other ownership interests are listed on a recognized stock exchange.
- (e) Whether or not Project Co is required to obtain HMQ's consent to a Change in Ownership or Change in Control pursuant to this Section 56.4, Project Co shall provide notice to HMQ of any proposed Change in Ownership or Change in Control of Project Co, or any person owning, directly or indirectly, beneficially or otherwise, any of the shares or units or any other ownership interest in Project Co or any such person, as the case may be, within 5 Business Days of such Change in Ownership or Change in Control, and such notification shall include a statement identifying all such owners and their respective holdings of such in the ownership interests of Project Co, prior to and following any such Change in Ownership or Change in Control, as the case may be.

- (f) No Restricted Person or a person whose standing or activities are inconsistent with the Province's reputation or integrity shall be permitted to have at any time or acquire, Direct or Indirect Power or Control over any member of the Project Co Group in relation to the decisions, management, actions or policies of Project Co or [REDACTED] or in relation to the operation, management and ownership of the Project.

## **56.5 HMQ Due Diligence**

- (a) Project Co shall promptly reimburse HMQ for HMQ's reasonable due diligence costs (including fees of professional advisors) in connection with any consent required of HMQ pursuant to, or HMQ determination of, Project Co's compliance with Section 56.1, 56.3 or 56.4 whether or not such consent is granted.

## **57. PROHIBITED ACTS**

### **57.1 Definition**

- (a) The term "**Prohibited Act**" means:
- (i) offering, giving or agreeing to give to HMQ or any public body (or anyone employed by or acting on their behalf), or to any family member of such person, any gift or consideration of any kind as an inducement or reward:
    - (A) for doing or not doing, or for having done or not having done, any act in relation to the obtaining or performance of this Project Agreement or any other agreement with HMQ or any public body in connection with the Project; or
    - (B) for showing or not showing favour or disfavour to any person in relation to this Project Agreement or any other agreement with HMQ or any public body in connection with the Project;

provided that this Section 57.1(a)(i) shall not apply to Project Co or any Project Co Party (or anyone employed by or acting on their behalf) providing consideration to HMQ or any public body in the ordinary course, or as reasonably necessary, to fulfill or comply with the obligations and liabilities of Project Co under this Project Agreement or any other agreement with HMQ or any public body in connection with the Project;

- (ii) entering into this Project Agreement or any other agreement with HMQ or any public body in connection with the Project if a commission or a fee has been paid or has been agreed to be paid by Project Co, or on its behalf or to its knowledge, HMQ or any public body (or anyone employed by or acting on their behalf), or to any family member of such person, unless, before the relevant agreement is entered into, particulars of any such commission or fee have been disclosed in writing to HMQ, provided that this Section 57.1(a)(ii) shall not apply to a fee or commission paid by

Project Co or any Project Co Party (or anyone employed by or acting on their behalf) to HMQ or any public body pursuant to an agreement where such fee or commission is paid in the ordinary course, or as reasonably necessary, to fulfill or comply with the obligations and liabilities of Project Co under this Project Agreement or any other agreement with HMQ or any public body in connection with the Project without contravening the intent of this Section 57;

- (iii) breaching or committing any offence under Applicable Law in respect of corrupt or fraudulent acts in relation to this Project Agreement or any other agreement with HMQ or any public body in connection with the Project; or
- (iv) defrauding or attempting to defraud or conspiring to defraud HMQ or any other public body.

## **57.2 Remedies**

- (a) If Project Co or any Project Co Party (or anyone employed by or acting on their behalf) commits any Prohibited Act, then HMQ shall be entitled to act in accordance with the following:
  - (i) if the Prohibited Act is committed by Project Co or by an employee acting under the direction of a director or officer of Project Co, then HMQ may give written notice to Project Co and Section 42 shall apply;
  - (ii) if the Prohibited Act is committed by an employee of Project Co acting independently of a direction of a director or officer of Project Co, then HMQ may give written notice to Project Co and Section 42 shall apply, unless, within 30 calendar days of receipt of such notice, Project Co terminates the employee's employment and ensures that the relevant part of the Project Operations shall be performed by another person;
  - (iii) if a Prohibited Act is committed by a Project Co Party or by an employee of that Project Co Party not acting independently of a direction of a director or officer of that Project Co Party, then HMQ may give written notice to Project Co and Section 42 shall apply, unless, within 30 calendar days of receipt of such notice, Project Co terminates the relevant Subcontract and ensures that the relevant part of the Project Operations shall be performed by another person, where relevant, in accordance with Section 56.3;
  - (iv) if the Prohibited Act is committed by an employee of a Project Co Party acting independently of a direction of a director or officer of that Project Co Party, then HMQ may give notice to Project Co and Section 42 shall apply, unless, within 30 calendar days of receipt of such notice, Project Co causes the termination of the employee's employment and ensures that the relevant part of the Project Operations shall be performed by another person; and

- (v) if the Prohibited Act is committed on behalf of Project Co or a Project Co Party by a person not specified in Sections 57.2(a)(i) to 57.2(a)(iv), then HMQ may give notice to Project Co and Section 42 shall apply, unless, within 30 calendar days of receipt of such notice, Project Co causes the termination of such person's employment or the appointment of their employer and, if necessary, ensures that the relevant part of the Project Operations shall be performed by another person.
- (b) Any notice of termination under this Section 57.2 shall specify:
  - (i) the nature of the Prohibited Act;
  - (ii) the identity of the person whom HMQ believes has committed the Prohibited Act; and
  - (iii) the date of termination in accordance with the applicable provisions of this Project Agreement.
- (c) Without prejudice to its other rights or remedies under this Section 57.2, HMQ shall be entitled to recover from Project Co any Direct Loss sustained in consequence of any breach of this Section 57.

### **57.3 Permitted Payments**

- (a) Nothing contained in this Section 57 shall prevent Project Co or any other person from paying any proper commission, fee or bonus whether to its employees within the agreed terms of their employment or otherwise, and such commission fee or bonus shall not constitute a Prohibited Act.

### **57.4 Notification**

- (a) Project Co shall notify HMQ of the occurrence and details of any Prohibited Act promptly on Project Co becoming aware of its occurrence.

### **57.5 Replacement of Project Co Party**

- (a) Where Project Co is required to replace any Project Co Party pursuant to this Section 57, the party replacing such Project Co Party shall from the time of the replacement be deemed to be a Project Co Party and the provisions of this Project Agreement shall be construed accordingly.

## **58. NOTICES**

### **58.1 Notices to Parties**

- (a) All notices, requests, demands, instructions, certificates, consents and other communications (each being a "Notice") required or permitted under this Project Agreement shall be in

writing (whether or not “written notice” or “notice in writing” is specifically required by the applicable provision of this Project Agreement) and served by sending the same by registered mail, facsimile or by hand, as follows:

If to Project Co: [REDACTED]

Fax No.: [REDACTED]

Attn.: [REDACTED]

With a copy to: [REDACTED]

Fax No.: [REDACTED]

Attn.: [REDACTED]

If to HMQ: [REDACTED]  
c/o Ontario Infrastructure and Lands  
Corporation

Fax No.: [REDACTED]

Attn.: [REDACTED]

With a copy to: [REDACTED]

Fax No.: [REDACTED]

Attn.: [REDACTED]

## **58.2 Notices to Representatives**

- (a) In addition to the notice requirements set out in Section 58.1, where any Notice is to be provided or submitted to the HMQ Representative or the Project Co Representative it shall be provided or submitted by sending the same by registered mail, facsimile or by hand, as follows:

If to Project Co Representative: [REDACTED]

Fax No.: [REDACTED]

Attn.: [REDACTED]

Email: [REDACTED]

If to the HMQ Representative: [REDACTED]

Tel. No.: [REDACTED]

Fax No.: [REDACTED]

Attn: [REDACTED]

Email: [REDACTED]

### **58.3 Facsimile**

- (a) Where any Notice is provided or submitted to a Party via facsimile, an original of the Notice sent via facsimile shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a Party's failure to comply with this Section 58.3.

### **58.4 Change of Address**

- (a) Either Party to this Project Agreement may, from time to time, change any of its contact information set forth in Sections 58.1 or 58.2 by prior Notice to the other Party, and such change shall be effective on the Business Day that next follows the recipient Party's receipt of such Notice unless a later effective date is given in such Notice.

### **58.5 Deemed Receipt of Notices**

- (a) Subject to Sections 58.5(b), 58.5(c) and 58.5(d):
  - (i) a Notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
  - (ii) a Notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
  - (iii) a Notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.
- (b) If the Party giving the Notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such Notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission in accordance with this Section 58.
- (c) If any Notice delivered by hand or transmitted by facsimile is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00



p.m. (recipient's local time), then such Notice shall be deemed to have been received by such recipient on the next Business Day.

- (d) A Notice given by facsimile shall be deemed to have been received by the recipient on the day it is transmitted only if a facsimile transmission report (maintained by the sender) indicates that the transmission of such Notice was successful.

## **58.6 Service on HMQ**

- (a) Where any Notice is required to be served on HMQ, the obligation to serve such Notice shall be fulfilled by serving it on HMQ in accordance with the provisions of this Section 58.

## **59. GENERAL**

### **59.1 Amendments**

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

### **59.2 Waiver**

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

### **59.3 Relationship Between the Parties**

- (a) The Parties are independent contractors. This Project Agreement is not intended to and does not create or establish between the Parties, or between HMQ and any Project Co Party, any relationship as partners, joint venturers, employer and employee, master and servant, or (except as provided in this Project Agreement), of principal and agent, and does not create or establish any relationship whatsoever between HMQ and any representative or employee of Project Co or the Project Co Parties.
- (b) The Parties further agree that:

- (i) except as expressly provided in this Project Agreement, neither Party shall be, or be deemed to be, an agent of the other Party, and neither Party shall have authority hereunder to represent it that is an agent of the other Party, or to accept any order, or enter into any contract or agreement, or make any representations or warranties of any kind to any person, or to assume or create any obligation, express or deemed, on behalf of or binding, or purportedly binding upon, the other Party;
- (ii) neither Party shall be required to make or pay employment benefits, contributions for Employment Insurance, Canada Pension Plan, Workers' Compensation Board or other similar levies with respect to any persons employed or engaged by the other Party;
- (iii) except as otherwise expressly provided in this Project Agreement, each Party shall be free from the control of the other Party as to the manner in which it shall perform its obligations, or cause same to be performed, under this Project Agreement; and
- (iv) any person which a Party may engage as an agent, employee, subcontractor or otherwise, to perform such Party's obligations under this Project Agreement, as permitted hereby, shall, unless the Parties otherwise agree in writing, be engaged by such Party to act solely on behalf of such Party, and such person shall not act, or be deemed to act, on behalf of the Party that did not engage its services.

#### **59.4 General Duty to Mitigate**

- (a) HMQ and Project Co shall at all times take commercially reasonable steps to minimize and mitigate any loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to this Project Agreement.

#### **59.5 Actual Knowledge**

- (a) Without limitation to its actual knowledge and/or such knowledge which it, at law, may from time to time, be deemed to have, Project Co and HMQ shall, for all purposes of this Project Agreement, be deemed to have such knowledge in respect of the Project as is actually held (or ought reasonably to be held) by their respective directors, officers, senior management and their respective Representatives. For clarity, except as expressly set out to the contrary, a reference in this Project Agreement to the "knowledge of" Project Co or HMQ, shall be construed in a manner consistent with the foregoing sentence.

#### **59.6 Entire Agreement**

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

#### **59.7 No Reliance**

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- (a) Each of the Parties acknowledge that:
- (i) it has not entered into this Project Agreement on the basis of and does not rely, and has not relied, upon any statement or representation, whether negligent or innocent, or warranty or other provision, whether oral, written, express or implied, made or agreed to by any person, whether a Party to this Project Agreement or not, except those expressly made, given or repeated in this Project Agreement and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be those expressly provided for in this Project Agreement; and
  - (ii) this Section 59.7 shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Project Agreement which was induced by fraud, for which the remedies available shall be all those available under the law governing this Project Agreement.

#### **59.8 Severability**

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

#### **59.9 Enurement**

- (a) This Project Agreement and any other agreement entered into in connection with the Project to which both HMQ and Project Co are parties shall enure to the benefit of, and be binding on, HMQ and Project Co and their respective successors and permitted transferees and assigns.

#### **59.10 Governing Law and Jurisdiction**

- (a) This Project Agreement, and each of the documents contemplated by or delivered under or in connection with this Project Agreement, shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) Subject to Schedule 27 – Dispute Resolution Procedure, and subject to the *Proceedings Against the Crown Act* (Ontario), both Parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom.

#### **59.11 Cumulative Remedies**

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- (a) Except as otherwise set forth in this Project Agreement, the rights, powers and remedies of each Party set forth in this Project Agreement are cumulative and are in addition to and without prejudice to any other right, power or remedy that may be available to such Party under this Project Agreement.

#### **59.12 Further Assurance**

- (a) Each Party shall do all things, from time to time, and execute all further documents necessary to give full effect to this Project Agreement.

#### **59.13 Costs**

- (a) Each Party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution and delivery of this Project Agreement.

#### **59.14 Language of Agreement**

- (a) Each of the parties acknowledges having requested and being satisfied that this Project Agreement and related documents be drawn in English. Chacune des parties reconnaît avoir demandé que ce document et ses annexes soient rédigés en anglais et s'en declare satisfaite.
- (b) For greater certainty, all correspondence, notices, drawings, test reports, certificates, specifications, information, name plates, identification labels, instructions and notices to the public and staff and all other written, printed or electronically readable matter required in accordance with, or for purposes envisaged by, this Project Agreement shall be in English.

#### **59.15 Proof of Authority**

- (a) HMQ and Project Co each reserve the right to require any person executing this Project Agreement on behalf of the other Party to provide proof, in a form acceptable to HMQ or Project Co, as applicable, that they have the requisite authority to execute this Project Agreement on behalf of and to bind HMQ or Project Co, as applicable.

#### **59.16 Counterparts**

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

#### **59.17 Province Persons as Third Party Beneficiaries**

- (a) The provisions of Sections 2.4(c), 3.1(b), 6.1, 6.2(a), 6.3(a), 6.4(a), 8.1(c), 9.2(a)(ii), 9.4(b), 9.5(a)(v), 14.2, 14.8, 16.1(a), 18.3(j), 19.1, 24A.12, 26.1(a), 26.4, 33.2(d), 48.3, 48.5, 48.6, 48.7(a), 48.8, 48.10, 49.3, 49.4, 49.5(b), 49.5(d), 49.5(g), 53.1, 54.2(a) and Schedule 18 –

Communications Protocol and each other provision of the Project Agreement which is to the benefit of a Province Person (including, for clarity, to an HMQ Party and/or a Government Entity) are:

- (i) intended for the benefit of each such Province Person, and, if so set out in the relevant Section, each such Province Person's directors, officers employees, board appointees, agents and representatives, and shall be enforceable by each of such persons and his or her heirs, executors, administrators and other legal representatives (collectively, the "**Province Person Third Party Beneficiaries**"); and
  - (ii) are in addition to, and not in substitution for, any other rights that the Province Persons and Province Person Third Party Beneficiaries may have in contract or otherwise.
- (b) HMQ shall hold the rights and benefits accruing to Province Persons and Province Person Third Party Beneficiaries pursuant to Sections 2.4(c), 3.1(b), 6.1, 6.2(a), 6.3(a), 6.4(a), 8.1(c), 9.2(a)(ii), 9.4(b), 9.5(a)(v), 14.2, 14.8, 16.1(a), 18.3(j), 19.1, 24A.12, 26.1(a), 26.4, 33.2(d), 48.5, 48.7(a), 48.8, 48.10, 49.3, 49.4, 49.5(b), 49.5(d), 49.5(g), 53.1, 54.2(a) and Schedule 18 – Communications Protocol and each other provision of the Project Agreement which is to the benefit of a Province Person and/or a Province Person Third Party Beneficiary (including, for certainty, an HMQ Party and/or a Government Entity) as agent and in trust for and on behalf of Province Persons and Province Person Third Party Beneficiaries and HMQ agrees to hold such rights and benefit of and, in HMQ's sole discretion, enforce performance of such covenants on behalf of the Province Persons and the Province Person Third Party Beneficiaries.

#### **59.17A Third Party Owners as Third Party Beneficiaries**

- (a) The applicable provisions of Sections 18.3(c), 18.5(a)(iv), 18.5(a)(v), 18.5(e), 18.8(a), 18.14, 18.15, 21.3, 21.5, 21.6, 25, 26.4, 48.1, 48.2, 48.3, 48.5, 48.6, 48.7, 48.8 and 48.10 and each other provision of the Project Agreement which is to the benefit of a Third Party Owner are:
- (i) intended for the benefit of each Third Party Owner and, if set out in the relevant Section, each Third Party Owner's directors, officers, employees, board appointees, agents and representatives, and shall be enforceable by each of such persons and his or her heirs, executors, administrators and other legal representatives (collectively, the "**Third Party Owner Beneficiaries**"); and
  - (ii) are in addition to, and not in substitution for, any other rights that the Third Party Third Party Beneficiaries may have by contract or otherwise.
- (b) HMQ shall hold the rights and benefits accruing to the Third Party Owners and the Third Party Owner Beneficiaries pursuant to the applicable provisions of Sections 18.3(c), 18.5(a)(iv), 18.5(a)(v), 18.5(e), 18.8(a), 18.14, 18.15, 21.3, 21.5, 21.6, 25, 26.4, 48.1, 48.2, 48.3, 48.5, 48.6, 48.7, 48.8 and 48.10 and each other provision of the Project Agreement which is to the benefit of a Third Party Owner and/or a Third Party Owner Beneficiary as

agent and in trust for and on behalf of the Third Party Owners and the Third Party Owner Beneficiaries and HMQ agrees to hold such rights and benefit of and, in HMQ's sole discretion, enforce performance of such covenants on behalf of the Third Party Owners and the Third Party Owner Beneficiaries.

## **60.     HMQ DESIGNATE**

### **60.1    Right to Designate**

At any time and from time to time, the Crown may designate any ministry, branch, agency, division, department or office of the Government of Ontario to carry out administrative responsibility for the rights and obligations of HMQ under this Agreement (including, without limitation, review of all documentation submitted by Project Co, a Project Co Representative or a Project Co Party to HMQ for review, approval, comment, evaluation or otherwise as described in this Agreement, engage in discussions, consultations and meetings with Project Co, submitting notices and documentation to HMQ, issuances of notices, documentation, Variation Confirmations and related matters) and Project Co may deal exclusively with the designated Person in respect of all such matters and is entitled to rely on the actions, directions, requests, notices, consents, approvals, waivers, comments relating to the review of documentation and other administrative matters and decisions determined by such designated Person from time to time, until the Crown has notified Project Co in writing that such designated Person is no longer the person designated by HMQ hereunder and such notice shall have effect on the later of the date of delivery of such notice and the date specified in the written notice). The Crown shall advise Project Co in writing of any designation hereunder. The rights and obligations of the parties to this Agreement shall be in no way affected by reason of any such designation. Project Co acknowledges the right of the Crown to delegate administrative responsibilities hereunder as set forth in this Section 60.1.

*Remainder of this page intentionally left blank*

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

**HER MAJESTY THE QUEEN IN RIGHT OF  
ONTARIO as represented by the Minister of  
Infrastructure, as represented by Ontario  
Infrastructure and Lands Corporation**

**[REDACTED]**

**DUNDEE KILMER DEVELOPMENTS L.P.**

**[REDACTED]**



**SCHEDULE 1**

**DEFINITIONS AND INTERPRETATION**

- 1. Definitions.** In the Project Agreement, unless the context otherwise requires:
- 1.1 “**Account Trustee**” has the meaning given in Schedule 30 - Insurance Trust Agreement.
- 1.2 “**Acknowledgement and Agreement re Reciprocal Agreement for Blocks 1, 2, 3 and 14**” has the meaning given in Schedule 17A – Project Co Stage 1 Lands Agreement of Purchase and Sale.
- 1.3 “**Acknowledgement and Agreement re Reciprocal Agreement for Block 15**” has the meaning given in Schedule 17A – Project Co Stage 1 Lands Agreement of Purchase and Sale.
- 1.4 “**Agreement and Direction re Cost to Complete Cash Equity**” means the agreement and direction in favour of Project Co entered into between HMQ and the Lenders’ Agent on Financial Close in the form set out in Schedule 41 – Agreement and Direction re Cost to Complete Cash Equity.
- 1.5 “**Additional Contractors**” means any independent contractor (not being, for the avoidance of doubt, the Construction Contractor or Project Co) or HMQ’s own forces, engaged by HMQ to carry out the Additional Works.
- 1.6 “**Additional Project Co Equipment**” means all equipment in addition to the equipment described in the Output Specifications approved by HMQ as Additional Project Co Equipment.
- 1.7 “**Additional Works**” means those works in relation to the Facilities or Site which are not Works and which are to be carried out by an Additional Contractor, including works to be performed before Project Substantial Completion.
- 1.8 “**Affiliate**” means an “**affiliate**” as that term is used in the *Business Corporations Act* (Ontario) and any successor legislation thereto, and, in the case of Project Co, shall include each of its unitholders, shareholders, partners or owners as the case may be.
- 1.9 “**Affordable Housing Facilities**” means, collectively, Affordable Housing Facility 1 and Affordable Housing Facility 2.
- 1.10 “**Affordable Housing Facility 1**” means the Facility designated as “Affordable Housing Facility 1” in Schedule 35 – List of Facilities.
- 1.11 “**Affordable Housing Facility 1 Owner**” means the owner of Affordable Housing Facility 1, which shall be identified by HMQ on a date following Financial Close.
- 1.12 “**Affordable Housing Facility 2**” means the Facility designated as “Affordable Housing Facility 2” in Schedule 35 – List of Facilities.

- 1.13 “**Affordable Housing Facility 2 Owner**” means the owner of Affordable Housing Facility 2, which shall be identified by HMQ on a date following Financial Close.
- 1.14 “**Affordable Ownership Housing**” means a self-contained residential condominium unit for which (a) the purchase price does not exceed the average new home purchase price in the Greater Toronto Area as reported by CMHC; and (b) the Province shall provide or has provided the eligible purchaser with financial assistance for the down-payment in respect of such unit.
- 1.15 “**Affordable Rental Housing**” means an affordable rental condominium unit where the total monthly shelter costs, at initial occupancy, is at or below the average market rent in the City of Toronto as reported by CMHC for similar condominium units.
- 1.16 “**Affordable Rental Housing Sites**” means the lands within the Project Co Lands on which the Affordable Housing Facilities will be constructed.
- 1.17 “**Ambush Marketing**” has the meaning given in Section 4.3 of Appendix 1 to Schedule 18 – Communications Protocol.
- 1.18 “**Ancillary Documents**” means, collectively:
- (a) the Construction Contract;
  - (b) the Service Provider Services Agreement;
  - (c) the Performance Security;
  - (d) [REDACTED];
  - (e) [REDACTED];
  - (f) [REDACTED]; and
  - (g) [REDACTED].
- 1.19 “**Anticipated Interim Completion Date**” has the meaning given in Section 23A.2(a) of the Project Agreement.
- 1.20 “**Anticipated Project Co Stage 1 Conversion Substantial Completion Date**” has the meaning given in Section 24A.7(a) of the Project Agreement.
- 1.21 “**Anticipated Project Substantial Completion Date**” has the meaning given in Section 24.7(a) of the Project Agreement.
- 1.22 “**Anticipated Third Party Facility Conversion Substantial Completion Date**” has the meaning, for each Third Party Facility, given in Section 25.7(a) of the Project Agreement.

1.23 “**Applicable Law**” means:

- (a) any statute or proclamation or any delegated or subordinate legislation including regulations and by-laws;
- (b) any Authority Requirement; and
- (c) any judgment of a relevant court of law, board, arbitrator or administrative agency which is a binding precedent in the Province of Ontario,

in each case, (1) in force in the Province of Ontario, or otherwise binding on Project Co, any Project Co Party, HMQ or any HMQ Party and (2) as amended, re-enacted, consolidated or replaced from time to time and in the case of any such amendment, re-enactment, consolidation or replacement, reference herein to a particular provision shall be read as referring to such amended, re-enacted, consolidated or replaced provision.

1.24 “**Appointed Representative**” has the meaning given in Schedule 4 – Lenders' Direct Agreement.

1.25 “**Appointed Representative Notice**” has the meaning given in Schedule 4 – Lenders' Direct Agreement.

1.26 “**Approved Purposes**” means:

- (a) following termination of the Project Agreement, the design, construction and/or maintenance of the Facilities, and/or the performance of any other operations the same as, or similar to, the Project Operations; and
- (b) the development by MHPS and/or the Province of best practices for facilities in the Province of Ontario similar to the Facilities.

1.27 “**As Built Drawings**” means drawings prepared by Project Co in a format and with content and details that HMQ, acting reasonably, considers appropriate.

1.28 “**Authority Requirements**” means any order, direction, directive, request for information, policy, administrative interpretation, guideline or rule of or by any Governmental Authority.

1.29 “**Background Information**” means any and all drawings, reports (including the Environmental Reports and Designated Substance Reports and the Geotechnical Reports), studies, data, documents, or other information, given or made available to Project Co or any Project Co Party by HMQ or any HMQ Party, or which was obtained from or through any other sources to the date of the Project Agreement.

1.30 “**Bank**” has the meaning given in Schedule 30 – Insurance Trust Agreement.

1.31 “**Base Case Equity IRR**” means [REDACTED]%.

- 1.32 “**Beneficiaries**” or “**Beneficiary**” has the meaning given in Section 2.3(a) of the Trust Account Agreement.
- 1.33 “**Block**” means, unless otherwise expressly set out to the contrary, a block as shown on the Plan of Subdivision.
- 1.34 “**Block Plan**” means the West Don Lands Block Plan and Urban Design Guidelines (2006), as amended in May, 2011.
- 1.35 “**Building Code**” means the regulations made under Section 34 of the *Building Code Act, 1992* (Ontario), as amended or replaced from time to time.
- 1.36 “**Building Permits**” means the building permits issued by the applicable Governmental Authorities with respect to the construction of Facilities on the Site and “**Building Permit**” means any one of them.
- 1.37 “**Business Day**” means any day other than a Saturday, a Sunday, a statutory holiday in the Province or any day on which banks are not open for business in the City of Toronto, Ontario.
- 1.38 “**CaGBC**” means the Canadian Green Building Council.
- 1.39 “**CMHC**” means Canada Mortgage and Housing Corporation.
- 1.40 “**Canadian and Industry Standards**” means, at the applicable time, those standards, practices, methods and procedures applicable to Good Industry Practice.
- 1.41 “**Canadian GAAP**” shall be deemed to be the generally accepted accounting principles from time to time approved by the Canadian Institute of Chartered Accountants, or any successor institute, applicable as at the date on which such calculation is made or required to be made in accordance with generally accepted accounting principles, as such principles may be amended or varied by International Financial Reporting Standards then in effect in Canada, in any case consistently applied from one period to the next.
- 1.42 “**Capital Expenditure**” means capital expenditure as interpreted in accordance with Canadian GAAP.
- 1.43 “**Cash Allowance Account**” means [REDACTED].
- 1.44 “**Cash Allowance Amount**” means:
- (a) \$[REDACTED] for Intelligent Communities;
  - (b) \$[REDACTED] for Impacted Materials in Cherry Street and Eastern Avenue;
  - (c) \$[REDACTED] for the Cherry Street LRT;
  - (d) \$[REDACTED] for Temporary Power;

- (e) \$[REDACTED] for Utilities;
  - (f) \$[REDACTED] Bayview Avenue and Mill Street Completion;
  - (g) \$[REDACTED] for 409 Front Street (Former Palace Street School/Canary Restaurant); and
  - (h) \$[REDACTED] for additional equipment, infrastructure and security equipment for the Third Party Facilities.
- 1.45 “**Cash Allowance Items**” means, collectively, a cash allowance in respect of each of the following items:
- (a) Intelligent Communities;
  - (b) Impacted Materials in Cherry Street and Eastern Avenue;
  - (c) Cherry Street LRT;
  - (d) Temporary Power;
  - (e) Utilities;
  - (f) Bayview Avenue and Mill Street Completion;
  - (g) 409 Front Street (Former Palace Street School/Canary Restaurant); and
  - (h) Additional equipment, infrastructure and security equipment for the Third Party Facilities.
- 1.46 “**Certification Services**” has the meaning given in Schedule 6 – Independent Certifier Agreement.
- 1.47 “**Certification Services Variation**” has the meaning given in Schedule 6 – Independent Certifier Agreement.
- 1.48 “**Change in Control**” means, with respect to a person:
- (a) any Change in Ownership, where the effect of such change is to result in control of the decisions made by or on behalf of such person subsequently being with a different entity or entities than prior to such change;
  - (b) any other change in respect of the power to elect a majority of the directors of the person or otherwise control the decisions made on behalf of such person;
  - (c) any other change of direct or indirect power to direct or cause the direction of the management, actions or policies of such person; or

- (d) any other change of direct or indirect power or authority to influence or direct the approval of a decision, the management, actions or policies of a person or to prevent the approval of a decision, the management, actions or policies of a person through any contractual right or other power or interest with or over a person.
- 1.49 “**Change in Law**” means the coming into effect or repeal (without re-enactment or consolidation) in Ontario of any Applicable Law, or any amendment or variation of any Applicable Law, including any judgment of a relevant court of law which changes binding precedent in Ontario in each case after the date of the Project Agreement.
- 1.50 “**Change in Ownership**” means, with respect to a person, any change in ownership, whether beneficial or otherwise, of any of the shares or units of ownership of such person, or in the direct or indirect power to vote or transfer any of the shares or units of ownership of such person.
- 1.51 “**Change of Authorization Event**” has the meaning given in Schedule 30 - Insurance Trust Agreement.
- 1.52 “**Change of Authorization Notice**” has the meaning given in Schedule 30 - Insurance Trust Agreement.
- 1.53 “**CLA**” means the *Construction Lien Act* (Ontario).
- 1.54 “**Commissioning Tests**” means all commissioning tests:
- (a) described in Schedule 14 - Outline Commissioning Program;
  - (b) required by Applicable Law, Canadian and Industry Standards or CSA Standards;
  - (c) recommended by the manufacturer of any part of the Facilities or Equipment; and
  - (d) required to be included in the Project Substantial Completion Commissioning Program, the Project Co Stage 1 Conversion Substantial Completion Commissioning Program and the Third Party Facility Conversion Substantial Completion Commissioning Program by the Independent Certifier, the HMQ Commissioning Agent or the HMQ Representative during its development pursuant to Section 25.2 of the Project Agreement.
- 1.55 “**Compensation Event**” has the meaning given in Section 38.1(a) of the Project Agreement.
- 1.56 “**Compensation Payment**” means the Default Termination Payment, the Non Default Termination Sum, the Relief Event and Force Majeure Termination Sum or the Prohibited Acts Termination Sum, as the case may be, each as defined in Schedule 23 – Compensation on Termination.
- 1.57 “**Confidant**” has the meaning given in Section 49.6(a)(i) of the Project Agreement.

- 1.58 “**Confidential Information**” means all confidential and proprietary information which is supplied or made available by or on behalf of a Party, whether before or after the date of the Project Agreement.
- 1.59 “**Construction Contract**” means the construction contract between Project Co and the Construction Contractor dated on or about the date of Financial Close.
- 1.60 “**Construction Contractor**” means EllisDon Leducor PAAV Inc., engaged by Project Co to perform the Works and any substitute building contractor engaged by Project Co as may be permitted by the Project Agreement.
- 1.61 “**Construction Contractor’s Direct Agreement**” means the construction contractor’s direct agreement between HMQ, Project Co, the Construction Contractor and the Construction Guarantor in the form set out in Schedule 5 - Construction Contractor’s Direct Agreement.
- 1.62 “**Construction Defect**” has the meaning given in Section 18.14(c) of the Project Agreement.
- 1.63 “**Construction Document Submittals**” has the meaning given in Section 18.3(d)(ii) of the Project Agreement.
- 1.64 “**Construction Guarantor**” means [REDACTED].
- 1.65 “**Construction Latent Defect**” has the meaning given in Section 18.14(e) of the Project Agreement.
- 1.66 “**Construction Quality Plan**” means the “Construction Quality Plan” developed and implemented in accordance with Section 13 of the Project Agreement and based on the outline of such document included in Schedule 11 - Design Quality Plan and Construction Quality Plan.
- 1.67 “**Contamination**” means the presence of any Hazardous Substance in the environment, except Hazardous Substances present in the environment in concentrations below applicable standards as set by Applicable Laws. If Contamination is present in soil, surface water or groundwater, then the soil, surface water or groundwater, as applicable, containing the Contamination shall also be deemed to be Contamination for the purposes of the Project Agreement.
- 1.68 “**Contingency Equity**” means the portion of the Contributed Equity contributed for the purpose of providing a liquid source of funds to cover potential delay, acceleration and Project Co Event of Default costs and cost overruns in the amount of \$[REDACTED] as more particularly set out in the Project Agreement and as set out in the Financial Model.
- 1.69 “**Contingency Equity Letter of Credit**” has the meaning given in Section 2.2A(a) of the Project Agreement.
- 1.70 “**Contract Material**” has the meaning given in Schedule 6 – Independent Certifier Agreement.

- 1.71 **“Contract Year”** means the period of 12 calendar months that commences on April 1st of each calendar year and ends on the next ensuing March 31st, provided that:
- (a) the first Contract Year shall be such period that commences on Financial Close and ends on the next ensuing March 31st; and
  - (b) the final Contract Year shall be such period that commences on April 1st that precedes the date on which the Project Agreement expires or is terminated, for whatever reason, and ends on the expiry or termination of the Project Agreement.
- 1.72 **“Contributed Equity”** means the aggregate of the Contingency Equity and Cost to Complete Equity in the amount of \$[REDACTED] as set out in the Financial Model.
- 1.73 **“Cost of the Work”** means the cost to Project Co of performing the Works as set out in the Financial Model.
- 1.74 **“Cost to Complete Cash Equity”** has the meaning given in Section 2.2B.1(a) of the Project Agreement.
- 1.75 **“Cost to Complete Equity”** means the portion of the Contributed Equity contributed for the purpose of funding a part of the direct and indirect costs of completing the Project in the amount of \$[REDACTED] and as set out in the Financial Model, which is equal to (i) \$[REDACTED] in respect of the Third Party Facilities plus (ii) \$[REDACTED] in respect of all Facilities other than the Third Party Facilities, which, for clarity, is the aggregate (without double counting) of all subscribed share capital, shareholder loans and other contributed capital of Project Co, excluding, for greater certainty, any amounts advanced to Project Co under the Lending Agreements which has a fixed return without equity participation, step-up rights or rights to share in Project Co’s excess cash flow and a coupon equal to or less than [REDACTED]% of the coupon payable to the Lenders.
- 1.76 **“Cost to Complete Letter of Credit”** has the meaning given in Section 2.2B(a) of the Project Agreement.
- 1.77 **“CPI”** means CPI-XFET, as published by Statistics Canada from time to time, or failing such publication, such other index as the Parties may agree, or as may be determined in accordance with Schedule 27 - Dispute Resolution Procedure, most closely resembles such index.
- 1.78 **“CPIC”** means the Canadian Police Information Center.
- 1.79 **“CPIo”** is the value of CPI at Financial Close, to be determined by reference to the relevant index in the month immediately preceding Financial Close.
- 1.80 **“CPIy”** is the value of CPI on April 1 of the relevant Contract Year “y”, to be determined by reference to the relevant index in the month of February most recently preceding the indexation date.
- 1.81 **“Crown”** means Her Majesty the Queen in Right of Ontario.



- 1.82 “**CSA Standards**” means, at the applicable time, the Canadian Standards Association standards.
- 1.83 “**CSIS**” means the Canadian Security Intelligence Service.
- 1.84 “**Debt Amount**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.85 “**Debt Makewhole**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.86 “**Debt Service Amount**” means, for any period, the principal and interest payable by Project Co or any Project Co Party to the Lenders in the normal course under the Lending Agreements.
- 1.87 “**Default Notice**” has the meaning given in Schedule 30 – Insurance Trust Agreement.
- 1.88 “**Default Termination Payment**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.89 “**Default Period**” has the meaning given in Schedule 30 – Insurance Trust Agreement.
- 1.90 “**Delay Event**” has the meaning given in Section 37.1(a) of the Project Agreement.
- 1.91 “**Delay Event Acceleration Notice**” has the meaning given in Section 37.3(c) of the Project Agreement.
- 1.92 “**Delay Event Acceleration Plan**” has the meaning given in Section 37.3(c) of the Project Agreement.
- 1.93 “**Design and Bid Fee**” has the meaning given in the Request for Proposals.
- 1.94 “**Designated Provider**” has the meaning given in Section 18.16(a) of the Project Agreement.
- 1.95 “**Design Data**” means in respect of the Facilities, all data, drawings, reports, documents, plans, software, formulae, calculations, manuals, designs, materials, works and other data prepared by Project Co relating to the design, construction, testing, commissioning or operation of the Facilities, but excluding (i) Intellectual Property of third parties, other than Project Co Parties, such as CAD software, that is used only in the process of design and construction, and (ii) Intellectual Property of third parties, other than Project Co Parties, such as building authorization software, that is used only in the building operating systems.
- 1.96 “**Design Development Submittals**” has the meaning given in Section 18.3(d)(i) of the Project Agreement.
- 1.97 “**Design Functionality**” means
- (a) in respect of the Facilities from the Project Substantial Completion Date to the last Pan/Parapan Am Games Site Turnback Date, the ability of the Facilities to enable Toronto 2015 to carry out the Pan/Parapan Am Games in a safe, secure and efficient

manner and in particular achieving a balance between circulation, proximity, appropriate room adjacencies and the security requirements of the Facilities in accordance with the requirements of the Output Specifications; and

- (b) in respect of each Third Party Facility after each relevant Third Party Facility Conversion Substantial Completion Date, the ability of the relevant Third Party Facility to enable the relevant Third Party Owner to use such Third Party Facility for its intended use in a safe, secure and efficient manner and in particular achieving a balance between circulation, proximity, appropriate room adjacencies and the security requirements of such Third Party Facility in accordance with the requirements of the Output Specifications.
- 1.98 “**Design Functionality Report**” has the meaning given in Section 18.12(b) of the Project Agreement.
- 1.99 “**Design Review Meeting**” has the meaning given in Section 18.5(a) of the Project Agreement.
- 1.100 “**Design Quality Plan**” means such document included in Schedule 11 - Design Quality Plan and Construction Quality Plan.
- 1.101 “**Design Team**” means (i) architectsAlliance, (ii) Kuwabara Payne McKenna Blumberg Architects Daoust Lestage Inc., (iii) Maclellan Jaunkalns Miller Architects, (iv) Adjeleian Allen Rubeli Limited, (v) Halsall Associates, (vi) Hidi Rae Consulting Engineers Inc., (vii) Terraprobe, and (viii) Cole Engineering, each engaged by Project Co to design the Facilities and any substitute design team engaged by Project Co as may be permitted by the Project Agreement.
- 1.102 “**Design Workshops**” has the meaning given in Section 18.5(a) of the Project Agreement.
- 1.103 “**Designated Project Co Employee**” means:
- (a) every person employed, engaged or hired by Project Co or a Project Co Party who is
    - (i) to carry out any of the responsibilities of Project Co (including by a Project Co Party) under the Project Agreement during the Project Term or to provide any of the Project Operations; or
    - (ii) identified by name in any proposal submitted by Project Co or a Project Co Party or who is hired in replacement of any person so named; or
  - (b) every other person otherwise designated as a Designated Project Co Employee by HMQ or ISU from time to time.
- 1.104 “**Develop**” means the commencement of *bona fide* construction on the applicable lands.
- 1.105 “**Development Approval**” means in respect of the Facilities, development permits, Building Permits, zoning approvals and any other planning or development permit, consent or

applicable Permits, Licences, Approvals and Agreements required from time to time for construction of the Facilities.

- 1.106 “**Direct Cost**” has the meaning given in Schedule 22 -Variation Procedure.
- 1.107 “**Direct Losses**” means all damage, losses, liabilities, penalties, fines, assessments, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on a substantial indemnity basis), proceedings, demands and charges whether arising under statute, contract or at common law, except Indirect Losses.
- 1.108 “**Direct or Indirect Power or Control**” means the direct or indirect power or control over the decisions, management, actions or policies of a person, including through the direct or indirect power or control over the decisions, management, actions or policies of any persons having direct or indirect power or control over the decisions, management, actions or policies of any other person, whether through:
- (a) ownership, beneficial or otherwise, of any of the shares, units or equity interests of a person;
  - (b) the direct or indirect power to vote any of the shares, units or equity interests of a person; or
  - (c) the direct or indirect power or authority to influence or direct the approval of a decision, the management, actions or policies of a person or to prevent the approval of a decision, the management, actions or policies of a person through any contractual right or other power or interest with or over a person.
- 1.109 “**Discriminatory Change in Law**” means any Change in Law, the effect of which is to discriminate directly against or impose additional Taxes which apply specifically to:
- (a) facilities whose design, construction, financing and facilities management are procured by a contract similar to the Project Agreement in relation to other similar facilities;
  - (b) the Facilities in relation to other facilities similar to the Project;
  - (c) Project Co in relation to other persons; or
  - (d) persons undertaking projects for design, construction, financing and facilities management that are procured by a contract similar to the Project Agreement in relation to other persons undertaking similar projects procured on a different basis,
- except that such Change in Law shall not be a Discriminatory Change in Law:
- (i) where it is in response to any act or omission on the part of Project Co which contravenes Applicable Law (other than an act or omission rendered illegal by virtue of the Discriminatory Change in Law itself);

- (ii) solely on the basis that its effect on Project Co is greater than its effect on other companies; or
- (iii) where such Change in Law is a change in Taxes that affects companies generally.

1.110 “**Dispute**” has the meaning given in Schedule 27 - Dispute Resolution Procedure.

1.111 “**Dispute Resolution Procedure**” means the procedure set out in Schedule 27 - Dispute Resolution Procedure.

1.112 “**Diversity Plan**” means the “Diversity Plan” developed and implemented in accordance with Section 13 of the Project Agreement and based on the outline of such document included in Schedule 40 – WTEI, Diversity and Smoke Free Workplace Plans.

1.113 “**Early Operational Term**” means:

- (a) in respect of each Toronto 2015 LD Underlay Facility and the portion of the Site upon which such Toronto 2015 LD Underlay Facility was constructed, the period
  - (i) beginning on the earlier of the Project Substantial Completion Date and, if Project Substantial Completion has not been achieved by [REDACTED], the date such Toronto 2015 LD Underlay Facility has been certified as meeting all of the requirements of Project Substantial Completion by the Independent Certifier in accordance with the Project Substantial Completion Commissioning Program, and
  - (ii) ending on the date such Toronto 2015 LD Underlay Facility and the applicable portion of the Site have been turned over to HMQ by Project Co and the applicable Turnover Process has been completed pursuant to and in accordance with Section 14.7(a) of the Project Agreement; and
- (b) in respect of each Facility other than the Toronto 2015 LD Underlay Facilities and the applicable portion of the Site upon which such Facility was constructed, the period
  - (i) beginning on the Project Substantial Completion Date, and
  - (ii) ending on the date such Facility and the applicable portion of the Site have been turned over to HMQ by Project Co and the applicable Turnover Process has been completed pursuant to and in accordance with Section 14.7(a) of the Project Agreement.

For greater clarity, the Early Operational Term shall terminate after the last Facility and the entire Site have been turned over to HMQ by Project Co pursuant to and in accordance with Section 14.7(a) of the Project Agreement.

1.114 “**Early Works**” has the meaning given in the Early Works Agreement.

- 1.115 **“Early Works Agreement”** means the agreement in respect of the Early Works between HMQ, Early Works Project Co, EllisDon Corporation and Ledcor Design-Build (Ontario) Inc. dated September 12, 2011.
- 1.116 **“Early Works Price”** has the meaning given in the Early Works Agreement.
- 1.117 **“Early Works Project Co”** means Project Co in its capacity as “Early Works Project Co” under the Early Works Agreement.
- 1.118 **“Economic Interest”** means any right to receive, directly or indirectly and whether in cash or in kind, a payment, repayment, fee, interest, dividend, distribution, redemption or any other consideration of benefit or value to the recipient of any nature whatsoever.
- 1.119 **“Emergency”** means any situation, event, occurrence or multiple occurrences that:
- (a) constitutes or may constitute a hazard to or jeopardizes or may jeopardize health and safety of persons;
  - (b) causes or may cause damage or harm to property, buildings and/or equipment; or
  - (c) materially interferes with or prejudices or may materially interfere with or prejudice the safe operation of the Facilities, any part of the Site and/or the conduct of the Project Operations;
- and which, in the opinion of HMQ, requires immediate action to prevent and/or mitigate the occurrence (or risk of the occurrence) of the foregoing.
- 1.120 **“Enabling Works”** has the meaning given in Section 1.2.2 of Part 1 of Schedule 15 – Output Specifications.
- 1.121 **“Enabling Works and Construction Access Sequence Diagrams”** means Figures 1, 2 and 3 in Section 1.2.2 of Part 1 of Schedule 15 – Output Specifications.
- 1.122 **“Encumbrance”** means any mortgage, lien, pledge, judgment, execution, charge, security interest, restriction, claim or encumbrance of any nature whatsoever, including claims of the Workplace Safety and Insurance Board, Canada Revenue Agency, and other Governmental Authorities.
- 1.123 **“Enforcement Event”** has the meaning given in Schedule 4 – Lenders' Direct Agreement.
- 1.124 **“Environmental Reports and Designated Substance Reports”** has the meaning given in Schedule 37 – Reports.
- 1.125 **“Equipment”** means the equipment designated as “In Contract Equipment” in the Output Specifications and the Additional Project Co Equipment, if any.
- 1.126 **“Equity Holder”** means, [REDACTED].

- 1.127 “**Equity IRR**” means the projected internal rate of return to the Equity Holder over the full term of this Project Agreement, taking into account the aggregate of all its investments.
- 1.128 “**Equity Sale IRR**” means the Equity IRR calculated to the date of any sale of Cost to Complete Equity calculated by taking into account the full Implied Equity Value and the actual timing of payment of all such amounts.
- 1.129 “**Estimate**” has the meaning given in Schedule 22 - Variation Procedure.
- 1.130 “**Excess Equity Gain**” means an amount equal to the greater of zero and the difference between:
- (a) the amount paid in consideration of the percentage of Cost to Complete Equity (as at Financial Close) sold in a particular sale of Cost to Complete Equity; and
  - (b) the Threshold Equity Sale Amount.
- 1.131 “**Excess Revenue Share**” has the meaning given in Schedule 3 – Revenue Sharing.
- 1.132 “**Expert**” has the meaning given in Schedule 27 - Dispute Resolution Procedure.
- 1.133 “**Expiry Date**” means the later of (i) the date upon which Project Final Completion has been achieved and (ii) the date upon which all of the Project Co Stage 1 Conversion Work has been completed, including all applicable seasonal work, as certified by the Independent Certifier.
- 1.134 “**Facilities**” means, collectively, the Facilities set out in Schedule 35 – List of Facilities.
- 1.135 “**Facility**” means a Facility listed in Schedule 35 – List of Facilities, and may be referred to by the name of the particular Facility as set out in Schedule 35 – List of Facilities, with each Facility being comprised of the following:
- (a) all buildings, facilities and other structures;
  - (b) the Plant;
  - (c) all site services, utilities, roadways and parking areas required to support such buildings, facilities and structures;
  - (d) all supporting systems, infrastructure and improvements; and
  - (e) all other works, improvements and demolitions to occur on the Site;

in each case required to meet the Output Specifications and the requirements under the Permits, Licences, Approvals and Agreements and whether or not in the course of construction, installation or completion.

- 1.136 “**Financial Close**” means the first date that funding is available under the Lending Agreements.
- 1.137 “**Financial Close Target Date**” means December 14, 2011, as such date may be extended in accordance with the provisions of the Project Agreement.
- 1.138 “**Financial Model**” means the computer spreadsheet model for the Project incorporating statements of Project Co’s cashflows including all expenditure, revenues, financing and taxation of the Project Operations together with the profit and loss accounts and balance sheets for Project Co throughout the Project Term accompanied by details of all assumptions, calculations and methodology used in their compilation and any other documentation necessary or desirable to operate the model.
- 1.139 “**Financial Obligations**” means the obligation to pay any application fees, third party fees, costs or charges (including all applicable Taxes thereon), the provision of any letters of credit, instruments of guarantee, bonds or security deposits, or any other financial security obligations save and except for the HMQ Security Deposits.
- 1.140 “**Financing**” means the financing with the Lenders, which is consistent in all material respects with Schedule 32 - Financial Model and the Project Agreement.
- 1.141 “**FIPPA**” means the *Freedom of Information and Protection of Privacy Act* (Ontario).
- 1.142 “**Force Majeure**” has the meaning given in Section 41.1(a) of the Project Agreement.
- 1.143 “**George Brown Facility**” means the Facility designated as the “George Brown Facility” in Schedule 35 – List of Facilities.
- 1.144 “**George Brown Facility Owner**” means George Brown College.
- 1.145 “**Geotechnical Reports**” has the meaning given in Schedule 37 – Reports.
- 1.146 “**Good Industry Practice**” means using standards, practices, methods and procedures to a good commercial standard, conforming to Applicable Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a qualified, skilled and experienced person engaged in a similar type of undertaking under the same or similar circumstances.
- 1.147 “**Government Entity**” means one or more of the Province, MOI, HMQ, Waterfront Toronto, Toronto 2015, any public law enforcement or security agency (including, but not limited to, ISU) and MHPS.
- 1.148 “**Government Entity Third Party Beneficiaries**” has the meaning given in Section 59.17(c)(i) of the Project Agreement.
- 1.149 “**Government Sensitive Information**” means any information which is designated as such by the Province from time to time, or which a reasonable person, having regard to the circumstances, would regard as sensitive, including (i) all confidential information that is

designated as such by Applicable Law, (ii) all information that relates to the security systems of the Facilities and of facilities in Ontario similar to the Facilities generally, and (iii) any record, the disclosure of which could be injurious to the interests of the Province.

- 1.150 **“Governmental Authority”** means any federal, provincial, territorial, regional, municipal or local governmental authority, quasi-governmental authority, court, government or self-regulatory organization, commission, board, tribunal, organization, or any regulatory, administrative or other agency, or any political or other subdivision, department, or branch of any of the foregoing, having legal jurisdiction in any way over HMQ, any aspect of the performance of the Project Agreement or the operation of the Facilities in each case to the extent it has or performs legislative, judicial, regulatory, administrative or other functions within its jurisdiction.
- 1.151 **“Guaranteed Third Party Price”** means the amount referred to in Section 31.1(a) of the Project Agreement for each of the Third Party Facilities.
- 1.152 **“Hazardous Substances”** means any contaminant, pollutant, dangerous substance, toxic substance, liquid waste, industrial waste, gaseous waste, hauled liquid waste, hazardous material, or hazardous substance as defined or identified pursuant to any Applicable Law.
- 1.153 **“Heritage Guidelines and Protocols”** means the Government of Ontario’s Best Practice Guidelines for the Treatment of Human Skeletal Remains Discovered Outside a Licensed Cemetery and the Cultural Heritage Protocol Agreement between the Ministry of Government Services and the Ministry of Culture and Communications.
- 1.154 **“HMQ”** means Her Majesty the Queen in right of Ontario as represented by the Minister of Infrastructure, as represented by Ontario Infrastructure and Lands Corporation, a non-share capital corporation continued and amalgamated under the *Ontario Infrastructure and Lands Corporation Act*, 2011, S.O. 2011, c. 9, Schedule 32, as amended.
- 1.155 **“HMQ Commissioning”** means the Project Substantial Completion HMQ Commissioning and the Third Party Facility Conversion Substantial Completion HMQ Commissioning.
- 1.156 **“HMQ Commissioning Agent”** means the person appointed by HMQ as its commissioning agent.
- 1.157 **“HMQ Design Team”** means any one or more of HMQ, MHPS, Waterfront Toronto (excluding, for greater clarity, the Waterfront Design Review Panel), each of the Third Party Owners and Toronto 2015 in addition to their agents, contractors and subcontractors of any tier and its or their directors, officers and employees, and other persons engaged in respect of design reviews, design evaluation, or design consultation processes with respect to the Facilities on behalf of HMQ, MHPS, Waterfront Toronto, each of the Third Party Owners and Toronto 2015 but excluding Project Co and any Project Co Party.
- 1.158 **“HMQ Event of Default”** has the meaning given in Section 43.1(a) of the Project Agreement.



- 1.159 “**HMQ Party**” means any of HMQ’s agents, contractors and subcontractors of any tier and its or their directors, officers and employees, but excluding Project Co and any Project Co Party, and the “**HMQ Parties**” shall be construed accordingly.
- 1.160 “**HMQ Permits, Licences, Approvals and Agreements**” means those HMQ permits, licences, approvals and agreements including those Development Approvals and Development Agreements which are the responsibility of HMQ to obtain as set out in Appendix 1 – Permits, Licences Approvals and Agreements of this Schedule 1 – Definitions and Interpretation.
- 1.161 “**HMQ Project Substantial Completion Minor Deficiencies Holdback**” has the meaning given in Section 24.10(a) of the Project Agreement.
- 1.162 “**HMQ Project Security**” means the security granted by Project Co in favour of HMQ to secure the obligations of Project Co under the Project Agreement to achieve Project Substantial Completion by the Longstop Date as set out in Schedule 21 – HMQ Project Security.
- 1.163 “**HMQ Representative**” means the person designated as such by HMQ on or prior to the date of this Project Agreement and any permitted replacement.
- 1.164 “**HMQ Security Deposits**” means any and all letters of credit, securities, prepaid fees, deposits and similar instruments paid or posted by, or on behalf of, HMQ in connection with the Project Operations including, but not limited to, those instruments listed in Appendix 2 – HMQ Security Deposits of this Schedule 1 – Definitions and Interpretation.
- 1.165 “**HMQ Signage**” has the meaning given in Section 2.2 of Appendix 1 to Schedule 18 – Communications Protocol.
- 1.166 “**HMQ Taxes**” means taxes, or payments in lieu of taxes, imposed on HMQ and HST and property taxes for which HMQ is responsible pursuant to Section 32 of the Project Agreement.
- 1.167 “**HMQ Trade-Marks**” means any and all Trade-Marks used by HMQ in any manner whatsoever.
- 1.168 “**HST**” means the value-added tax imposed pursuant to Part IX of the *Excise Tax Act* (Canada), and any successor legislation thereto.
- 1.169 “**IC’s Representatives**” has the meaning given in Section 23.8(a) of the Project Agreement.
- 1.170 “**Implied Equity Value**” means the amount paid in consideration of a percentage of Cost to Complete Equity divided by the percentage of Cost to Complete Equity (as at Financial Close) sold in a particular sale of Cost to Complete Equity.
- 1.171 “**Improvements**” means structures, buildings, installations, fixtures, services and other such improvements.

- 1.172 **“Incremental Warranty Period”** has the meaning given in Section 18.14(d) of the Project Agreement.
- 1.173 **“Indemnifier”** has the meaning given in Section 53.3(a) of the Project Agreement.
- 1.174 **“Independent Certifier”** means the person appointed as the Independent Certifier pursuant to the Independent Certifier Agreement and as may be permitted pursuant to the Project Agreement.
- 1.175 **“Independent Certifier Agreement”** means the contract entered into between Project Co, HMQ and the Independent Certifier in substantially the form attached hereto as Schedule 6 - Independent Certifier Agreement.
- 1.176 **“Indirect Losses”** has the meaning given in Section 54.1(a) of the Project Agreement.
- 1.177 **“Insurance”** means the insurance contemplated by Schedule 25 – Insurance and Performance Security Requirements.
- 1.178 **“Insurance Policies”** has the meaning given in Schedule 30 - Insurance Trust Agreement.
- 1.179 **“Insurance Proceeds”** has the meaning given in Schedule 30 - Insurance Trust Agreement.
- 1.180 **“Insurance Trust Agreement”** means the insurance trust agreement to be entered into between HMQ, the Lenders' Agent, Project Co and the Account Trustee in the form set out in Schedule 30 - Insurance Trust Agreement.
- 1.181 **“Integrated Security Unit”** or **“ISU”** means the security unit responsible for overseeing the planning, coordination and delivery of security for the Pan/Parapan Am Games comprised of members from provincial, federal and local police and security forces.
- 1.182 **“Intellectual Property”** means in connection with a specified subject matter, on a worldwide basis, all registered or unregistered Trade-Marks, trade names, patents, copyrights, trade secrets, designs, industrial designs, official marks, colour schemes, rights of publicity, mask work rights, utility models and other industrial or intangible property rights of a similar nature, all grants and registrations worldwide in connection with the foregoing and all other rights with respect thereto existing other than pursuant to grant or registration; all applications for any such grant or registration, all rights of priority under international conventions to make such applications and the right to control their prosecution, and all amendments, continuations, divisions and continuations-in-part of such applications; and all corrections, reissues, patents of addition, extensions and renewals of any such grant, registration or right.
- 1.183 **“Intellectual Property Rights”** means all Intellectual Property in or associated with the Project Data and all Intellectual Property which, or the subject matter of which, is at any time before or after the date of the Project Agreement created, brought into existence, acquired, used or intended to be used by Project Co, any Project Co Party or by other third parties (for such third parties' use by or on behalf of or for the benefit of Project Co) for any or all of the purposes of:

- (a) the Works, including the design and construction of the Facilities (excluding Intellectual Property Rights of third parties, such as CAD software, that is used only in the process of design and construction);
  - (b) any other Project Operations; or
  - (c) the Project Agreement.
- 1.184 **“Intercreditor Agreement”** has the meaning given in the Provincial Loan Agreement.
- 1.185 **“Interim Completion”** means the point at which Project Co has completed [REDACTED]% of the Project Substantial Completion Works as evidenced by the certification by the “payment certifier” for the Construction Contract(s) that the payments (including, for clarity, all Legislative Holdbacks) paid or due and payable by Project Co to the Construction Contractor under the Construction Contract(s), in aggregate, are equal to at least [REDACTED]% of the Cost of the Work in respect of the Project Substantial Completion Works as set out in the Financial Model.
- 1.186 **“Interim Completion Certificate”** means the certificate to be issued by the Independent Certifier in accordance with Section 23A.1(d) of the Project Agreement.
- 1.187 **“Interim Completion Countdown Notice”** has the meaning given in Section 23A.2(a) of the Project Agreement.
- 1.188 **“Interim Completion Date”** means the date on which Interim Completion is achieved as evidenced by the Interim Completion Certificate, as such date shall be stated therein.
- 1.189 **“Interim Completion Notice”** has the meaning given in Section 23A.1(b) of the Project Agreement.
- 1.190 **“Interim Completion Payment”** means an amount equal to [REDACTED] (\$[REDACTED]) less the Legislative Holdback.
- 1.191 **“Interim Completion Payment Date”** means the date that is 2 Business Days after the Interim Completion Date.
- 1.192 **“Invoice Date”** has the meaning given in Schedule 23 - Compensation on Termination.
- 1.193 **“IPFP Framework”** has the meaning given in the recitals to the Project Agreement.
- 1.194 **“Jointly Developed Materials”** has the meaning given in Section 48.4(a) of the Project Agreement.
- 1.195 **“Key Individuals”** has the meaning given in Schedule 9 – Key Individuals.
- 1.196 **“Land Transfer Taxes Amount”** has the meaning given in Section 32.7(a) of the Project Agreement.

- 1.197 “**LEED**” means Leadership in Energy & Environmental Design.
- 1.198 “**LEED Facility**” means any of the Project Co Stage 1 Condominium Facilities or the Third Party Facilities and “**LEED Facilities**” means, collectively, the Project Co Stage 1 Condominium Facilities and the Third Party Facilities.
- 1.199 “**LEED Gold Rating**” means the achievement of a “Gold” rating from the CaGBC with respect to the CaGBC’s LEED Rating System.
- 1.200 “**LEED Lands**” means Blocks 1, 3, 4, 11, 14 and 15.
- 1.201 “**LEED Letter of Credit**” has the meaning given in Section 22.5(a) of the Project Agreement.
- 1.202 “**LEED Liquidated Damages**” has the meaning given in Section 22.4(d) of the Project Agreement.
- 1.203 “**LEED Rating System**” means LEED-Canada NC 2009.
- 1.204 “**Legal Descriptions**” has the meaning given in Section 26.2(a) of the Project Agreement.
- 1.205 “**Legislative Holdback**” means the holdback to be maintained under Part IV of the CLA.
- 1.206 “**Lenders**” means [REDACTED].
- 1.207 “**Lenders’ Agent**” has the meaning given in Schedule 4 - Lenders’ Direct Agreement.
- 1.208 “**Lenders’ Consultant**” means any consultant appointed from time to time by the Lenders.
- 1.209 “**Lenders’ Direct Agreement**” means the direct agreement to be entered into between HMQ, the Lenders’ Agent and Project Co in the form set out in Schedule 4 - Lenders’ Direct Agreement.
- 1.210 “**Lenders’ Technical Advisor**” means Mott Macdonald Canada Ltd.
- 1.211 “**Lending Agreements**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.212 [REDACTED].
- 1.213 [REDACTED].
- 1.214 [REDACTED].
- 1.215 “**Loan Parties**” has the meaning given in Schedule 8 – Provincial Loan Agreement.
- 1.216 “**Loan Party**” has the meaning given in Schedule 8 – Provincial Loan Agreement.
- 1.217 “**Longstop Date**” has the meaning given in Section 42.1(a)(iii) of the Project Agreement.

- 1.218 “**LTA Monthly Third Party Facility Conversion Authorization Amount**” has the meaning given in Section 18.17(b) of the Project Agreement.
- 1.219 “**LTA Third Party Facility Games Damage Authorization Amount**” has the meaning given in Section 14.7A(d) of the Project Agreement.
- 1.220 “**Market**” means the Marketing process described in Section 1.2 of Schedule 18 – Communications Protocol.
- 1.221 “**Marketing**” has the meaning given in Section 1.2 of Schedule 18 – Communications Protocol.
- 1.222 “**MGS**” means Her Majesty The Queen in Right of Ontario as represented by the Minister of Government Services, and includes any successors thereto or persons exercising delegated power and the Minister’s authority.
- 1.223 “**MHPS**” means Her Majesty The Queen in Right of Ontario as represented by the Minister of Health Promotion and Sport or any other Minister representing Her Majesty The Queen in Right of Ontario and delegated responsibility for the Pan/Parapan Am Games (including any successors to such Ministers or persons exercising delegated power and such Ministers’ authority) or the Executive Council of Ontario as represented by any persons exercising delegated power with respect to the Pan/Parapan Am Games and such Council’s authority.
- 1.224 “**MOI**” means Her Majesty The Queen in Right of Ontario as represented by the Minister of Infrastructure, and includes any successors thereto or persons exercising delegated power under the Minister’s authority.
- 1.225 “**Municipal Works**” has the meaning given in Section 1.2.3 of Part 1 of Schedule 15 – Output Specifications.
- 1.226 “**Municipal Works Facilities**” means, collectively, the Facilities designated as “Municipal Works Facilities” in Schedule 35 – List of Facilities and “**Municipal Works Facility**” means any Municipal Works Facility.
- 1.227 “**Municipal Works Facilities Maintenance Period Work**” has the meaning given in Section 25A(a).
- 1.228 “**Municipal Works Letter of Credit**” has the meaning given in Section 18.18(a) of the Project Agreement.
- 1.229 “**Non-Default Termination Sum**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.230 “**Non-Partner**” has the meaning given in Section 4.3 of Appendix 1 to Schedule 18 – Communications Protocol.
- 1.231 “**Non-Resident**” means a person that is, at the relevant time, a non-resident of Canada for the purposes of the *Income Tax Act* (Canada).

- 1.232 “**Notice**” has the meaning given in Section 58.1(a) of the Project Agreement.
- 1.233 “**Notice of Approval Conditions**” means the Notice of Approval Conditions issued by the City of Toronto in respect of the Project.
- 1.234 “**Notice of Dispute**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.235 “**Notice Period**” has the meaning given in Schedule 4 – Lenders' Direct Agreement.
- 1.236 “**Occupancy Permit**” means all Permits, Licences, Approvals and Agreements required for the occupancy of the Facilities in compliance with Applicable Law.
- 1.237 “**Off-Site Third Parties**” has the meaning given in Section 14.1(h) of the Project Agreement.
- 1.238 “**OILC**” means the Ontario Infrastructure and Lands Corporation.
- 1.239 “**Ontario New Home Warranties Plan Act**” means the *Ontario New Home Warranties Plan Act*, R.S.O. 1990, Ch. O.31.
- 1.240 “**Ontario New Home Warranties Plan Act Compliance Agreement**” means the agreement to be entered into between HMQ, Tarion, Project Co and the Construction Contractor in the form set out in Schedule 39 - Ontario New Home Warranties Plan Act Compliance Agreement.
- 1.241 “**Ontario Infrastructure and Lands Corporation**” means the non-share capital corporation continued and amalgamated under the *Ontario Infrastructure and Lands Corporation Act*, 2011, S.O. 2011, c. 9, Schedule 32, as amended and includes any successors thereto or persons exercising delegated power and the Minister's authority, as agent for Her Majesty the Queen in Right of Ontario as represented by the Minister of Infrastructure.
- 1.242 “**Operational Term**” has the meaning given in the Project Co Services Agreement.
- 1.243 “**Order**” has the meaning given in Schedule 30 - Insurance Trust Agreement.
- 1.244 “**Outline Commissioning Program**” means the schedule setting out the standards, specifications, procedures and other requirements for the performance and completion of the commissioning activities of the Parties outlined in Schedule 14 - Outline Commissioning Program.
- 1.245 “**Output Specifications**” means Schedule 15 – Output Specifications.
- 1.246 “**PA Parties**” or “**PA Party**” has the meaning given in Schedule 6 – Independent Certifier Agreement.
- 1.247 “**Pan/Parapan Am Games**” means the Toronto 2015 Pan/Parapan American Games.

- 1.248 **“Pan/Parapan Am Games Athletes Village”** means the area comprising the Site and all of the Facilities constructed within the Site.
- 1.249 **“Pan/Parapan Am Games Site Turnback Date (Parapan Sites)”** means [REDACTED] in respect of Blocks 1, 2, 3, 4, 11, 12, 13, 14, 15 and 16.
- 1.250 **“Pan/Parapan Am Games Site Turnback Date (Remaining TO2015 Facilities)”** means [REDACTED] in respect of West Blocks 3, 4, and 7, the West Block 7 Laneway, and Blocks 8, 9, 10, 20 and 32.
- 1.251 **“Pan/Parapan Am Games Site Turnback Dates”** means, collectively, the Pan/Parapan Am Games Site Turnback Date (Parapan Sites) and the Pan/Parapan Am Games Site Turnback Date (Remaining TO2015 Facilities) and **“Pan/Parapan Am Games Site Turnback Date”** means any one of these dates.
- 1.252 **“Party”** means either HMQ or Project Co, and **“Parties”** means both HMQ and Project Co.
- 1.253 **“Party Representative”** and **“Party Representatives”** have the meanings given in Schedule 27 - Dispute Resolution Procedure.
- 1.254 **“Payment Compensation Amount”** means, with respect to an amount and a specified period of time, (i) such amount multiplied by (ii) such period of time in days divided by the actual number of days in the current year multiplied by (iii) the rate of interest per annum in effect on each such day equal to [REDACTED]% over the rate of interest per annum quoted by [REDACTED] from time to time as its reference rate for Canadian Dollar demand loans made to its commercial customers in Canada and which it refers to as its “prime rate”, as such rate may be changed by it from time to time.
- 1.255 **“Payment Instruction”** has the meaning given in Schedule 33 – Trust Account Agreement.
- 1.256 **“Performance Guarantees”** means the guarantees to Project Co in respect of the Construction Contract.
- 1.257 **“Performance Security”** means the performance security required pursuant to Article 19 of Schedule 25 – Insurance and Performance Security Requirements.
- 1.258 **“Permits, Licences, Approvals and Agreements”** means the HMQ Permits, Licences, Approvals and Agreements and the Project Co Permits, Licences, Approvals and Agreements.
- 1.259 **“Personal Information”** means all personal information (as the term **“personal information”** is defined in the *Personal Information Protection and Electronic Documents Act* (Canada)) in the possession, custody or control of Project Co or a Project Co Party, that HMQ discloses, transfers or provides access to Project Co or a Project Co Party in connection with the Project Operations or that Project Co or a Project Co Party otherwise collects, handles or of which it otherwise comes into possession in connection with the Project Operations, other than personal information of the employees of Project Co or a Project Co Party and other than personal information that is (i) wholly unrelated to the

Project Operations, and (ii) not derived directly or indirectly from HMQ in respect of the Project.

- 1.260 **“Plan of Subdivision”** means the plan of subdivision 66M-2488 registered on September 9, 2011, prepared by Sexton McKay Limited OLS and approved under Section 51 of the *Planning Act* (Ontario).
- 1.261 **“Planning, Design & Compliance Consultant”** means a consultant to HMQ to act as an advocate for HMQ and MHPS throughout the design and construction stage of the Project.
- 1.262 **“Plant”** means all buildings, building services, infrastructure, building fabric, and mechanical and electrical services, which are required to meet the operational needs of HMQ as defined in Schedule 15 – Output Specifications.
- 1.263 **“Preferred Proponent”** has the meaning given in the Request for Proposals.
- 1.264 **“Product”** or **“Products”** means material, machinery, equipment and fixtures forming the Works but does not include machinery and equipment used to prepare, fabricate, convey or erect the Works, which is referred to as construction machinery and equipment.
- 1.265 **“Prohibited Act”** has the meaning given in Section 57.1(a) of the Project Agreement.
- 1.266 **“Prohibited Acts Termination Sum”** has the meaning given in Schedule 23 – Compensation on Termination.
- 1.267 **“Prohibited Encumbrances”** has the meaning given in the Request for Proposals.
- 1.268 **“Project”** has the meaning given in the recitals to the Project Agreement.
- 1.269 **“Project Agreement”** has the meaning given in the recitals to the Project Agreement.
- 1.270 **“Project Agreement Arbitration”** has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.271 **“Project Co”** has the meaning given in the introductory paragraph of the Project Agreement.
- 1.272 **“Project Co Commissioning”** means the Project Substantial Completion Project Co Commissioning, the Project Co Stage 1 Conversion Substantial Completion Project Co Commissioning and the Third Party Facility Conversion Substantial Completion Project Co Commissioning.
- 1.273 **“Project Co Commissioning Coordinator”** means the person appointed by Project Co as its commissioning agent.
- 1.274 **“Project Communications”** has the meaning given in Section 2.2 of Schedule 18 – Communications Protocol.
- 1.275 **“Project Co Delay”** has the meaning given in Section 20.4A(b) of the Project Agreement.



- 1.276 **“Project Co Delay Notice”** has the meaning given in Section 20.4A(b) of the Project Agreement.
- 1.277 **“Project Co Event of Default”** has the meaning given in Section 42.1(a) of the Project Agreement.
- 1.278 **“Project Co Facilities”** means, collectively, each Facility designated under the heading “Project Co Facilities” in Schedule 35 – List of Facilities.
- 1.279 **[REDACTED]**
- 1.280 **“Project Co Group”** means Project Co **[REDACTED]**.
- 1.281 **“Project Co Lands”** means, collectively, the Project Co Stage 1 Lands and the Project Co Stage 2 Lands.
- 1.282 **“Project Co Lands Agreements of Purchase and Sale”** means, collectively, the Project Co Stage 1 Lands Agreement of Purchase and Sale and the Project Co Stage 2 Lands Agreement of Purchase and Sale.
- 1.283 **“Project Co Lands Transfer Date”** means the date that is 10 Business days following the Pan/Parapan Am Games Site Turnback Date (Parapan Sites) unless otherwise agreed to by the Parties, acting reasonably.
- 1.284 **“Project Co Party”** means:
- (a) the Construction Contractor;
  - (b) any person engaged by Project Co and/or the Construction Contractor from time to time as may be permitted by the Project Agreement to procure or manage the provision of the Project Operations (or any of them);
  - (c) any Supplier or consultant of Project Co engaged by or through Project Co to perform any of the Project Operations; and
  - (d) in respect of each of the above, their subcontractors of any tier, agents, employees, officers and directors,
- and **“Project Co Parties”** shall be construed accordingly.
- 1.285 **“Project Co Permits, Licences, Approvals and Agreements”** means all permissions, consents, approvals, certificates, permits, licences, agreements and authorizations to be obtained by Project Co in accordance with the Project Agreement and as required by Applicable Law, and all necessary consents and agreements from and with any third parties (including all Development Approvals and Development Agreements and the approval of the Fire Marshal of Ontario), needed to perform the Project Operations in accordance with the Project Agreement, including those permits, licences, approvals and agreements which are the responsibility of Project Co to obtain as set out in Appendix 1 – Permits, Licences

Approvals and Agreements of this Schedule 1 – Definitions and Interpretation but other than any HMQ Permits, Licences, Approvals and Agreements.

- 1.286 **“Project Co Proposal Extracts”** means the documents attached as Schedule 13 – Project Co Proposal Extracts.
- 1.287 **“Project Co Representative”** means the person designated as such by Project Co on or prior to the date of the Project Agreement and any permitted replacement.
- 1.288 **“Project Co Services”** has the meaning given in Schedule 36 – Project Co Services Agreement.
- 1.289 **“Project Co Services Agreement”** means the Project Co Services Agreement between HMQ, Project Co and Toronto 2015 in the form set out in Schedule 36 – Project Co Services Agreement.
- 1.290 **“Project Co Signage”** has the meaning given in Section 2.1 of Appendix 1 to Schedule 18 – Communications Protocol.
- 1.291 **“Project Co Signage Rights”** has the meaning given in Section 14.11(b).
- 1.292 **“Project Co Stage 1 Condominium Facilities”** means the Facilities identified as “Project Co Stage 1 Condominium Facilities” pursuant to Section 26.2(a) of the Project Agreement, which are to be completed and located on the Project Co Stage 1 Lands and **“Project Co Stage 1 Condominium Facility”** means any one of the Project Co Stage 1 Condominium Facilities.
- 1.293 **“Project Co Stage 1 Conversion Substantial Completion”** means the point at which the Project Co Stage 1 Conversion Work has been completed in accordance with the Project Agreement; the Occupancy Permit for the Project Co Stage 1 Condominium Facilities has been issued; and all requirements for Project Co Stage 1 Conversion Substantial Completion described in the Project Co Stage 1 Conversion Substantial Completion Commissioning Program, other than in respect of Project Co Stage 1 Conversion Substantial Completion Minor Deficiencies have been satisfied.
- 1.294 **“Project Co Stage 1 Conversion Substantial Completion Certificate”** means a certificate to be issued by the Independent Certifier in accordance with Section 24A.4(d) of the Project Agreement.
- 1.295 **“Project Co Stage 1 Conversion Substantial Completion Commissioning Program”** means the program to be jointly developed and agreed by HMQ and Project Co in accordance with Section 24A.2 of the Project Agreement.
- 1.296 **“Project Co Stage 1 Conversion Substantial Completion Countdown Notice”** has the meaning given in Section 24A.7(a) of the Project Agreement.
- 1.297 **“Project Co Stage 1 Conversion Substantial Completion Date”** means the date on which Project Co Stage 1 Conversion Substantial Completion is achieved as evidenced by the

Project Co Stage 1 Conversion Substantial Completion Certificate, as such date shall be stated therein.

- 1.298 **“Project Co Stage 1 Conversion Substantial Completion Minor Deficiencies”** means, in respect of the Project Co Stage 1 Conversion Work, any defects, deficiencies and items of outstanding work (including in relation to seasonal work) arising from or related to the work required to achieve Project Co Stage 1 Conversion Substantial Completion and, for clarity, excludes the Project Substantial Completion Minor Deficiencies and the Third Party Facility Conversion Substantial Completion Minor Deficiencies.
- 1.299 **“Project Co Stage 1 Conversion Substantial Completion Minor Deficiencies List”** has the meaning given in Section 24A.8(a) of the Project Agreement.
- 1.300 **“Project Co Stage 1 Conversion Substantial Completion Notice”** has the meaning given in Section 24A.4(b) of the Project Agreement.
- 1.301 **“Project Co Stage 1 Conversion Substantial Completion Project Co Commissioning”** means the commissioning activities to be carried out by Project Co prior to the issuance of the Project Co Stage 1 Conversion Substantial Completion Certificate in accordance with the Project Co Stage 1 Conversion Substantial Completion Commissioning Program.
- 1.302 **“Project Co Stage 1 Conversion Substantial Completion Project Co Commissioning Tests”** means all commissioning tests required to be performed by Project Co pursuant to the Project Co Stage 1 Conversion Substantial Completion Commissioning Program.
- 1.303 **“Project Co Stage 1 Conversion Work”** means that portion of the Works in respect of the Project Co Stage 1 Condominium Facilities required to be completed to achieve Project Co Stage 1 Conversion Substantial Completion described in Section 1.3.12 of Part 1 of the Output Specifications and, for clarity, does not include the Project Substantial Completion Works, any Toronto 2015 Additional Work and Toronto 2015 Project Co Work under the Project Co Services Agreement, and the Third Party Facility Conversion Work.
- 1.304 **“Project Co Stage 1 Facility Lands”** means the lands upon which each Project Co Stage 1 Condominium Facility is to be completed as identified pursuant to Section 26.2(a) of the Project Agreement.
- 1.305 **“Project Co Stage 1 Lands”** means the lands upon which all of the Project Co Stage 1 Condominium Facilities are to be completed, being Block 4, Block 11, Part of Block 14 and Part of Block 15, as further identified pursuant to Section 26.2(a) of the Project Agreement.
- 1.306 **“Project Co Stage 1 Lands Agreement of Purchase and Sale”** has the meaning given in Section 26.1(a) of the Project Agreement.
- 1.307 **“Project Co Stage 2 Facilities”** means the Facilities designated as the “Project Co Stage 2 Facilities” in Schedule 35 – List of Facilities.
- 1.308 **“Project Co Stage 2 Lands”** means Blocks 12, 13 and 16 as further described in the Project Co Stage 2 Lands Agreement of Purchase and Sale.

- 1.309 “**Project Co Stage 2 Lands Agreement of Purchase and Sale**” has the meaning given in Section 26.1(b) of the Project Agreement.
- 1.310 “**Project Co Stage 2 Lands Development Agreement**” has the meaning given in Section 26.1(c) of the Project Agreement.
- 1.311 “**Project Co Variation Notice**” has the meaning given in Schedule 22 - Variation Procedure.
- 1.312 “**Project Communications**” has the meaning given in Schedule 18 – Communications Protocol.
- 1.313 “**Project Data**” means:
- (a) all Design Data;
  - (b) all drawings, reports, documents, plans, software, formulae, calculations and other data relating to the provision of the Project Operations; and
  - (c) any other materials, works, documents and or data acquired, brought into existence or used in relation to the Project Operations or the Project Agreement,
- other than the Jointly Developed Materials, the Background Information and the Intellectual Property of third parties, such as CAD software, that is used only in the process of design and construction.
- 1.314 “**Project Documents**” means the Ancillary Documents and the Lending Agreements.
- 1.315 “**Project Final Completion**” means the point at which all Third Party Facility Conversion Work has been completed in accordance with the Project Agreement, including completion of all Third Party Facility Conversion Substantial Completion Minor Deficiencies, other than any minor work which is seasonal in nature and cannot be completed by the Project Final Completion Date.
- 1.316 “**Project Final Completion Certificate**” means the certificate to be issued by the Independent Certifier in accordance with Section 25.11 of the Project Agreement.
- 1.317 “**Project Final Completion Date**” means the date on which Project Final Completion is achieved as evidenced by the Project Final Completion Certificate, as such date shall be stated therein, provided that such date shall not be later than April 15, 2016 (as such date may be extended pursuant to Section 37 of the Project Agreement).
- 1.318 “**Project Final Completion Notice**” has the meaning given in Section 25.11(b) of the Project Agreement.
- 1.319 “**Project Know How**” means all ideas, concepts, alternatives, methodologies, processes, recommendations and suggestions developed by or through Project Co or any Project Co Party and revealed to or discovered by HMQ, whether before or after the date of the Project Agreement, which may be connected in any way to:

- (a) the Works, including the design and construction of the Facilities;
- (b) any other Project Operations; or
- (c) the Project Agreement.

1.320 **“Project Operations”** means:

- (a) the performance of the Works; and
- (b) the performance of all other obligations of Project Co under the Project Agreement.

1.321 **“Project Substantial Completion”** means the point at which the Project Substantial Completion Works have been completed in accordance with the Project Agreement; the Occupancy Permit has been issued for the Project Co Condominium Stage 1 Facilities and each of the Third Party Facilities; a certificate of substantial performance with respect to the Project Substantial Completion Works is published pursuant to Section 32(1) of the CLA; all requirements for Project Substantial Completion described in the Project Substantial Completion Commissioning Program, other than in respect of Project Substantial Completion Minor Deficiencies, have been satisfied; and, in accordance with Appendix 1 – Permits, Licences Approvals and Agreements of this Schedule 1 – Definitions and Interpretation, the City of Toronto has accepted the Municipal Works Facilities under the Subdivision Agreement, the maintenance period has commenced under the Subdivision Agreement and all of the requirements for the conveyances of the Municipal Works Facilities to the City of Toronto by HMQ have been satisfied (although, for clarity, the actual conveyances of the Municipal Works Facilities by HMQ may occur following Project Substantial Completion).

1.322 **“Project Substantial Completion Certificate”** means the certificate to be issued by the Independent Certifier in accordance with Section 24.4(d) of the Project Agreement.

1.323 **“Project Substantial Completion Commissioning Program”** means the program to be jointly developed and agreed by HMQ and Project Co in accordance with Section 24.2 of the Project Agreement.

1.324 **“Project Substantial Completion Countdown Notice”** has the meaning given in Section 24.7(a) of the Project Agreement.

1.325 **“Project Substantial Completion Date”** means the date on which Project Substantial Completion is achieved as evidenced by the Project Substantial Completion Certificate, as such date shall be stated therein.

1.326 **“Project Substantial Completion HMQ Commissioning”** means the commissioning activities to be carried out by HMQ in accordance with the Project Substantial Completion Commissioning Program.

1.327 **“Project Substantial Completion HMQ Commissioning Period”** means the period during which HMQ is performing the Project Substantial Completion HMQ Commissioning.

- 1.328 “**Project Substantial Completion HMQ Commissioning Tests**” means all commissioning tests required to be performed by HMQ pursuant to the Project Substantial Completion Commissioning Program.
- 1.329 “**Project Substantial Completion Minor Deficiencies**” means any defects, deficiencies and items of outstanding work (including in relation to seasonal work) arising from or related to the work required to achieve Project Substantial Completion and which would not materially impair HMQ’s use and enjoyment of the Facilities for the purpose of the Pan/Parapan Am Games and, for clarity, excludes the Project Co Stage 1 Conversion Substantial Completion Minor Deficiencies and the Third Party Facility Conversion Substantial Completion Minor Deficiencies.
- 1.330 “**Project Substantial Completion Minor Deficiencies List**” has the meaning given in Section 24.8(a) of the Project Agreement.
- 1.331 “**Project Substantial Completion Notice**” has the meaning given in Section 24.4(b) of the Project Agreement.
- 1.332 “**Project Substantial Completion Payment**” means \$[REDACTED] less the HMQ Project Substantial Completion Minor Deficiencies Holdback, if any, and the Legislative Holdback.
- 1.333 “**Project Substantial Completion Payment Date**” means the date that is 2 Business Days after the Project Substantial Completion Date.
- 1.334 “**Project Substantial Completion Project Co Commissioning**” means the commissioning activities to be carried out by Project Co prior to the issuance of the Project Substantial Completion Certificate in accordance with the Project Substantial Completion Commissioning Program.
- 1.335 “**Project Substantial Completion Project Co Commissioning Tests**” means all commissioning tests required to be performed by Project Co pursuant to the Project Substantial Completion Commissioning Program.
- 1.336 “**Project Substantial Completion Works**” means that portion of the Works required to be completed to achieve Project Substantial Completion described in Section 1.3.11 of Part 1 of the Output Specifications and, for clarity, does not include any Toronto 2015 Additional Work and Toronto 2015 Project Co Work under the Project Co Services Agreement, the Project Co Stage 1 Conversion Work and the Third Party Facility Conversion Work.
- 1.337 “**Project Term**” means the period commencing on the date of the Project Agreement and expiring at midnight on the Termination Date.
- 1.338 “**Proposal**” has the meaning given in Schedule 13 – Project Co Proposal Extracts.
- 1.339 “**Proprietor**” has the meaning given in Section 49.6(a) of the Project Agreement.
- 1.340 “**Province**” or “**Crown**” means Her Majesty the Queen in Right of Ontario.

- 1.341 “**Province Persons**” means the HMQ Parties, the Government Entities and while attending in their official capacity at the Facilities or the Site, the following:
- (a) any entity to which authority is designated pursuant to Section 59.1 and any agents and employees of any such entity; and
  - (b) contractors of any entity to which authority is delegated pursuant to Section 59.1 and subcontractors of such contractors and any subcontractor of any of those subcontractors at any tier and its or their directors, officers and employees,
- but excluding Project Co and any Project Co Party.
- 1.342 “**Province Person Third Party Beneficiaries**” has the meaning given in Section 59.17(a)(i) of the Project Agreement.
- 1.343 “**Provincial Lender**” means the “**Lender**” under Schedule 8 – Provincial Loan Agreement.
- 1.344 “**Provincial Loan**” means the funds provided to Project Co, if any, under the Provincial Loan Agreement.
- 1.345 “**Provincial Loan Agreement**” means the loan agreement between Project Co, [REDACTED] and HMQ in the form attached as Schedule 8 – Provincial Loan Agreement.
- 1.346 “**Quality Plans**” has the meaning given in Section 13.1(a) of the Project Agreement.
- 1.347 “**Recovery Amount**” has the meaning given in Section 53.3(g) of the Project Agreement.
- 1.348 “**Reference Plans**” has the meaning given in Section 26.2(a) of the Project Agreement.
- 1.349 “**Refinancing**” has the meaning given in Schedule 12 – Refinancing.
- 1.350 “**Reimbursement Event**” has the meaning given in Section 30.5(a) of the Project Agreement.
- 1.351 “**Rekai Project**” means a mixed-use long-term care and Affordable Rental Housing development located on part of PIN 21077-0289 (LT).
- 1.352 “**Relevant Change in Law**” means a Discriminatory Change in Law or a Specific Change in Law.
- 1.353 “**Relevant Conviction**” means any offense in Canada or elsewhere:
- (a) for which a record exists under the *Criminal Records Act*; or
  - (b) otherwise designated as a Relevant Conviction by HMQ or ISU from time to time, having regard to the secure nature of the Site and the Facilities,
- and is one for which a pardon has not been granted.

- 1.354 “**Relevant Jurisdiction**” means, from time to time, with respect to a person that is granting HMQ Project Security under the Project Agreement, any province or territory of Canada, any state of the United States or any other country or political subdivision thereof in which such person has its chief executive office or chief place of business or has property, both real and personal, that is subject to the HMQ Project Security and, for greater certainty, includes the provinces and states set out in Schedule 21 – HMQ Project Security.
- 1.355 “**Relief Event**” has the meaning given in Section 40.1(a) of the Project Agreement.
- 1.356 “**Relief Event and Force Majeure Termination Sum**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.357 “**Request for Payment Approval**” has the meaning given in Section 18.11(d) of the Project Agreement.
- 1.358 “**Request for Proposals**” or “**RFP**” means the request for proposals issued in respect of the Project dated January 28, 2011.
- 1.359 “**Restricted Person**” means any person who, or any member of a group of persons acting together, any one of which:
- (a) has, directly or indirectly, its principal or controlling office in a country that is subject to any economic or political sanctions imposed by Canada or Ontario;
  - (b) has as its primary business the illegal manufacture, sale, distribution or promotion of narcotics substances or arms, or is or has been involved in terrorism;
  - (c) in the case of an individual, he or she (or in the case of a legal entity, any of the members of its board of directors or its senior executive managers) has been sentenced to imprisonment or otherwise given a custodial sentence, other than a suspended sentence, for any criminal offence or for any offence under any Provincial statute, other than offences under the *Highway Traffic Act* or corresponding legislation in any other jurisdiction, or under any municipal laws, less than five years prior to the date at which the consideration of whether such individual is a “**Restricted Person**” is made hereunder;
  - (d) has as its primary business the acquisition of distressed assets or investments in companies or organizations which are or are believed to be insolvent or in a financial standstill situation or potentially insolvent;
  - (e) is subject to a material claim of HMQ or the Province under any proceedings (including regulatory proceedings) which have been concluded or are pending at the time at which the consideration of whether such person is a “**Restricted Person**” is made hereunder, and which (in respect of any such pending claim, if it were to be successful) would, in HMQ’s view, in either case, be reasonably likely materially to affect the ability of Project Co to perform its obligations under the Project Agreement; or



- (f) has a material interest in the production of tobacco products.
- 1.360 **“Review Procedure”** means the procedure set out in Schedule 10 - Review Procedure.
- 1.361 **“River City Project”** means a market condominium project on Blocks 3, 4, 5 and/or 6 on Plan of Subdivision 66M-2473 (which Plan of Subdivision is provided in the Background Information).
- 1.362 **“Safety Plan”** means the safety plan included in the Project Co Proposal Extracts.
- 1.363 **“Schedule”** means a schedule to the Project Agreement.
- 1.364 **“Scheduled Interim Completion Date”** means [REDACTED], as such date may be extended pursuant to Section 37 of the Project Agreement.
- 1.365 **“Scheduled Project Co Stage 1 Conversion Substantial Completion Date”** means [REDACTED], as such date may be extended pursuant to Section 37 of the Project Agreement.
- 1.366 **“Scheduled Project Final Completion Date”** means [REDACTED], as such date may be extended pursuant to Section 37 of the Project Agreement.
- 1.367 **“Scheduled Project Substantial Completion Date”** means [REDACTED], as such date may be extended pursuant to Section 37 of the Project Agreement.
- 1.368 **“Scheduled Third Party Facility Conversion Substantial Completion Date”** means, for each Third Party Facility, the following dates:
- (a) in respect of the YMCA Facility, [REDACTED];
  - (b) in respect of the George Brown Facility, [REDACTED];
  - (c) in respect of Affordable Housing Facility 1, [REDACTED]; and
  - (d) in respect of Affordable Housing Facility 2, [REDACTED],
- as such dates may be extended pursuant to Section 37 of the Project Agreement.
- 1.369 **“Security”** has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.370 **“Security and Background Check”** means the security and background check requirements set forth in Schedule 7 – Security and Background Check Requirements.
- 1.371 **“Security Documents”** has the meaning given in Schedule 4 – Lenders' Direct Agreement.
- 1.372 **“Sell”** means the process pursuant to which a purchaser enters into an agreement of purchase and sale for a condominium unit or a proposed condominium unit pursuant to the *Condominium Act* (Ontario).

- 1.373 “**Sensitive Information**” means financial or commercial information which would, if disclosed to a competitor of Project Co or any Project Co Party, give that competitor a competitive advantage over Project Co or such Project Co Party and thereby prejudice the business of Project Co or such Project Co Party.
- 1.374 “**Service Provider Services Agreement**” means the service agreement made as of Financial Close between Project Co and EllisDon Facilities Services Inc.
- 1.375 “**Severe Market Disruption**” means any occurrence of exceptional circumstances in financial markets in Europe, the United States of America and/or Canada, which:
- (a) results in the suspension or cessation of all or substantially all lending activity in national or relevant international capital or interbank markets; and
  - (b) adversely affects access by Project Co to such markets.
- 1.376 “**Shop Drawings**” means drawings, diagrams, illustrations, schedules, performance charts, brochures and other data which are to be provided by Project Co to illustrate details of a portion of the Works, indicating materials, methods of construction and attachment or anchorage, erection diagrams, connections, explanatory notes and other information necessary for completion of the Works.
- 1.377 “**Signage**” has the meaning given in Appendix 1 of Schedule 18 – Communications Protocol.
- 1.378 “**Signage Plan**” has the meaning given in Appendix 1 of Schedule 18 – Communications Protocol.
- 1.379 “**Site**” means the lands and all Improvements thereon on therein, which are identified in Schedule 28 – Site.
- 1.380 “**Site Conditions**” means the condition of the Site, including the physical, geophysical, climatic, ecological, environmental, geotechnical and archaeological conditions.
- 1.381 “**Site Plan Agreements**” means, collectively, the site plan agreements to be registered against title to the Site in favour of the City of Toronto which are necessary to obtain Site Plan Approval for the Project.
- 1.382 “**Site Plan Approval**” means the approval of plans and drawings by the applicable Governmental Authority in accordance with Section 114 of the *City of Toronto Act, 2006* (Ontario) and/or Section 41 of the *Planning Act* (Ontario), as the case may be.
- 1.383 “**Sold**” means a purchaser has entered into an agreement of purchase and sale for a condominium unit or a proposed condominium unit pursuant to the *Condominium Act* (Ontario).
- 1.384 “**Smoke Free Workplace Plan**” means the “Smoke Free Workplace Plan” developed and implemented in accordance with Section 13 of the Project Agreement and based on the

outline of such document included in Schedule 40 – WTEI, Diversity and Smoke Free Workplace Plans.

- 1.385 “**Specific Change in Law**” means any Change in Law that principally affects, or principally related only to, the construction or operation of facilities similar to the Facilities in the Province of Ontario.
- 1.386 “**Sponsors**” has the meaning given in the Request for Proposals.
- 1.387 “**Standby Letter of Credit**” has the meaning given in Section 2.2(a) of the Project Agreement.
- 1.388 “**Start-Up Meeting**” has the meaning given in Section 18.4(a) of the Project Agreement.
- 1.389 “**Step-In Period**” has the meaning given in Schedule 4 - Lenders’ Direct Agreement.
- 1.390 “**Subcontractor**” means any subcontractor of Project Co engaged by or through Project Co to perform any of the Project Operations, including the Construction Contractor, any Supplier or consultant, and any subcontractor of any other subcontractor at any tier.
- 1.391 “**Subcontracts**” means the contracts entered into by or between Project Co and any Subcontractor or between any Subcontractor at any tier, including the Construction Contractor, and any other Subcontractor at any tier in relation to any aspect of the Project Operations.
- 1.392 “**Subdivision Agreement**” means the agreement entered into by Ontario Infrastructure and Lands Corporation and the City of Toronto pursuant to Section 51 of the *Planning Act* (Ontario) in respect of obtaining the required approval of a plan of subdivision for the Project.
- 1.393 “**Submission Deadline**” has the meaning given in the Request for Proposals.
- 1.394 “**Submittal**” means a Works Submittal.
- 1.395 “**Supplier**” means a person who supplies to Project Co, or to any Subcontractor, any equipment, materials, supplies or services as part of, or for, the Project Operations.
- 1.396 “**Taxes**” means any and all taxes, levies, imposts, duties, fees, withholdings, assessments, deductions or charges whatsoever, imposed, assessed, levied or collected by any Governmental Authority, together with interest thereon and penalties with respect thereto, and includes all HST except where stated to the contrary, provided however that “**Taxes**” shall not include the HMQ Taxes.
- 1.397 “**Tarion**” means TARION Warranty Corporation.
- 1.398 “**Tarion Payment**” means [REDACTED].

- 1.399 **“Tarion Registration and Enrolment Obligations”** has the meaning given in Section 18.20(b) of the Project Agreement.
- 1.400 **“TCHC Project”** means the development located on Block 1 of plan of subdivision 66M-2473.
- 1.401 **“Technical Reports”** means the Environmental Reports and Designated Substance Reports and the Geotechnical Reports.
- 1.402 **“Temporary Underlay Facilities”** means, collectively, each Facility designated under the heading “Temporary Underlay Facilities” in Schedule 35 – List of Facilities.
- 1.403 **“Termination Date”** means the earlier of the Expiry Date and such earlier date, if any, on which termination of the Project Agreement takes effect in accordance with its terms.
- 1.404 **“Third Party Arbitration”** has the meaning given in Schedule 27 - Dispute Resolution Procedure.
- 1.405 **“Third Party Facilities”** means all of the Third Party Facilities.
- 1.406 **“Third Party Facility”** means each Facility designated under the heading “Third Party Facilities” in Schedule 35 – List of Facilities.
- 1.407 **“Third Party Facility Conversion Costs LC”** has the meaning given in Section 18.17(a) of the Project Agreement.
- 1.408 **“Third Party Facility Conversion Costs LC Reduction Authorization”** means a Payment Instruction from the Lenders’ Technical Advisor to the Trustee setting out the LTA Monthly Third Party Facility Conversion Authorization Amount.
- 1.409 **“Third Party Facility Conversion Substantial Completion”** means, in respect of a Third Party Facility, the point at which the Third Party Facility Conversion Work has been completed in accordance with the Project Agreement; the Occupancy Permit for the applicable Third Party Facility has been issued; and all requirements for Third Party Facility Conversion Substantial Completion described in the Third Party Facility Conversion Substantial Completion Commissioning Program, other than in respect of Third Party Facility Conversion Substantial Completion Minor Deficiencies have been satisfied in respect of the applicable Third Party Facility.
- 1.410 **“Third Party Facility Conversion Substantial Completion Certificate”** means a certificate to be issued by the Independent Certifier in accordance with Section 25.4(d) of the Project Agreement.
- 1.411 **“Third Party Facility Conversion Substantial Completion Commissioning Program”** means the program to be jointly developed and agreed by HMQ and Project Co in accordance with Section 25.2 of the Project Agreement.

- 1.412 **“Third Party Facility Conversion Substantial Completion Countdown Notice”** has the meaning given in Section 25.7(a) of the Project Agreement.
- 1.413 **“Third Party Facility Conversion Substantial Completion Date”** means the date on which Third Party Facility Conversion Substantial Completion is achieved in respect of a Third Party Facility as evidenced by a Third Party Facility Conversion Substantial Completion Certificate, as such date shall be stated therein.
- 1.414 **“Third Party Facility Conversion Substantial Completion HMQ Commissioning”** means the commissioning activities to be carried out by HMQ in accordance with the Third Party Facility Conversion Substantial Completion Commissioning Program.
- 1.415 **“Third Party Facility Conversion Substantial Completion HMQ Commissioning Period”** means the period during which HMQ is performing the Third Party Facility Conversion Substantial Completion HMQ Commissioning.
- 1.416 **“Third Party Facility Conversion Substantial Completion HMQ Commissioning Tests”** means all commissioning tests required to be performed by HMQ pursuant to the Third Party Facility Conversion Substantial Completion Commissioning Program.
- 1.417 **“Third Party Facility Conversion Substantial Completion Minor Deficiencies”** means, in respect of the Third Party Facility Conversion Work, any defects, deficiencies and items of outstanding work (including in relation to seasonal work) arising from or related to the work required to achieve a Third Party Facility Conversion Substantial Completion and which would not materially impair HMQ’s or the applicable Third Party Owner’s use and enjoyment of the applicable Third Party Facility and, for clarity, excludes the Project Substantial Completion Minor Deficiencies and the Project Co Stage 1 Conversion Substantial Completion Minor Deficiencies.
- 1.418 **“Third Party Facility Conversion Substantial Completion Minor Deficiencies List”** has the meaning given in Section 25.8(a) of the Project Agreement.
- 1.419 **“Third Party Facility Conversion Substantial Completion Notice”** has the meaning given in Section 25.4(b) of the Project Agreement.
- 1.420 **“Third Party Facility Conversion Substantial Completion Project Co Commissioning”** means the commissioning activities to be carried out by Project Co prior to the issuance of the Third Party Facility Conversion Substantial Completion Certificate in respect of a Third Party Facility in accordance with the Third Party Facility Conversion Substantial Completion Commissioning Program.
- 1.421 **“Third Party Facility Conversion Substantial Completion Project Co Commissioning Tests”** means all commissioning tests required to be performed by Project Co pursuant to the Third Party Facility Conversion Substantial Completion Commissioning Program.
- 1.422 **“Third Party Facility Conversion Work”** means that portion of the Works in respect of the Third Party Facilities to be completed after the first Pan/Parapan Am Games Site Turnback

Date described in Section 1.3.14 of Part 1 of the Output Specifications and, for clarity, does not include the Project Substantial Completion Works, any Toronto 2015 Additional Work and Toronto 2015 Project Co Work under the Project Co Services Agreement, and the Project Co Stage 1 Conversion Work.

- 1.423 **“Third Party Facility Games Damage Reduction Authorization”** means a written authorization from the Lenders’ Technical Advisor to the Trustee setting out the LTA Third Party Facility Games Damage Authorization Amount.
- 1.424 **“Third Party Facility Lands”** means the lands upon which each Third Party Facility is to be completed as identified pursuant to Section 26.2(a) of the Project Agreement.
- 1.425 **“Third Party Lands”** means the lands upon which all of the Third Party Facilities are to be completed, being Part of Blocks 1 and 2, Block 3 and Part of Blocks 14 and 15, as further identified pursuant to Section 26.2(a) of the Project Agreement.
- 1.426 **“Third Party Litigation”** has the meaning given in Schedule 27 - Dispute Resolution Procedure.
- 1.427 **“Third Party Owner”** means the YMCA Facility Owner, the George Brown Facility Owner, the Affordable Housing Facility 1 Owner or the Affordable Housing Facility 2 Owner; and **“Third Party Owners”** means, collectively, the YMCA Facility Owner, the George Brown Facility Owner, the Affordable Housing Facility 1 Owner and the Affordable Housing Facility 2 Owner.
- 1.428 **“Third Party Owner Beneficiaries”** has the meaning given in Section 59.17A(a)(i) of the Project Agreement.
- 1.429 **“Threshold Equity Sale Amount”** means the amount which, if paid in consideration of the percentage of Cost to Complete Equity (as at Financial Close) sold in a particular sale of Cost to Complete Equity, would result in an Implied Equity Value that, if received in full on the day of the equity sale of Cost to Complete Equity and taking account of the actual timing of payment of all such amounts, would result in an Equity Sale IRR equal to the Threshold Equity Sale IRR.
- 1.430 **“Threshold Equity Sale IRR”** means [REDACTED]%.
- 1.431 **“Title Encumbrances”** means the Encumbrances listed in Schedule 16 - Title Encumbrances and any other Encumbrance consented to by HMQ and reasonably required in connection with the development of the Facilities and the Project Operations.
- 1.432 **“Toronto 2015”** means Toronto Organizing Committee for the 2015 Pan American and Parapan American Games.
- 1.433 **“Toronto 2015 Additional Work”** has the meaning given in the Project Co Services Agreement.

- 1.434 **“Toronto 2015 Athletes Village Naming Rights”** has the meaning set out in Section 6.3(a) of Schedule 18 – Communications Protocol.
- 1.435 **“Toronto 2015 Intellectual Property”** means all Intellectual Property of Toronto 2015 including in or associated with the Pan/Parapan Am Games which, or the subject matter of which, is at any time before or after the date of the Project Agreement created, brought into existence, acquired, used or intended to be used by Toronto 2015 or by other third parties (for such third parties’ use under rights granted by Toronto 2015 or any other owner of such Intellectual Property by or on behalf of or for the benefit of Toronto 2015 or the Pan/Parapan Am Games) for any purpose associated with Toronto 2015 or the Pan/Parapan Am Games.
- 1.436 **“Toronto 2015 LD Underlay Facilities”** means West Blocks 3, 4 and 7 and Block 10.
- 1.437 **“Toronto 2015 Project Co Stage 1 Condominium Facilities Compensation Payment”** has the meaning given in the Project Co Services Agreement.
- 1.438 **“Toronto 2015 Project Co Work”** has the meaning given in the Project Co Services Agreement.
- 1.439 **“Toronto 2015 Signage”** has the meaning given in Section 2.2 of Appendix 1 to Schedule 18 – Communications Protocol.
- 1.440 **“Toronto 2015 Signage Date”** means the same date as the Toronto 2015 Turnover Date (Remaining Facilities).
- 1.441 **“Toronto 2015 Signage Period”** has the meaning given in Section 4 of Appendix 1 of Schedule 18 – Communications Protocol.
- 1.442 **“Toronto 2015 Third Party Facilities Compensation Payment”** has the meaning given in the Project Co Services Agreement.
- 1.443 **“Toronto 2015 Turnover Date (LD Underlay Facilities)”** means [REDACTED], as such date may be extended pursuant to Section 37 of the Project Agreement.
- 1.444 **“Toronto 2015 Turnover Date (Remaining Facilities)”** means [REDACTED], as such date may be extended pursuant to Section 37 of the Project Agreement.
- 1.445 **“Toronto 2015 Turnover Dates”** means, collectively, the Toronto 2015 Turnover Date (LD Underlay Facilities) and the Toronto 2015 Turnover Date (Remaining Facilities).
- 1.446 **“Total Guaranteed Third Party Price”** has the meaning given in Section 31.1(a) of the Project Agreement.
- 1.447 **“Trade-Marks”** means any registered or unregistered mark, trade-mark, service mark, distinguishing guise, logo, insignia, seal, design or symbol.
- 1.448 **“Trust Account”** has the meaning given in the Trust Account Agreement.

- 1.449 **“Trust Account Agreement”** means the trust account agreement between Project Co, HMQ, the Lenders’ Agent and the Trustee in the form attached hereto as Schedule 33 – Trust Account Agreement.
- 1.450 **“Trustee”** has the meaning given in Schedule 33 – Trust Account Agreement.
- 1.451 **“Turnback Process”** means the “Turnback Process” requirements set out in Section 2.2.5 (Games – Turnover and Turnback Process) of Part 2 of Schedule 15 – Output Specifications.
- 1.452 **“Turnover Process”** means the “Turnover Process” requirements set out in Section 2.2.5 (Games – Turnover and Turnback Process) of Part 2 of Schedule 15 – Output Specifications.
- 1.453 **[REDACTED]**.
- 1.454 **“Uninsurable Risk”** has the meaning given in Section 8.1 of Schedule 25 – Insurance and Performance Security Requirements.
- 1.455 **“Utilities”** means energy/power supplies and waste recovery, including electricity, natural gas/fuel oil, water, sanitary waste and storm water.
- 1.456 **“Utility Company”** means any company or companies designated by Project Co to provide Utilities.
- 1.457 **“Variation”** has the meaning given in Schedule 22 - Variation Procedure.
- 1.458 **“Variation Confirmation”** has the meaning given in Schedule 22 - Variation Procedure.
- 1.459 **“Variation Directive”** has the meaning given in Schedule 22 - Variation Procedure.
- 1.460 **“Variation Enquiry”** has the meaning given in Schedule 22 - Variation Procedure.
- 1.461 **“Variation Procedure”** means the procedure set out in Schedule 22 - Variation Procedure.
- 1.462 **“Warranties Guarantee”** has the meaning given in Section 18.15(i) of the Project Agreement.
- 1.463 **“Warranties Construction Latent Defect Guarantee”** has the meaning given in Section 18.15(j) of the Project Agreement.
- 1.464 **“Warranties Letter of Credit”** has the meaning given in Section 18.15(b) of the Project Agreement.
- 1.465 **“Warranties Letter of Credit Release Date”** means the date that the Warranty Period expires under Section 18.14(d) of the Project Agreement.
- 1.466 **“Warranty Period”** has the meaning given in Section 18.14(d) of the Project Agreement.



- 1.467 **“Warranty Period Construction Defect”** means a Construction Defect that has arisen during the Warranty Period.
- 1.468 **“Warranty Period Works”** has the meaning given in Section 18.14(d) of the Project Agreement.
- 1.469 **“Waterfront Design Review Panel”** means the independent design review panel formed by Waterfront Toronto.
- 1.470 **“Waterfront Toronto”** means the Toronto Waterfront Revitalization Corporation (excluding, for greater clarity, the Waterfront Design Review Panel).
- 1.471 **“Waterfront Toronto Employment Initiative Plan”** or **“WTEI Plan”** means the “Waterfront Toronto Employment Initiative Plan” developed and implemented in accordance with Section 13 of the Project Agreement and based on the outline of such document included in Schedule 40 – WTEI, Diversity and Smoke Free Workplace Plans.
- 1.472 **“West Block”** means a block as shown on the sketch set out in Appendix 4 – Sketch of West Blocks to this Schedule 1 – Definitions and Interpretation.
- 1.473 **“West Block 7 Laneway”** means part of PIN 21077-0293(LT), being part of Lots 11 and 12 on the North side of Mill Street on Plan 108 designated as Parts 3, 6 and 7 on Plan 66R-25445, save and except Plan 66M-2488, and as shown on Appendix 4 – Sketch of West Blocks to this Schedule 1 – Definitions and Interpretation.
- 1.474 **“West Don Lands”** means the lands outlined in the sketch prepared by Waterfront Toronto dated May 27, 2011 and attached as Appendix 3 – West Don Lands to this Schedule 1 – Definitions and Interpretation.
- 1.475 **“Works”** means the design, construction, installation, testing, commissioning and completion of the Facilities, including rectification of any Project Substantial Completion Minor Deficiencies, any Project Co Stage 1 Conversion Substantial Completion Minor Deficiencies, any Third Party Facility Conversion Substantial Completion Minor Deficiencies and any other activities required to enable or facilitate the commencement of operations at the Facilities, including all work under the Permits, Licences, Approvals and Agreements, save and except for (i) all work which is expressly described in Appendix 1 – Permits, Licences Approvals and Agreements of this Schedule 1 – Definitions and Interpretation as being the responsibility of HMQ, (ii) the Project Substantial Completion HMQ Commissioning and the Third Party Facility Conversion Substantial Completion HMQ Commissioning, and (iii) the Project Co Services.
- 1.476 **“Works Change in Law”** means any Change in Law that:
- (a) is not a Relevant Change in Law;
  - (b) occurs after the date of the Project Agreement;

- (c) requires Project Co to perform any work of alteration, addition, demolition, extension or variation in the quality or function of the Facilities which is not Works or capital replacement work which Project Co would otherwise be required to perform in order to comply with its obligations under the Project Agreement; and
  - (d) was not reasonably foreseeable at the date of the Project Agreement by an experienced contractor carrying out activities and/or performing design and/or other operations similar to those to be carried out and/or performed by any Project Co Party in relation to the Project.
- 1.477 **“Works Committee”** has the meaning given in Section 11.1(a) of the Project Agreement.
- 1.478 **“Works Milestone”** means any milestone identified as a “Works Milestone” in the Works Schedule and , for clarity, includes the applicable date for achieving such milestone (as such date may be extended pursuant to Section 37 of the Project Agreement); and **“Works Milestones”** means, collectively, all of such “Works Milestones”.
- 1.479 **“Works Performance Security”** has the meaning given in the Lenders’ Direct Agreement.
- 1.480 **“Works Report”** has the meaning given in Section 20.7(a) of the Project Agreement.
- 1.481 **“Works Schedule”** has the meaning given in Section 20.2(c) of the Project Agreement.
- 1.482 **“Works Submittal”** has the meaning given in Section 1.1 of Schedule 10 - Review Procedure.
- 1.483 **“WSIB”** means the Ontario Workplace Safety and Insurance Board that is responsible for administering the *Workplace Safety and Insurance Act, 1997* (Ontario).
- 1.484 **“YMCA Facility”** means the Facility designated as the “YMCA Facility” in Schedule 35 – List of Facilities.
- 1.485 **“YMCA Facility Owner”** means YMCA of Greater Toronto.
- 2. Interpretation.** The Project Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:
- 2.1 The tables of contents, headings, marginal notes and references to them in the Project Agreement are for convenience of reference only, shall not constitute a part of the Project Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, the Project Agreement.
- 2.2 Except where the context requires otherwise (irrespective of whether some, but not all, references in a Schedule specifically refer to that Schedule or to other portions of the Project Agreement) references to specific Sections, Clauses, Paragraphs, Subparagraphs, Schedules, and other divisions of the Project Agreement are references to such Sections, Clauses, Paragraphs, or Subparagraphs of, Schedules to, or divisions of the Project Agreement and the terms “Section” and “Clause” are used interchangeably and are synonymous.

- 2.3 Except where the context requires otherwise, references to specific Sections, Clauses, Paragraphs, Subparagraphs, Schedules, and other divisions of the Project Agreement followed by a number are references to the whole of the Section, Clause, Paragraph, Subparagraphs, Schedule or other division of the Project Agreement as applicable, bearing that number, including all subsidiary provisions containing that same number as a prefix.
- 2.4 Except where the context requires otherwise, references in the Output Specifications to specific Parts, Sections, Clauses, Paragraphs, Subparagraphs, Schedules, and other divisions of the Output Specifications shall be construed such that each such reference on a page of the Output Specifications will be read to be preceded by and to include the prefix Section number or other reference at the top of the applicable page, and all cross-references to any Section in Schedule 15 - Output Specifications shall be interpreted to include the applicable prefix Section number or other reference.
- 2.5 The Schedules to the Project Agreement are an integral part of the Project Agreement and a reference to the Project Agreement includes a reference to the Schedules.
- 2.6 All references in the Project Agreement to a Schedule shall be to a Schedule of the Project Agreement.
- 2.7 All capitalized terms used in a Schedule shall have the meanings given to such terms in Schedule 1 – Definitions and Interpretation, unless stated otherwise in a particular Schedule in which case such definition shall have the meaning given to it in that Schedule solely for the purposes of that Schedule.
- 2.8 The language of the Output Specifications and other documents comprising the Project Agreement is in many cases written in the imperative for brevity. Clauses containing instructions, directions or obligations are directed to Project Co and shall be construed and interpreted as if the words “Project Co shall” immediately preceded the instructions, directions or obligations.
- 2.9 Words importing persons or parties are to be broadly interpreted and include an individual, corporation, limited liability company, joint stock company, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.
- 2.10 Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.
- 2.11 Unless otherwise provided in the Project Agreement, all accounting and financial terms used in the Project Agreement shall be interpreted and applied in accordance with Canadian GAAP.
- 2.12 References to any standard, principle, agreement, document, instruments or letters of credit include (subject to all relevant approvals and any other provisions of the Project Agreement

- concerning amendments) a reference to that standard, principle, agreement, document, instruments or letters of credit as amended, supplemented, restated, substituted, replaced, novated or assigned.
- 2.13 References to any Applicable Law, including any statutes or other Applicable Law specifically referred to herein, whether or not amendments or successors to such Applicable Law are referred to herein, are to be construed as references to that Applicable Law as from time to time amended or to any Applicable Law covering the same or similar subject matter from time to time replacing, extending, consolidating or amending the same.
- 2.14 References to a statute shall include all regulations, by-laws, ordinances and orders made under or pursuant to the statute.
- 2.15 References to persons shall include their successors and assigns. References to a public organization shall include their successors and assigns, and if a public organization ceases to exist or ceases to perform its functions without a successor or assign, references to such public organization shall be deemed to include a reference to any public organization or any organization or entity which has taken over either or both the functions and responsibilities of such public organization.
- 2.16 A reference in the Project Agreement or in any Project Document to any right, power, obligation or responsibility of any Governmental Authority shall be deemed to be a reference to the Governmental Authority that, pursuant to Applicable Laws has such right, power, obligation or responsibility at the relevant time.
- 2.17 References to a deliberate act or omission or deliberate or negligent act or omission of any HMQ Party or any Government Entity shall be construed having regard to the interactive nature of the activities of HMQ, the HMQ Parties and Project Co and further having regard to:
- (a) acts contemplated by the Output Specifications;
  - (b) acts or omissions in the ordinary course of the Project Operations and expressly or reasonably inferred from the Output Specifications to be taken into account by Project Co in the performance of the Project Operations; or
  - (c) acts otherwise provided for in the Project Agreement.
- 2.18 The words in the Project Agreement shall bear their natural meaning.
- 2.19 Each of Project Co’s and HMQ’s respective obligations shall be construed as separate obligations owed to the other.
- 2.20 References containing terms such as:
- (a) “hereof”, “herein”, “hereto”, “hereinafter”, and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to the Project Agreement taken as a whole; and

- (b) “includes” and “including”, whether or not used with the words “without limitation” or “but not limited to”, shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean “includes without limitation” and “including without limitation”.
- 2.21 In construing the Project Agreement, the rule known as the *ejusdem generis* rule shall not apply nor shall any similar rule or approach apply to the construction of the Project Agreement and, accordingly, general words introduced or followed by the word “other” or “including” or “in particular” shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
- 2.22 Where the Project Agreement states that an obligation shall be performed “no later than” or “within” or “by” a stipulated date or event which is a prescribed number of days after a stipulated date or event the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- 2.23 Where the Project Agreement states that an obligation shall be performed “no later than” or “by” a prescribed number of days before a stipulated date or event or “by” a date which is a prescribed number of days before a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- 2.24 Where the Project Agreement states that an obligation shall be performed “on” a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- 2.25 Any reference to time of day or date means the local time or date in Toronto, Ontario.
- 2.26 Unless otherwise indicated, time periods will be strictly construed.
- 2.27 Whenever the terms “will” or “shall” are used in the Project Agreement in relation to Project Co or HMQ they shall be construed and interpreted as synonymous and to read “Project Co shall” or “HMQ shall” as the case may be.
- 2.28 Any reference to currency is to Canadian currency and any amount advanced, paid or calculated is to be advanced, paid or calculated in Canadian currency.
- 2.29 Unless otherwise identified in the Project Agreement, all units of measurement in any documents submitted by Project Co to HMQ shall be in accordance with the SI system of units.
- 2.30 Terms not defined herein and used in the Project Agreement which have a technical meaning commonly understood within the construction industry or the Province’s tourism or sporting industries will be construed as having that meaning unless the context otherwise requires.

- 2.31 Save where expressly stated otherwise, references to amounts or sums expressed to be “indexed” or “index linked” are references to amounts or sums which require adjustment to reflect the effects of inflation. Such adjustment shall be calculated in accordance with the following formula:

$$\text{Adjusted amount or sum} = \text{Amount or sum} \times \frac{\text{CPI}_y}{\text{CPI}_o}$$

- 2.32 The terms “properly inferable”, “readily apparent” and “readily discoverable” as used in this Project Agreement, shall be interpreted by taking into consideration Project Co’s and any Project Co Party’s experience and the investigations, inspections and examinations of the Background Information and of the Site carried out by Project Co or by any Project Co Party during the Request for Proposals process or other due diligence; and by taking into consideration reasonable, normal course and industry standard investigations, inspections or other due diligence; in each case in accordance with Good Industry Practice.

**APPENDIX 1**

**PERMITS, LICENCES, APPROVALS AND AGREEMENTS**

**HMQ AND PROJECT CO RESPONSIBILITY TABLES**

- Please see attached document -

**APPENDIX 2**

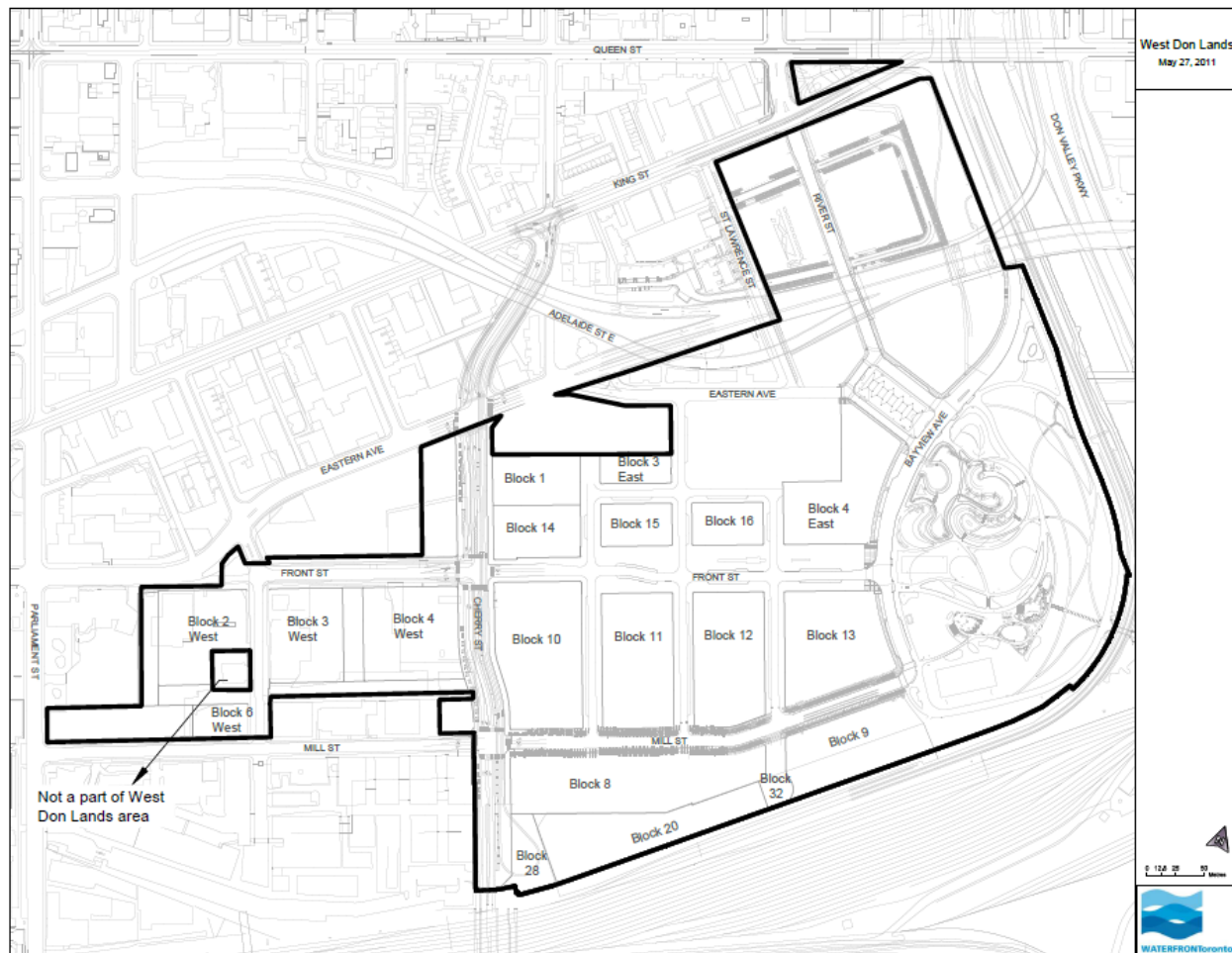
**HMQ SECURITY DEPOSITS**

**[There are no HMQ Security Deposits under the Project Agreement. Any reference to “HMQ Security Deposits” in the Project Agreement shall have no force or effect.]**



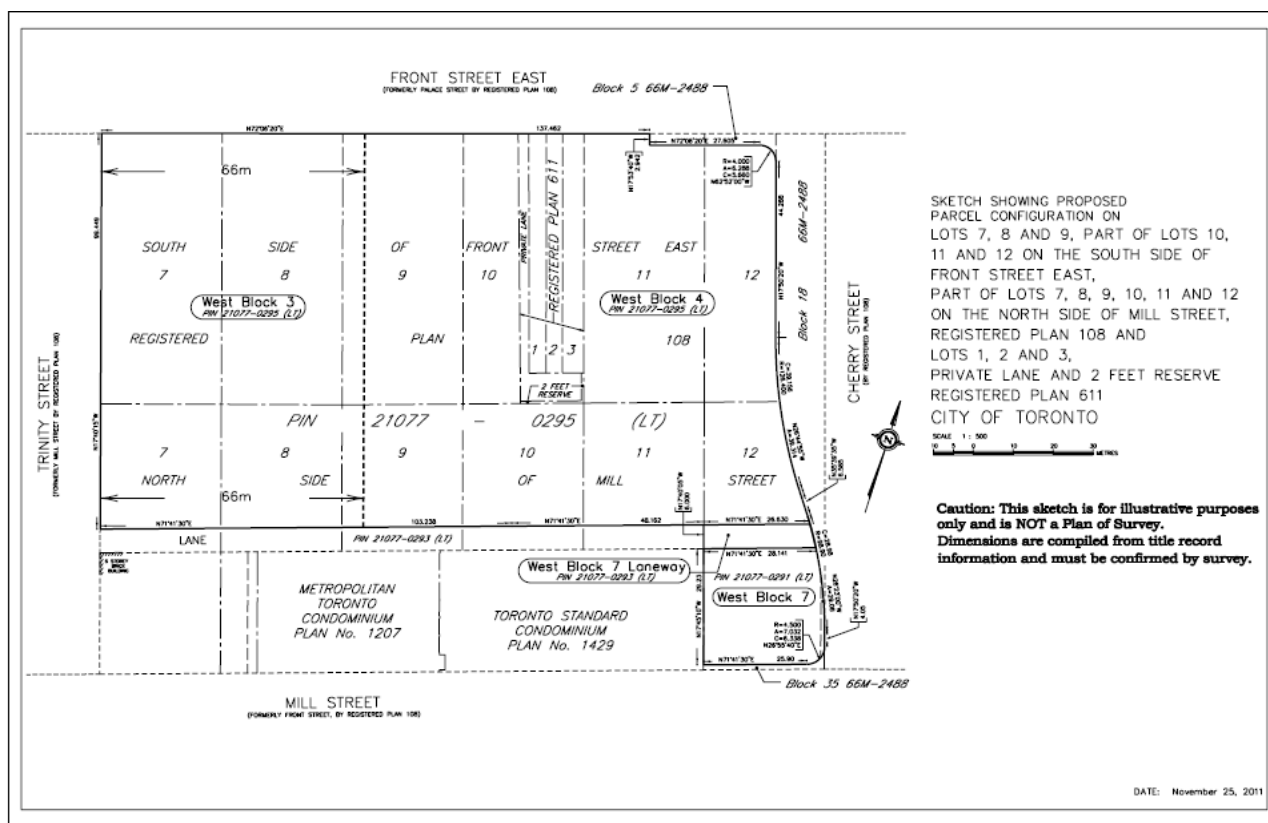
### APPENDIX 3

#### WEST DON LANDS



## APPENDIX 4

### SKETCH OF WEST BLOCKS



...Blocks 3w and 4w revised nov 25 2011 2d.dgn 11/25/2011 5:08:00 PM

## APPENDIX 1

## PERMITS, LICENCES, APPROVALS AND AGREEMENTS (“PLAA”)

HMQ AND PROJECT CO PLAA RESPONSIBILITY TABLE

“**Additional Contractors**” means any independent contractor (not being, for the avoidance of doubt, the Construction Contractor or Project Co) or HMQ’s own forces, engaged by HMQ to carry out the Additional Works.

“**Additional Works**” means those works in relation to the Facilities or Site which are not Works and which are to be carried out by an Additional Contractor, including works to be performed before Project Substantial Completion.

“**Enabling Works**” being those works that HMQ is responsible for as identified in the Output Specifications Part 1 Section 1.2.2 (Enabling Works and Construction Access).

“**Phase 2 Lands**” being the lands identified on Registered Plan of Subdivision 66M-2488.

“**Works**” being those works that Project Co is responsible for as defined in the Project Agreement and, for information, includes “Municipal Works” as defined in the Output Specifications Part 1 Section 1.2.3 (Municipal Works).

**Note 1:** Where both HMQ & Project Co are identified as having the same responsibility, please refer to the Comment column for an explanation.

**Note 2:** The following Responsibility Table is for the purpose of the performance of Enabling Works and Works and for describing obligations in respect of Additional Works.

**Note 3:** The following Responsibility Table is subject to the applicable requirements in respect to the Enabling Works and Works as reflected in Schedule 15 Output Specifications. Project Co is responsible for satisfying itself with respect to compliance with the foregoing requirements and any changes thereto.

**Note 4:** Project Co or HMQ, as applicable, shall be entitled to a Variation, subject to and in accordance with Schedule 22 – Variation Procedure, with respect to any material change to the scope of the Works caused by a requirement or change to the scope of the Works required by the City of Toronto that is (i) related to the Municipal Works Facilities that are to be constructed for, and transferred to, the City of Toronto pursuant to the Subdivision *Ontario Infrastructure and Lands Corporation* © Copyright 2011 – This document must not be copied or reproduced in any manner without the written permission of *Ontario Infrastructure and Lands Corporation*.

Agreement between HMQ and the City of Toronto and (ii) not contemplated by the requirements of the Project Agreement, including in this Appendix 1 - Permits, Licences, Approvals and Agreements and in Schedule 15 – Output Specifications

Permits, Licences, Approvals and Agreements	HMQ Obligation to Obtain or Execute, unless otherwise noted  Identified by an X	HMQ Obligation to Perform unless otherwise noted  Identified by an X	Project Co Obligation to Obtain or Execute Identified by an X	Project Co Obligation to Perform Identified by an X	Comment
<b>I Development Agreements (terms as defined in Project Agreement)</b>					
1. Subdivision Agreement and Registration of Draft Plan for Phase 2 Lands	X	X		X	<p>HMQ has obtained the Registration of the Plan of Subdivision as Plan 66M-2488 and the Subdivision Agreement for the Phase 2 Lands has been executed and registered as Instrument No. AT2824469. HMQ will perform the Enabling Works in accordance with the Subdivision Agreement. HMQ to forward the executed agreement to the agencies noted.</p> <p>Project Co to perform all of its Works in accordance with the Subdivision Agreement. Please refer to Schedule A to Appendix 1 of this Responsibility Table for further information regarding the division of responsibility with respect to the Subdivision</p>

Permits, Licences, Approvals and Agreements	HMQ Obligation to Obtain or Execute, unless otherwise noted Identified by an X	HMQ Obligation to Perform unless otherwise noted Identified by an X	Project Co Obligation to Obtain or Execute Identified by an X	Project Co Obligation to Perform Identified by an X	Comment
					Agreement.
2. Subdivision Agreement for West Don Lands Phase 1	X			X	Applies only to those components of the Works that are within the boundaries of the West Don Lands Phase 1 Plan of Subdivision, Plan 66M-2473. Project Co to under take such works in accordance with the Registered Subdivision Agreement for such lands within the Site. (West Don Lands Phase 1 Subdivision Agreement instrument No. AT2305244)
3. Site Plan Agreements	X		X	X	Project Co is responsible to obtain and perform all obligations under the Site Plan Agreement(s).  If HMQ is the owner of the lands subject to the Site Plan Agreement(s), HMQ's only obligation is to execute the Site Plan Agreement(s) upon being satisfied with same.
IIA Enabling Works	X	X			
IIB Additional Works					
4. Storm Sewer Outfall Tunnel	X	X		X	License agreement with the City of Toronto to perform work on City Owned Lands to be obtained

Permits, Licences, Approvals and Agreements	HMQ Obligation to Obtain or Execute, unless otherwise noted Identified by an X	HMQ Obligation to Perform unless otherwise noted Identified by an X	Project Co Obligation to Obtain or Execute Identified by an X	Project Co Obligation to Perform Identified by an X	Comment
and Oil Grit Separator: Access Agreements					by HMQ.  Project Co to coordinate with the Additional Contractors per section 9.6 of the Project Agreement.
	X	X		X	An Easement Conveyance and Permission to Enter and Construct Agreement to be obtained by HMQ with each of the following organizations: Metrolinx, Toronto Port Lands Company and Hydro One. Project Co to coordinate with the Additional Contractors per section 9.6 of the Project Agreement..
5. Storm Sewer Outfall Tunnel and Oil Grit Separator: Permits from City	X	X		X	HMQ will obtain any permits required from the City.  Project Co to coordinate with the Additional Contractors per section 9.6 of the Project Agreement..
6. Storm Sewer Outfall Tunnel and Oil Grit Separator:	X	X		X	Permit to take water to be obtained by HMQ.  Project Co to coordinate with the Additional

Permits, Licences, Approvals and Agreements	HMQ Obligation to Obtain or Execute, unless otherwise noted Identified by an X	HMQ Obligation to Perform unless otherwise noted Identified by an X	Project Co Obligation to Obtain or Execute Identified by an X	Project Co Obligation to Perform Identified by an X	Comment
Other Approvals					Contractors per section 9.6 of the Project Agreement..
	X	X		X	Certificates of Approval from MOE (tunnels and shafts, OGS and sewers) to be obtained by HMQ.  Project Co to coordinate with the Additional Contractors per section 9.6 of the Project Agreement.
	X	X		X	City approval of detailed design drawings for the works to be obtained by HMQ.  Project Co to coordinate with the Additional Contractors per section 9.6 of the Project Agreement.
	X	X		X	Toronto Port Authority permit, to permit the outfall into the Keating Channel, to be obtained by HMQ.  Project Co to coordinate with the Additional Contractors per section 9.6 of the Project

Permits, Licences, Approvals and Agreements	HMQ Obligation to Obtain or Execute, unless otherwise noted Identified by an X	HMQ Obligation to Perform unless otherwise noted Identified by an X	Project Co Obligation to Obtain or Execute Identified by an X	Project Co Obligation to Perform Identified by an X	Comment
					Agreement..
	X	X		X	City approval of the Risk Assessment and Risk Management Report to be obtained by HMQ.  Project Co to coordinate with the Additional Contractors per section 9.6 of the Project Agreement..
	X	X		X	HMQ to obtain all additional permits, licenses and approvals, including any approvals and permits anticipated upon completion of the work (e.g. related to commissioning).  Project Co to coordinate with the Additional Contractors per section 9.6 of the Project Agreement.
7. Bayview South Electrical Works including light pole and luminaire installation and minor deficiency corrections including storm	X	X		X	HMQ to obtain all permits, licenses and approvals, including any approvals and permits anticipated upon completion of the work (e.g. related to commissioning).

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Permits, Licences, Approvals and Agreements	HMQ Obligation to Obtain or Execute, unless otherwise noted Identified by an X	HMQ Obligation to Perform unless otherwise noted Identified by an X	Project Co Obligation to Obtain or Execute Identified by an X	Project Co Obligation to Perform Identified by an X	Comment
sewer grouting.					Project Co to coordinate with the Additional Contractors per section 9.6 of the Project Agreement.
8. Other Additional Works	X	X		X	Project Co to coordinate with the Additional Contractors per section 9.6 of the Project Agreement.
<b>III Works</b>					
9. Cherry Street: Temporary Licence Agreements, to perform Works on privately owned lands at: 507 and 525 Kings Street East, 19 Sackville St, 10, 12, 14 and 16, if required.	X			X	To be obtained by HMQ prior to January 1, 2012.  Project Co to perform the Works in accordance with the requirements of the Temporary Licence Agreements obtained by HMQ.
10. Cherry Street: Temporary Staging Agreement for City owned lands adjacent to 525 King Street East	X		X	X	Agreement to be obtained by HMQ prior to January 1, 2012.  Project Co to perform the Works in accordance with Agreement requirements and to obtain any

Permits, Licences, Approvals and Agreements	HMQ Obligation to Obtain or Execute, unless otherwise noted Identified by an X	HMQ Obligation to Perform unless otherwise noted Identified by an X	Project Co Obligation to Obtain or Execute Identified by an X	Project Co Obligation to Perform Identified by an X	Comment
					extensions to such Agreement if required.
11. Cherry Street: Road Alteration By-law for Cherry Street	X			X	To be obtained by HMQ. The by-law will permit Works in accordance with the Municipal Works Contract Documents.  Project Co to perform Works in accordance with By-law.
12. Cherry Street: Road Alteration by-law for Cherry Street	X			X	City Council has approved recommendations of City Staff Report dated August 15, 2011 regarding closure of access on the east side of Cherry Street, and City Council passed By-law #1123-2011, which permits the realignment of Cherry Street in accordance with Works drawings.  Project Co to perform Works in accordance with the By-law.
13. Cherry Street: Removal of any encroachments on to the Cherry Street and Sumach Street right of way			X	X	Project Co to remove any encroachments on the Cherry Street right of way in accordance with the Municipal Works Contract Documents.

Permits, Licences, Approvals and Agreements	HMQ Obligation to Obtain or Execute, unless otherwise noted  Identified by an X	HMQ Obligation to Perform unless otherwise noted  Identified by an X	Project Co Obligation to Obtain or Execute Identified by an X	Project Co Obligation to Perform Identified by an X	Comment
14. Cherry Street: Certificates of Approval from MOE for Sewage and Water Works	X			X	To be obtained by HMQ prior to Financial Close.  Project Co to perform Works in accordance with Municipal Works Contract Documents.
15. Cherry Street: City acceptance of environmental reports and recommendations for road reconstruction	X			X	To be obtained by HMQ prior to Financial Close.  Project Co to perform in accordance with recommendations.
16. Cherry Street: Delivery Agreement with TTC to design and order tracks	X		X	X	HMQ is responsible for the obtaining the Delivery Agreement to design and order the tracks.  Project Co is responsible for implementing the Delivery Agreement to design and order the tracks.
17. Cherry Street: Delivery Agreement with TTC to construct the Works			X	X	Project Co is responsible for entering into any further agreements with TTC to implement the Works.
18. Cherry Street: Permit to Take Water as required for			X	X	

Permits, Licences, Approvals and Agreements	HMQ Obligation to Obtain or Execute, unless otherwise noted Identified by an X	HMQ Obligation to Perform unless otherwise noted Identified by an X	Project Co Obligation to Obtain or Execute Identified by an X	Project Co Obligation to Perform Identified by an X	Comment
any Works.					
19. Cherry Street: Archaeological Assessment	X	X			Field work is complete. Final reports to be prepared by HMQ.
20. Cherry Street: Tree removal permits	X	X		X	HMQ has obtained tree removal permits and has removed all applicable trees along Cherry Street, with the exception of two trees at 12 Sumach (one within ROW and one on private property) which trees are to be removed by Project Co. Permits to remove these trees have been obtained by HMQ.
21. All other permits required to remove or injure trees.			X	X	
22. City approval of Municipal Works Contract Documents	X			X	To be obtained by HMQ prior to start of Early Works.  Project Co to perform in accordance with Municipal Works Contract Documents.
23. Certificates of Approval from MOE for Sewage and Water Works	X			X	To be obtained by HMQ prior to start of Early Works.  Project Co to perform in accordance with Municipal Works Contract Documents.

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Permits, Licences, Approvals and Agreements	HMQ Obligation to Obtain or Execute, unless otherwise noted Identified by an X	HMQ Obligation to Perform unless otherwise noted Identified by an X	Project Co Obligation to Obtain or Execute Identified by an X	Project Co Obligation to Perform Identified by an X	Comment
<b>IV Other Permits, Licences, Approvals and Agreements for all Works</b>					
1. All building permits	X		X	X	HMQ to sign, if required by the City, any agreement required to permit the issuance of conditional building permits provided HMQ is the owner of the subject lands and subject to such agreement being satisfactory to HMQ.
2. Tie backs, crane swing and encroachments required for the Works			X	X	
3. Construction management plans, road cut permits and road closure permits as required for the Works			X	X	
4. Agreements and arrangements (including notice to property owners) with landowners adjacent to Work to be completed on			X	X	Construction access arrangements with neighbouring properties as required in accordance with City's standard approach for construction on City-owned ROW.

Permits, Licences, Approvals and Agreements	HMQ Obligation to Obtain or Execute, unless otherwise noted Identified by an X	HMQ Obligation to Perform unless otherwise noted Identified by an X	Project Co Obligation to Obtain or Execute Identified by an X	Project Co Obligation to Perform Identified by an X	Comment
public right-of-way					
5. Temporary road closures for any municipal roads required to be closed to the public starting on [REDACTED] and ending on [REDACTED] for the use of the Pan/Parapan Am Games by HMQ.	X			X	HMQ to apply for and obtain.  Project Co to perform Works in accordance with such permits as obtained.
6. Temporary occupancy permits and or licences to carry out works and occupancy of lands including but not limited to, City owned lands (roadways parkland), lands owned by the Toronto Port Lands Company, and Metrolinx	X	X	X	X	HMQ is only responsible for Enabling Works.
7. All levies, fees, charges and costs associated with	X	X	X	X	HMQ is only responsible for Enabling Works.

Permits, Licences, Approvals and Agreements	HMQ Obligation to Obtain or Execute, unless otherwise noted Identified by an X	HMQ Obligation to Perform unless otherwise noted Identified by an X	Project Co Obligation to Obtain or Execute Identified by an X	Project Co Obligation to Perform Identified by an X	Comment
the required Permits, Licences, Approvals and Agreements					
8. Offer to Connect with Toronto Hydro Electric System		X	X	X	HMQ to initiate Offer to Connect process with Toronto Hydro Electric System.  Project Co to obtain Offer to Connect and perform all Works in accordance with the Offer to Connect.
9. Lifting of the “H” Holding symbol for Phase 2 Lands	X	X			H has been lifted from certain Phase 2 lands through City of Toronto by-law No. 1131-2011.
10. All other permits to take water			X	X	Project Co to obtain a permit to take water for the Site.  Project Co to perform the Works in accordance with the permit to take water. .
11. All other Permits, Licences, Approvals and Agreements or any changes or additions to approvals conveyances or easements obtained by HMQ.			X	X	Project Co responsible where HMQ not identified as having a specific responsibility.

Permits, Licences, Approvals and Agreements	HMQ Obligation to Obtain or Execute, unless otherwise noted Identified by an X	HMQ Obligation to Perform unless otherwise noted Identified by an X	Project Co Obligation to Obtain or Execute Identified by an X	Project Co Obligation to Perform Identified by an X	Comment
<b>III Conformity with Other Requirements and Guidelines for Works</b>					
12. West Don Lands Block Plan and Design Guidelines, prepared by Urban Design Associates, dated 2006, and revised May 2011 by WT with &Co, The Planning Partnership and Phillips Farevaag Smallerberg				X	
13. West Don Lands Precinct Plan, prepared by Urban Design Associates, May 2005				X	
14. West Don Lands Public Realm Master Plan, prepared by Planning Partnership, dated May 2011				X	
15. West Don Land Parks and Open Space Conveyances				X	Applicable to publically accessible open space on Blocks 1 and or 14 for the lands identified as

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Permits, Licences, Approvals and Agreements	HMQ Obligation to Obtain or Execute, unless otherwise noted  Identified by an X	HMQ Obligation to Perform unless otherwise noted  Identified by an X	Project Co Obligation to Obtain or Execute Identified by an X	Project Co Obligation to Perform Identified by an X	Comment
and Phasing Plan, prepared by Waterfront Toronto, dated April 12, 2011					Corktown Mews in the Parks and Open Space Conveyances and Phasing Plan.
16. West Don Lands Plan of Subdivision Phase 2 Parking Strategy Report, prepared by BA Group, dated December 2008 and revised May 2011 by the West Don Lands Phase 2 Lands Parking Assessment also by BA Group				X	
17. West Don Lands Plan of Subdivision Phase 2 Transportation Analysis, prepared by BA Group, dated December 2008				X	
18. Noise and Vibration Feasibility Study for the Proposed Redevelopment				X	

Permits, Licences, Approvals and Agreements	HMQ Obligation to Obtain or Execute, unless otherwise noted  Identified by an X	HMQ Obligation to Perform unless otherwise noted  Identified by an X	Project Co Obligation to Obtain or Execute Identified by an X	Project Co Obligation to Perform Identified by an X	Comment
of the West Don Lands, prepared by HGC Engineering, dated August 23, 2006					
19. Noise and Vibration Feasibility Study for the Proposed Redevelopment of the West Don Lands Addendum #1, prepared by HGC Engineering, dated October 22, 2010				X	
20. West Don Lands Class Environmental Assessment Master Plan, Toronto Waterfront Revitalization Corporation and City of Toronto, March 2005				X	
21. Heritage Conservation Guidelines, 409 Front Street East, prepared by E.R.A. Architects Inc.,				X	

**2015 Pan/Parapan American Games Athletes' Village Project**

Permits, Licences, Approvals and Agreements	HMQ Obligation to Obtain or Execute, unless otherwise noted Identified by an X	HMQ Obligation to Perform unless otherwise noted Identified by an X	Project Co Obligation to Obtain or Execute Identified by an X	Project Co Obligation to Perform Identified by an X	Comment
dated April 8th, 2011					
22. Heritage Conservation Guidelines, 425 Cherry Street/420 Front Street East, prepared by E.R.A. Architects Inc., dated April 8, 2011				X	

SCHEDULE A TO APPENDIX 1 – PERMITS, LICENCES, APPROVALS AND AGREEMENTS

RESPONSIBILITY TABLE

CITY OF TORONTO

SCHEDULE “B-1” OF THE SUBDIVISION AGREEMENT for Phase 2 Lands, registered as Instrument No. AT2824469

(City File No.: 08 231376 STE 28 SB)

“**Works**” being those works that Project Co is responsible for as defined in the Project Agreement and for information includes Municipal Works as defined in the Output Specifications Part 1 Section 1.2.3. (Municipal Works).

“**Enabling Works**” being those works that HMQ is responsible for as identified in the Output Specifications Part 1 Section 1.2.2. (Enabling Works and Construction Access).

“**Phase 2 Lands**” being the lands identified on Registered Plan of Subdivision 66M-2488

**Note 1:** Where both HMQ & Project Co are identified as having the same responsibility, please refer to the Comment column for an explanation.

**Note 2:** The following Responsibility Table is for the purpose of the performance of Enabling Works and Works and for describing obligations in respect of Additional Works.

**Note 3:** The following Responsibility Table is subject to the applicable requirements in respect to the Enabling Works and Works as reflected in Schedule 15 Output Specifications. Project Co is responsible for satisfying itself with respect to compliance with the foregoing requirements and any changes thereto.

**Note 4:** Project Co or HMQ, as applicable, shall be entitled to a Variation, subject to and in accordance with Schedule 22 – Variation Procedure, with respect to any material change to the scope of the Works caused by a requirement or change to the scope of the Works required by the City of Toronto that is (i) related to the Municipal Works Facilities that are to be constructed for, and transferred to, the City of Toronto pursuant to the Subdivision *Ontario Infrastructure and Lands Corporation* © Copyright 2011 – This document must not be copied or reproduced in any manner without the written permission of *Ontario Infrastructure and Lands Corporation*.

Agreement between HMQ and the City of Toronto and (ii) not contemplated by the requirements of the Project Agreement, including in this Appendix 1 - Permits, Licences, Approvals and Agreements and in Schedule 15 – Output Specifications

**Note 5:** Please refer to the Subdivision Agreement registered as Instrument No. AT2824469 to review all responsibilities.

Responsibility contained in Schedule “B-1” of the Subdivision Agreement, registered as Instrument No. AT2824469	HMQ Obligation to Obtain or Execute Identified by an X	HMQ Obligation to Perform Identified by an X	Project Co Obligation to Obtain or Execute Identified by an X	Project Co Obligation to Perform Identified by an X	Comment
<b>SCHEDULE “B-1”</b>					
1. Notwithstanding any other provision of this Agreement, the City agrees  (a) to execute or provide any consent, document, instrument or assurance to effect the Registration of the Plan of Subdivision, and the registration of restrictive covenants on lands owned by the City within the Lands laid out by the Plan of Subdivision, or as may be required to comply with the provision of this Agreement; and  (b) to transfer any easements over City-owned Lands as may be necessary to satisfy the provisions of this Agreement.	X	X			
2. Where any provision of this Agreement requires the submission of a Risk Assessment or Record of Site Condition to the MOE for lands owned by the City, the City authorizes the Owner to submit the Risk Assessment or Record of Site Condition on the City's	X	X			

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Responsibility contained in Schedule “B-1” of the Subdivision Agreement, registered as Instrument No. AT2824469	HMQ Obligation to Obtain or Execute Identified by an X	HMQ Obligation to Perform Identified by an X	Project Co Obligation to Obtain or Execute Identified by an X	Project Co Obligation to Perform Identified by an X	Comment
behalf provided that the City has reviewed and is satisfied with such submission.					
3. The Owner and the City acknowledge that approval pursuant to s. 28 of the Financial Administration Act (Ontario) is required for any financial arrangement, financial commitment, guarantee, indemnity or similar transaction that would, directly or indirectly, increase the indebtedness or contingent liabilities of Ontario.		X		X	Acknowledged
4. The Parties acknowledge and agree that blocks on the Plan of Subdivision forming the public roads will be dedicated as public highways immediately following Acceptance of Services for the same and conveyance of necessary blocks to the City but that this shall in no way affect the contractual obligation of the Owner to repair and maintain the public roads as part of the Services until formal Assumption of Services in accordance with Section 29 of this Agreement.		X		X	Acknowledged
5. In the event of a conflict between the main body of this Agreement, Schedule “B” and Schedule “B- 1”, the provisions of Schedule B and Schedule B-1 read together shall prevail.		X		X	Acknowledged
<b>PHASING</b>					
6. Development within the Plan of Subdivision may proceed on a staged basis including the construction	X	X	X	X	HMQ is only responsible for

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Responsibility contained in Schedule “B-1” of the Subdivision Agreement, registered as Instrument No. AT2824469	HMQ Obligation to Obtain or Execute Identified by an X	HMQ Obligation to Perform Identified by an X	Project Co Obligation to Obtain or Execute Identified by an X	Project Co Obligation to Perform Identified by an X	Comment
and conveyance of the municipal infrastructure, the proposed streets, related infrastructure, storm water management, water and sanitary sewer infrastructure provided the same is satisfactory to Technical Services, is in accordance with the accepted ‘Preliminary Staging Plan’ described in Sections 7-9 or the ‘Detailed Staging Plan’ described in Sections 10-11 as applicable, and on such terms as provided for in this Agreement with respect to Acceptance and Assumption of Services and the Dedication of Public Streets to the satisfaction of Technical Services and the City Solicitor.					Enabling Works.  Project Co to coordinate with the Additional Contractors per section 9.6 of the Project Agreement
7. Prior to the Registration of the Plan of Subdivision, the Owner shall prepare and submit for review and acceptance of Technical Services and City Planning a ‘Preliminary Staging Plan’ that identifies the staged construction of the services including public streets and other municipal infrastructure and public realm improvements.	X	X			
<b>PHASING AND CONSTRUCTION OF CHERRY STREET, EASTERN AVENUE, BLOCK 28, AND THE STORM WATER OUTFALL: PRELIMINARY STAGING PLAN</b>					
8. The Owner agrees to implement the Plan of Subdivision and construct the required municipal infrastructure applicable to any of Cherry Street, Block 19, Block 7, Block 5, Block 18, Block 6, Block 35, Block 29,	X	X	X	X	HMQ is only responsible for Enabling Works and Additional Works.

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<p>Eastern Avenue, Block 28, or the Stormwater Outfall generally in conformity with the accepted ‘Preliminary Staging Plan’ unless otherwise agreed to by Technical Services.</p> <p>For greater certainty, the phrase "Stormwater Outfall" in this Schedule B-1 shall refer to the Stormwater management system which will serve Phases 1 and 2 of the West Don Lands, and part of Phase 3 west of Cherry Street. The Stormwater Outfall will extend in a southerly direction from Cherry Street through part of West Don Lands, Phase 2, and then southerly to the Keating Chanel, and will consist of various tunnels, shafts and associated facilities and apparatus including the Storm Water Quality Facility (SWQF) proposed to be located at 480 Lake Shore Boulevard East.</p> <p>The Stormwater Outfall as described in more detail in the Pre-Design Report ("PDR") dated February 11, 2011, prepared by R.V. Anderson, and as amended from time to time, will be constructed in accordance with the PDR to the satisfaction of Toronto Water, and will be operated by the Owner up to the date of the Assumption of Services by the City in accordance with industry standards, equipment manufacturers' recommendations, and design and performance objectives as set out in the PDR or as</p>					<p>Project Co to coordinate with the Additional Contractors per section 9.6 of the Project Agreement</p>



Responsibility contained in Schedule “B-1” of the Subdivision Agreement, registered as Instrument No. AT2824469	HMQ Obligation to Obtain or Execute Identified by an X	HMQ Obligation to Perform Identified by an X	Project Co Obligation to Obtain or Execute Identified by an X	Project Co Obligation to Perform Identified by an X	Comment
<p>otherwise agreed to by the City.</p> <p>The Stormwater Outfall will incorporate risk management measures if required by a duty of care risk assessment, as prepared by Conestoga Rovers &amp; Associates, or such other consultant as selected at the sole discretion of Her Majesty the Queen in Right of Ontario as may be represented by a Minister of the Crown or its agent. The risk assessment will be completed in a manner that is consistent with industry standards, conventional practices as used in the preparation of an environmental risk assessment and risk management plan and which generally meets the minimum requirements for a risk assessment as specified in Table 1 of Schedule C of O.Regulation 153/04.</p> <p>Although it forms part of the Services as they are defined in this Agreement, the PDR, and the Handover Protocol (November 12/09) as set out in the PDR, will impose additional requirements relating to the construction of the Stormwater Outfall, and the Acceptance of Services and/or Assumption of Services by the City relating specifically to the Storm Outfall will take place in accordance with the terms of the PDR. Although the Stormwater Outfall will be constructed in phases, it will function as a single system and as such the Assumption of</p>					

Responsibility contained in Schedule “B-1” of the Subdivision Agreement, registered as Instrument No. AT2824469	HMQ Obligation to Obtain or Execute Identified by an X	HMQ Obligation to Perform Identified by an X	Project Co Obligation to Obtain or Execute Identified by an X	Project Co Obligation to Perform Identified by an X	Comment
Services by the City with respect to the Storm Outfall will take place after all phases are completed, and not in phases.					
9. In the event that changes are proposed to the ‘Preliminary Staging Plan’ prior to Release for Construction of Services for any of Cherry Street, Block 19, Block 7, Block 5, Block 18, Block 6, Block 35, Block 29, Eastern Avenue, Block 28, or the Stormwater Outfall, then the Owner agrees to update the ‘Preliminary Staging Plan’ prior to Release for Construction of Services for the review and acceptance of Technical Services and City Planning.	X	X	X	X	HMQ is only responsible for Enabling Works and Additional Works.
<b>PHASING AND CONSTRUCTION OF THE BALANCE OF THE WEST DON LANDS PHASE 2: DETAILED STAGING PLAN</b>					
10. Prior to Release for Construction of Services for any of Blocks 1, 2, 3, 4, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 30, 31, 32, 33, 34 or Front Street, the Owner shall prepare and submit for review and acceptance of Technical Services and City Planning a ‘Detailed Staging Plan’ based on the ‘Preliminary Staging Plan’ that will identify the staged construction of the services including public streets and other municipal infrastructure and public realm improvements, and that identifies the proposed co-ordination and orderly development of the Blocks within			X	X	

Responsibility contained in Schedule “B-1” of the Subdivision Agreement, registered as Instrument No. AT2824469	HMQ Obligation to Obtain or Execute Identified by an X	HMQ Obligation to Perform Identified by an X	Project Co Obligation to Obtain or Execute Identified by an X	Project Co Obligation to Perform Identified by an X	Comment
the Plan of Subdivision.					
11. The Owner agrees to implement the Plan of Subdivision and construct the required municipal infrastructure, applicable to any of Blocks 1, 2, 3, 4, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 30, 31, 32, 33, 34 or Front Street generally in conformity with the accepted ‘Detailed Staging Plan’ unless otherwise agreed to by Technical Services.			X	X	
<b>LAND EXCHANGE</b>					
12. Prior to the Registration of the Plan of Subdivision, the Owner shall make arrangements to the satisfaction of the City Solicitor for the necessary land transactions/exchanges with the City, required to facilitate the proposed development.	X	X			
<b>INFRASTRUCTURE</b>					
13. The Owner agrees to maintain securities in an amount acceptable to Technical Services for the completed infrastructure as a maintenance guarantee for two years from the date of completion of each construction stage as certified by the Consulting Engineer and accepted by Technical Services. Securities will be				X	For clarity, no securities are required by the City for Works proposed in connection with the development of land owned by HMQ.

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<b>Responsibility contained in Schedule “B-1” of the Subdivision Agreement, registered as Instrument No. AT2824469</b>	<b>HMQ Obligation to Obtain or Execute Identified by an X</b>	<b>HMQ Obligation to Perform Identified by an X</b>	<b>Project Co Obligation to Obtain or Execute Identified by an X</b>	<b>Project Co Obligation to Perform Identified by an X</b>	<b>Comment</b>
released following City Council’s approval of an Assumption Report, which will be submitted within 3 years from the date of completion of each construction stage to the satisfaction of Technical Services. Assumption of works may be staged in accordance with the approved construction staging plans.					Project Co is required to post all required securities for works proposed in connection with development of land not owned by HMQ if securities are required by the City.
14. The Owner shall construct all utilities underground, unless otherwise agreed to by Technical Services.	X	X	X	X	HMQ is only responsible for Enabling Works and Additional Works.
15. Prior to the Registration of the Plan of Subdivision, the Owner shall submit a “Traffic Operations Assessment”, including traffic signal warrant analyses, for the review and approval of Technical Services.	X	X			
16. Prior to the Release for Construction of Services the Owner agrees to pay to the City \$324,000 which is an aggregate figure for all traffic control signals, and includes a lump sum payment of \$90,000 for maintenance of all such signals and any other traffic improvements/mitigation measures identified in the approved “Traffic Operations Assessment”.			X	X	
17. The Owner agrees to construct, at its own expense, any modifications or improvements to the existing abutting streets, facilities and public infrastructure external to the Plan of Subdivision, as shown on the	X	X	X	X	HMQ is only responsible for Enabling Works and Additional Works.  Project Co is responsible for all

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accepted Engineering drawings, including, but not limited to, improvements to Cherry Street, Front Street, and Eastern Avenue, to the satisfaction of Technical Services.					other matters.
<b>FUNCTIONAL SERVICING REPORT</b>					
18. Prior to the Registration of the Plan of Subdivision, the Owner shall prepare and submit a Functional Servicing Report to the satisfaction of Technical Services.	X	X			
<b>FUNCTIONAL STORM WATER MANAGEMENT REPORT</b>					
19. Prior to the Registration of the Plan of Subdivision, the Owner shall prepare and submit a Functional Storm Water Management Report, to the satisfaction of Technical Services.	X	X			
<b>TRAFFIC OPERATIONS ASSESSMENT</b>					
20. The Owner agrees to prepare and submit for review and acceptance of Transportation Services, Traffic Operations Assessment(s), in conjunction with future site plan applications for development on Blocks(s) in the Plan of Subdivision. The Owner agrees that such Traffic Operations Assessment(s) may be required to assess traffic operations for development proposed on individual Blocks or may be permitted to assess traffic operations for development proposed on more than			X	X	

Responsibility contained in Schedule “B-1” of the Subdivision Agreement, registered as Instrument No. AT2824469	HMQ Obligation to Obtain or Execute Identified by an X	HMQ Obligation to Perform Identified by an X	Project Co Obligation to Obtain or Execute Identified by an X	Project Co Obligation to Perform Identified by an X	Comment
one Block in the Plan of Subdivision at the discretion and to the satisfaction of Transportation Services.					
21. The Owner acknowledges and agrees that any mitigating measures identified in the Traffic Operations Assessments through site plan approval on the Blocks within the Plan of Subdivision will be implemented by the Owner at no cost to the City, to the satisfaction of Transportation Services.			X	X	
<b>PARKING STRATEGY</b>					
22. Prior to the Registration of the Plan of Subdivision the Owner shall submit a Parking Strategy Report for the review and approval of Technical Services and City Planning that includes consideration of the implications of the zoning by-law parking requirements on the West Don Lands Phase 2 development plan, and outlines an implementation strategy for meeting the parking needs. The purpose of the Parking Strategy is to assess the site conditions and development objectives, which impact the provision of parking according to the zoning by-law, and recommend a strategy to address the parking requirements.	X	X		X	Project Co to comply with the Parking Strategy Report: West Don Lands Phase 2 Lands Parking Assessment May 2011.
<b>CHERRY STREET — ROAD WIDENINGS, RESTRICTED ACCESS AND SCHEDULE FOR CONSTRUCTION</b>					
23. The Owner agrees to convey Block 6, Block 18, Block 19, Block 28 and Block 29 to the City for road widening	X	X		X	HMQ to convey said lands. Project Co not to encumber

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purposes along Cherry Street free and clear of all encumbrances, save and except for any other requirements or encumbrances pursuant to this Agreement, the easement described in instrument CA121112, or other such encumbrances as may be approved by Technical Services, at such time and on conditions provided for in this Agreement to the satisfaction of Technical Services and the City Solicitor.					said lands except as otherwise provided for by the Subdivision Agreement.
<p>24. The Owner acknowledges and agrees that Block 28 is proposed for the turning loop for the Toronto Transit Commission Light Rail Transit infrastructure to be constructed along the east side of Cherry Street.</p> <p>Prior to the Registration of the Plan of Subdivision, the Owner shall make arrangements satisfactory to Metrolinx, Technical Services and the City Solicitor with respect to the existing parking on Block 28 to ensure that Block 28 is available for the proposed LRT turning loop.</p>	X	X		X	<p>Acknowledged.</p> <p>HMQ has made arrangements to the satisfaction of Metrolinx.</p>
25. The Owner acknowledges and agrees that access and egress to Cherry Street from Block 1, Block 8, Block 10 Block 14, and Block 20 will be restricted by the City due to the planned Light Rail Transit Line on the east side of Cherry Street.		X		X	Acknowledged.

Responsibility contained in Schedule “B-1” of the Subdivision Agreement, registered as Instrument No. AT2824469	HMQ Obligation to Obtain or Execute Identified by an X	HMQ Obligation to Perform Identified by an X	Project Co Obligation to Obtain or Execute Identified by an X	Project Co Obligation to Perform Identified by an X	Comment
26. In the event that Block 20 is developed for a District Energy Centre, egress to Cherry Street will be permitted from Block 20 via an easement over Block 28 in favour of Block 20 to the satisfaction of Transportation Services in consultation with the Toronto Transit Commission.	X	X			A District Energy Centre is no longer contemplated.
27. The City acknowledges and agrees that the Owner may propose to construct Cherry Street prior to the release for construction of services of the Plan of Subdivision or the registration of the Plan of Subdivision in order to facilitate the provision of infrastructure necessary for the PAN AM Games. In the event that the Owner proposes the construction of Cherry Street in advance of release for construction services and prior to the registration of the Plan of Subdivision, the Owner shall provide, for the review and acceptance of Technical Services, detailed engineering drawings for Cherry Street, and enter into agreement(s) as required to provide for the construction of Cherry Street, to the satisfaction of Technical Services and the City Solicitor.	X	X	X	X	HMQ is only responsible for Enabling Works.  Construction of Cherry Street in advance of registration of the plan of subdivision is not contemplated. For clarity, Project Co is responsible for construction of Cherry Street as part of the Works.
<b>FUTURE PUBLIC STREETS AND ROAD WIDENINGS</b>					
28. The Owner agrees to convey Blocks 5, 7, 21, 22, 23, 24, 25, 27, 30, 31, 32, 33, 34, and 35, the future public streets and street widenings, in accordance with the	X			X	Project Co to perform all obligations as may be required to permit the conveyance of

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Responsibility contained in Schedule “B-1” of the Subdivision Agreement, registered as Instrument No. AT2824469	HMQ Obligation to Obtain or Execute Identified by an X	HMQ Obligation to Perform Identified by an X	Project Co Obligation to Obtain or Execute Identified by an X	Project Co Obligation to Perform Identified by an X	Comment
approved plan when, in the opinion of Technical Services, the lands are necessary for public highway purposes.					the noted Blocks. HMQ responsible to execute the transfers to the City.
29. The Owner acknowledges and agrees that the future public streets and street widening lands described in Clauses 23 and 28 of this Schedule will be conveyed to the City at nominal cost, free and clear of all encumbrances, save and except for any other requirements or encumbrances pursuant to this Agreement, or other such encumbrances as may be approved by Technical Services, the surface and subsurface public services and facilities, and utilities, subject to a right-of-way in favour of the Owner for access purposes until such time as the said lands have been assumed for public highway purposes.	X	X		X	Project Co to perform all obligations as required for the conveyance of the future public streets and street widenings to the City in accordance with the requirements of the Subdivision Agreement.  Project Co is not to encumber the subject lands, except as otherwise provided for in the Subdivision Agreement. HMQ is responsible only for the execution of the transfers for all lands owned by HMQ, upon being satisfied with the form of the transfer.
<b>FUNCTIONAL ROAD PLAN</b>					
30. Prior to the Registration of the Plan of Subdivision, the Owner shall prepare and submit Functional Road Plans of the Public Streets that include all proposed utilities and streetscaping and includes proposed	X	X			

**2015 Pan/Parapan American Games Athletes' Village Project**

Responsibility contained in Schedule "B-1" of the Subdivision Agreement, registered as Instrument No. AT2824469	HMQ Obligation to Obtain or Execute Identified by an X	HMQ Obligation to Perform Identified by an X	Project Co Obligation to Obtain or Execute Identified by an X	Project Co Obligation to Perform Identified by an X	Comment
improvements to Eastern Avenue for the review and acceptance of Technical Services.					
31. The Owner agrees that the detailed engineering drawings submitted prior to Release for Construction of Services, shall be in general conformity with the accepted Functional Road Plans, unless otherwise agreed by Technical Services.	X	X		X	Project Co to comply with the detailed engineering drawings obtained by HMQ, or is responsible for satisfying the approval authorities with respect to any changes thereto.
32. Prior to the Registration of the Plan of Subdivision, the Owner shall submit a detailed 'Pavement Marking and Signing Plan', for review and acceptance of Transportation Services, identifying the intended traffic operations of all new public streets, the configuration of intersections, the signing required to regulate the intended transportation facilities and any modifications required to the pavement markings and signs on existing public streets. The Owner shall be responsible for all costs associated with implementing the requirements of the 'Pavement Marking and Signing Plan', unless otherwise agreed to by Technical Services.	X			X	HMQ to obtain acceptance of Pavement Marking and Signage Plan and integrate into the Municipal Works Contract Documents as applicable.  Project Co to perform in accordance with the Municipal Works Contract Documents.
<b>EASEMENT</b>					
33. Prior to Release for Construction of Services, the	X	X	X	X	HMQ to convey easements

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Owner shall identify all easements required, to among other things provide for utilities, public services and facilities, including access and maintenance easements for existing and new City infrastructure, to the satisfaction of Technical Services.					identified prior to Release for Construction of Services for Enabling Works and is responsible for all associated costs. Project Co to advise HMQ of any additional easements required in connection with the Works. HMQ to convey all easement associated with the Works upon being satisfied with same and is responsible only for the cost to transfer such easement.
34. The Owner agrees that the conveyance of easements shall be at no cost to the City, and in accordance with the accepted ‘Preliminary Staging Plan’ or ‘Detailed Staging Plan’ to the satisfaction of Technical Services.	X	X	X	X	HMQ to convey easements identified as a result of Enabling Works and Additional Works and is responsible for all associated costs. Project Co. to advise HMQ of any additional easements required in connection with the Works. HMQ to convey all easement associated with the Works upon being satisfied with same and is responsible

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					only for the cost to transfer such easement.
<b>BLOCKS 1, 2 AND BLOCK 3 — REQUIREMENTS</b>					
<p>35. Prior to the Registration of the Plan of Subdivision, the Owner agrees to provide to the City a restrictive covenant to be registered on title to Blocks 1, 2 and 3 stating that each of Blocks 1, 2 and 3 will not be transferred, or sold or charged, unless the lands are described as the whole of any one of the following parcels: Parcel 1: Blocks 1 and 2, or Parcel 2: Blocks 2 and 3.</p> <p>The restriction would also include a provision governing permitted uses of Block 2, such that Block 2 shall not be used or maintained for any purpose other than for the purposes of a driveway access and any landscape features that are ancillary to the driveway, for the benefit of Blocks 1 and 3; and that no above grade buildings, or structures shall be constructed or erected upon Block 2.</p> <p>The restriction would include a provision that it could not be modified by the Province without the written consent of the City.</p>	X	X		X	<p>Restrictive Covenant has been registered as instrument AT2824750.</p> <p>HMQ and Project Co to conform with restrictive covenant.</p> <p>Project Co will be responsible to prepare easement over, along and upon Block 2 at the time of conveyance of the parcels. Such easement may</p>

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At the time of the conveyance of either of the parcels described above, an easement and right-of-way will be reserved over, along and upon Block 2 for the purposes of a driveway benefiting the Owners from time to time of Block 1 or Block 3 and their respective successors, assigns and invitees.					also provide for public access. HMQ shall be responsible to execute transfer of easement(s) upon being satisfied with same.
<b>BLOCKS 1 AND/OR 4, 14, 8 AND/OR 20, AND 17 — ACCESS</b>					
36. Prior to final site plan approval on Block 1 and/or 4, 14, 8 and/or 20, and 17, the Owner, shall convey or make appropriate arrangements for the conveyance of an easement to the City to secure public access to provide for the public use of the proposed open space on Blocks 1 and/or 4, 14, 8 and/or 20, and 17 as generally shown in the accepted West Don Lands Block Plan and Design Guidelines to the satisfaction of City Planning and Parks Recreation and Forestry.	X		X	X	HMQ's only obligation limited to the execution of required transfer documents as prepared by Project Co to the satisfaction of HMQ, if HMQ is the owner at the time the easement is conveyed. Project Co responsible for all other work required to obtain and complete conveyances. Project Co is responsible for the design and construction of the open space on Blocks 1 and or 14 as acceptable to the City through the submission of an application for Site Plan Approval.

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<b>COMMUNICATION PLAN</b>					
37. The Owner agrees to provide a clear communication protocol to Technical Services, for communicating critical issues during construction related to the interface of multiple consultants and multiple contractors.	X	X	X	X	HMQ is only responsible for Enabling Works and Additional Works.
<b>URBAN DESIGN &amp; HERITAGE PRESERVATION SERVICES</b>					
38. Prior to the Registration of the Plan of Subdivision, the Owner shall prepare and submit for the review and acceptance of City Planning, revisions to the "West Don Lands Public Realm Master Plan.	X	X		X	HMQ to meet obligations as required to register the plan of subdivision. Project Co to have appropriate regard for the West Don Lands Public Realm Master Plan
39. The Owner agrees to undertake:					
i. the realignment of the intersection of Eastern Avenue with the Eastern Avenue divergence in accordance with accepted engineering drawings to the satisfaction of Technical Services; and			X	X	
ii. public realm improvements proposed to Eastern Avenue from River Street to Eastern Avenue diversion in accordance with accepted designs to the satisfaction of City Planning.			X	X	

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40. Prior to the Registration of the Plan of Subdivision, the Owner shall submit the final version of the “West Don Lands Block Plan and Design Guidelines, to the satisfaction of City Planning.	X	X		X	HMQ to prepare the final version of the West Don Lands Block Plan and Design Guidelines. Project Co to construct the Works in a manner which is in accordance with West Don Lands Block Plan and Design Guidelines.
41. Prior to the Registration of the Plan of Subdivision, the Owner shall submit to the satisfaction of City Planning, heritage conservation guidelines for the properties listed on the City of Toronto’s Heritage Inventory. The heritage conservation guidelines are to be prepared by a qualified heritage conservation consultant. The objective of the guidelines is to establish an overall approach to the conservation of the listed properties and to guide decisions pertaining to proposed changes to the resource. The guidelines will reference appropriate conservation principles such as “The Parks Canada Standards and Guidelines for the Conservation of Historic Places in Canada” (2003), the “Ontario Ministry of Culture’s “Eight Guiding Principles in Conservation of Historic Properties” (1997) and will:  i. identify heritage attributes and conservation	X	X		X	HMQ shall submit, to the satisfaction of City Planning, heritage conservation guidelines. Project Co to proceed with development in accordance with the recommendations contained in the guidelines.

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<p>objectives for the properties listed on the City of Toronto’s Heritage Inventory;</p> <p>ii. make recommendations for development on the property and on adjacent property, including massing, setbacks, podium heights, additions and alterations;</p> <p>iii. include consideration of new building mass in a comprehensive fashion to ensure the built form of the area as a whole, including heritage properties, is complementary and cohesive; and;</p> <p>iv. make recommendations for appropriate heritage protection mechanisms as part of the development process.</p>					
42. Prior to the issuance of any building permit or prior to any work that could alter heritage attributes, for the listed heritage properties, the Owner shall provide building permit drawings or alteration drawings and additionally, a Heritage Impact Assessment, if it is determined that the heritage attributes may be affected by the planned alterations, to the satisfaction of the Manager, Heritage Preservation Services.			X	X	
<b>BLOCK 9 — RESERVATION FOR SCHOOL USE AND/OR COMMUNITY CENTRE</b>					
43. The Owner acknowledges and agrees that Block 9 will be reserved for a period of up to 10 years from the		X		X	Acknowledged. Notice has

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<p>date of registration of the Plan of Subdivision for the acquisition, in whole or in part, for fair market value by the Toronto District School Board and/or the City for use as a school site or a joint school and City community recreation centre. The Owner further agrees that, in the event that the Toronto District School Board does not acquire all or part of Block 9 within this period, Block 9 will be reserved for potential acquisition, in whole or in part, at fair market value by the City for community recreation use, until the earlier of: (i) the expiration of such 10-year period; or (ii) 1 year from the date on which the Toronto District School Board informs the Owner that it will not acquire Block 9. Notwithstanding the foregoing, in no event shall the Toronto District School Board or the City have any right to acquire Block 9 until the completion of the Pan American and Para Pan American Games and the conversion of the Pan American and Para Pan American Games related facilities in the West Don Lands to post-games use, which is expected to occur in early 2016. The Owner agrees that it will not take any action, nor permit any action to be taken, that would frustrate or interfere with the rights of the City and the Toronto District School Board pursuant to this Clause and the City acknowledges that this Clause does not preclude the Owner from using Block 9 for any uses such as those required for or associated with the Pan American and Para Pan American Games to be hosted in</p>					<p>been registered as instrument AT2824751.</p>

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<p>the City.</p> <p>The City and the Owner acknowledge and agree that upon (i) receipt by the Owner of notice from the Toronto District School Board and the City indicating that neither the Toronto District School Board or the City will acquire Block 9; or (ii) the expiration of the 10 year period set forth above, this Clause 43 shall be at an end and deemed to be of no further force and effect and this Notice may be deleted from title to Block 9 unilaterally by the Owner, or its successor(s) in title.</p>					
<b>RISK ASSESSMENT</b>					
<b>GENERAL: ALL PROPERTIES</b>					
44. The Owner shall submit a Record of Site Condition acknowledged by the Ministry of the Environment prior to changing the use of the property to Residential, Parkland or Institutional, to the Chief Building Official, Technical Services, and the General Manager of Parks, Recreation and Forestry as appropriate.	X	X			HMQ to obtain RSC's prior to Financial Close
45. The Owner shall implement any Risk Assessment conditions, including any risk management measures specified in a Certificate of Property Use, as issued by the Ministry of the Environment in the accepted Risk		X		X	HMQ is only responsible for Enabling Works and Additional Works.

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Assessment at no cost to the City.					
46. The Owner shall agree to submit to the City a Ministry of the Environment-accepted Risk Assessment or a Ministry of the Environment-acknowledged Record of Site Condition, prior to lifting the (“h”) zoning symbol.	X	X			HMQ to obtain Risk Assessment prior to RFP Close.
<b>CONVEYANCE OF PROPERTIES</b>					
47. Prior to conveyance of lands to the City, the Owner shall submit:					Should Project Co make any amendments to Risk Assessments, Records of Site Conditions or Certificates of Property Use, Project Co is solely responsible for such work, including all costs and associated risk to budget and schedule. Any such changes must be made to the satisfaction of HMQ and HMQ’s environmental consultant and the City of Toronto and the City of Toronto Peer Reviewer.
a. a Record of Site Condition to the satisfaction of the Peer Reviewer retained by the City of Toronto at the expense of the Owner, to be filed on the	X				HMQ responsible for conditions 47a) and b).

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Environmental Site Registry, in accordance with the <i>Environmental Protection Act</i> ;					
b. a Record of Site Condition, prepared in accordance with (a), that has been filed on the Environmental Site Registry, in accordance with the <i>Environmental Protection Act</i> ;	X				
c. to the satisfaction of the Peer Reviewer retained by the City at the expense of the Owner and reports by a “qualified person” (as defined in O.Reg 153/04, as amended by O.Reg 511/09, as applicable) confirming that any soil imported to lands from outside of the lands covered by the Ministry of the Environment-accepted Risk Assessment to lands to be conveyed to the City meets the applicable Ministry of the Environment requirements for Parkland/Residential/Institutional use given in Table 3 of the Soil Ground Water and Sediment Standards for Use Under Part XV.1 of the <i>Environmental Protection Act</i> (July 2009) or such standards that have been established in accordance with the risk assessment process prescribed in O.Reg. 153/04, as amended by O. Reg. 511/09; and	X		X		47c) Project Co is responsible for confirming to HMQ that any soil imported to lands from outside of the lands meets the requirements of this clause; HMQ will submit such confirmation to the City for the review of the Peer Reviewer.
d. to the satisfaction of the Peer Reviewer retained by the City at the expense of the Owner, reports by a	X		X		47d) If any recycled crushed concrete material originating

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<p>“qualified person” (as per O.Reg 153/04, as amended by O.Reg. 511/09, as applicable) confirming that any recycled crushed concrete material originating from the Lands or the West Don Lands Phase 1 Subdivision which is used in the construction of roads within the lands to be conveyed to the City:</p> <p>i. contains no hazardous wastes as defined by R.R.O. 1990 Regulation 347 (as amended by O.Reg. 558/00); and</p> <p>ii. contains no asbestos.</p> <p>e. to the satisfaction of the Peer Reviewer retained by the City at the expense of the Owner, reports by a “qualified person” (as per O.Reg 153/04, as amended by O.Reg 511/09, as applicable) confirming that any contaminated soils moved on to the lands to be conveyed to the City from anywhere else in the lands covered by a Ministry of the Environment-accepted Risk Assessment, are placed on the lands to be conveyed to the City in accordance with the Ministry of the Environment-</p>	X		X		<p>from the Lands or the West Don Lands Phase 1 Subdivision is used on the construction of roads to be conveyed to the City, Project Co is responsible for confirming to HMQ that the requirements of this clause are met; HMQ will submit such confirmation to the City for the review of the Peer Reviewer.</p> <p>47e) Project Co is responsible for confirming to HMQ that any contaminated soils moved to the lands to be conveyed to the City meet the requirements of this clause; HMQ will submit such confirmation to the City for the review of the Peer Reviewer.</p>

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accepted Risk Assessment, including any risk management measures specified in the Certificate of Property Use provided that the resulting risk management measures will not impose a continuing burden on the City of Toronto.					
48. For the lands to be conveyed to the City, the Owner shall complete all risk management measures, if any, and shall satisfy all conditions that may be imposed pursuant to a, and as specified in, a Certificate of Property Use issued by the Director at the Ministry of the Environment.		X		X	HMQ only responsible for Enabling Works and Additional Works.
49. Prior to the conveyance of lands to the City, the Owner shall enter into any necessary agreement to implement any terms or conditions of the Certificate of Property Use at no cost to the City until such time as such conditions are met and to reimburse the City for any incremental costs or expenses incurred by the City that are attributable to the implementation of any conditions or requirements in the Certificate of Property Use.	X	X	X	X	HMQ to execute all necessary agreements for lands owned by HMQ. HMQ and Project Co are each obligated to obtain the necessary agreements for Enabling Works and the Works, respectively, and to cover all costs related thereto.
<b>INTERIM OPERATIONS PRIOR TO CONVEYANCE</b>					
50. Prior to acceptance of any maintenance and operating obligations by the City for specified roadways, if prior to conveyance of these lands to the City, the Owner		X		X	HMQ only responsible for Enabling Works and Additional Works.

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<p>agrees:</p> <p>a. that the proposed interim operational and maintenance activity are in compliance with the Ministry of the Environment – Accepted Risk Assessment, including any risk management measures specified in the Certificate of Property Use; and,</p> <p>b. to enter into an agreement specified in Clause 49.</p>					
<b>PARKLAND CONVEYANCE — GENERAL</b>					
51. The Owner agrees to complete parkland in accordance with the Five Year Business Plan and Ten Year Forecast of the Toronto Waterfront Revitalization Corporation, as adopted by City Council on July 25, 26 & 27, 2006, of Waterfront Toronto, to the satisfaction of the General Manager of Parks, Forestry & Recreation.	X	X			
<b>PARK CONVEYANCE</b>					
52. Prior to the Registration of the Plan of Subdivision, the Owner shall prepare and submit for the review and acceptance of Parks Recreation and Forestry an update to the “Parks and Public Spaces Conveyance and Phasing Plan” that;	X	X			<p>HMQ to provide and obtain acceptance of Parks and Public Spaces Conveyance and Phasing Plan.</p> <p>Project Co to design, obtain City approval for and arrange for registration of the easement</p>

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<p>a. identifies the proposed public parks, and the proposed privately owned publicly accessible open spaces;</p> <p>b. includes the dimensions of the public parks and the privately owned publicly accessible open spaces;</p> <p>c. details the design objectives of the public parks and the privately owned publicly accessible open spaces; and</p> <p>d. details the phasing for the completion of the public</p>					<p>for public access for publicly accessible open space on Blocks 1 and/or 14 in accordance with the design and functional intentions set out in the Parks and Public Spaces Conveyance and Phasing Plan. HMQ's obligation regarding registration of the easement limited to the execution of required transfer documents, if HMQ is Owner, with such document prepared by Project Co to the satisfaction of HMQ.</p>



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parks and the privately owned publicly accessible open spaces.					
53. Prior to the Registration of the Plan of Subdivision, Toronto Waterfront Revitalization Corporation shall submit a letter on behalf of the Owner updating the City on the status of the “West Don Lands: School and Community Centre Feasibility Study” dated September 13, 2007.	X	X			
<b>STREET TREE PLANTING</b>					
54. Prior to the Registration of the Plan of Subdivision, the Owner agrees to provide a street tree planting plan(s), to the satisfaction of the General Manager of Parks, Forestry and Recreation, which provides;  a. the exact location and timing of planting of any trees proposed to be planted within the City's right of way including details with respect to proposed tree species, calliper and quantity. The planting plan should provide the best available, natural, planting environment for trees and ensure that the City's minimum soil volume requirements per tree	X			X	HMQ to provide satisfactory street tree planting plan(s) as part of Municipal Works Contract Documents.  Project Co to plant trees in accordance with all applicable requirements

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<p>are satisfied, or unless otherwise approved. It is preferred that trees be planted in turf when possible. If no room exists for turf boulevards with trees, raised planting beds or continuous tree pits should be considered; and</p> <p>b. adequate space along the public roadways for tree planting. All utilities and underground plant must be designed to allow for the construction of turf boulevards / continuous tree pits, within the City's right of way or to the satisfaction of the General Manager of Parks, Forestry and Recreation.</p>					
55. The Owner agrees to provide a performance guarantee based on the current deposit rate of \$583.00 per tree, for a two-year renewable guarantee for all new trees planted within the City's right of way.			X	X	Project Co is required to post all required securities for works proposed in connection with development of land not owned by HMQ if securities are required by the City.
56. The Owner agrees to maintain the street trees in good condition for a period of two years. The trees will be inspected during and prior to the end of the two year renewable guarantee period. If the trees are in good condition at the end of the two year renewable guarantee period, the City will assume maintenance and ownership of the trees. Prior to the City assuming ownership and maintenance of the trees, the Owner			X	X	

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will be responsible for rectifying any problems as determined by and to the satisfaction of the General Manager Parks Forestry and Recreation. The performance guarantee for tree planting shall be refunded at the end of the two year renewable guarantee period for all trees in good condition. The balance of the performance guarantee, if any, will be held for the duration of the renewable guarantee period.					
57. The Owner acknowledges and agrees that, prior to the City assuming ownership and maintenance of the trees, the performance guarantee for street trees will be drawn on by the City to cover any costs incurred as a result of enforcing and ensuring that the trees are kept in a healthy and vigorous state. In the event that the City is in receipt of a tree protection deposit under Section 58 below, any tree for which a deposit has been made under this Condition will have the deposit refunded, subject to inspection and to the satisfaction of the General Manager, Parks, Forestry and Recreation.			X	X	
58. The Owner agrees that at the time of development of sites adjacent to established street tree plantings, protection deposits shall be provided for street trees at 3 times the value of the street trees with a minimum of			X	X	

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\$2,500.00 each.					
<b>RAILWAY — NOISE MITIGATION AND SAFETY MEASURES</b>					
59. Prior to the Registration of the Plan of Subdivision, the Owner shall submit a revised Noise and Vibration Feasibility Study for the proposed development of the West Don Lands Phase 2 to the satisfaction of and for the approval of the Chief Planner and Technical Services.	X	X		X	Revised Noise and Vibration Study to be prepared by HMQ. ("Noise and Vibration study for the Proposed Redevelopment of the West Don Lands Addendum #1")  Project Co to perform the Works in accordance with the recommendations of the Noise and Vibration Study.
60. In the event that mitigation measures are proposed on lands to be conveyed or dedicated to the City and such mitigation measures are accepted by the City, then the Owner agrees to pay the City an amount satisfactory to Technical Services and Parks Recreation and Forestry as appropriate, for the future maintenance costs associated with any constructed mitigation measures.			X	X	
61. The Owner agrees to the following: a. Prior to site plan approval on any lands zoned RA or RA(h), with the exception of parking facilities and temporary storage facilities, to engage a consultant			X	X	

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<p>to undertake a detailed Noise and Vibration Impact Study in order to recommend abatement measures necessary to achieve acceptable levels as set out by the Ministry of Environment and Metrolinx. The study will consider noise associated with the Metrolinx rail corridors for those lands within 300 metres of the rail corridors, and vibration associated with the Metrolinx rail corridors, for those lands within 75 metres of the rail corridors. Upon review and approval of the study by the City and Metrolinx, all recommendations set forth in the study shall be secured through the conditions of Site Plan Approval and/or the Building Permit Approval for a given site, to the satisfaction of the City and Metrolinx.</p> <p>b. As a condition of site plan approval or completion of parkland on Blocks 8, 9, 20, 28, 29 and 32, with the exception of parking facilities and temporary storage facilities, provide a building setback for residential and other sensitive uses measuring a minimum of 30 metres, as well as to construct and maintain an earthen berm for safety purposes, a minimum of 2.5 metres above grade at the property line, having side slopes not steeper than 2.5 to 1, adjoining and parallel to the railway right-of-way with returns at the ends or an alternative design for</p>			X	X	

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these measures as negotiated with Metrolinx.					
62. Prior to Registration of the Plan of Subdivision, the Owner shall install a minimum 1.83m high chain link fence along the mutual property line with the Metrolinx property, or alternative fencing treatment, in a location approved by Metrolinx and the City. The fencing should provide for a suitable level of trespass prevention. Where access to the railway right-of-way is required by Metrolinx, appropriate controlled access will be provided for, to the satisfaction of Metrolinx.	X	X			
63. The Owner agrees that any proposed alteration to the existing drainage affecting the Metrolinx property will be subject to the review and approval of Metrolinx. The Owner agrees to submit the final grading and drainage plans to Metrolinx for review and approval.			X	X	
64. The Owner agrees to include warning clauses in all Offers of Purchase and Sale, and/or Rental Agreements for each dwelling unit within 300 metres of the rail right of way;  “WARNING: The Greater Toronto Transit Authority, carrying on business as Metrolinx, and its assigns and successors in interest, has rights-of-way and rail facilities within 300 metres from the land the subject hereof, which operate on a 24-hour basis. There may be alterations to or expansion of the rail facilities of such			X	X	

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<b>Responsibility contained in Schedule “B-1” of the Subdivision Agreement, registered as Instrument No. AT2824469</b>	<b>HMQ Obligation to Obtain or Execute Identified by an X</b>	<b>HMQ Obligation to Perform Identified by an X</b>	<b>Project Co Obligation to Obtain or Execute Identified by an X</b>	<b>Project Co Obligation to Perform Identified by an X</b>	<b>Comment</b>
<p>rights-of-way in the future including the possibility that Metrolinx, or any other railway entering into an agreement with Metrolinx to use the right-of-way or their assigns or successors as foresaid, may expand their operations, which expansion may affect the living environment of the residents in the vicinity, notwithstanding the inclusion of any noise and vibration attenuating measures in the design of the development and individual dwellings. Metrolinx will not be responsible for any complaints or claims arising from the use of such facilities and/or operations on, over or under the aforesaid right-of-way.”</p> <p>“Warning to Solicitors: Solicitors are advised to stress the importance of the above noted warning clauses when advising their clients on the purchase of units in the development.”</p>					
65. The Owner agrees to notify Metrolinx of any proposed site preparation or construction on or adjacent to the rail property, and the Owner will modify any such works, as required by Metrolinx, to ensure that such works are carried out in such a manner so as to not impact the operations of Metrolinx.	X	X	X	X	HMQ to notify Metrolinx and CN for Enabling Works and Additional Works. Project Co to notify Metrolinx and CN for the Works.
66. Prior to Registration of the Plan of Subdivision, the Owner shall enter into an agreement(s) with Metrolinx stipulating how Metrolinx’s concerns will be resolved.	X	X		X	HMQ has entered into an agreement with Metrolinx, registered as instrument AT2824752.

Responsibility contained in Schedule “B-1” of the Subdivision Agreement, registered as Instrument No. AT2824469	HMQ Obligation to Obtain or Execute Identified by an X	HMQ Obligation to Perform Identified by an X	Project Co Obligation to Obtain or Execute Identified by an X	Project Co Obligation to Perform Identified by an X	Comment
					Project Co to conform with agreement requirements as applicable to Project Operations, including the requirement to enter into a replacement agreement if necessary



Responsibility contained in Schedule “B-1” of the Subdivision Agreement, registered as Instrument No. AT2824469	HMQ Obligation to Obtain or Execute Identified by an X	HMQ Obligation to Perform Identified by an X	Project Co Obligation to Obtain or Execute Identified by an X	Project Co Obligation to Perform Identified by an X	Comment
67. Prior to Registration of the Plan of Subdivision, the Owner agrees to transfer an environmental easement to Metrolinx, for those lands within 300 metres of the property line between the subject lands and the rail corridor, excluding all lands to be transferred to the City for the purpose of parks or roads, for operational noise, vibration, and other emissions, to be registered on title against the subject lands in favour of Metrolinx. The environmental easement shall contain restrictive and other requirements for site-specific noise, vibration and safety mitigation measures, and shall be registered on title. The environmental easement shall also provide that any mitigation measures implemented are not to be tampered with or altered and further that the Owner is responsible for and shall continue to maintain these measures to the satisfaction of Metrolinx. The Owner agrees to pay Metrolinx's reasonable costs in preparing and negotiating the environmental easement.	X	X		X	HMQ has registered easement as instrument AT2824753.  Project Co to perform all obligations under the environmental easement, including, but not limited to, as Owner upon becoming Owner.
68. The Owner agrees to pay the City, an amount satisfactory to Technical Services, for the future maintenance costs associated with any constructed noise barriers, walls and/or retaining walls to be assumed by the City.			X	X	

Responsibility contained in Schedule “B-1” of the Subdivision Agreement, registered as Instrument No. AT2824469	HMQ Obligation to Obtain or Execute Identified by an X	HMQ Obligation to Perform Identified by an X	Project Co Obligation to Obtain or Execute Identified by an X	Project Co Obligation to Perform Identified by an X	Comment
<b>TRCA</b>					
69. The Owner shall ensure to the satisfaction of the TRCA, that the phased closure and decommissioning of existing sewer services which outlet to the Don River under the proposed flood protection landform is complete upon completion of the stormwater management system for the West Don Lands.	X	X			
70. The Owner shall provide a report satisfactory to TRCA and the Peer Reviewer retained by TRCA at the Owner's expense, stating that the flood protection landform is structurally and functionally complete as one continuous landform (including the completed north tie-in and south tie-in) to a rough grade condition on the dry side and to a final-grade condition with initial hydro-seeding on the wet side. For certainty, “rough-grade condition” does not mean or include final grading hydro-seeding or the construction of any parklands or walkways.	X	X			
71. Prior to final approval, the Owner shall meet the following requirements to ensure that human occupancy of new structures within the West Don Lands will not be permitted until the flood protection landform is structurally and functionally complete as set out in Section 70:	X	X		X	HMQ has registered the restrictive covenant as instrument AT2825068.  Project Co to perform all works in accordance with the requirements of the Restrictive

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Responsibility contained in Schedule “B-1” of the Subdivision Agreement, registered as Instrument No. AT2824469	HMQ Obligation to Obtain or Execute Identified by an X	HMQ Obligation to Perform Identified by an X	Project Co Obligation to Obtain or Execute Identified by an X	Project Co Obligation to Perform Identified by an X	Comment
<p>a. Register a restrictive covenant against the lands satisfactory to TRCA:</p> <p>i. restricting occupancy until the flood protection landform is structurally and functionally complete as set out in Section 70; and</p> <p>ii. acknowledging that prior to the completion of the flood protection landform, TRCA may only issue a permit with conditions limiting construction completion and restricting human occupancy until the flood protection landform is structurally and functionally complete as set out in Section 70.</p>					Covenant.
<p>72. In order to advance construction of buildings in Phase 2 prior to the completion of the flood protection landform, the Owner agrees to:</p> <p>a. apply for and receive a permit from the TRCA under Ontario Regulation 166/06, as amended, or its successors. This will include review and approval of construction methodologies.</p>			X	X	Instrument AT2824846 has been registered to secure this requirement.
73. The Owner agrees that:	X	X	X	X	HMQ is responsible for completing the Flood Protection Land Form prior to

Responsibility contained in Schedule “B-1” of the Subdivision Agreement, registered as Instrument No. AT2824469	HMQ Obligation to Obtain or Execute Identified by an X	HMQ Obligation to Perform Identified by an X	Project Co Obligation to Obtain or Execute Identified by an X	Project Co Obligation to Perform Identified by an X	Comment
<p>a. No occupancy of any structure will be permitted until the flood protection landform is structurally and functionally complete, as set out in Section 70, to the satisfaction of the TRCA;</p> <p>b. In the event that the Owner makes an application for a conditional building permit in a case where building construction may proceed to a final building permit prior to completion of the flood protection landform, the Owner will not object to the imposition of a condition that the building or buildings shall not be occupied until the flood protection landform is structurally and functionally complete, as set out in Section 71, to the satisfaction of the TRCA;</p>					<p>Project Substantial Completion.</p> <p>HMQ is obligated to provide confirmation of completion of Flood Protection Land Form.</p> <p>Project Co acknowledges and agrees to the terms of this condition and shall comply with any applicable City requirements for the Works.</p>

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Responsibility contained in Schedule “B-1” of the Subdivision Agreement, registered as Instrument No. AT2824469	HMQ Obligation to Obtain or Execute Identified by an X	HMQ Obligation to Perform Identified by an X	Project Co Obligation to Obtain or Execute Identified by an X	Project Co Obligation to Perform Identified by an X	Comment
<p>c. None of these clauses shall be read or interpreted so as to conflict with or fetter the discretion of the Chief Building Official to issue or refuse to issue a conditional Building Permit under S.8 of the Building Code Act;</p> <p>d. In the event that the Chief Building Official issues a Conditional Building Permit prior to the final completion of the flood protection landform, the Owner accepts all responsibility and risk, including delays in occupancy, if any building cannot be occupied because the construction of the flood protection landform is not complete; and</p> <p>e. Prior to the issuance of any building permit the Owner will submit confirmation that the construction timing of the flood protection landform will be completed in sufficient time to prevent any delay in occupancy of any building, and will monitor the progress of construction of the flood protection landform and adjust its construction schedule as needed to minimize such delays.</p>					
74. Prior to Registration of the Plan of Subdivision, the Owner shall provide to the City a Restrictive Covenant to be registered on a portion of Block 9 stating that:	X	X		X	HMQ has registered instruments AT2825066 and AT2824846 HMQ and Project Co to perform in accordance with

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Responsibility contained in Schedule “B-1” of the Subdivision Agreement, registered as Instrument No. AT2824469	HMQ Obligation to Obtain or Execute Identified by an X	HMQ Obligation to Perform Identified by an X	Project Co Obligation to Obtain or Execute Identified by an X	Project Co Obligation to Perform Identified by an X	Comment
“No basements or below-grade structures that penetrate the flood protection landform shall be permitted.”					covenant for Enabling Works and the Works, respectively
75. Prior to Registration of the Plan of Subdivision,, an easement or easements or other legal instrument to the satisfaction of TRCA shall be placed on a portion of Block 9 for the purpose of ensuring that all future works that may affect the stability and/or integrity of the flood protection landform are reviewed and approved by the TRCA.	X	X		X	HMQ has registered instruments AT2825067 and AT2824846.  Project Co to abide by restrictions or and conditions imposed in the easement or instrument.
76. The Owner agrees that construction on Block 9 will not occur until the toe of the flood protection landform has been surveyed and a reference plan has been approved and deposited on title.		X		X	This obligation has been secured under instrument AT2825066 and AT2824846.

Responsibility contained in Schedule “B-1” of the Subdivision Agreement, registered as Instrument No. AT2824469	HMQ Obligation to Obtain or Execute Identified by an X	HMQ Obligation to Perform Identified by an X	Project Co Obligation to Obtain or Execute Identified by an X	Project Co Obligation to Perform Identified by an X	Comment
<b>TORONTO DISTRICT SCHOOL BOARD</b>					
<p>77. The Owner shall erect and maintain signs, at points of egress and ingress of the lands, advising that;</p> <p>“The Toronto District School Board makes every effort to accommodate students at local schools. However, due to residential growth, sufficient accommodation may not be available for all students. Students may be accommodated in schools outside this area until space in local schools becomes available. For information regarding designated school(s), please call (416) 394-7526.”</p> <p>These signs shall be to the Toronto District School Board’s specifications and erected by the later of the issuance of any building permit or, being one month after the completion of the Pan American and Parapan American Games to be hosted in the City of Toronto.</p>			X	X	
<p>78. The Owner shall agree in the Servicing and/or Development agreement, or in a separate agreement between the Toronto District School Board and the Owner, to include the following warning clauses in all offers of purchase and sale of residential units (prior to registration of the plan and for a period of ten years</p>			X	X	

Responsibility contained in Schedule “B-1” of the Subdivision Agreement, registered as Instrument No. AT2824469	HMQ Obligation to Obtain or Execute Identified by an X	HMQ Obligation to Perform Identified by an X	Project Co Obligation to Obtain or Execute Identified by an X	Project Co Obligation to Perform Identified by an X	Comment
<p>following registration), that;</p> <p>“Despite the best efforts of the Toronto District School Board, sufficient accommodation may not be locally available for all students anticipated from the development area and that students may be accommodated in facilities outside the area, and further, that students may later be transferred.</p> <p>Purchasers agree for the purpose of transportation to school, if bussing is provided by the Toronto District School Board in accordance with the Board’s policy, that students will not be bussed home to school, but will meet the bus at designated locations in or outside of the area.”</p>					



## **SCHEDULE 2**

### **COMPLETION DOCUMENTS**

In this Schedule 2, "certified" shall mean that the relevant document is certified as a true and complete copy in full force and effect and unamended as of the date of the relevant certificate by an officer or director of the relevant corporation.

#### **1. DOCUMENTS TO BE DELIVERED BY PROJECT CO**

Unless an original document is specifically required, a certified copy of each of the following documents (in each case, executed by the parties to such agreement other than HMQ and in form and substance satisfactory to HMQ, acting reasonably) is to be delivered by Project Co to HMQ, or to such other party as specified below, on or prior to the Financial Close Target Date:

- 1.1 an original of this Project Agreement;
- 1.2 an original of the amendment and restatement of this Project Agreement;
- 1.3 an original of the Lenders' Direct Agreement;
- 1.4 an original of the Independent Certifier Agreement;
- 1.5 an original of the Insurance Trust Agreement;
- 1.6 an original of the Trust Account Agreement;
- 1.7 an original notice of appointment of the Project Co Representative;
- 1.8 an original of the Acknowledgement and Undertaking in the form attached as Appendix A to this Schedule 2;
- 1.9 the Lending Agreements;
- 1.10 an original of the Construction Contract;
- 1.11 an original of the Project Co Services Agreement;
- 1.12 an original of the Service Provider Services Agreement;
- 1.13 an original of the Construction Contractor's Direct Agreement;
- 1.14 an original of the Project Co Stage 1 Lands Agreement of Purchase and Sale;
- 1.15 an original of the Project Co Stage 2 Lands Agreement of Purchase and Sale;
- 1.16 an original of the Project Co Stage 2 Lands Development Agreement;

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- 1.17 an original of the Provincial Loan Agreement and satisfaction of the conditions in Section 3.01 therein;
- 1.18 an original of the Intercreditor Agreement;
- 1.19 an original of the Ontario New Home Warranties Plan Act Compliance Agreement;
- 1.20 an original of the assignment and assumption agreement made as of Financial Close in respect of the Early Works between Early Works Project Co, Construction Contractor, EllisDon Corporation, Ledcor Design-Build (Ontario) Inc. and the Construction Guarantor;
- 1.21 an original of the Contingency Equity Letter of Credit, to be delivered to the Trustee;
- 1.22 an original of the Cost to Complete Letter of Credit, to be delivered to the Trustee;
- 1.23 an original of the Agreement and Direction re Cost to Complete Cash Equity;
- 1.24 an original of each of the agreements and other documents comprising the HMQ Project Security;
- 1.25 a certificate of insurance and draft policies of insurance for the insurances required to be taken out by Project Co and/or the Construction Contractor in accordance with this Project Agreement;
- 1.26 one printed copy of the Financial Model (as revised pursuant to Section 2.3(d) of the Project Agreement, if applicable) and two copies on CD-Rom;
- 1.27 a certificate of an officer of Project Co certifying:
  - (a) a true copy of the Financial Model audit report dated December 14, 2011 prepared by Operis Business Engineering Limited;
  - (b) that the Financial Model algorithms have not changed from the audit report referred to in (a) above; and
  - (c) the corporate structure of Project Co, as approved by HMQ prior to Financial Close;
- 1.28 a certificate of an officer of Project Co substantially in the form attached as Appendix B to this Schedule 2;
- 1.29 a certificate of an officer of the Construction Guarantor substantially in the form attached as Appendix B to this Schedule 2;
- 1.30 a certificate of an officer of the Construction Contractor substantially in the form attached as Appendix B to this Schedule 2;
- 1.31 a certificate of an officer of Project Co certifying the delivery to HMQ of a true copy of the Performance Security;

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- 1.32 an original of the opinion from counsel to Project Co, the Construction Contractor, the Construction Guarantor, and such other Project Co Parties as HMQ may reasonably require substantially in the form attached as Appendix C to this Schedule 2 and otherwise acceptable to HMQ and its counsel;
- 1.33 an original of the Acknowledgement and Agreement re Reciprocal Agreement for Blocks 1, 2, 3 and 14 (which agreement shall, for clarity, only be executed and delivered by Project Co on, and for the purpose of achieving, Financial Close);
- 1.34 an original of the Acknowledgement and Agreement re Reciprocal Agreement for Block 15 (which agreement shall, for clarity, only be executed and delivered by Project Co on, and for the purpose of achieving, Financial Close); and
- 1.35 such other documents as the parties may agree, each acting reasonably.

## **2. DOCUMENTS TO BE DELIVERED BY HMQ**

Unless an original document is specifically required, a certified copy of each of the following documents (in each case, where HMQ is a party to such document, executed by HMQ and, if applicable, any HMQ Party or Governmental Authority) is to be delivered by HMQ to Project Co on or prior to the Financial Close Target Date:

- 2.1 an original of this Project Agreement;
- 2.2 an original of the amendment and restatement of this Project Agreement;
- 2.3 an original of the Lenders' Direct Agreement;
- 2.4 an original of the Independent Certifier Agreement;
- 2.5 an original of the Insurance Trust Agreement;
- 2.6 an original of the Trust Account Agreement;
- 2.7 an original of the Construction Contractor's Direct Agreement;
- 2.8 an original of the Project Co Stage 1 Lands Agreement of Purchase and Sale;
- 2.9 an original of the Project Co Stage 2 Lands Agreement of Purchase and Sale;
- 2.10 an original of the Project Co Stage 2 Lands Development Agreement;
- 2.11 an original of the Project Co Services Agreement;
- 2.12 an original of the Provincial Loan Agreement;
- 2.13 an original of the Intercreditor Agreement;

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- 2.14 an original of the Ontario New Home Warranties Plan Act Compliance Agreement;
- 2.15 an original of the Agreement and Direction re Cost to Complete Cash Equity;
- 2.16 an original notice of appointment of the HMQ Representative;
- 2.17 a certificate of an officer of HMQ and a declaration of management signed by an officer of HMQ substantially in the forms attached as Appendix D and Appendix E respectively to this Schedule 2;
- 2.18 a final and executed reliance letter that has been delivered to HMQ from each applicable consultant in respect of each (i) Environmental Report and Designated Substance Report, and (ii) Geotechnical Report for which a reliance letter is to be delivered pursuant to Schedule 37 – Reports; and
- 2.19 such other documents as the parties may agree, each acting reasonably.

**APPENDIX A**

**FORM OF UNDERTAKING AND ACKNOWLEDGEMENT**

**TO: Her Majesty the Queen in Right of Ontario as represented by the Minister of Infrastructure, as represented by Ontario Infrastructure and Lands Corporation ("HMQ")**

**RE: Project agreement (as amended, supplemented or modified from time to time, the "Project Agreement") dated the [•] day of [•], 2011 between HMQ and Dundee Kilmer Developments L.P. ("Project Co")**

---

1. The undersigned acknowledges that:
  - (a) The Project will proceed as an alternative financing and procurement project under the MOI's *ReNew Ontario* infrastructure investment plan, and complies with the principles set out in the IPFP Framework.
  - (b) The IPFP Framework establishes 5 fundamental principles which guide the financing and procurement of public infrastructure projects in Ontario:
    - (i) The public interest is paramount.
    - (ii) Value for money must be demonstrable.
    - (iii) Appropriate public control/ownership must be preserved.
    - (iv) Accountability must be maintained.
    - (v) All processes must be fair, transparent and efficient.
  - (c) The IPFP Framework states that, consistent with the principle of appropriate public ownership/control, public ownership of assets will be preserved in the public sector.
2. The undersigned undertakes to comply with any direction or order issued by MHPS or HMQ to the extent that the direction or order affects the Project Operations.

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3. Capitalized terms used but not defined herein have the respective meanings ascribed thereto in the Project Agreement.

**DATED** this \_\_\_\_ day of \_\_\_\_\_, 2011.

**DUNDEE KILMER DEVELOPMENTS L.P.,**

**[REDACTED]**

**APPENDIX B**

**FORM OF PROJECT CO/PROJECT CO PARTY OFFICER'S CERTIFICATE**

Certificate of an Officer of

[•]

(the "Corporation")

**TO: HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as represented by the Minister of Infrastructure, as represented by Ontario Infrastructure and Lands Corporation ("HMQ")**

**AND TO: ONTARIO INFRASTRUCTURE AND LANDS CORPORATION**

**AND TO: McCARTHY TÉTRAULT LLP**

**AND TO: [COUNSEL TO PROJECT CO]**

**AND TO: [LENDERS' AGENT]**

**AND TO: [COUNSEL TO LENDERS]**

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I, [•], being the [•] of the Corporation and an authorized signatory of the Corporation and being duly authorized by the Corporation to deliver this certificate, hereby make the following certifications and confirmations for and on behalf of the Corporation and without incurring personal liability and that the same may be relied upon by you without further inquiry:

**1. Constatting Documents**

- (a) The Corporation is a subsisting corporation duly incorporated under the laws of **[the Province of Ontario]**.
- (b) Attached hereto as **Schedule "A"** are true and complete copies of the articles, together with all amendments thereto, of the Corporation (the "**Articles**"). The Articles are in full force and effect on the date hereof and no other articles have been issued and no proceeding has been taken or is contemplated to the date hereof to authorize the Corporation to amend, surrender or cancel the Articles.
- (c) Attached hereto as **Schedule "B"** are true and complete copies of the by-laws of the Corporation (the "**By-laws**") enacted on or before the date hereof. The By-laws have been in full force and effect from and after the date thereof as set out therein and are in full force and effect, unamended as of the date hereof. No proceeding has been taken to the date hereof to authorize the Corporation to amend the By-laws and neither the directors nor the shareholders of the Corporation have passed, confirmed or consented to any resolutions amending or varying the By-laws.

- (d) Attached hereto as **Schedule "C"** is a true and complete copy of a unanimous shareholders' agreement between the shareholders of the Corporation and the Corporation (the "**Unanimous Shareholders' Agreement**") executed on or before the date hereof. The Unanimous Shareholders' Agreement has been in full force and effect from and after the date thereof as set out therein and is in full force and effect, unamended as of the date hereof.
- (e) The minute books and corporate records of the Corporation made available to [●] are the original minute books and corporate records of the Corporation and contain all minutes of meetings, resolutions and proceedings of the shareholders and directors of the Corporation to the date hereof and there have been no meetings, resolutions or proceedings authorized or passed by the shareholders or directors of the Corporation to the date hereof not reflected in such minute books and corporate records. Such minute books and corporate records are true, complete and correct in all material respects and there are no changes, additions or alterations necessary to be made thereto to make such minute books and corporate records true, complete and correct in all material respects.
- (f) At the date hereof, no winding-up, liquidation, dissolution, insolvency, bankruptcy, amalgamation, arrangement, reorganization or continuation proceedings in respect of the Corporation have been commenced or are being contemplated by the Corporation, and the Corporation has no knowledge of any such proceedings having been commenced or contemplated in respect of the Corporation by any other party.
- (g) At the date hereof, the Corporation is up-to-date in the filing of all returns and other documents required to be filed by it by governmental authorities, including under corporate, securities and tax legislation, and no notice of any proceedings to cancel its certificate of incorporation or otherwise to terminate its existence has been received by the Corporation.
- (h) Pursuant to the Unanimous Shareholders' Agreement, the powers of the directors of the Corporation to manage the business and affairs of the Corporation, whether such powers arise from the [**Business Corporations Act (Ontario) (the "Act")**], the Articles or the By-laws of the Corporation, or otherwise, are restricted to the fullest extent permitted by law, and, in accordance with the Act and the Unanimous Shareholders' Agreement, the shareholders of the Corporation have and enjoy and may exercise and perform all the rights, powers, and duties of the directors of the Corporation to manage the business and affairs of the Corporation.
- (i) There are no provisions in the Articles, By-laws, Unanimous Shareholders' Agreement or in any other agreement binding on the Corporation which:
  - (i) restrict or limit the powers of the Corporation to enter into:
    - (1) a certain project agreement with HMQ made as of [●], 2011 (as the same may be amended, supplemented, restated or otherwise modified



from time to time, the "**Project Agreement**") pursuant to which the Corporation will design, build and finance the Facilities;

- (2) a lenders' direct agreement between the Corporation, HMQ and the Lenders' Agent; and
- (3) **[NTD: List all other documents delivered at Financial Close by Project Co.]**

(collectively, the "**Documents**"); or

- (ii) restrict or limit the authority of the directors or shareholders of the Corporation by resolution to delegate the powers set out in subparagraph (i) to a director or an officer of the Corporation.

## **2. Resolutions**

- (a) Annexed hereto, forming part hereof and marked as **Schedule "D"** are true and complete copies of the resolutions of the **[directors/shareholders]** of the Corporation (the "**Resolutions**"), which have been duly and validly passed in accordance with applicable law, constituting authority and approval for the Corporation, *inter alia*, to enter into the Documents. The Resolutions are the only resolutions of the Corporation pertaining to the subject matter thereof and the same are in full force and effect, unamended as of the date hereof.
- (b) The authorization, execution and delivery of each Document contemplated in the Resolutions, and the performance by the Corporation of its obligations thereunder, do not constitute or result in a violation or breach or default under:
  - (i) the Articles, By-laws or the Unanimous Shareholders' Agreement;
  - (ii) to the best of my knowledge and belief after due diligence, any order of any Canadian or **[Ontario]** governmental body by which it is bound;
  - (iii) to the best of my knowledge and belief after due diligence, the terms of any agreement or instrument under which any of its property or assets is bound; or
  - (iv) to the best of my knowledge and belief after due diligence, any writ, judgment, injunction, determination or award which is binding on the Corporation or any of its properties.
- (c) To the best of my knowledge and belief after due diligence, there is no claim, action, suit, proceedings, arbitration, investigation or inquiry before any governmental agency, court or tribunal, foreign or domestic, or before any private arbitration tribunal, pending or threatened against the Corporation, or involving its properties or business. To the best of my knowledge and belief after due diligence, no

administrative or court decree is outstanding in respect of the Corporation or its assets.

- (d) To the best of my knowledge and belief after due diligence, no consent, approval or other order of any Canadian or [Ontario] governmental authority which has not been obtained is required to permit the Corporation to execute and deliver the Documents.

### **3. No Breach or Default**

Neither the execution and delivery by the Corporation of the Documents nor the consummation of the transactions therein contemplated nor the fulfilment or compliance with the terms thereof will contravene or result in a breach of any of the terms, conditions or provisions of, or constitute a default under the Articles, By-laws, Unanimous Shareholders' Agreement or under any other agreement binding on the Corporation.

### **4. Specimen Signatures**

The persons whose names are set forth below are, at the date hereof, officers and/or directors of the Corporation, duly elected or appointed to the office or offices set forth opposite their respective names and authorized to execute the Documents on behalf of the Corporation. The signatures set forth opposite their respective names are the true signatures of those persons:

<u>NAME</u>	<u>POSITION</u>	<u>SIGNATURE</u>

### **5. Capital**

Listed below are all of the issued and outstanding shares in the capital of the Corporation and the registered owner of such shares:

<u>ISSUED SHARES</u>	<u>REGISTERED OWNER</u>
----------------------	-------------------------

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Attached hereto as **Schedule "E"** are true copies of all certificates in respect of such issued and outstanding shares. The Corporation has issued no securities, including (without limitation) securities convertible or exchangeable into shares and/or securities in respect of debt, other than such issued and outstanding shares as are listed above.

**DATED** this \_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Name:

Title:

**APPENDIX C**

**FORM OF PROJECT CO/PROJECT CO PARTY OPINION**

**[INSERT DATE]**

Ontario Infrastructure and Lands Corporation  
777 Bay Street, 9<sup>th</sup> Floor  
Toronto, Ontario  
M5G 2C8

Her Majesty the Queen in Right of Ontario as  
represented by the Minister of Infrastructure,  
as represented by Ontario Infrastructure and  
Lands Corporation  
777 Bay Street, 9<sup>th</sup> Floor  
Toronto, Ontario  
M5G 2C8

McCarthy Tétrault LLP LLP  
Box 48, Suite 4700  
Toronto Dominion Bank Tower  
Toronto, ON M5K 1E6

Minister of Health Promotion and Sport  
**[NTD: MHPS to provide address]**

Dear Sirs/Mesdames:

**Re:     [● Project]**

---

We have acted as counsel to [●] ("**Project Co**"), [●] (the "**Construction Contractor**") in connection with the alternative financing and procurement transaction whereby Project Co has agreed to enter into a design, build and finance agreement for the new Facilities in [Toronto], Ontario. **[NTD: Additional parties to be added depending on consortium structure and/or the financing package.]**

This opinion is being delivered to Her Majesty the Queen in Right of Ontario as represented by the Minister of Infrastructure, as represented by Ontario Infrastructure and Lands Corporation ("**HMQ**"), Ontario Infrastructure and Lands Corporation, the Ministry of [●] and their counsel pursuant to Section 1.32 of Schedule 2 to the project agreement made as of [●], 2011 between HMQ and Project Co (as the same may be amended, supplemented, restated or otherwise modified from time to time, the "**Project Agreement**").

All capitalized terms used but not otherwise defined in this opinion shall have the respective meanings ascribed thereto in the Project Agreement.

In our capacity as counsel to Project Co and the Construction Contractor, we have participated in the preparation and negotiation, and have examined an executed copy, of each of the following documents (unless otherwise indicated, all documents are dated as of [●], 2011):

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1. the Project Agreement; and
2. the following project documents (collectively, the "**Implementation Documents**"):
  - (a) the Construction Contract;
  - (b) the Lenders' Direct Agreement;
  - (c) the Construction Contractor's Direct Agreement;
  - (d) the Lending Agreements;
  - (e) **[HMQ Project Security to be listed here and defined collectively as the HMQ Project Security Documents];** and
  - (f) **[NTD: List all other documents delivered at Financial Close by Project Co. Note that a separate opinion will be required under Section 3.01 of the Provincial Loan Agreement.]**

The Project Agreement and the Implementation Documents are hereinafter collectively referred to as the "**Documents**", and each is individually referred to as a "**Document**".

We are qualified to practise law in the Province of Ontario. We have made no investigation of the laws of any jurisdiction other than Ontario, and the opinions expressed below are confined to the laws of Ontario and the federal laws of Canada applicable therein as at the date hereof. Without limiting the generality of the immediately preceding sentence, we express no opinion with respect to the laws of any jurisdiction other than the Province of Ontario to the extent that those laws may govern the validity, perfection, effect of perfection or non-perfection or enforcement of the security interests created by the HMQ Project Security Documents as a result of the application of Ontario conflict of laws rules including, without limitation, sections 5 to 8.1 of the *Personal Property Security Act* (Ontario) (the "**PPSA**"). In addition, we express no opinion whether, pursuant to those conflict of laws rules, Ontario laws would govern the validity, perfection, effect of perfection or non-perfection or enforcement of those security interests.

[We do not act as corporate counsel to **[Project Co or the Construction Contractor]**, nor have we participated in the general maintenance of their corporate records and corporate proceedings.] **[NTD: Include if applicable]** In expressing certain of the opinions below, we have, where indicated, relied exclusively, and without any independent investigation or enquiry, on certificates of public officials and a certificate of an officer of each of Project Co and the Construction Contractor dated as of the date hereof (the "**Officer's Certificates**") as to certain factual matters.

### **Searches and Reliance**

We have conducted, or have caused to be conducted, the searches identified in Schedule "A" (the "**Searches**") for filings or registrations made in those offices of public record listed in Schedule "A". The Searches were conducted against the current name and all former names of Project Co and the

Construction Contractor (including, in each case, both the English and French versions, if any). The results of the Searches are set out in Schedule "A".

We have also made such investigations and examined originals or copies, certified or otherwise identified to our satisfaction, of such certificates of public officials and of such other certificates, documents and records as we have considered necessary or relevant for purposes of the opinions expressed below, including, without limitation, the Officer's Certificates.

We have relied exclusively, and without any independent investigation or enquiry, on the Officer's Certificates and the certificates of public officials with respect to certain factual matters.

In connection with the opinions set forth in paragraphs 1, 2 and 3 below, we have relied exclusively on Certificates of Status issued by the **[Ministry of Government Services (Ontario)]** of even date, copies of which are attached as Schedule "B".

In connection with the opinions set forth in paragraphs 4, 6, 8, 12 and 14 below, we have relied exclusively, and without any independent investigation or enquiry, upon the opinion of [●] dated [●], 2011 (the "**CC Opinion**"), a copy of which has been delivered to you. To the extent that the CC Opinion contains assumptions, qualifications, limitations or definitions, or is expressed as relying on any certificate(s) or other documents identified therein, the opinions herein expressed in reliance on the CC Opinion should be read as incorporating the identical assumptions, qualifications, limitations, definitions and reliances.

### **Assumptions**

For the purposes of the opinions expressed herein, we have assumed:

1. The genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to originals of all documents submitted to us as certified, true, conformed, photostatic or notarial copies or facsimiles thereof and the authenticity of the originals of such certified, true, conformed, photostatic or notarial copies or facsimiles.
2. Each of the parties (other than Project Co and the Construction Contractor) to each of the Documents is and was, at all relevant times, a subsisting corporation, partnership, limited partnership, limited liability company or trust, as applicable, under the laws of its jurisdiction of formation.
3. Each of the parties (other than Project Co and the Construction Contractor) has (and had) the corporate power, authority and capacity to own its property and assets and to carry on its business as such business is now (or as was then) being carried on by it, has (or had) all requisite corporate power, authority and capacity to execute and deliver each Document to which it is party and to perform its obligations thereunder, has taken all necessary corporate action, as applicable, to authorize the execution and delivery of each Document to which it is a party and the performance of its obligations thereunder, and has duly executed and delivered each Document to which it is a party and each Document to which it is a party is a legal, valid and binding obligation of such party enforceable against it in accordance with its terms.

4. The completeness, truth and accuracy of all facts set forth in the Officer's Certificates.
5. The completeness, truth and accuracy of all facts set forth in official public records and certificates and other documents supplied by public officials.
6. Value has been given by each of the parties (other than Project Co and the Construction Contractor) to Project Co and the Construction Contractor.

### **Opinions**

Based upon and subject to the foregoing, and to the qualifications, exceptions and limitations hereinafter expressed, we are of the opinion that, as of the date hereof:

#### *Incorporation and Existence*

1. Project Co is a corporation incorporated under the laws of **[the Province of Ontario]** and has not been dissolved.
2. The Construction Contractor is a corporation incorporated under the laws of **[the Province of Ontario]** and has not been dissolved.

#### *Corporate Power and Capacity*

3. Project Co has the corporate power and capacity to own or lease its properties and assets, to carry on its business as it is currently being conducted and as it is contemplated to be conducted under the Project Agreement, and to enter into and perform its obligations under each of the Documents to which it is a party.
4. The Construction Contractor has the corporate power and capacity to own or lease its properties and assets, to carry on its business as it is currently being conducted and as it is contemplated to be conducted under the Documents, and to enter into and perform its obligations under each of the Documents to which it is a party.

#### *Corporate Authorization*

5. Project Co has taken all necessary corporate action to authorize the execution and delivery of, and the performance of its obligations under, each of the Documents to which it is a party.
6. The Construction Contractor has taken all necessary corporate action to authorize the execution and delivery of, and the performance of its obligations under, each of the Documents to which it is a party.

#### *Execution and Delivery*

7. Project Co has duly executed and delivered each of the Documents to which it is a party.

8. The Construction Contractor has duly executed and delivered each of the Documents to which it is a party.

*Enforceability*

9. Each of the Documents to which Project Co is a party constitutes a legal, valid and binding obligation of Project Co, enforceable against it in accordance with its terms.
10. Each of the Documents to which the Construction Contractor is a party constitutes a legal, valid and binding obligation of the Construction Contractor, enforceable against it in accordance with its terms.

*No Breach or Default*

11. The execution and delivery by Project Co of the Documents to which it is a party does not, and the performance by Project Co of its obligations under each such Document in accordance with its terms will not, breach or constitute a default under (i) its articles, by-laws or unanimous shareholders' agreement, or (ii) the provisions of any law, statute, rule or regulation to which Project Co is subject.
12. The execution and delivery by the Construction Contractor of the Documents to which it is a party does not, and the performance by the Construction Contractor of its obligations under each such Document in accordance with its terms will not, breach or constitute a default under (i) its articles, by-laws or unanimous shareholders' agreement, or (ii) the provisions of any law, statute, rule or regulation to which the Construction Contractor is subject.

*Regulatory Approvals*

13. No authorization, consent, permit or approval of, or other action by, or filing with or notice to, any governmental agency or authority, regulatory body, court, tribunal or other similar entity having jurisdiction is required in connection with the execution and delivery by Project Co of the Documents to which it is a party and the performance of its obligations thereunder, other than the registration of the financing statements described in paragraph 16 below.
14. No authorization, consent, permit or approval of, or other action by, or filing with or notice to, any governmental agency or authority, regulatory body, court, tribunal or other similar entity having jurisdiction is required in connection with the execution and delivery by the Construction Contractor of the Documents to which it is a party and the performance of its obligations thereunder.



*Creation of Security Interest and Registration*

15. Each HMQ Project Security Document:

- (a) creates a valid security interest in favour of HMQ in the collateral described therein that is personal property to which the PPSA applies in which Project Co that is a party thereto now has rights; and
- (b) is sufficient to create a valid security interest in favour of HMQ in the collateral described therein that is personal property to which the PPSA applies in which Project Co that is a party thereto hereafter acquires rights when those rights are acquired by Project Co,

in each case to secure the payment and performance of the obligations described therein as being secured thereby.

16. We have registered a financing statement on behalf of HMQ under the PPSA against Project Co in respect of the HMQ Project Security Documents to which Project Co is a party. The details of such registrations are set out in Schedule "C". Except as provided in Schedule "C", no renewal or amendment of such registrations is required under the PPSA. Registration has been made in all public offices provided for under the laws of the Province of Ontario or the federal laws of Canada where such registration is necessary to preserve, protect or perfect the security interests created by each HMQ Project Security Document in favour of HMQ in the collateral described therein that is personal property to which the PPSA applies.

**[NTD: Pledge of shares and control opinion, if any, to be reviewed in context of AFP opinion and Provincial Loan Agreement opinion.]**

**Qualifications**

Our opinions herein are subject to the following qualifications and reservations, namely:

- 1. The enforceability of any Document and the rights and remedies set out therein or any judgment arising out of or in connection therewith is subject to and may be limited by any applicable bankruptcy, reorganization, winding-up, insolvency, moratorium or other laws of general application affecting creditors' rights from time to time in effect.
- 2. The enforceability of each of the Documents and the rights and remedies set out therein is subject to and may be limited by general principles of equity, and no opinion is given as to any specific remedy that may be granted, imposed or rendered, including equitable remedies such as those of specific performance and injunction, or the availability of equitable defences.
- 3. The enforceability of any Document will be subject to the limitations contained in the Limitations Act, 2002 (Ontario), and we express no opinion as to whether a court may find

- any provision of any Document to be unenforceable as an attempt to vary or exclude a limitation period under that Act.
4. To the extent that a particular contractual provision is characterized by a court as a penalty and not as a genuine pre-estimate of damages, it will not be enforceable.
  5. A court may not treat as conclusive those certificates and determinations which the Documents state are to be so treated.
  6. A receiver or receiver and manager appointed pursuant to the provisions of any Document, for certain purposes, may not be treated by a court as being solely the agent of Project Co notwithstanding any agreement to the contrary.
  7. The ability to recover or claim for certain costs or expenses may be subject to judicial discretion.
  8. With respect to any provisions of the Documents pursuant to which the parties to such Documents are permitted or required to submit a dispute arising out of such Documents to arbitration, we express no opinion as to the enforceability of such arbitration provisions in all circumstances since under the *Arbitration Act, 1991* (Ontario) a court of competent jurisdiction in Ontario may, in its discretion and upon certain grounds, refuse to stay judicial proceedings in which event an arbitration under such arbitration provisions may not be commenced or continued. In addition, the *Arbitration Act, 1991* (Ontario) provides that a court may hear an appeal of an arbitration award on a question of law, or set aside an arbitration award or declare it invalid, in each case on certain prescribed grounds.
  9. Any requirement in any of the Documents that interest be paid at a higher rate after than before default may not be enforceable.
  10. The effectiveness of provisions which purport to relieve a person from a liability or duty otherwise owed may be limited by law, and provisions requiring indemnification or reimbursement may not be enforced by a court, to the extent that they relate to the failure of such person to perform such duty or liability.
  11. No opinion is expressed as to the enforceability of any provision contained in any Document which purports to sever from the Document any provision therein which is prohibited or unenforceable under applicable law without affecting the enforceability or validity of the remainder of the document.
  12. No opinion is expressed regarding any waiver of service of process, presentment, demand, protest or notice of dishonour which may be contained in any of the Documents.
  13. Any award of costs is in the discretion of a court of competent jurisdiction.
  14. The enforceability of rights of indemnity set out in the Documents may be limited under applicable law to the extent that they directly or indirectly relate to liabilities imposed by law on HMQ for which it would be contrary to public policy to require Project Co to indemnify

- HMQ or to the extent that they constitute the indirect enforcement of a foreign revenue or penal law.
15. We express no opinion as to the enforceability by any person who is not a party to the Documents of any provision therein that purports to bind or affect or confer a benefit on such person.
16. An assignment of a debt or account will not be binding upon the applicable obligor to the extent that such debt or account is paid or otherwise discharged before notice of the assignment is given to such obligor, together with a direction to pay the same to HMQ.
17. We have not made any registration:
- (a) under the Patent Act (Canada), the Trade-marks Act (Canada), the Industrial Designs Act (Canada), the Integrated Circuit Topography Act (Canada), the Copyright Act (Canada) or the Plant Breeders' Rights Act (Canada);
  - (b) under the *Canada Shipping Act* (Canada) in respect of any vessel that is registered or recorded under that Act; or
  - (c) under the *Canada Transportation Act* or the *Railways Act* (Ontario) in respect of any rolling stock to which the provisions of either of these Acts may apply.
18. If the collateral described in any HMQ Project Security Document includes a motor vehicle (as defined in the Regulation under the PPSA) that is classified as equipment of Project Co and that is sold by Project Co out of the ordinary course of business, the buyer of that motor vehicle will take it free and clear of the security interests created by such HMQ Project Security Document unless
- (a) the vehicle identification number is set out in the PPSA financing statement registered against Project Co; or
  - (b) the buyer knew that the sale constituted a breach of such HMQ Project Security Document.
19. We express no opinion as to:
- (a) whether Project Co has title to or any rights in any collateral described in the HMQ Project Security Documents or as to the priority of any security created by the HMQ Project Security Documents;
  - (b) the creation of any security interest in any policy of insurance or contract of annuity, or as to whether any applicable notices have been provided to any insurers of Project Co in connection with the security interests and assignments created pursuant to the HMQ Project Security Documents, including, without limitation, any notices that may be required or permitted pursuant to the *Insurance Act* (Ontario);

- (c) the enforceability of an assignment of or security interest in any “Crown debt” (as such term is defined in Part VII of the *Financial Administration Act* (Canada));
- (d) whether a security interest may be created in or whether an assignment may be made in respect of:
  - (i) a receivable (other than an “account” (as defined in the PPSA)), licence, approval, privilege, franchise, permit, lease or agreement (collectively, “**Special Property**”) to the extent that the terms of such Special Property or any applicable law prohibit its assignment or require, as a condition of its assignability, a notice, consent, approval or other authorization, registration or step that has not been made or given, or
  - (ii) permits, quotas or licences that are held by or issued to Project Co;
- (e) any security interest created by the HMQ Project Security Documents with respect to any property that is transformed in such a way that it is not identifiable or traceable or any proceeds of any such property that are not identifiable or traceable.

This opinion is being delivered solely in connection with the transaction addressed herein and may not be relied upon by any person other than the addressees, and their successors and permitted assigns, or for any purpose other than the transaction addressed herein.

Yours very truly,

**[INSERT NAME OF LAW FIRM]**

**SCHEDULE “A”**

**Searches**

**SCHEDULE “B”**

**Certificates of Status**

**SCHEDULE “C”**

**PPSA Registrations**

**1. Registration of PPSA Financing Statements**

A financing statement in favour of HMQ was registered against Project Co pursuant to the PPSA on •, 20• as Registration No. • and Reference File No. • in respect of “inventory”, “equipment”, “accounts”, “other” and “motor vehicle included” for a period that expires on •, 20•.

**2. PPSA Renewal and Amendment Requirements**

- (a) **Renewals:** The above-mentioned financing statements will expire on the dates indicated above, unless renewed, in each case, prior to the applicable date by a financing change statement in the prescribed form. We assume no responsibility for such renewal registrations, nor does the Personal Property Registry send any reminder of any required renewal. Accordingly, HMQ should maintain a reminder system so that the appropriate renewals may be made in a timely manner.
- (b) **Amendments:** If Project Co were to change its name, a financing change statement would have to be registered by HMQ within 30 days of the date that HMQ learned of the change of name and the new name. If Project Co were to transfer collateral subject to a HMQ Project Security Document, a financing change statement would have to be registered by HMQ (A) if the transfer was effected with the prior consent of HMQ, within 15 days of the transfer, and (B) if the transfer was effected without the prior consent of HMQ, within 30 days after the later of (I) the transfer, if HMQ had prior knowledge of the transfer and if HMQ had at such time the information required to register a financing change statement, and (II) the day HMQ learned the information required to register a financing change statement. We assume no responsibility for the registration of any such financing change statements.
- (c) **Proposed PPSA Amendment:** Currently, the PPSA provides that the validity, the perfection, the effect of perfection or non-perfection, and the priority of:
  - (i) a security interest in (a) an intangible, or (b) goods that are a type that are normally used in more than one jurisdiction, if the goods are equipment or inventory leased or held for lease by a debtor to others; and
  - (ii) a non-possessory security interest in an instrument, a negotiable document of title, money and chattel paper,

are governed by the law of the jurisdiction where a debtor is located at the time the security interest attaches. A corporate debtor is deemed to be located at such debtor's place of business if there is one, or at such debtor's chief executive office if there is more than one place of business. Although it has not yet been proclaimed

into force, an amendment to the PPSA has been enacted to provide that such matters are instead to be governed by (A) if such debtor is a provincial company, the law of the jurisdiction of incorporation of such debtor or (B) if such debtor is a federal company, the law of the jurisdiction in which its registered or head office is located.



**APPENDIX D**

**FORM OF  
CERTIFICATE OF AN OFFICER OF  
ONTARIO INFRASTRUCTURE AND LANDS CORPORATION  
(the "Corporation")**

**TO:** [COUNSEL TO HMQ]

**AND TO:** [PROJECT CO]

**AND TO:** [COUNSEL TO PROJECT CO]

**AND TO:** [LENDERS' AGENT]

**AND TO:** [LENDERS' COUNSEL]

**RE:** Project agreement (as amended, supplemented or modified from time to time, the "**Project Agreement**") dated the [●] day of [●], 2011 between Her Majesty the Queen in Right of Ontario as represented by the Minister of Infrastructure, as represented by the Corporation and [●] ("**Project Co**")

---

I, [●], the [●] of the Corporation and an authorized signatory of the Corporation and being duly authorized by the Corporation to deliver this certificate, hereby make the following certifications and confirmations for and on behalf of the Corporation and without incurring personal liability and that the same may be relied upon by you without further inquiry:

1. Attached hereto as **Schedule "A"** is a true and complete copy of (i) the resolutions of the directors of the Corporation regarding the execution of public works projects assigned to the Corporation and certain other matters set forth therein; and (ii) an excerpt of the resolutions of the directors of the Corporation relating to delegation of signing authority (collectively, the "**Execution Resolutions**"), which have been duly and validly passed in accordance with applicable law. The Execution Resolutions are the only resolutions of the Corporation pertaining to the subject matter thereof and the same is in full force and effect, unamended as of the date hereof.
2. Attached hereto as **Schedule "B"** is a true and complete copy of the resolutions of the directors of the Corporation approving the selection of Project Co as the designated proponent for the 2015 Pan/Parapan American Games Athletes' Village Project (the "**Project Resolutions**"). The Project Resolutions are the only resolutions of the Corporation pertaining to the subject matter thereof and the same is in full force and effect, unamended as of the date hereof.
3. The following named persons, on or as of the date hereof, are duly elected or appointed officers of the Corporation, as evidenced by the holding of the office or offices set forth opposite their names, are proper signing officers of the Corporation and are authorized to

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**Amended and Restated Project Agreement – Schedule 2**  
**2015 Pan/Parapan American Games Athletes' Village Project** **Execution Version**

execute and deliver Project Documents (as such a term is defined in the Execution Resolutions referenced in Item 1(i) above) relating to the 2015 Pan/Parapan American Games Athletes' Village Project on behalf of the Corporation. The signatures set forth opposite their respective names are the true signatures of those persons.

<u>Name</u>	<u>Position</u>	<u>Signature</u>
[•]	_____	_____
[•]	_____	_____
[•]	_____	_____
[•]	_____	_____

**DATED** this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Name: [•]  
Title: Secretary

**APPENDIX E**

**FORM OF DECLARATION OF MANAGEMENT**

**ONTARIO INFRASTRUCTURE AND LANDS CORPORATION**  
**(“the Corporation”)**

**DECLARATION OF MANAGEMENT**

**WHEREAS** Her Majesty the Queen in Right of Ontario as represented by the Minister of Infrastructure, as represented by the Corporation and [●] [NTD: Insert name of Project Co] propose to enter into a Project Agreement relating to the 2015 Pan/Parapan American Games Athletes’ Village Project in Toronto, Ontario (the “**Project**”);

**AND WHEREAS** the Corporation will from time to time enter into agreements for the design and construction of the Project assigned to the Corporation by the Minister of Infrastructure and as well as ancillary agreements, instruments, certificates and other documents required to give effect to, or contemplated to be delivered in accordance with the Project (collectively, “**Project Documents**”);

**NOW THEREFORE THE CORPORATION’S MANAGEMENT HEREBY DECLARES THAT:**

1. by resolution of the board of directors of the Corporation passed on [●], the board of directors of the Corporation has authorized the Corporation’s management (for and in the name of and on behalf of the Corporation) to execute and deliver the Project Documents and do all such other acts and things as the Corporation’s management may determine to be necessary or advisable to carry out the transactions contemplated by the applicable Project Documents;
2. the Corporation’s management may execute and deliver the Project Documents to which the Corporation may become a party and any other documents, instruments or agreements delivered in connection with the Project Documents from time to time (collectively, together with the Project Documents, the “**Documents**”) all in such form and on such terms as the management of the Corporation executing such Documents in accordance with this declaration may approve, such approval to be evidenced conclusively by the execution of such Documents by the Corporation’s management; and
3. the Project Documents to be executed and delivered by the Corporation in connection with the Project and the transactions and obligations contemplated thereunder are for the purpose of carrying out the objects of the Corporation and the Corporation shall not and will not assert the contrary against any person dealing with the Corporation or any person who has acquired an interest in the Project from the Corporation.

**Amended and Restated Project Agreement – Schedule 2**  
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**THIS DECLARATION** may be signed in counterparts, and all such counterparts, when taken together, shall constitute one and the same declaration, effective on this date.

**DATED** this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

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Name:     [•]  
Title:     Secretary

**SCHEDULE 3**  
**REVENUE SHARING**

**PART A**

**DEFINITIONS**

**1. DEFINITIONS**

In this Schedule 3, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Schedule 3) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:

- 1.1 **“Block”** means, for the purposes of this Schedule 3 only, a Block on the Project Co Stage 1 Lands.
- 1.2 **“Calculation Date”** means March 31, 2016 and each of its first, second, third, fourth and fifth anniversaries thereafter.
- 1.3 **“Debt Amount”** means, for the purpose of this Schedule 3 only, the Debt Amount (for clarity as defined in Schedule 23 - Compensation on Termination) as such amount is (i) determined in accordance with the Financial Model at Financial Close and (ii) adjusted pursuant to a Variation or otherwise with the prior written consent of HMQ, acting reasonably; and, for clarity and subject to the foregoing, any outstanding principal amount and accrued interest relating thereto in excess of amounts shown on the Financial Model at Financial Close (unless such amounts are adjusted thereafter pursuant to Subsection (ii) above) shall be excluded from the calculation of Debt Amount.
- 1.4 **“Excess Revenue”** or **“ER”** means the amount as calculated on a Calculation Date and as determined pursuant to Section 1 of Part B of this Schedule 3.
- 1.5 **“Excess Revenue Share”** has the meaning given in Section 2.4 of Part B.
- 1.6 **“Excess Revenue Share Payment Date”** means 90 calendar days after a Calculation Date.
- 1.7 **“Term”** means the period from Financial Close to the date that is one year following the final Calculation Date.
- 1.8 **“Total Actual Revenue”** means, for the period from Financial Close to a Calculation Date, any revenue arising directly or indirectly from the Blocks from the sale of market residential condominium units, retail and commercial units and other real property, including, but not limited to, parking units, storage units and upgrade revenues, but, for clarity, excluding HST.

- 1.9     **“Total Expected Revenue”** means, the aggregate of any revenue forecasted to arise from the sale of market residential condominium units, retail and commercial units and other real property, including, but not limited to, parking units, storage units and upgrade revenues, but, for clarity, excluding HST, as delivered by Project Co to HMQ in the Financial Model delivered to HMQ on Financial Close.

**PART B**

**CALCULATION OF EXCESS REVENUE SHARE**

**1. EXCESS REVENUE**

- 1.1 Excess Revenue, if any, shall be calculated on each Calculation Date in accordance with the following formula:

**ER = the greater of 0 or Total Actual Revenue – (Total Expected Revenue x [REDACTED]%)**

**Where, for clarity:**

“**ER**” is the Excess Revenue to which the revenue sharing formula is to be applied;

“**Total Actual Revenue**” is defined in Part A of this Schedule 3; and

“**Total Expected Revenue**” is defined in Part A of this Schedule 3.

- 1.2 Excess Revenue (for clarity, as determined in accordance with Section 2.2 below) shall only be payable to HMQ once the Debt Amount has been fully repaid.
- 1.3 For the purpose of determining HMQ’s entitlement to and the amount of Excess Revenue, Project Co shall calculate the Total Actual Revenue and the outstanding amount of the Debt Amount as of the applicable Calculation Date as reported and audited pursuant to Part C of this Schedule 3. For any period for which audited figures are not available pursuant to Section 1.1 of Part C of this Schedule 3, Project Co shall use the relevant Total Actual Revenue and the outstanding amount of the Debt Amount as of the applicable Calculation Date as reported and accompanied by an officer’s certificate pursuant to Section 1.1(b) of Part C of this Schedule 3.

**2. EXCESS REVENUE SHARE**

- 2.1 Pursuant to Section 47 of the Project Agreement, Project Co shall pay the Excess Revenue Share to HMQ in accordance with this Schedule 3.
- 2.2 Project Co shall be deemed to have paid against the Debt Amount all Total Actual Revenue amounts received by or for the account of Project Co which, in accordance with the Lending Agreements, are available for payment against the Debt Amount. Further, and notwithstanding any provision of the Lending Agreements to the contrary, any such revenue amounts that have been paid to an Equity Holder while any amount of the Debt Amount remains outstanding and unpaid shall be deemed to have been paid against the Debt Amount. Further, and for clarity, any such revenue amounts remaining in cash and which would otherwise be available for payment against the Debt Amount under the

provisions of the Lending Agreements, shall be deemed to have been paid against the Debt Amount.

- 2.3 Within 20 calendar days following each Calculation Date, Project Co shall provide HMQ with a letter setting out:
- (a) confirmation that, as of the applicable Calculation Date, either the Debt Amount (for clarity as determined in accordance with Section 2.2 above)
    - (i) has been paid in full; or
    - (ii) is still outstanding and providing its amount and calculation;
  - (b) the calculation and confirmation of the Excess Revenue Share, if any; and
  - (c) the information required to be provided under Section 1 of Part C of this Schedule 3.
- 2.4 On each Excess Revenue Share Payment Date, Project Co shall pay an amount to HMQ equal to the following (the “**Excess Revenue Share**”):

**Excess Revenue Share = ER x [REDACTED]% - Excess Revenue Paid**

**where:**

“**Excess Revenue Paid**” means the cumulative total of any Excess Revenue Share that has previously been paid by Project Co to HMQ.

### **3. DISPUTES**

- 3.1 Any disagreement between the Parties under this Schedule 3 may be referred for resolution in accordance with Schedule 27 - Dispute Resolution Procedure.



**PART C**

**PROJECT CO REPORTING OBLIGATIONS**

**1. AUDIT AND OFFICER'S CERTIFICATE**

1.1 No later than 90 days after each Calculation Date, Project Co shall deliver to HMQ:

- (a) an audit opinion by an accountant signed by the accountant and stating that:
  - (i) the accountant has examined, in accordance with Canadian generally accepted auditing standards, the Total Actual Revenue; and
  - (ii) such Total Actual Revenue is fairly presented in accordance with the requirements of the Project Agreement.
- (b) a certificate signed by a senior financial officer of Project Co:
  - (i) stating that such officer has examined, in accordance with Canadian GAAP, the calculation of the Total Actual Revenue;
  - (ii) containing a breakdown of the Total Actual Revenue for each Block and type of revenue;
  - (iii) containing a certification by such senior officer that the calculation of the Total Actual Revenue is presented in accordance with the requirements of this Schedule 3;
  - (iv) stating that such officer has examined, in accordance with Canadian GAAP, the calculation of the outstanding amount of the Debt Amount as of the applicable Calculation Date;
  - (v) containing a certification by such senior officer that the calculation of the outstanding amount of the Debt Amount as of the applicable Calculation Date is presented in accordance with the requirements of this Schedule 3;
  - (vi) is in a form provided to HMQ by Project Co no later than 30 calendar days before each Calculation Date and is acceptable to HMQ, acting reasonably; and
  - (vii) without limiting the requirements stated above, shows on a month by month basis, the amount of unsold inventory during the preceding calendar year.

- 1.2 For greater certainty, the audit opinions and officer's certificates will only be required under this Section 1 of Part C of Schedule 3 for the period from Financial Close until the final Calculation Date.

**2. OCCASIONAL STATEMENTS**

- 2.1 In addition to the other reports and statements required hereunder, HMQ may, from time to time and at its cost and expense, require Project Co to deliver, and Project Co shall use all reasonable efforts to deliver, within 10 calendar days of the request, or as soon thereafter as may be reasonably practicable, a statement of the calculation of the applicable Total Actual Revenue, outstanding amount of the Debt Amount, if any, and Excess Revenue, if any, for any period requested by the HMQ.
- 2.2 HMQ shall not make any request for statements under this Part C of Schedule 3 more than twice in any calendar year.

**3. PROJECT CO'S RECORDS**

- 3.1 Project Co shall keep, for at least five years (or such longer period as may be required by Applicable Law) after the end of each calendar year of the Term, adequate books and records in accordance with Good Industry Practice during the Term, including original copies of all agreements of purchase and sale with third party purchasers and any other sales records that HMQ reasonably requires and that would normally be examined by an accountant pursuant to Canadian generally accepted auditing standards in performing a detailed audit of the applicable Total Actual Revenue, outstanding amount of the Debt Amount, if any, and Excess Revenue, if any.
- 3.2 Project Co shall also cause the records described above to be kept by all applicable Project Co Parties.

**PART D**

**RIGHTS OF HMQ**

**1. RIGHT TO EXAMINE**

- 1.1 Without limiting any other rights of HMQ under the Project Agreement or Applicable Law and subject to HMQ's provision of reasonable prior written notice, HMQ may examine the books and records of Project Co and of each Project Co Party relating to the applicable Total Actual Revenue, outstanding amount of the Debt Amount, if any, and Excess Revenue, if any, for any period covered by any financial statement issued by Project Co or for any other period during the Term that HMQ requires.
- 1.2 HMQ may examine the records and procedures of Project Co and of each Project Co Party to check, verify and tabulate the applicable Total Actual Revenue, outstanding amount of the Debt Amount, if any, or Excess Revenue, if any, or to examine accounting records and procedures, including features affecting the determination of the applicable Total Actual Revenue, outstanding amount of the Debt Amount, if any, or Excess Revenue, if any.
- 1.3 To facilitate the right of HMQ to examine the books and records of Project Co, Project Co shall, upon 3 Business Days' prior written notice from HMQ, make such books and records available for examination and inspection by HMQ in a central location in the City of Toronto.
- 1.4 Provided (i) no Project Co Event of Default has then occurred and is continuing and (ii) Project Co has not understated the applicable Total Actual Revenue, outstanding amount of the Debt Amount, if any, or Excess Revenue, if any, by [REDACTED]% or more on three or more occasions during the Term, HMQ shall examine the books and records of Project Co and of each Project Co Party under this Section 1 of Part D not more frequently than once every six months during the Term.

**2. RIGHT TO AUDIT**

- 2.1 Without limiting the other audit and inspection rights of HMQ under the Project Agreement or Applicable Law, HMQ may, for any period as HMQ may determine, cause a complete audit to be made of the business and records of Project Co and of each Project Co Party as set out in this Section 2 of Part D of this Schedule 3, relating to the calculation of the applicable Total Actual Revenue, outstanding amount of the Debt Amount, if any, or Excess Revenue, if any. If the auditor reports that the records and procedures are insufficient to permit a determination of the applicable Total Actual Revenue, outstanding amount of the Debt Amount, if any, or Excess Revenue, if any, as the case may be, for a calendar year or a part of a calendar year, or that Project Co or any Project Co Party is not complying in any material respect with Section 1 of Part D of this Schedule 3, and if Project Co does not produce sufficient records to permit such a

determination of the applicable Total Actual Revenue, outstanding amount of the Debt Amount, if any, or Excess Revenue, if any, as the case may be, within 10 days following Project Co's receipt of the auditor's report, HMQ, acting reasonably, may deliver to Project Co an estimate (which will be final and binding on Project Co) of the applicable Total Actual Revenue, outstanding amount of the Debt Amount, if any, or Excess Revenue, if any, as the case may be, for the relevant period and, in the case of Excess Revenue, Project Co shall, within 30 days following receipt of the estimate, pay to HMQ the amount showing in the estimate to be owing in respect of the applicable Excess Revenue, as the case may be, with interest on the amount owing calculated from the date the statement was received to the date of receipt of payment at an interest rate of [REDACTED]% per annum.

- 2.2 If HMQ's audit discloses that the applicable Total Actual Revenue, outstanding amount of the Debt Amount, if any, or Excess Revenue, if any, for the relevant period is understated, Project Co shall, in the case of Excess Revenue, pay the deficiency to HMQ on demand, together with interest on the deficiency calculated from the first day of such period to the date of receipt of payment at an interest rate of [REDACTED]% per annum. The cost of the audit shall be borne by HMQ unless the audit discloses that any applicable Total Actual Revenue, outstanding amount of the Debt Amount, if any, or Excess Revenue, if any, is understated by [REDACTED]% or more, or if HMQ's auditor reports that Project Co has not complied in all material respects with Section 1 of Part D of this Schedule 3, in which case, the cost of the audit shall be borne by Project Co.
- 2.3 Notwithstanding Section 1 of Part D of this Schedule 3, provided (i) no Project Co Event of Default has then occurred and is continuing, and (ii) Project Co has not understated the Total Actual Revenue, outstanding amount of the Debt Amount, if any, or Excess Revenue, if any, by [REDACTED]% or more in any certificate delivered by Project Co under Part C of this Schedule 3, HMQ shall not request any audit of the business and records of Project Co or any Project Co Party relating to the calculation of the applicable Total Actual Revenue, outstanding amount of the Debt Amount, if any, or Excess Revenue, if any, more frequently than once in any calendar year of the Term.

### **3. PROJECT CO'S FAILURE**

- 3.1 If Project Co fails to deliver a statement required under this Part D within the time required, HMQ may, if Project Co does not deliver the required statement within 5 calendar days following notice from HMQ, employ an auditor to examine the books and records of Project Co and/or any Project Co Party to certify the amount of the applicable Total Actual Revenue, outstanding amount of the Debt Amount, if any, or Excess Revenue, if any, as the case may be, for the period related to the statement, and Project Co shall pay to HMQ, on demand, the cost of the examination together with the sums shown by the examination to be owing on account of the applicable Excess Revenue, with interest thereon calculated from the date the statement was required to the date of receipt of payment at an interest rate of [REDACTED]% per annum.

**SCHEDULE 4**

**LENDERS' DIRECT AGREEMENT**

**THIS AGREEMENT** is made as of the \_\_\_\_ day of \_\_\_\_\_, 2011

**BETWEEN:**

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO** as represented by the Minister of Infrastructure, as represented by Ontario Infrastructure and Lands Corporation, a non-share capital corporation continued and amalgamated under the *Ontario Infrastructure and Lands Corporation Act*, 2011, S.O. 2011, c. 9, Schedule 32, as amended

(“**HMQ**”)

- **AND** -

**[REDACTED]**

(the “**Lenders' Agent**”)

- **AND** -

**DUNDEE KILMER DEVELOPMENTS L.P., [REDACTED]**

(“**Project Co**”)

**WHEREAS:**

- A. HMQ and Project Co have entered into the Project Agreement.
- B. The overriding priority of HMQ in entering into and implementing the Project Agreement is to procure the design, construction and finance of the Project in order to have the Pan/Parapan American Games Athletes' Village in operation for the Pan/Parapan American Games in 2015.
- C. Under the Lending Agreements, financing is to be provided to Project Co by the Lenders to finance the Project Operations, conditional on, among other things, Project Co and certain Project Co Parties granting the Security to the Lenders' Agent.
- D. The Lenders' Agent has agreed to enter into this lenders' direct agreement (the “**Lenders' Direct Agreement**”) with HMQ in relation to the Security, the exercise of its rights under the Security Documents, the carrying out of acceleration of the Works as a

result of a Project Co Delay and the remedying of breaches by Project Co under the Project Agreement.

- E. With a view to ensuring that HMQ is able to properly and effectively discharge its duties, functions and responsibilities under Applicable Law, Project Co, the Lenders' Agent and the Lenders commit to working collaboratively, responsibly and cooperatively with HMQ throughout the Project Term.

**NOW THEREFORE** in consideration of the mutual covenants and agreements of the Parties hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

## **1. DEFINITIONS**

In this Lenders' Direct Agreement, including the recitals and appendices, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Lenders' Direct Agreement) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:

- (a) **"Affiliate"** has the meaning given in the Project Agreement.
- (b) **"Appointed Representative"** means any of the following to the extent so identified in an Appointed Representative Notice:
  - (i) the Lenders' Agent, any Lender or any of their Affiliates;
  - (ii) a receiver or receiver and manager of Project Co or any other Project Party appointed under the Security Documents;
  - (iii) a trustee in bankruptcy or court-appointed receiver of Project Co;
  - (iv) an administrator of Project Co;
  - (v) a person directly or indirectly owned or controlled by the Lenders' Agent and/or any of the Lenders; or
  - (vi) any other person approved by HMQ (such approval not to be unreasonably withheld or delayed).
- (c) **"Appointed Representative Notice"** has the meaning given in Section 8(b).
- (d) **"Business Day"** has the meaning given in the Project Agreement.
- (e) **"Construction Contract"** has the meaning given in the Project Agreement.
- (f) **"Construction Contractor"** has the meaning given in the Project Agreement.

- (g) “**Construction Contractor’s Direct Agreement**” has the meaning given in the Project Agreement.
- (h) “**Contingent Equity Letter of Credit**” has the meaning given in the Project Agreement.
- (i) “**Cost to Complete Equity**” has the meaning given in the Project Agreement.
- (j) “**Cost to Complete Letter of Credit**” has the meaning given in the Project Agreement.
- (k) “**Default Notice**” has the meaning given in Section 7(b)(i).
- (l) “**Enforcement Action**” means any acceleration of amounts due and owing to the Lenders under any of the Lending Agreements and/or any enforcement proceeding or enforcement action (including a step-in under this Lenders’ Direct Agreement) commenced or taken under any of the Security Documents.
- (m) “**Enforcement Event**” means an event of default as defined in the Lending Agreements, or any other event which permits an Enforcement Action.
- (n) “**Exercise Date**” has the meaning given in Section 12(b).
- (o) “**Governmental Authority**” has the meaning given in the Project Agreement.
- (p) “**HMQ**” means Her Majesty the Queen in right of Ontario as represented by the Minister of Infrastructure, as represented by Ontario Infrastructure and Lands Corporation, a non-share capital corporation continued and amalgamated under the *Ontario Infrastructure and Lands Corporation Act*, 2011, S.O. 2011, c. 9, Schedule 32, as amended.
- (q) “**HMQ Project Documents**” means the Project Agreement and all other documents to which both HMQ and Project Co are parties pursuant to or in connection with the Project Agreement, including, for greater certainty, the HMQ Project Security.
- (r) “**HMQ Project Security**” has the meaning given in the Project Agreement.
- (s) “**Indebtedness Notice**” has the meaning given in Section 7(b)(ii).
- (t) “**Intercreditor Agreement**” has the meaning given in the Project Agreement.
- (u) “**Lender Representative**” means a representative (which may be the Lenders’ Agent) acting as agent or trustee for and on behalf of all of the lenders lending to a Suitable Substitute.
- (v) “**Lenders**” has the meaning given in the Project Agreement.

- (w) **"Lenders' Agent"** means [REDACTED], acting as agent for and on behalf of the Lenders.
- (x) **"Lenders' Direct Agreement"** means this lenders' direct agreement.
- (y) **"Lending Agreements"** has the meaning given in the Project Agreement.
- (z) **"Longstop Date"** has the meaning given in the Project Agreement.
- (aa) **"New Rectification Plan"** has the meaning given in Section 8.A(b).
- (bb) **"Notice Period"** means, prior to the Project Substantial Completion Date, the period starting on the date of delivery of a Default Notice and ending 60 days later. After the first Pan/Parapan Am Games Site Turnback Date, **"Notice Period"** means the period starting on the date of delivery of a Default Notice and ending 120 days later.
- (cc) **"Novation Date"** has the meaning given in Section 10(a).
- (dd) **"Novation Notice"** has the meaning given in Section 10(a).
- (ee) **"Pan/Parapan Am Games Site Turnback Date"** has the meaning given in the Project Agreement.
- (ff) **"Party"** means any of HMQ, Project Co or the Lenders' Agent, and **"Parties"** means all of HMQ, Project Co and the Lenders' Agent.
- (gg) **"person"** is to be given the same interpretation as in the Project Agreement.
- (hh) **"Project"** has the meaning given in the Project Agreement.
- (ii) **"Project Agreement"** means the project agreement made on or about the \_\_\_\_\_ day of \_\_\_\_\_, 2011 between HMQ and Project Co.
- (jj) **"Project Co"** means Dundee Kilmer Developments L.P.
- (kk) **"Project Co Delay"** has the meaning given in the Project Agreement.
- (ll) **"Project Co Delay Notice"** has the meaning given in the Project Agreement.
- (mm) **"Project Co Event of Default"** has the meaning given in the Project Agreement.
- (nn) **"Project Co Party"** has the meaning given in the Project Agreement.
- (oo) **"Project Documents"** has the meaning given in the Project Agreement.
- (pp) **"Project Operations"** has the meaning given in the Project Agreement.



- (qq) “**Project Substantial Completion Date**” has the meaning given in the Project Agreement.
- (rr) “**Province**” has the meaning given in the Project Agreement.
- (ss) “**Provincial Loan**” has the meaning given in the Project Agreement.
- (tt) “**Provincial Loan Agreement**” has the meaning given in the Project Agreement.
- (uu) “**Refinancing**” has the meaning given in the Project Agreement.
- (vv) “**Restricted Person**” has the meaning given in the Project Agreement.
- (ww) “**Scheduled Project Substantial Completion Date**” has the meaning given in the Project Agreement.
- (xx) “**Security**” means the security interests granted by Project Co and certain Project Co Parties to the Lenders’ Agent pursuant to the Security Documents.
- (yy) “**Security Documents**” means all security granted by Project Co and the Project Co Parties to the Lenders (or any trustee or agent thereof, including the Lenders’ Agent) pursuant to or in connection with the Lending Agreements, including but not limited to:
  - (i) [REDACTED];
- (zz) “**Step-In Date**” means the date on which HMQ receives a Step-In Notice from the Lenders’ Agent.
- (aaa) “**Step-In Notice**” means the notice given by the Lenders’ Agent to HMQ pursuant to Section 8(a) stating that the Lenders’ Agent is exercising its step-in rights under this Lenders’ Direct Agreement.
- (bbb) “**Step-In Period**” means the period from the Step-In Date up to and including the earlier of:
  - (i) the Step-Out Date;
  - (ii) the Termination Date (provided that HMQ has complied with its obligations in Section 7 and Section 8.A of this Lenders’ Direct Agreement);
  - (iii) the date that a transfer of Project Co’s rights and obligations under the HMQ Project Documents to a Suitable Substitute pursuant to Section 10 becomes effective;

- (iv) if the Step-In Date occurs prior to the Project Substantial Completion Date, then the Longstop Date; and
- (v) if the Step-In Date occurs after the first Pan/Parapan Am Games Site Turnback Date, then June 1, 2016.
- (ccc) **“Step-Out Date”** means, before the Project Substantial Completion Date, the date falling 10 days after the date on which HMQ receives a Step-Out Notice. After the first Pan/Parapan Am Games Site Turnback Date, **“Step-Out Date”** means the date falling 30 days after the date on which HMQ receives a Step-Out Notice.
- (ddd) **“Step-Out Notice”** has the meaning given in Section 9(a).
- (eee) **“Subsequent Indebtedness Notice”** has the meaning given in Section 7(c).
- (fff) **“Suitable Substitute”** means a person, approved in writing by HMQ in accordance with Sections 10(b) and 10(c), which:
  - (i) has the legal capacity, power and authority to become a party to and perform the obligations of Project Co under the HMQ Project Documents; and
  - (ii) employs individuals having the appropriate qualifications, experience and technical competence, and having the resources available to it (including committed financial resources and subcontracts) that are sufficient to enable it to perform the obligations of Project Co under the HMQ Project Documents.
- (ggg) **“Termination Date”** has the meaning given in the Project Agreement.
- (hhh) **“Third Party Facility Conversion Costs LC Draw Event”** has the meaning given in Section 8(a)(v).
- (iii) **“Trust Account”** has the meaning given in the Trust Account Agreement.
- (jjj) **“Trust Account Agreement”** has the meaning given in the Project Agreement.
- (kkk) **“Works”** has the meaning given in the Project Agreement.
- (lll) **“Works Performance Security”** means, collectively, the Contingency Equity Letter of Credit, the Cost to Complete Letter of Credit and the Third Party Facility Conversion Costs LC.

## **2. INTERPRETATION**

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

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- (a) The headings in this Lenders’ Direct Agreement are for convenience of reference only, shall not constitute a part of this Lenders’ Direct Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Lenders’ Direct Agreement.
- (b) Unless the context otherwise requires, references to specific Sections, Clauses, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Clauses, Paragraphs, Subparagraphs, or divisions of this Lenders’ Direct Agreement.
- (c) Words importing persons or parties are to be broadly interpreted and include an individual, corporation, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.
- (d) Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.
- (e) References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of this Lenders’ Direct Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- (f) The words in this Lenders’ Direct Agreement shall bear their natural meaning.
- (g) References containing terms such as:
  - (i) “hereof”, “herein”, “hereto”, “hereinafter”, and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Lenders’ Direct Agreement taken as a whole; and
  - (ii) “includes” and “including”, whether or not used with the words “without limitation” or “but not limited to”, shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean “includes without limitation” and “including without limitation”.
- (h) In construing this Lenders’ Direct Agreement, the rule known as the *ejusdem generis rule* shall not apply nor shall any similar rule or approach to the construction of this Lenders’ Direct Agreement and, accordingly, general words introduced or followed by the word “other” or “including” or “in particular” shall

not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.

- (i) Where this Lenders' Direct Agreement states that an obligation shall be performed "no later than" or "within" or "by" a stipulated date or event which is a prescribed number of days after a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (j) Where this Lenders' Direct Agreement states that an obligation shall be performed "on" a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (k) Any reference to time of day or date means the local time or date in Toronto, Ontario.
- (l) Unless otherwise indicated, time periods will be strictly construed.
- (m) Whenever the terms "will" or "shall" are used in this Lenders' Direct Agreement they shall be construed and interpreted as synonymous and to read "shall".

### **3. CONFLICT OF DOCUMENTS**

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

### **4. TERM**

- (a) This Lenders' Direct Agreement shall terminate automatically on the earliest of:
  - (i) the date on which all amounts which may be or become owing to the Lenders under the Lending Agreements have been irrevocably paid in full;
  - (ii) the Termination Date (provided that HMQ has complied with its obligations in Section 7 and Section 8.A of this Lenders' Direct Agreement); and
  - (iii) the date that any transfer of Project Co's rights and obligations under the HMQ Project Documents to a Suitable Substitute pursuant to Section 10

becomes effective and the agreements contemplated in Section 10(e)(iii) are executed and delivered by the parties thereto.

- (b) Within 30 days following its occurrence, the Lenders' Agent shall provide notice to HMQ of the date referred to in Section 4(a)(i).

## **5. AGREEMENTS AND SECURITY**

- (a) Project Co and the Lenders' Agent shall not amend or modify the Lending Agreements, or any of them, except where Project Co is permitted to do so pursuant to Section 7.3(a) of the Project Agreement.
- (b) Project Co and HMQ shall not amend or modify the HMQ Project Documents (other than in accordance with the terms of those agreements) without the prior written consent of the Lenders' Agent, not to be unreasonably withheld or delayed, which consent shall not be withheld if the relevant amendment or modification shall not (i) materially adversely affect the ability of the Lenders to exercise their rights under the Security, (ii) materially adversely affect the value of the Security, or (iii) increase the liability of the Lenders or Project Co under the relevant agreement. The Lenders' Agent shall respond to any request for consent under this Section 5(b) within 30 days of receipt thereof.
- (c) Project Co acknowledges and consents to the arrangements set out in this Lenders' Direct Agreement, and agrees not to do or omit to do anything that may prevent any other Party from enforcing its rights under this Lenders' Direct Agreement.
- (d) The Lenders' Agent acknowledges having received a copy of the Project Agreement, the Provincial Loan Agreement and the HMQ Project Security.
- (e) HMQ acknowledges having received copies of the Lending Agreements, and confirms that they are in form and substance satisfactory to HMQ as at the date of Financial Close.
- (f) HMQ acknowledges notice of and consents to the Security, and confirms that it has not received notice of any other security interest granted over Project Co's rights under any of the HMQ Project Documents save and except for the HMQ Project Security and the security granted by Project Co in favour of HMQ pursuant to the Provincial Loan Agreement.
- (g) HMQ agrees that any enforcement by the Lenders' Agent of a security interest in the equity of Project Co or any other Project Party, as applicable, granted in favour of the Lenders' Agent as part of the Security following an Enforcement Event shall not constitute a Change in Ownership, Change in Control or Project Co Event of Default under the Project Agreement.

- (h) Project Co and the Lenders' Agent hereby authorize and instruct HMQ (and HMQ agrees) to pay all sums payable to Project Co under the Project Agreement to account number [REDACTED] and Project Co and HMQ agree that upon the occurrence of an Enforcement Event, if so directed in writing by the Lenders' Agent upon giving reasonable notice, HMQ shall pay any sum which it is obliged to pay to Project Co under the Project Agreement to a bank account specified by the Lenders' Agent.
- (i) Prior to the irrevocable payment in full of all amounts owing to the Lenders under the Lending Agreements, HMQ shall not take any action to wind-up, liquidate, dissolve or appoint a receiver or receiver and manager of Project Co or to institute or sanction a voluntary arrangement or any other bankruptcy or insolvency proceedings in relation to Project Co.
- (j) Project Co shall not release the Provincial Loan Agreement without the consents of HMQ and the Lenders' Agent.
- (k) In accordance with Section 20.4A of the Project Agreement, HMQ agrees to deliver any Project Co Delay Notice to the Lenders' Agent at the same time such notice is given to Project Co.

**6. ENFORCEMENT OF SECURITY BY LENDERS' AGENT**

- (a) The Lenders' Agent shall promptly notify HMQ of any Enforcement Event, any Enforcement Action, any notice from the Lenders to Project Co to accelerate the maturity of any amounts owing by Project Co to the Lenders under the Lending Agreements or any notice from the Lenders to Project Co to demand repayment of any amounts owing by Project Co to the Lenders under the Lending Agreements.
- (b) The Lenders' Agent may assign, transfer or otherwise dispose of any right, title or interest it may have in, or rights or obligations it may have pursuant to, the Security Documents to a successor agent in accordance with the terms of the Lending Agreements except where:
  - (i) such assignment, transfer or other disposition would constitute a Refinancing and the provisions of Schedule 12 - Refinancing to the Project Agreement have not been complied with in connection therewith; or
  - (ii) the person to whom such assignment, transfer or other disposition is to be made, or an Affiliate of such person, is a Restricted Person or a person who may compromise the reputation or integrity of HMQ or any other Government Entity.

- (c) Any Lender may assign, transfer or otherwise dispose of any right, title or interest it may have in, or rights or obligations it may have pursuant to, the Lending Agreements in accordance with the terms of the Lending Agreements.

**7. TERMINATION OF PROJECT AGREEMENT BY HMQ**

- (a) Subject only to the rights expressly afforded to the Lenders' Agent pursuant to, and the restrictions set forth in, this Section 7 and Section 8.A, HMQ may, at any time, serve notice terminating the Project Agreement if it is entitled to do so under the terms of the Project Agreement.
- (b) At any time other than during the Step-In Period (with the restrictions on termination during the Step-In Period set out in Section 7(d) and Section 8.A(b)), HMQ shall not exercise any right it may have to terminate or serve notice terminating the Project Agreement for a Project Co Event of Default unless:
  - (i) HMQ promptly delivers written notice (a “**Default Notice**”) to Project Co and the Lenders' Agent setting out the Project Co Event of Default in reasonable detail;
  - (ii) not later than 30 days after the date of a Default Notice, HMQ delivers written notice (an “**Indebtedness Notice**”) to the Lenders' Agent setting out:
    - A. all amounts owed by Project Co to HMQ and any other existing liabilities and unperformed obligations of Project Co to HMQ of which HMQ is aware (having made reasonable enquiry), in each case, as of the date on which HMQ sent the Default Notice; and
    - B. all amounts which will become owing by Project Co to HMQ and any other liabilities and obligations of Project Co to HMQ of which HMQ is aware (having made reasonable enquiry), in each case, on or before the end of the Notice Period; and
  - (iii) the Notice Period has expired and the Lenders' Agent has not delivered a Step-In Notice.
- (c) At any time after HMQ sends an Indebtedness Notice but before HMQ receives a Step-In Notice, if HMQ discovers amounts that have become owing by Project Co to HMQ or any other liabilities or obligations of Project Co to HMQ that have come due but which were not included in the Indebtedness Notice, HMQ shall deliver written notice (a “**Subsequent Indebtedness Notice**”) to the Lenders' Agent setting out those amounts, liabilities or obligations.
- (d) Subject to and without prejudice to the rights of HMQ under Section 8.A, during the Step-In Period, HMQ shall not terminate the Project Agreement on grounds:

- (i) that the Lenders' Agent has served a Step-In Notice or enforced any Security Document; or
- (ii) arising prior to the Step-In Date of which HMQ was aware (having made due inquiry) and whether or not continuing at the Step-In Date unless:
  - A. the grounds arose prior to the Project Substantial Completion Date, and the Project Substantial Completion Date does not occur on or before the Longstop Date; or
  - B. the grounds arose after the first Pan/Parapan Am Games Site Turnback Date, and neither the Appointed Representative nor Project Co, as the case may be, is diligently proceeding to cure any breach of the Project Agreement that:
    - (1) arose prior to the Step-In Date;
    - (2) is continuing and capable of being cured; and
    - (3) would have entitled HMQ to terminate the Project Agreement; or
  - C. the grounds (whenever they first arose) did not give rise to any right to terminate the Project Agreement until after the Step-In Date; or
- (iii) arising solely in relation to Project Co.
- (e) HMQ shall be entitled to terminate the Project Agreement by written notice to Project Co and the Appointed Representative:
  - (i) if any amount referred to in Section 7(b)(ii)A has not been paid to HMQ on or before the Step-In Date;
  - (ii) if any amount referred to in Section 7(b)(ii)B has not been paid on or before the last day of the Notice Period; or
  - (iii) if amounts included in a Subsequent Indebtedness Notice have not been paid on or before the date falling 30 days after the date on which the Subsequent Indebtedness Notice is delivered to the Lender's Agent.

## **8. STEP-IN RIGHTS**

- (a) Subject to Section 8(b) and without prejudice to the rights of the Lenders' Agent to enforce the Security, the Lenders' Agent may give HMQ a Step-In Notice at any time:



- (i) during which a Project Co Event of Default is subsisting (whether or not a Default Notice has been served);
  - (ii) during the Notice Period;
  - (iii) during which an Enforcement Event is subsisting;
  - (iv) during which a Project Co Delay is subsisting; or
  - (v) during an event which entitles the Lenders' Agent or HMQ to request a draw upon the Third Party Facility Conversion Costs LC under Sections 18.17(e), 18.17(f), 18.17(g) or 18.17(h) of the Project Agreement (a **"Third Party Facility Conversion Costs LC Draw Event"**).
- (a.1) If a Project Co Delay arises and the Lenders' Agent chooses not to give HMQ a Step-In Notice, then the Lenders' Agent shall provide written notice to HMQ of its intention not to exercise its rights under Section 8 of this Lenders' Direct Agreement as soon as possible after it determines not to exercise such rights and, for clarity, in such an event, HMQ shall exercise its right to cause Project Co to accelerate the performance of the Works under Section 20.4A(b) of the Project Agreement. HMQ and the Lender's Agent each acknowledge that the issuance of a Project Co Delay Notice or the occurrence of a Project Co Delay shall not constitute a Project Co Event of Default under the Project Agreement.
- (b) At least 5 Business Days before the Lenders' Agent delivers a Step-In Notice, the Lenders' Agent shall deliver written notice (an **"Appointed Representative Notice"**) to HMQ of:
- (i) its intention to deliver a Step-In Notice; and
  - (ii) the identity of its proposed Appointed Representative.
- (c) Upon issuance of a Step-In Notice, the Appointed Representative shall assume, jointly with Project Co, all of Project Co's rights under the HMQ Project Documents.
- (d) During the Step-In Period, HMQ shall deal with the Appointed Representative instead of Project Co in connection with all matters related to the HMQ Project Documents. Project Co agrees to be bound by all such dealings between HMQ and the Appointed Representative to the same extent as if they had been between HMQ and Project Co.
- (e) During the Step-In Period and as otherwise set out in the Project Agreement, the Lenders' Agent or the Appointed Representative, as applicable, shall have the right to access any or all of the Works Performance Security and monies in the Trust Account pursuant to and in accordance with the terms of the Project Agreement and the Trust Account Agreement.

## **8.A HMQ LONGSTOP DATE TERMINATION**

- (a) Notwithstanding any other provision in this Lenders' Direct Agreement save and except for Sections 8.A(b), (c), (d) and (e), 90 calendar days after HMQ delivers a Default Notice to Project Co and the Lenders' Agent as a result of a Project Co Event of Default arising under Section 42.1(a)(iii), then unless the Lenders' Agent has exercised its step-in rights under Section 8 of this Lenders' Direct Agreement during such 90 calendar day period, HMQ may terminate the Project Agreement pursuant to Section 42.4(a)(i) of the Project Agreement. If the Lenders' Agent has exercised its step-in rights under Section 8 of this Lenders' Direct Agreement during such 90 calendar day period, then Sections 8.A(b), (c), (d) and (e) shall apply.
- (b) Where the Lenders' Agent has exercised its step-in rights pursuant to Section 8.A(a), the Appointed Representative shall (or shall cause Project Co to) at any time within such 90 calendar day period submit a new rectification plan (the "**New Rectification Plan**") demonstrating that Project Co will achieve Project Substantial Completion on or before the Longstop Date if the New Rectification Plan is implemented.
- (c) If the New Rectification Plan delivered under Section 8.A(b) is to the satisfaction of the Independent Certifier, acting reasonably, the Appointed Representative and Project Co shall proceed to implement the New Rectification Plan and HMQ's right to terminate the Project Agreement as a result of the Project Co Event of Default under Section 42.1(a)(iii) shall be held in abeyance. In such an event, following the implementation of the New Rectification Plan, the Appointed Representative and Project Co shall be required to demonstrate on a bi-weekly basis to the Independent Certifier's reasonable satisfaction that Project Co achieving Project Substantial Completion on or before the Longstop Date under the New Rectification Plan continues to be achievable, failing which, HMQ may terminate the Project Agreement pursuant to Section 42.4(a)(i) of the Project Agreement after providing the Appointed Representative, Project Co and the Lenders' Agent with 10 calendar days prior written notice of its intention to do so.
- (d) If the New Rectification Plan delivered under Section 8.A(b) is not to the satisfaction of the Independent Certifier, acting reasonably, then, after the Independent Certifier delivers notice to the Appointed Representative, Project Co and the Lenders' Agent that the New Rectification Plan is unacceptable, the Appointed Representative shall have five calendar days to deliver a revised New Rectification Plan (a "**Revised New Rectification Plan**"). If the Revised New Rectification Plan is not acceptable to the Independent Certifier, acting reasonably, then HMQ may terminate the Project Agreement pursuant to Section 42.4(a)(i) of the Project Agreement upon providing the Appointed Representative, Project Co and the Lenders' Agent with 10 calendar days prior written notice of its intention to do so. If the Revised New Rectification Plan is to the satisfaction of the Independent Certifier, acting reasonably, the Appointed Representative and

Project Co shall proceed to implement the Revised New Rectification Plan and HMQ's right to terminate the Project Agreement as a result of the Project Co Event of Default under Section 42.1(a)(iii) shall be held in abeyance. In such an event, following the implementation of the Revised New Rectification Plan, the Appointed Representative and Project Co shall be required to demonstrate on a bi-weekly basis to the Independent Certifier's reasonable satisfaction that Project Co achieving Project Substantial Completion on or before the Longstop Date under the Revised New Rectification Plan continues to be achievable, failing which, HMQ may terminate the Project Agreement pursuant to Section 42.4(a)(i) of the Project Agreement after providing the Appointed Representative, Project Co and the Lenders' Agent with 10 calendar days prior written notice of its intention to do so.

- (e) If no New Rectification Plan is delivered under Section 8.A(b), then, after the expiry of the 90 calendar day period set out in 8.A(a), HMQ may immediately terminate the Project Agreement pursuant to Section 42.4(a)(i) of the Project Agreement upon providing the Appointed Representative, Project Co and the Lenders' Agent with 10 calendar days prior written notice of its intention to do so.

## **9. STEP-OUT RIGHTS**

- (a) The Appointed Representative may, at any time during the Step-In Period, deliver written notice (a "**Step-Out Notice**") to HMQ to terminate the Step-In Period on the Step-Out Date.
- (b) On expiry of the Step-In Period:
  - (i) the rights and obligations of the Appointed Representative in relation to HMQ under the HMQ Project Documents arising prior to the expiry of the Step-In Period will be assumed by Project Co to the exclusion of the Appointed Representative;
  - (ii) HMQ will no longer deal with the Appointed Representative and will deal with Project Co in connection with all matters related to the HMQ Project Documents; and
  - (iii) the Appointed Representative and HMQ shall be and hereby are released from all obligations and liabilities to one another under the HMQ Project Documents.
- (c) There will not be more than one Step-In Period in respect of any one Default Notice.

## **10. NOVATION TO SUITABLE SUBSTITUTE**

- (a) Subject to Section 10(b), at any time:

- (i) after an Enforcement Event has occurred;
- (ii) during the Notice Period; or
- (iii) during the Step-In Period,

the Lenders’ Agent may deliver to HMQ and any Appointed Representative written notice (a “**Novation Notice**”) that it wishes to transfer Project Co’s rights and obligations under the HMQ Project Documents to a proposed transferee, together with all information reasonably necessary for HMQ to decide whether the proposed transferee is a Suitable Substitute, provided that the Lenders’ Agent shall not deliver a Novation Notice in the event that the Step-In Notice arises exclusively as a result of a Project Co Delay or a Third Party Facility Conversion Costs LC Draw Event (for clarity, each of which on its own is not caused by and does not cause a Project Co Event of Default) unless a Project Co Event of Default or an Enforcement Event has otherwise arisen under the Project Agreement or the Lending Agreements. The Novation Notice shall specify a Business Day not less than 30 days from the date on which HMQ receives the Novation Notice (“**Novation Date**”) for the transfer of Project Co’s rights and obligations under the HMQ Project Documents to the proposed transferee in accordance with the provisions of Section 10(e).

- (b) HMQ shall promptly notify the Lenders’ Agent of any additional information it requires in order to assess whether the proposed transferee is a Suitable Substitute. HMQ shall notify the Lenders’ Agent, in writing, as to whether the person to whom the Lenders’ Agent proposes to transfer Project Co’s rights and liabilities under the HMQ Project Documents is approved by HMQ as a Suitable Substitute, on or before the date falling 30 days after the later of the date of receipt by HMQ of the Novation Notice and the date of receipt of any additional information requested by HMQ. For greater certainty, if HMQ fails to respond within such period, HMQ shall be deemed not to have approved the proposed transferee.
- (c) HMQ shall not unreasonably withhold or delay its approval of a proposed transferee as a Suitable Substitute, but it shall, without limitation, be reasonable for HMQ to withhold its approval if:
  - (i) there are unremedied breaches under the Project Agreement which are capable of being remedied by the Appointed Representative or the Suitable Substitute and there is no rectification plan acceptable to HMQ, acting reasonably, in respect of such breaches;
  - (ii) the proposed transferee is a Restricted Person or other person who is not permitted to be a Project Co Party pursuant to the Project Agreement; or

- (iii) the proposed security interests to be granted by the Suitable Substitute to the Lender Representative are materially different from the Security, materially adversely affect the ability of the Suitable Substitute to perform under the HMQ Project Documents, materially adversely affects the Works Performance Security or the HMQ Project Security, or have the effect of increasing any liability of HMQ, whether actual or potential.
- (d) If HMQ withholds its approval of a proposed transferee as a Suitable Substitute in accordance with Section 10(c), the Lenders' Agent may give one or more subsequent Novation Notices pursuant to the provisions of Section 10(a) containing changed particulars relating to the same proposed transferee or particulars relating to another proposed transferee which the Lenders' Agent has good cause to believe will be acceptable to HMQ, acting reasonably, provided that only one Novation Notice may be outstanding at any one time.
- (e) On the Novation Date:
  - (i) Project Co and HMQ will be released from their obligations under the HMQ Project Documents to each other, and the Suitable Substitute and HMQ will assume those same obligations towards each other;
  - (ii) each of the rights of Project Co against HMQ under the HMQ Project Documents and the rights of HMQ against Project Co under the HMQ Project Documents will be cancelled, and the Suitable Substitute and HMQ will acquire those same rights against each other;
  - (iii) the Parties will enter into, and the Lenders' Agent shall cause the Suitable Substitute and the Lender Representative to enter into, all such agreements or other documents as are reasonably necessary to give effect to the foregoing, including:
    - A. an agreement between HMQ and the Suitable Substitute, on substantially the same terms as the Project Agreement; and
    - B. an agreement among HMQ, the Suitable Substitute and the Lender Representative on substantially the same terms as this Lenders' Direct Agreement; and
  - (iv) any subsisting ground for termination by HMQ of the Project Agreement will be deemed to have no effect and any subsisting Default Notice will be automatically revoked.

## **11. TRANSFERS**

HMQ shall, at Project Co's cost and expense, take whatever action the Lenders' Agent, the Appointed Representative or a Suitable Substitute may reasonably require for perfecting any assumption or transfer of or release pursuant to Sections 8, 9 or 10, including the execution of

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any transfer or assignment, and the giving of any notice, order or direction and the making of any registration which, in each case, the Lenders' Agent, the Appointed Representative or the Suitable Substitute reasonably requires.

## **12. CONSTRUCTION CONTRACTOR'S DIRECT AGREEMENT**

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

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

HMQ agrees and undertakes that if it receives any amount in contravention of the provisions of this Section 12(f), it will immediately make a payment of an equal amount to the Lenders' Agent for the account of the Lenders' Agent and the Lenders.

### **13. ASSIGNMENT**

- (a) No Party to this Lenders' Direct Agreement may assign, transfer or otherwise dispose of any part of its rights or obligations under this Lenders' Direct Agreement save as provided in this Section 13.
- (b) Project Co may assign, transfer or otherwise dispose of the benefit of this Lenders' Direct Agreement to any person to whom Project Co assigns, transfers or otherwise disposes of its interest in the Project Agreement pursuant to Section 56.1 of the Project Agreement and the provisions of the Lending Agreements, and shall provide written notice to HMQ and the Lenders' Agent of such assignment, transfer or other disposition. Such assignee, as a condition precedent to any such assignment, transfer or other disposition, shall assume the obligations and acquire the rights of Project Co under this Lenders' Direct Agreement pursuant to an assumption agreement with, and in form and substance satisfactory to, HMQ and the Lenders' Agent, each acting reasonably. HMQ and the Lenders' Agent shall, at Project Co's cost and expense, do all things and execute all further documents as may be necessary in connection therewith.
- (c) HMQ may assign, transfer or otherwise dispose of the whole or part of this Lenders' Direct Agreement to any person to whom HMQ assigns, transfers or otherwise disposes of its interest in the Project Agreement pursuant to Section 56.2 of the Project Agreement, and shall provide written notice to Project Co and the Lenders' Agent of such assignment, transfer or other disposition.
- (d) The Lenders' Agent may only assign, transfer or otherwise dispose of any interest in this Lenders' Direct Agreement as permitted by the Lending Agreements, and shall provide written notice to Project Co and HMQ of such assignment, transfer or other disposition; provided that, notwithstanding any provision to the contrary in the Lending Agreements, the Lender's Agent may not assign, transfer or otherwise dispose of any interest in this Lenders' Direct Agreement to a Restricted Person. The Lenders' Agent, as a condition precedent to any such

assignment, transfer or other disposition, shall cause the assignee to enter into a new agreement with Project Co and HMQ on substantially the same terms as this Lenders' Direct Agreement and Project Co and HMQ shall enter into such new agreement with the assignee. Project Co and HMQ shall, at the Lenders' Agent's cost and expense, do all things and execute all further documents as may be necessary in connection therewith.

#### **14. NOTICES**

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

If to HMQ:

**[REDACTED]**

Fax No.: **[REDACTED]**

Attn.: **[REDACTED]**

If to the Lenders' Agent:

**[REDACTED]**

Fax: **[REDACTED]**

Attn.: **[REDACTED]**

If to Project Co:

**[REDACTED]**

Fax: **[REDACTED]**

Attn.: **[REDACTED]**

And to:

**[REDACTED]**

Fax: **[REDACTED]**

Attn.: **[REDACTED]**



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

## **15. AMENDMENTS**

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

## **16. WAIVER**

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

## **17. RELATIONSHIP BETWEEN THE PARTIES**

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

## **18. ENTIRE AGREEMENT**

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

## **19. SEVERABILITY**

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

## **20. ENUREMENT**

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

## **21. GOVERNING LAW AND JURISDICTION**

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

## **22. DISPUTE RESOLUTION PROCEDURE**

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

**23. FURTHER ASSURANCE**

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

**24. LANGUAGE OF AGREEMENT**

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

**25. COUNTERPARTS**

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

**26. CONFIDENTIALITY**

The Lenders' Agent agrees to comply with the obligations imposed on Project Co by the provisions of Section 49 of the Project Agreement, *mutatis mutandis*, provided that the Lenders' Agent will be permitted to disclose to any relevant regulatory authority only such Confidential Information as is necessary for the Lenders' Agent to comply with Applicable Law.

**27. HMQ DESIGNATE**

At any time and from time to time, the Crown may designate any ministry, branch, agency, division, department or office of the Government of Ontario to carry out administrative responsibility for the rights and obligations of HMQ under this Lenders' Direct Agreement and Project Co and the Lenders' Agent may deal exclusively with the designated person in respect of all such matters and is entitled to rely on the actions, directions, requests, notices, consents, approvals, waivers, comments relating to the review of documentation and other administrative matters and decisions determined by such designated person from time to time, until the Crown has notified Project Co and the Lenders' Agent in writing that such designated person is no longer the person designated by HMQ hereunder and such notice shall have effect on the later of the date of delivery of such notice and the date specified in the written notice. The Crown shall advise Project Co and the Lenders' Agent in writing of any designation hereunder. The rights and obligations of the parties to this Lenders' Direct Agreement shall be in no way affected by reason of any such designation. Project Co and the Lenders' Agent acknowledge the right of the Crown to delegate administrative responsibilities hereunder as set forth in this Section 27.

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*[The remainder of this page intentionally left blank]*

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

**HER MAJESTY THE QUEEN IN RIGHT OF  
ONTARIO as represented by the Minister of  
Infrastructure, as represented by Ontario  
Infrastructure and Lands Corporation**  
**[REDACTED]**

**[REDACTED]**

**DUNDEE KILMER DEVELOPMENTS L.P.,**  
**[REDACTED]**

**SCHEDULE 5**

**CONSTRUCTION CONTRACTOR’S DIRECT AGREEMENT**

**THIS AGREEMENT** is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2011

**BETWEEN:**

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO** as represented by the Minister of Infrastructure, as represented by Ontario Infrastructure and Lands Corporation, a non-share capital corporation continued and amalgamated under the *Ontario Infrastructure and Lands Corporation Act*, 2011, S.O. 2011, c. 9, Schedule 32, as amended

(“**HMQ**”)

**AND:**

**DUNDEE KILMER DEVELOPMENTS L.P., [REDACTED]**

(“**Project Co**”)

**AND:**

**ELLISDON LEDCOR PAAV INC.**, a corporation incorporated under the laws of Ontario

(the “**Construction Contractor**”)

**AND:**

**[REDACTED]**

**AND:**

**[REDACTED]**

(**[REDACTED]**, the “**Construction Guarantor**”)

**WHEREAS:**

- A. HMQ and Project Co have entered into the Project Agreement, which requires Project Co to enter into, and to cause the Construction Contractor and the Construction Guarantor to enter into, this Construction Contractor’s Direct Agreement with HMQ.
- B. Project Co and the Construction Contractor have entered into the Construction Contract, which requires the Construction Contractor and the Construction Guarantor to enter into this Construction Contractor’s Direct Agreement with HMQ.

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**NOW THEREFORE** in consideration of the mutual covenants and agreements of the Parties hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

**1. DEFINITIONS**

In this Construction Contractor’s Direct Agreement, including the recitals and appendices, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Construction Contractor’s Direct Agreement) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:

- (a) **“Business Day”** has the meaning given in the Project Agreement.
- (b) **“Construction Contract”** has the meaning given in the Project Agreement.
- (c) **“Construction Contractor”** means EllisDon Ledcor PAAV Inc.
- (d) **“Construction Guarantor”** means [REDACTED].
- (e) **“Default Notice”** has the meaning given in Section 5(a).
- (f) **“Governmental Authority”** has the meaning given in the Project Agreement.
- (g) **“HMQ”** means Her Majesty the Queen in right of Ontario as represented by the Minister of Infrastructure, as represented by Ontario Infrastructure and Lands Corporation, a non-share capital corporation continued and amalgamated under the *Ontario Infrastructure and Lands Corporation Act*, 2011, S.O. 2011, c. 9, Schedule 32, as amended.
- (h) **“Lenders”** has the meaning given in the Project Agreement.
- (i) **“Lenders’ Direct Agreement”** has the meaning given in the Project Agreement.
- (j) **“Party”** means HMQ, the Construction Contractor, the Construction Guarantor or Project Co, and **“Parties”** means HMQ, the Construction Contractor, the Construction Guarantor and Project Co.
- (k) **“Project”** has the meaning given in the Project Agreement.
- (l) **“Project Agreement”** means the project agreement made on or about the \_\_\_\_\_ day of \_\_\_\_\_, 2011, between HMQ and Project Co.
- (m) **“Project Co”** means Dundee Kilmer Developments L.P.
- (n) **“Step-In Notice”** has the meaning given in Section 6(a).
- (o) **“Substitute”** has the meaning given in Section 6(a).

- (p) “Works” has the meaning given in the Project Agreement.

## **2. INTERPRETATION**

This Construction Contractor’s Direct Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

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



enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean “includes without limitation” and “including without limitation”.

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

### **3. CONFLICT IN DOCUMENTS**

- (a) In the event of ambiguities, conflicts or inconsistencies between or among this Construction Contractor's Direct Agreement, the Project Agreement and the Construction Contract, this Construction Contractor's Direct Agreement shall prevail.
- (b) In the event of ambiguities, conflicts or inconsistencies between or among this Construction Contractor's Direct Agreement and the Lenders' Direct Agreement, the Lenders' Direct Agreement shall prevail.

### **4. AGREEMENTS**

- (a) Project Co and the Construction Contractor shall not amend, modify, or depart from the terms of the Construction Contract without the prior written consent of HMQ,

acting reasonably, which consent shall not be withheld or delayed where such amendment, modification or departure does not materially and adversely affect the ability of Project Co to perform its obligations under this Construction Contractor’s Direct Agreement and does not have the effect of increasing any liability of HMQ, whether actual or potential. Project Co and the Construction Contractor shall provide to HMQ a written copy of all such amendments, modifications or departures. The Parties acknowledge and agree that this Section 4(a) shall not apply to Variations provided for under the Project Agreement.

- (b) Each of the Parties acknowledges having received a copy of the Project Agreement and the Construction Contract.
- (c) If the Construction Contractor gives Project Co any notice of any default(s) under the Construction Contract that may give the Construction Contractor a right to terminate the Construction Contract or to treat it as having been repudiated by Project Co or to discontinue the Construction Contractor’s performance thereunder, then the Construction Contractor shall concurrently provide HMQ with a copy of such notice and set out in reasonable detail the default(s).

**5. NO TERMINATION BY CONSTRUCTION CONTRACTOR WITHOUT DEFAULT NOTICE**

The Construction Contractor shall not exercise any right it may have to terminate the Construction Contract or to treat it as having been repudiated by Project Co or to discontinue the Construction Contractor’s performance thereunder unless:

- (a) the Construction Contractor first delivers a written notice (a “**Default Notice**”) to HMQ setting out in reasonable detail the default(s) on which the Construction Contractor intends to rely in terminating the Construction Contract or to treat it as having been repudiated by Project Co or to discontinue the Construction Contractor’s performance thereunder; and
- (b) within a period of 5 Business Days of HMQ receiving the Default Notice:
  - (i) the default(s) on which the Construction Contractor intends to rely in terminating the Construction Contract or to treat it as having been repudiated by Project Co or to discontinue the Construction Contractor’s performance thereunder have not been remedied; and
  - (ii) the Construction Contractor has not received a Step-In Notice from HMQ,

provided that if, within such period of 5 Business Days, HMQ agrees to pay the Construction Contractor’s reasonable costs of continued performance, such period of 5 Business Days shall be extended to 45 days.

**6. STEP-IN RIGHTS**

- (a) HMQ may at any time:
  - (i) within 5 Business Days or, if such period has been extended in accordance with Section 5, 45 days of HMQ receiving a Default Notice; or
  - (ii) if HMQ has not received a Default Notice and if HMQ’s right to terminate the Project Agreement has arisen and is continuing,

deliver a notice (a “**Step-In Notice**”) electing to replace Project Co under the Construction Contract either with HMQ or a third party designated by HMQ in the Step-In Notice (the “**Substitute**”), provided that HMQ can demonstrate to the Construction Contractor, acting reasonably, that the Substitute shall have sufficient financial resources, or shall be supported by a satisfactory guarantee, to carry out the obligations of the Substitute under the Construction Contract.

- (b) Subject to Section 6(d), upon receipt by the Construction Contractor of a Step-In Notice:
  - (i) Project Co and the Construction Contractor will be deemed to be released from their existing and future obligations under the Construction Contract to each other (except with respect to any and all indemnities from Project Co or the Construction Contractor to the other in respect of the period prior to the receipt of the Step-In Notice), and HMQ or the Substitute, as applicable, and the Construction Contractor will be deemed to assume those same existing and future obligations towards each other (except in respect of the aforesaid indemnities);
  - (ii) the existing and future rights of Project Co against the Construction Contractor under the Construction Contract and vice versa will be deemed to be cancelled (except with respect to any and all indemnities from Project Co or the Construction Contractor to the other in respect of the period prior to the receipt of the Step-In Notice), and HMQ or the Substitute, as applicable, and the Construction Contractor will be deemed to acquire those same existing and future rights against each other (except in respect of the aforesaid indemnities), subject to any applicable credit from the Construction Contractor to HMQ if HMQ pays for the Construction Contractor’s reasonable costs of continued performance pursuant to Section 5;
  - (iii) any guarantee, bond or covenant in favour of Project Co from any third party in respect of any term, provision, condition, obligation, undertaking or agreement on the part of the Construction Contractor to be performed, observed or carried out by the Construction Contractor as contained in, referred to, or inferred from the Construction Contract shall be assigned, novated or granted, as required by HMQ or the Substitute, as applicable, each acting reasonably, to HMQ or the Substitute, as applicable, and the Construction Contractor shall cause such assignment, novation or grant on

substantially the same terms and conditions as the original guarantee, bond or covenant, provided however that where Project Co shall continue to hold, or shall continue to be entitled to or have rights under, such guarantee, bond or covenant as security for any obligations of the Construction Contractor, the assignment, novation or grant of the guarantee, bond or covenant to the extent of any such obligations to Project Co shall be conditional on the satisfaction of those obligations to Project Co; and

- (iv) at HMQ's request, the Construction Contractor shall enter into, and shall cause the Construction Guarantor and any other guarantor, covenantor or surety under any guarantee, bond or covenant referred to in Section 6(b)(iii) to enter into, and HMQ shall or shall cause the Substitute to enter into, as applicable, all such agreements or other documents as reasonably necessary to give effect to the foregoing, including, without limitation, an agreement between HMQ or the Substitute, as applicable, and the Construction Contractor, acceptable to HMQ and the Construction Contractor, each acting reasonably, on substantially the same terms as the Construction Contract.
- (c) Subject to Section 6(d), Project Co shall, at its own cost, cooperate fully with HMQ and the Substitute in order to achieve a smooth transfer of the Construction Contract to HMQ or the Substitute, as applicable, and to avoid or mitigate in so far as reasonably practicable any inconvenience, including the administration of the Construction Contract, ongoing supervisory activities and scheduling.
- (d) The rights granted by Sections 6(b) and (c) shall be of no force or effect if, at any time the Construction Contractor receives a Step-In Notice, the Construction Contractor has already received notice in writing from another entity entitled to the benefit of step-in rights relating to the Construction Contract that it is or has validly exercised those step-in rights. If the Construction Contractor receives any such notice on the same day as a Step-In Notice, the Step-In Notice shall be effective, except where the other notice is given by the Lenders, in which case such other notice and not the Step-In Notice shall be effective.
- (e) If HMQ gives a Step-In Notice within the time provided hereunder at any time after the Construction Contractor has terminated the Construction Contract or treated it as having been repudiated by Project Co or discontinued the Construction Contractor's performance thereunder in accordance with the terms of this Construction Contractor's Direct Agreement, the Construction Contractor agrees that the Construction Contract shall be reinstated and deemed to have continued despite any termination or treatment as having been repudiated, and HMQ shall pay the Construction Contractor's reasonable costs for re-commencing the obligations it has under the Construction Contract and the Construction Contractor shall be entitled to reasonable compensation and/or relief for re-commencing such obligations, having regard to the additional costs and delays incurred as a result of having terminated the Construction Contract or having treated it as being repudiated by Project Co or having discontinued its performance thereunder.

**7. CONSTRUCTION CONTRACTOR LIABILITY**

- (a) The liability of the Construction Contractor hereunder shall not be modified, released, diminished or in any way affected by:
  - (i) any independent inspection, investigation or enquiry into any matter which may be made or carried out by or for HMQ, or by any failure or omission to carry out any such inspection, investigation or enquiry; or
  - (ii) the appointment by HMQ of any other person to review the progress of or otherwise report to HMQ in respect of the Project, or by any action or omission of such person whether or not such action or omission might give rise to any independent liability of such person to HMQ,

provided always that nothing in this Section 7 shall modify or affect any rights which the Construction Contractor might have otherwise had to claim contribution from any other person whether under statute or common law.

- (b) In the event HMQ delivers a Step-In Notice, the Construction Contractor shall have no greater liability to HMQ or any Substitute than it would have had to Project Co under the Construction Contract, and the Construction Contractor shall be entitled in any proceedings by HMQ or any Substitute to rely on any liability limitations in the Construction Contract.

**8. PROJECT CO AS PARTY**

Project Co acknowledges and agrees that the Construction Contractor shall not be in breach of the Construction Contract by complying with its obligations hereunder.

**9. CONSTRUCTION GUARANTOR AS PARTY**

The Construction Guarantor agrees with HMQ that the Construction Guarantor has entered into a guarantee or covenant referred to in Section 6(b)(iii), hereby consents to the assignment, novation or grant (including any conditional assignment, novation or grant) as provided herein immediately upon receipt by the Construction Contractor of a Step-In Notice and without the requirement of any further action on the part of HMQ, and agrees that the Construction Guarantor shall in accordance with Section 6 enter into all such agreements or other documents as reasonably necessary to give effect to the foregoing. The Construction Guarantor enters into this Construction Contractor's Direct Agreement solely for the purposes of this Section 9.

**10. ASSIGNMENT**

- (a) Project Co shall not, without the prior written consent of HMQ, assign, transfer, charge, subcontract, sub-participate or otherwise dispose of any interest in this Construction Contractor's Direct Agreement except to the extent entitled to do so under the Project Agreement.

- (b) HMQ may assign or otherwise dispose of the benefit of the whole or part of this Construction Contractor's Direct Agreement to any person to whom HMQ may assign or otherwise dispose of its interest in the Project Agreement pursuant to Section 56.2 of the Project Agreement but only in conjunction therewith, and shall provide written notice to Project Co and the Construction Contractor of such assignment or disposition.
- (c) The Construction Contractor shall not, without the prior written consent of HMQ and Project Co, assign, transfer, charge, subcontract, sub-participate or otherwise dispose of any interest in this Construction Contractor's Direct Agreement except as may be permitted under the Construction Contract.

## **11. NOTICES**

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

If to HMQ: **[REDACTED]**

Fax No.: **[REDACTED]**

Telephone: **[REDACTED]**

Attn.: **[REDACTED]**

If to Project Co: **[REDACTED]**

Fax No.: **[REDACTED]**

Telephone: **[REDACTED]**

Attn.: **[REDACTED]**

And to: **[REDACTED]**

Fax No.: **[REDACTED]**

Telephone: **[REDACTED]**

Attn.: **[REDACTED]**

If to the Construction **[REDACTED]**

Contractor:

Fax No.: [REDACTED]

Telephone: [REDACTED]

Attn.: [REDACTED]

And to: [REDACTED]

Fax: [REDACTED]

Telephone: [REDACTED]

Attn.: [REDACTED]

If to the Construction [REDACTED]  
Guarantor:

Telephone: [REDACTED]

Attn.: [REDACTED]

And to: [REDACTED]

Fax: [REDACTED]

Telephone: [REDACTED]

Attn: [REDACTED]

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

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

## **12. AMENDMENTS**

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

## **13. WAIVER**

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

## **14. RELATIONSHIP BETWEEN THE PARTIES**

The Parties are independent contractors. This Construction Contractor's Direct Agreement is not intended to and does not create or establish between the Parties any relationship as



partners, joint venturers, employer and employee, master and servant, or, except as provided in this Construction Contractor's Direct Agreement, of principal and agent.

**15. ENTIRE AGREEMENT**

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

**16. SEVERABILITY**

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

**17. ENUREMENT**

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

**18. GOVERNING LAW AND JURISDICTION**

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

**19. FURTHER ASSURANCE**

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

**20. LANGUAGE OF AGREEMENT**

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

**21. COUNTERPARTS**

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

*[The remainder of this page intentionally left blank]*

**IN WITNESS WHEREOF** the Parties have executed this Construction Contractor’s Direct Agreement as of the date first above written.

**HER MAJESTY THE QUEEN IN RIGHT OF  
ONTARIO as represented by the Minister of  
Infrastructure, as represented by Ontario  
Infrastructure and Lands Corporation**

**[REDACTED]**

**DUNDEE KILMER DEVELOPMENTS L.P.**

**[REDACTED]**

**ELLISDON LEDCOR PAAV INC.**

**[REDACTED]**

**[REDACTED]**

**SCHEDULE 6**

**INDEPENDENT CERTIFIER AGREEMENT**

**THIS AGREEMENT** is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2011

**BETWEEN:**

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO** as represented by the Minister of Infrastructure, as represented by Ontario Infrastructure and Lands Corporation, a non-share capital corporation continued and amalgamated under the *Ontario Infrastructure and Lands Corporation Act*, 2011, S.O. 2011, c. 9, Schedule 32, as amended

(“**HMQ**”)

**AND:**

**DUNDEE KILMER DEVELOPMENTS L.P., [REDACTED]**

(“**Project Co**”)

**AND:**

**BTY CONSULTANCY GROUP INC.**, a corporation incorporated under the laws of the Province of Ontario

(the “**Independent Certifier**”)

**WHEREAS:**

- A. HMQ and Project Co (collectively, the “**PA Parties**” and each, a “**PA Party**”) have entered into the Project Agreement.
- B. Pursuant to the terms of the Project Agreement, the PA Parties wish to appoint the Independent Certifier, and the Independent Certifier wishes to accept such appointment, to perform certain services in connection with the Project Agreement.
- C. The PA Parties and the Independent Certifier wish to enter into this Independent Certifier Agreement in order to record the terms by which the Independent Certifier shall perform such services.

**NOW THEREFORE** in consideration of the mutual covenants and agreements of the PA Parties and the Independent Certifier herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the PA Parties and the Independent Certifier covenant and agree as follows:

**1. DEFINITIONS**

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## **1.1 Definitions**

- (a) In this Independent Certifier Agreement, including the recitals and appendices, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Independent Certifier Agreement) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:
- (i) **“Certification Services”** means:
    - (A) all of the functions and obligations described in the Project Agreement as being the responsibility of the Independent Certifier;
    - (B) all of the functions and obligations conferred on the Independent Certifier under this Independent Certifier Agreement, including the functions described in Appendix A to this Independent Certifier Agreement; and
    - (C) all other things or tasks which the Independent Certifier must do to comply with its obligations under this Independent Certifier Agreement.
  - (ii) **“Certification Services Variation”** is any change to the Certification Services.
  - (iii) **“Contract Material”** means all material:
    - (A) provided to the Independent Certifier or created or required to be created by either PA Party; and
    - (B) provided by or created or required to be created by the Independent Certifier as part of, or for the purpose of, performing the Certification Services,including documents, equipment, reports, technical information, plans, charts, drawings, calculations, tables, schedules and data (stored and recorded by any means).
  - (iv) **“Fee”** means the fees payable by HMQ and Project Co to the Independent Certifier for the Certification Services, as such fees are specified and made payable in accordance with Appendix B to this Independent Certifier Agreement.
  - (v) **“IC Representative”** means any of the personnel providing the Certification Services listed in Appendix C to this Independent Certifier Agreement.
  - (vi) **“Intellectual Property”** means any and all intellectual property rights, whether subsisting now or in the future, including rights of any kind in inventions, patents, copyright, trademarks, service marks, industrial designs, integrated circuit topography rights, applications for registration of any of the foregoing, and know-how, trade secrets, confidential information and trade or business names.

- (vii) **“PA Parties”** means both HMQ and Project Co, and **“PA Party”** means either HMQ or Project Co, as the context requires.
- (viii) **“Project Agreement”** means that certain project agreement made on or about the date hereof between HMQ and Project Co with respect to the design, construction and financing of the Facilities.

## **2. INTERPRETATION**

### **2.1 Interpretation**

- (a) In this Independent Certifier Agreement, unless the context indicates a contrary intention:
  - (i) words denoting the singular number include the plural and vice versa;
  - (ii) words denoting individuals include corporations and vice versa;
  - (iii) headings are for convenience only and do not affect interpretation;
  - (iv) references to Clauses, Sections or Parts are references to Clauses, Sections or Parts of this Independent Certifier Agreement;
  - (v) references to this Independent Certifier Agreement or any contract, agreement or instrument are deemed to include references to this Independent Certifier Agreement or such other contract, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;
  - (vi) references to any party to this Independent Certifier Agreement includes its successors or permitted assigns;
  - (vii) words denoting any gender include all genders;
  - (viii) references to any legislation or to any section or provision of any legislation include any statutory modification or re-enactment of any statutory provision substituted for legislation, section or provision, and ordinances, by laws, regulations and other statutory instruments issued under that legislation, section or provision;
  - (ix) a reference to “\$” is to Canadian currency;
  - (x) the terms “including” and “include” mean “including” or “include” (as applicable) without limitation;
  - (xi) if a word or phrase is defined, then other parts of speech and grammatical forms of that word or phrase have a corresponding meaning; and
  - (xii) unless otherwise indicated, all time periods will be strictly construed.

## **2.2 Obligations and Exercise of Rights by PA Parties**

- (a) The obligations of the PA Parties under this Independent Certifier Agreement shall be several.
- (b) Except as specifically provided for in this Independent Certifier Agreement or the Project Agreement, the rights of the PA Parties under this Independent Certifier Agreement shall be jointly exercised by the PA Parties.

## **3. ROLE OF THE INDEPENDENT CERTIFIER**

### **3.1 Engagement**

- (a) The PA Parties hereby appoint the Independent Certifier, and the Independent Certifier hereby accepts such appointment, to carry out the Certification Services in accordance with this Independent Certifier Agreement. The Independent Certifier shall perform the Certification Services in accordance with this Independent Certifier Agreement.
- (b) Nothing in this Independent Certifier Agreement will be interpreted as giving the Independent Certifier any responsibility for performance of the design or construction, or for the certifications of the professionals of record.
- (c) Neither PA Party shall, without the prior written consent of the other PA Party, enter into any separate agreement with the Independent Certifier in connection with the Project, and Project Co shall ensure that no Project Co Party enters into any separate agreement with the Independent Certifier in connection with the Project.
- (d) The Independent Certifier shall make such observations and evaluations of any Works pursuant to a Variation in order to certify any monthly progress payment to Project Co of the value of work performed, provided the Independent Certifier shall be entitled to a Certification Services Variation Order pursuant to Section 9.4 and 9.5 of this Independent Certifier Agreement.
- (e) The Independent Certifier hereby agrees to submit to a Security and Background Check from time to time in accordance with Schedule 7 – Security and Background Check Requirements to the Project Agreement and shall cause each IC Representative to submit to a Security and Background Check from time to time in accordance with Schedule 7 – Security and Background Check Requirements to the Project Agreement.

### **3.2 Acknowledgement of Independent Certifier**

- (a) The Independent Certifier hereby acknowledges in favour of the PA Parties that it has received a copy of the Project Agreement.

### **3.3 Standard of Care**

- (a) The Independent Certifier must exercise the standard and skill, care and diligence in the performance of the Certification Services that would be expected of an expert professional experienced in providing services in the nature of the Certification Services for projects similar to the Project.

### **3.4 Duty of Independent Judgment**

- (a) In exercising its Certification Services, the Independent Certifier must:
  - (i) act impartially, honestly and independently in representing the interests of both PA Parties in accordance with the terms of the Project Agreement and this Independent Certifier Agreement;
  - (ii) act reasonably and professionally;
  - (iii) act in a timely manner:
    - (A) in accordance with the times prescribed in this Independent Certifier Agreement and the Project Agreement; or
    - (B) where no times are prescribed, within 10 days or such earlier time so as to enable the PA Parties to perform their respective obligations under the Project Agreement; and
  - (iv) act in accordance with the joint directions of the PA Parties provided that the directions are not inconsistent with the other terms of this Independent Certifier Agreement or the terms of the Project Agreement and do not vary or prejudice the Independent Certifier's authority or responsibilities or the exercise by the Independent Certifier of its professional judgment under this Independent Certifier Agreement.
- (b) Although the Independent Certifier may take account of any opinions or representations made by the PA Parties, the Independent Certifier shall not be bound to comply with any opinions or representations made by either of them in connection with any matter on which the Independent Certifier is required to exercise its professional judgment.
- (c) The Independent Certifier acknowledges that the PA Parties may rely on the Certification Services, including determinations, findings and certifications made by the Independent Certifier, and accordingly, the Independent Certifier will use its best skill and judgment in providing the Certification Services.



### **3.5 Authority to Act**

- (a) The Independent Certifier:
- (i) is an independent consultant and is not, and must not purport to be, a partner, joint venturer or agent of either PA Party;
  - (ii) other than as expressly set out in this Independent Certifier Agreement or the Project Agreement, has no authority to give any directions to a PA Party or its officers, directors, members, employees, contractors, consultants or agents; and
  - (iii) has no authority to waive or alter any terms of the Project Agreement, nor to discharge or release a party from any of its obligations under the Project Agreement unless jointly agreed by the PA Parties in writing.

### **3.6 Knowledge of the PA Parties’ Requirements**

- (a) The Independent Certifier warrants that:
- (i) it has informed and will be deemed to have informed itself fully of the requirements of the Project Agreement;
  - (ii) it will inform itself fully of the requirements of such other documents and materials as may become relevant from time to time to the performance of the Certification Services;
  - (iii) without limiting Sections 3.6(a)(i) or 3.6(a)(ii), it has and will be deemed to have informed itself fully of all time limits and other requirements for any Certification Service which the Independent Certifier carries out under the Project Agreement and this Independent Certifier Agreement;
  - (iv) it has and will be deemed to have informed itself completely of the nature of the work necessary for the performance of the Certification Services and the means of access to any facilities at the Facilities and Site including restrictions on any such access or protocols that are required; and
  - (v) it has satisfied itself as to the correctness and sufficiency of its proposal for the Certification Services and that the Fee covers the cost of complying with all of the obligations under this Independent Certifier Agreement and of all matters and things necessary for the due and proper performance and completion of the Certification Services.

### **3.7 Co-ordination and Information by Independent Certifier**

- (a) The Independent Certifier must:
- (i) fully cooperate with the PA Parties;

- (ii) carefully co-ordinate the Certification Services with the work and services performed by the PA Parties;
- (iii) without limiting its obligations under Sections 3.4 and 3.7(a)(ii), perform the Certification Services so as to avoid unreasonably interfering with, disrupting or delaying the work and services performed by the PA Parties; and
- (iv) provide copies to the PA Parties of all reports, communications, certificates and other documentation that it provides to either PA Party.

### **3.8 Conflict of Interest**

- (a) The Independent Certifier warrants that:
  - (i) at the date of signing this Independent Certifier Agreement, no conflict of interest exists or is likely to arise in the performance of its obligations under this Independent Certifier Agreement; and
  - (ii) if, during the term of this Independent Certifier Agreement, any such conflict or risk of conflict of interest arises, the Independent Certifier will notify the PA Parties immediately in writing of that conflict or risk of conflict and take such steps as may be required by either of the PA Parties to avoid or mitigate that conflict or risk.

### **3.9 Independent Certifier Personnel**

- (a) The Independent Certifier shall make reasonable efforts to ensure that the individuals listed in Appendix C remain involved in the performance of the Certification Services and, in particular, will not, for the duration of this Independent Certifier Agreement, require or request any such person to be involved in any other project on behalf of the Independent Certifier if, in the reasonable opinion of the PA Parties, such involvement would have a material adverse effect on the performance of the Certification Services.
- (b) The Independent Certifier shall ensure that its personnel providing the Certification Services in respect of the Commissioning Tests, the Project Substantial Completion Commissioning Program, the Outline Commissioning Program, the Project Co Stage 1 Conversion Substantial Completion Commissioning Program and the Third Party Facility Conversion Substantial Completion Commissioning Program shall:
  - (i) possess a current professional designation of not less than membership in Professional Engineers Ontario, The Ontario Association of Certified Engineering Technicians and Technologists or such similar professional designation recognized in North America;
  - (ii) have demonstrated competence in the commissioning of facilities similar to the Facilities and in having completed or monitored the commissioning of facilities similar in size and type to the Facilities;

- (iii) have an understanding of the appropriate CSA standards; and
  - (iv) have an understanding of the commissioning process and the reports to be provided pursuant to this Independent Certifier Agreement and the Project Agreement, including not only the start-up procedures but the pre-commissioning and post-commissioning activities.
- (c) The Independent Certifier shall furnish HMQ with evidence satisfactory to HMQ of any such personnel’s compliance with the foregoing requirements within a reasonable time prior to the proposed commencement of the Certification Services in respect of the Commissioning Tests, the Project Substantial Completion Commissioning Program, the Outline Commissioning Program, the Project Co Stage 1 Conversion Substantial Completion Commissioning Program and the Third Party Facility Conversion Substantial Completion Commissioning Program.

### **3.10 Minimize Interference**

- (a) The Independent Certifier shall perform the Certification Services in such a way as to minimize any undue interference with the progress of the Works.

## **4. ROLE OF THE PA PARTIES**

### **4.1 Assistance**

- (a) The PA Parties agree to cooperate with and provide reasonable assistance to the Independent Certifier to familiarize the Independent Certifier with all necessary aspects of the Project to enable the Independent Certifier to carry out its obligations under this Independent Certifier Agreement.

### **4.2 Instructions in Writing**

- (a) Unless otherwise provided in this Independent Certifier Agreement or the Project Agreement, all instructions to the Independent Certifier by the PA Parties shall be given in writing and accepted or endorsed by both of the PA Parties.

### **4.3 Information and Services**

- (a) The PA Parties shall make available to the Independent Certifier, as soon as practicable from time to time, all information, documents and particulars necessary for the Independent Certifier to carry out the Certification Services, including such information, documents and particulars required in order for the Independent Certifier to determine whether Interim Completion, Project Substantial Completion, Project Co Stage 1 Conversion Substantial Completion, Third Party Facility Conversion Substantial Completion and Project Final Completion have occurred, and shall provide copies of all such information, documents and particulars to the other party hereto.

#### **4.4 Additional Information**

- (a) If any information, documents or particulars are reasonably required to enable the Independent Certifier to perform the Certification Services and have not been provided by the PA Parties, then:
  - (i) the Independent Certifier must give notice in writing to the Project Co Representative or HMQ's Representative, as the case may be, of the details of the information, documents or particulars demonstrating the need and the reasons why they are required; and
  - (ii) Project Co or HMQ, as the case may be, must arrange the provision of the required information, documents or particulars.

#### **4.5 Right to Enter and Inspect**

- (a) Upon giving reasonable notice to the Project Co Representative, the Independent Certifier (and any person authorized by it) may enter and inspect the Site, the Facilities or Works at any reasonable time in connection with the exercise or proposed exercise of rights under this Independent Certifier Agreement, subject to:
  - (i) observance of the reasonable rules of Project Co as to safety and security for the Site, the Facilities and the Works;
  - (ii) not causing unreasonable delay to the carrying out of the Works by reason of its presence at the Site, the Facilities and the Works; and
  - (iii) not causing any damage to the Site, the Facilities or the Works.

#### **4.6 PA Parties Not Relieved**

- (a) Neither PA Party shall be relieved from performing or observing its obligations, or from any other liabilities, under the Project Agreement as a result of either the appointment of, or any act or omission by, the Independent Certifier.

#### **4.7 PA Parties not Liable**

- (a) On no account will a PA Party be liable to another PA Party for any act or omission by the Independent Certifier whether under or purportedly under a provision of the Project Agreement, this Independent Certifier Agreement or otherwise, provided that any such act or omission shall not extinguish, relieve, limit or qualify the nature or extent of any right or remedy of either PA Party against or any obligation or liability of either PA Party to the other PA Party which would have existed regardless of such act or omission.

## **5. CERTIFICATION QUALITY PLAN**

### **5.1 Certification Quality Plan**

- (a) The Independent Certifier must:
- (i) develop and implement a certification quality plan identifying the processes and outcomes of the Certification Services that complies with all requirements of the Independent Certifier's quality assurance accreditation, and is otherwise satisfactory to each of the HMQ Representative and the Project Co Representative;
  - (ii) within 14 days after the date of this Independent Certifier Agreement, provide such certification quality plan to each of the HMQ Representative and the Project Co Representative;
  - (iii) if satisfactory to each of the HMQ Representative and the Project Co Representative, implement such certification quality plan; and
  - (iv) if not satisfactory to each of the HMQ Representative and the Project Co Representative, within 7 days after receiving notice thereof from either PA Party to that effect, revise and resubmit the certification quality plan to each of the HMQ Representative and the Project Co Representative, and implement it if satisfactory to each of the HMQ Representative and the Project Co Representative.

### **5.2 Certification Quality Plan not to Relieve Independent Certifier**

- (a) The Independent Certifier will not be relieved of any responsibilities or obligations in respect of the performance of the Certification Services and will remain solely responsible for them notwithstanding:
- (i) the obligation of the Independent Certifier to develop and implement a certification quality plan; or
  - (ii) any comment or direction upon, review or acceptance of, approval to proceed with or request to vary any part of the certification quality plan by either the HMQ Representative or the Project Co Representative.

## **6. SUSPENSION**

### **6.1 Notice**

- (a) The Certification Services (or any part) may be suspended at any time by the PA Parties:
- (i) if the Independent Certifier fails to comply with its obligations under this Independent Certifier Agreement, immediately by the PA Parties giving joint notice in writing to the Independent Certifier;

- (ii) where any of the events specified in Sections 1.1(h) and 1.3(a) of Schedule 7 – Security and Background Check Requirements of the Project Agreement have occurred in respect of any IC Representative unless (A) any such IC Representative's employment or engagement by the Independent Certifier is immediately terminated, and evidence of termination thereof has been provided to HMQ in writing within five (5) Business Days of the occurrence of any of the events described in Sections 1.1(h) and 1.3(a) of Schedule 7 – Security and Background Check Requirements of the Project Agreement in respect of such IC Representative; or (B) the Independent Certifier has satisfied HMQ, acting reasonably, that such IC Representative is no longer involved in the Project and is no longer involved or engaged in providing any of the Certification Services; or
- (iii) in any other case, by the PA Parties giving 7 days joint notice in writing to the Independent Certifier.

## **6.2 Costs of Suspension**

- (a) The Independent Certifier will:
  - (i) subject to the Independent Certifier complying with Article 9, be entitled to recover the extra costs incurred by the Independent Certifier by reason of a suspension directed under Section 6.1(a)(iii) valued as a Certification Services Variation under Section 9; and
  - (ii) have no entitlement to be paid any costs, expenses, losses or damages arising from a suspension under Sections 6.1(a)(i) or 6.1(a)(ii).

## **6.3 Recommencement**

- (a) The Independent Certifier must immediately recommence the carrying out of the Certification Services (or any part) on receipt of a joint written notice from the PA Parties requiring it to do so.

## **7. INSURANCE AND LIABILITY**

### **7.1 Independent Certifier's Professional Indemnity Insurance**

- (a) The Independent Certifier must have in place at all times during the term of this Independent Certifier Agreement:
  - (i) professional liability insurance:
    - (A) in the amount of \$[REDACTED] per claim and \$[REDACTED] in the aggregate, a deductible of not more than \$[REDACTED] per claim and from an insurer and on terms satisfactory to each of the PA Parties; and

- (B) covering liability which the Independent Certifier might incur as a result of a breach by it of its obligations owed by the Independent Certifier in a professional capacity to the PA Parties, or either of them, under or in connection with this Independent Certifier Agreement or the provision of the Certification Services; and
  - (ii) comprehensive general liability insurance in the amount of \$[REDACTED] per claim and in the aggregate, no deductible for personal injury or bodily injury, a deductible of not more than \$[REDACTED] per occurrence for property damage and from an insurer and on terms satisfactory to each of the PA Parties.
- (b) The Independent Certifier must provide copies of its insurance policies to each of the PA Parties upon execution of this Independent Certifier Agreement, and, at least 5 Business Days prior to the expiry date of any such insurance policy, the Independent Certifier must provide evidence of the renewal of any such insurance policy satisfactory to the PA Parties, acting reasonably.

## **7.2 Workers' Compensation Insurance**

- (a) The Independent Certifier must, at its own cost and at all times during the term of this Independent Certifier Agreement, insure its liability (including its common law liability) as required under any applicable workers compensation statute or regulation in relation to its employees engaged in the Certification Services.

## **8. PAYMENT FOR SERVICES**

### **8.1 Payment of Fee**

- (a) In consideration of the Independent Certifier performing the Certification Services in accordance with this Independent Certifier Agreement, each PA Party shall pay one-half of the Fee to the Independent Certifier in accordance with the payment schedule specified in Appendix B.
- (b) The obligation of each PA Party to pay one-half of the Fee to the Independent Certifier is a several obligation, and neither PA Party shall have any liability in respect of the non-payment by the other PA Party of any fees or costs payable by such other PA Party under this Independent Certifier Agreement.
- (c) The Fee includes all taxes (except for HST), overheads and profit to perform the Certification Services.
- (d) The PA Parties acknowledge and agree that if any approved amount due and payable by the PA Parties to the Independent Certifier in excess of \$[REDACTED] is outstanding for more than 60 days, the Independent Certifier shall not have any obligation to make any certification under the Project Agreement.

## **9. CERTIFICATION SERVICES VARIATIONS**

### **9.1 Notice of Certification Services Variation**

- (a) If the Independent Certifier believes, other than a “Certification Services Variation Order” under Section 9.4(c), that any direction by the PA Parties constitutes or involves a Certification Services Variation it must:
  - (i) within 7 days after receiving the direction and before commencing work on the subject matter of the direction, give notice to the PA Parties that it considers the direction constitutes or involves a Certification Services Variation; and
  - (ii) within 21 days after giving the notice under Section 9.1(a)(i), submit a written claim to each of the HMQ Representative and the Project Co Representative which includes detailed particulars of the claim, the amount of the claim and how it was calculated.
- (b) Regardless of whether the Independent Certifier considers that such a direction constitutes or involves a Certification Services Variation, the Independent Certifier must continue to perform the Certification Services in accordance with this Independent Certifier Agreement and all directions, including any direction in respect of which notice has been given under this Section 9.1.

### **9.2 No Adjustment**

- (a) If the Independent Certifier fails to comply with Section 9.1, the Fee will not be adjusted as a result of the relevant direction.

### **9.3 External Services**

- (a) In the event that external personnel or consultants are required for expert opinion with respect to a Certification Services Variation, then, with the prior written approval of the PA Parties, any additional fees relating to such external personnel or consultants will be payable by the PA Parties at the agreed upon amount.

### **9.4 Certification Services Variation Procedure**

- (a) The HMQ Representative and the Project Co Representative may jointly issue a document titled “Certification Services Variation Price Request” to the Independent Certifier which will set out details of a proposed Certification Services Variation which the PA Parties are considering.
- (b) Within 7 days after the receipt of a “Certification Services Variation Price Request”, the Independent Certifier must provide each of the HMQ Representative and the Project Co Representative with a written notice in which the Independent Certifier sets out the effect which the proposed Certification Services Variation will have on the Fee.



- (c) Each of the HMQ Representative and the Project Co Representative may then jointly direct the Independent Certifier to carry out a Certification Services Variation by written document titled “Certification Services Variation Order” which will state either that:
  - (i) the Fee is adjusted as set out in the Independent Certifier’s notice; or
  - (ii) the adjustment (if any) to the Fee will be determined under Section 9.5.

## **9.5 Cost of Certification Services Variation**

- (a) Subject to Section 9.2, the Fee will be adjusted for all Certification Services Variations or suspensions under Section 6.1(a)(iii) carried out by the Independent Certifier by:
  - (i) the amount (if any) stated in the “Certification Services Variation Order” in accordance with Section 9.4(c);
  - (ii) if Section 9.5(a)(i) is not applicable, an amount determined pursuant to the fee schedule in Appendix B; or
  - (iii) where such rates or prices are not applicable, a reasonable amount to be agreed between the PA Parties and the Independent Certifier or, failing agreement, determined by the HMQ Representative and the Project Co Representative jointly.
- (b) Any reductions in the Fee shall be calculated on the same basis as any increases.

## **10. TERM AND TERMINATION**

### **10.1 Term**

- (a) Subject to earlier termination, this Independent Certifier Agreement will commence on the date of the Project Agreement and continue in full force until:
  - (i) the completion of the Works and the performance of the Certification Services set forth herein; or
  - (ii) such other date as may be mutually agreed between the PA Parties and the Independent Certifier.

### **10.2 Notice of Breach**

- (a) If the Independent Certifier commits a breach of this Independent Certifier Agreement, the PA Parties may give written notice to the Independent Certifier:
  - (i) specifying the breach; and
  - (ii) directing its rectification in the period specified in the notice being a period not less than 7 days from the date of service of the notice.

### **10.3 Termination for Breach**

- (a) If the Independent Certifier fails to rectify the breach within the period specified in the notice issued under Section 10.2, the PA Parties may, without prejudice to any other rights of the PA Parties or either of them, immediately terminate this Independent Certifier Agreement.

### **10.4 Termination for Failure to Satisfy Security and Background Check Requirements**

- (a) HMQ may, in its sole discretion, terminate this Independent Certifier Agreement and the appointment of the Independent Certifier for the Project Agreement where any of the events specified in Sections 1.1(h) and 1.3(a) of Schedule 7 – Security and Background Check Requirements of the Project Agreement have occurred in respect of any of IC's Representatives unless (i) any such IC's Representative's employment or engagement by the Independent Certifier is immediately terminated, and evidence of termination thereof has been provided to HMQ in writing within five (5) Business Days of the occurrence of any of the events described in Sections 1.1(h) and 1.3(a) of Schedule 7 – Security and Background Check Requirements of the Project Agreement; or (ii) the Independent Certifier has satisfied HMQ, acting reasonably, that such IC Representative is no longer involved in the Project and is no longer involved or engaged in providing any of the Certification Services.

### **10.5 Termination for Financial Difficulty or Change in Control**

- (a) The PA Parties may, without prejudice to any other rights which the PA Parties or either of them may have, terminate this Independent Certifier Agreement immediately if:
  - (i) events have occurred or circumstances exist which, in the opinion of the PA Parties, may result in or have resulted in an insolvency or a Change in Control of the Independent Certifier; or
  - (ii) the Independent Certifier has communications with its creditors with a view to entering into, or enters into, any form of compromise, arrangement or moratorium of any debts whether formal or informal, with its creditors.

### **10.6 Termination for Convenience**

- (a) Notwithstanding anything to the contrary in this Independent Certifier Agreement, the PA Parties may, at any time, jointly terminate this Independent Certifier Agreement upon 30 days written notice to the Independent Certifier. The PA Parties and the Independent Certifier agree that, notwithstanding the 30 days' notice of termination, the Independent Certifier shall continue on a day-to-day basis thereafter until a new Independent Certifier is appointed.

### **10.7 Independent Certifier's Rights upon Termination for Convenience**

- (a) Upon a termination under Section 10.6, the Independent Certifier will:
  - (i) be entitled to be reimbursed by the PA Parties for the value of the Certification Services performed by it to the date of termination; and
  - (ii) not be entitled to any damages or other compensation in respect of the termination and (without limitation) any amount in respect of:
    - (A) the lost opportunity to earn a profit in respect of the Certification Services not performed at the date of termination; and
    - (B) any lost opportunity to recover overheads from the turnover which would have been generated under this Independent Certifier Agreement but for it being terminated.

### **10.8 Procedure upon Termination**

- (a) Upon completion of the Independent Certifier's engagement under this Independent Certifier Agreement or earlier termination of this Independent Certifier Agreement (whether under Sections 10.3, 10.5 or 10.6 or otherwise), the Independent Certifier must:
  - (i) cooperate with the PA Parties with respect to the transition of the Certification Services to a replacement certifier;
  - (ii) deliver to the PA Parties all Contract Material and all other information concerning the Project held or prepared by the Independent Certifier during the execution of work under this Independent Certifier Agreement; and
  - (iii) as and when required by the PA Parties, meet with them and such other persons nominated by them with a view to providing them with sufficient information to enable the PA Parties to execute the Project or the persons nominated to provide the Certification Services.

### **10.9 Effect of Termination**

- (a) Except as otherwise expressly provided in this Independent Certifier Agreement, termination of this Independent Certifier Agreement shall be without prejudice to any accrued rights and obligations under this Independent Certifier Agreement as at the date of termination (including the right of the PA Parties to recover damages from the Independent Certifier).

### **10.10 Survival**

- (a) Termination of this Independent Certifier Agreement shall not affect the continuing rights and obligations of the PA Parties and the Independent Certifier under Sections 7, 8, 10.7, 10.8, 10.9, 11, 12.7, 12.8 and this Section 10.10 or under any other provision which is

expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

## **11. INDEMNITY**

### **11.1 PA Parties to Save Independent Certifier Harmless**

- (a) The PA Parties hereby indemnify and save the Independent Certifier completely harmless from any actions, causes of action, suits, debts, costs, damages, expenses, claims and demands whatsoever, at law or in equity, arising directly or indirectly in whole or in part out of any action taken by the Independent Certifier within the scope of its duties or authority hereunder.
- (b) The indemnity provided under this Section 11.1 shall not extend:
  - (i) to any breach of this Independent Certifier Agreement, or any part or parts hereof, by the Independent Certifier, its employees, servants, agents or persons for whom it is in law responsible, or any negligent or unlawful act or omission or willful misconduct of the Independent Certifier, its employees, servants or persons for whom it is in law responsible (in respect of which the Independent Certifier shall indemnify the PA Parties, as referred to in Section 11.2);
  - (ii) to any action taken by the Independent Certifier outside the scope of authority set forth in this Independent Certifier Agreement, or any part or parts hereof; or
  - (iii) to any debt, cost, expense, claim or demand for which insurance proceeds are recoverable by the Independent Certifier.
- (c) This indemnity shall survive the termination of this Independent Certifier Agreement.

### **11.2 Independent Certifier to Save PA Parties Harmless**

- (a) The Independent Certifier hereby indemnifies and saves the PA Parties, and their affiliated entities, subsidiaries and their respective directors, officers, employees, agents, permitted successors and assigns, completely harmless from any actions, causes of action, suits, debts, costs, damages, expenses, claims and demands whatsoever, at law or in equity, arising directly or indirectly in whole or in part out of any breach of this Independent Certifier Agreement, or any part or parts hereof, by the Independent Certifier, its employees, servants, agents or persons for whom it is in law responsible, or any negligent or unlawful act or omission or willful misconduct of the Independent Certifier, its employees, servants or persons for whom it is in law responsible.
- (b) The indemnity provided under this Section 11.2 to a PA Party shall not extend:
  - (i) to any negligent or unlawful act or omission or willful misconduct of such PA Party, its employees, servants or persons for whom it is in law responsible (in respect of

which such PA Parties shall indemnify the Independent Certifier, as referred to in Section 11.1); or

- (ii) to any debt, cost, expense, claim or demand for which insurance proceeds are recoverable by such PA Party.
- (c) This indemnity shall survive the termination of this Independent Certifier Agreement.

### **11.3 Conduct of Claims**

- (a) Claims made by a third person against a party having, or claiming to have, the benefit of an indemnity pursuant to this Independent Certifier Agreement shall be conducted in accordance with the conduct of claims procedure described in Appendix D – Conduct of Claims to this Independent Certifier Agreement.

## **12. GENERAL**

### **12.1 Entire Agreement**

- (a) Except where provided otherwise in this Independent Certifier Agreement, this Independent Certifier Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Independent Certifier Agreement.

### **12.2 Negation of Employment**

- (a) The Independent Certifier, its officers, directors, members, employees, servants and agents and any other persons engaged by the Independent Certifier in the performance of the Certification Services will not by virtue of this Independent Certifier Agreement or the performance of the Certification Services become in the service or employment of the PA Parties for any purpose.
- (b) The Independent Certifier will be responsible for all matters requisite as employer or otherwise in relation to such officers, directors, members, employees, servants and agents and other persons who are engaged by the Independent Certifier.

### **12.3 Waiver**

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

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

#### **12.4 Notices**

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

If to HMQ:	[REDACTED]
c/o Ontario Infrastructure and Lands Corporation	Fax No.: [REDACTED]  Attn.: [REDACTED]
If to Project Co:	[REDACTED]  Fax No.: [REDACTED]  Attn.: [REDACTED]
With a copy to:	[REDACTED]  Fax No.: [REDACTED]  Attn.: [REDACTED]
If to Independent Certifier:	[REDACTED]  Fax No.: [REDACTED]  Attn.: [REDACTED]

- (b) Where any notice is provided or submitted to a party via facsimile, an original of the notice sent via facsimile shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a party’s failure to comply with this Section 12.4(b).
- (c) Any party to this Independent Certifier Agreement may, from time to time, change any of its contact information set forth in Section 12.4(a) by prior notice to the other Parties, and such change shall be effective on the Business Day that next follows the recipient party’s receipt of such notice unless a later effective date is given in such notice.

- (d) Subject to Sections 12.4(e), 12.4(f) and 12.4(g):
  - (i) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
  - (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
  - (iii) a notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.
- (e) If the party giving the notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission in accordance with this Section 12.4.
- (f) If any notice delivered by hand or transmitted by facsimile is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such notice shall be deemed to have been received by such recipient on the next Business Day.
- (g) A notice given by facsimile shall be deemed to have been received by the recipient on the day it is transmitted only if a facsimile transmission report (maintained by the sender) indicates that the transmission of such notice was successful.

## **12.5 Transfer and Assignment**

- (a) The Independent Certifier:
  - (i) must not assign, transfer, mortgage, charge or encumber any right or obligation under this Independent Certifier Agreement without the prior written consent of the PA Parties, which each PA Party may give or withhold in its absolute discretion; and
  - (ii) agrees that any assignment, transfer, mortgage, charge or encumbrance will not operate to release or discharge the Independent Certifier from any obligation or liability under this Independent Certifier Agreement.
- (b) For the purposes of this Section 12.5, an assignment will be deemed to have occurred where there is a Change in Control of the Independent Certifier after the date of this Independent Certifier Agreement.
- (c) Each of the PA Parties may assign, transfer, mortgage, charge or encumber any right or obligation under this Independent Certifier Agreement in accordance with the terms of the Project Agreement.

## **12.6 Governing Laws and Jurisdictions**

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

## **12.7 HMQ Designate**

- (a) At any time and from time to time, HMQ may designate any ministry, branch, agency, division, department or office of the Government of Ontario to carry out administrative responsibility for the rights and obligations of HMQ under this Independent Certifier Agreement and Project Co and the Independent Certifier may deal exclusively with the designated person in respect of all such matters and is entitled to rely on the actions, directions, requests, notices, consents, approvals, waivers, comments relating to the review of documentation and other administrative matters and decisions determined by such designated person from time to time, until HMQ has notified Project Co and the Independent Certifier in writing that such designated person is no longer the person designated by HMQ hereunder and such notice shall have effect on the later of the date of delivery of such notice and the date specified in the written notice. HMQ shall advise Project Co and the Independent Certifier in writing of any designation hereunder. The rights and obligations of the parties to this Independent Certifier Agreement shall be in no way affected by reason of any such designation. Project Co and the Independent Certifier acknowledge the right of HMQ to delegate administrative responsibilities hereunder as set forth in this Section 12.7.

## **12.8 Confidentiality**

- (a) The Independent Certifier must ensure that:
  - (i) neither it nor any of its officers, directors, members, employees, servants and agents disclose, or otherwise make public, any Contract Material or any other information or material acquired in connection with or during the performance of the Certification Services without prior written approval of the PA Parties; and
  - (ii) no Contract Material is used, copied, supplied or reproduced for any purpose other than for the performance of the Certification Services under this Independent Certifier Agreement.
- (b) The PA Parties may at any time require the Independent Certifier to give and to arrange for its officers, directors, members, employees, servants and agents engaged in the performance of the Certification Services to give written undertakings, in the form of confidentiality agreements on terms required by the PA Parties, relating to the non disclosure of confidential information, in which case the Independent Certifier must promptly arrange for such agreements to be made.



## **12.9 Contract Material**

- (a) The PA Parties and the Independent Certifier agree that the Independent Certifier does not and will not have any rights, including any Intellectual Property, in any Contract Material provided to the Independent Certifier or created or required to be created by either PA Party.
- (b) As between the PA Parties and the Independent Certifier, all title and ownership, including all Intellectual Property, in and to the Contract Material created or required to be created by the Independent Certifier as part of, or for the purposes of performing the Certification Services, is hereby assigned jointly to the PA Parties on creation, or where such title, ownership and Intellectual Property cannot be assigned before creation of the Contract Material, it will be assigned to the PA Parties on creation. In addition, to the extent that copyright may subsist in such Contract Material so created by the Independent Certifier, the Independent Certifier hereby waives all past, present and future moral rights therein and the Independent Certifier shall ensure that any agent or employee of Independent Certifier shall have waived all such moral rights. The PA Parties acknowledge and agree that as between the PA Parties, title, ownership and other rights to the foregoing shall be governed by the Project Agreement.
- (c) The Independent Certifier will do all such things and execute all such documents as reasonably requested by either of the PA Parties in order to confirm or perfect the assignment of Intellectual Property in the Contract Material referred to in Section 12.9(b).

## **12.10 Amendment**

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

## **12.11 Severability**

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

## **12.12 Enurement**

- (a) This Independent Certifier Agreement shall enure to the benefit of, and be binding on, each of the parties and their respective successors and permitted transferees and assigns.

**12.13 Counterparts**

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

*Remainder of this page intentionally left blank*

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

**HER MAJESTY THE QUEEN IN RIGHT OF  
ONTARIO as represented by the Minister of  
Infrastructure, as represented by Ontario  
Infrastructure and Lands Corporation**

**[REDACTED]**

**DUNDEE KILMER DEVELOPMENTS L.P.,**

**[REDACTED]**

**BTY CONSULTANCY GROUP INC.**

**[REDACTED]**

**APPENDIX A**

**CERTIFICATION SERVICES**

Without limiting the other provisions of this Independent Certifier Agreement and the Project Agreement, the Independent Certifier shall provide the following:

- (a) Receive and monitor drawings and documents related to the development of the design as necessary for the Independent Certifier to be informed as to the progress of the Works and to provide an opinion in the event of a Dispute related to the development of the design.
- (b) Receive and monitor progress reports as necessary for the Independent Certifier to be informed as to the progress of the Works.
- (c) Review information relating to Project Co Delays, Delay Events (including, but not limited to, in respect to Section 37.3(c) of the Project Agreement regarding the acceleration of the Works by Project Co) and Compensation Events.
- (d) Review information relating to Variation Enquiries, Project Co Variation Notices, Variations, Estimates, claims for extension of time and compensation and consult with the relevant party.
- (e) In accordance with Section 11.1(b) of the Project Agreement, attend meetings and participate, as necessary, in the activities of the Works Committee.
- (f) Review the draft Project Substantial Completion Commissioning Program and the detailed tests, test methodology and expected test results proposed by Project Co and provide comments, including to report on the effectiveness of the Project Substantial Completion Commissioning Program, to identify any errors or omissions, and to report any risks.
- (g) Review the draft Third Party Facility Conversion Substantial Completion Commissioning Program and the detailed tests, test methodology and expected test results proposed by Project Co and provide comments, including to report on the effectiveness of the Third Party Facility Conversion Substantial Completion Commissioning Program, to identify any errors or omissions, and to report any risks.
- (h) Review the draft Project Co Stage 1 Conversion Substantial Completion Commissioning Program and the detailed tests, test methodology and expected test results proposed by Project Co and provide comments, including to report on the effectiveness of the Project Co Stage 1 Conversion Substantial Completion Commissioning Program, to identify any errors or omissions, and to report any risks.
- (i) Monitor the Commissioning Tests (as indicatively described in Schedule 14 - Outline Commissioning Program to the Project Agreement) and other tests, including re-tests, to be performed as set out in the Project Substantial Completion Commissioning Program, the Project Co Stage 1 Conversion Substantial Completion Commissioning Program, the Third Party Facility Conversion Substantial Completion Commissioning Program or as otherwise

required for Project Co to achieve Project Substantial Completion, Project Co Stage 1 Conversion Substantial Completion, Third Party Facility Conversion Substantial Completion and Project Final Completion.

- (j) Prior to any certification, consider the views and comments of both Project Co and HMQ in relation to the satisfaction of the conditions for certification.
- (k) Conduct inspections of the Works as necessary for the Independent Certifier to be satisfied that the Works are proceeding in accordance with the requirements of the Project Agreement.
- (l) Review relevant documentation, including floor area schedules, certificates and approvals, Permits, Licences and Approvals, certifications, test results, quality assurance audits, letters of assurance from professionals, schedules of equipment and staff profile schedules provided to the Independent Certifier pursuant to the Project Agreement.
- (m) Monitor the requirements, progress and results of all Project Substantial Completion Project Co Commissioning, Project Co Stage 1 Conversion Substantial Completion Project Co Commissioning, Third Party Facility Conversion Substantial Completion Project Co Commissioning, Project Substantial Completion HMQ Commissioning and Third Party Facility Conversion Substantial Completion HMQ Commissioning.
- (n) Identify any errors or omissions made during the conduct of any such Commissioning Tests referenced in item (m) above and to advise Project Co and HMQ with respect to the implications of those errors and omissions, to the extent that the Independent Certifier may reasonably be aware.
- (o) Upon receipt of notice from Project Co requesting the issuance of the Interim Completion Certificate, the Project Substantial Completion Certificate, the Project Co Stage 1 Conversion Substantial Completion Certificate, a Third Party Facility Conversion Substantial Completion Certificate or the Project Final Completion Certificate, as applicable, consider such request and, within the time period set out in the Project Agreement and in accordance with the Project Agreement, either:
  - (i) issue the applicable certificate; or
  - (ii) issue a report detailing the matters that the Independent Certifier considers are required to be performed prior to issuing the applicable certificate.
- (p) Upon notice from Project Co that the matters required to be performed prior to issuing the applicable certificate have been completed, re-inspect the Works or re-consider the matters specified to be performed, and repeat the procedures in Section (o) of this Appendix A until the issuance of the applicable certificate.
- (q) Prepare, in consultation with Project Co and HMQ, as soon as reasonably practicable and, in any event within, the time period specified in Section 24.8(a) of the Project Agreement, the Project Substantial Completion Minor Deficiencies List, which Project Substantial Completion Minor Deficiencies List will include an estimate of the cost and the time for

rectifying the Project Substantial Completion Minor Deficiencies and a schedule for the completion and rectification of the Project Substantial Completion Minor Deficiencies.

- (r) Prepare, in consultation with Project Co and HMQ, as soon as reasonably practicable and, in any event within, the time period specified in Section 24A.8(a) of the Project Agreement, the Project Co Stage 1 Conversion Substantial Completion Minor Deficiencies List, which Project Co Stage 1 Conversion Substantial Completion Minor Deficiencies List will include an estimate of the cost and the time for rectifying the Project Co Stage 1 Conversion Substantial Completion Minor Deficiencies and a schedule for the completion and rectification of the Project Co Stage 1 Conversion Substantial Completion Minor Deficiencies.
- (s) Prepare, in consultation with Project Co and HMQ, as soon as reasonably practicable and, in any event within, the time period specified in Section 25.8(a) of the Project Agreement, the Third Party Facility Conversion Substantial Completion Minor Deficiencies List, which Third Party Facility Conversion Substantial Completion Minor Deficiencies List will include an estimate of the cost and the time for rectifying the Third Party Facility Conversion Substantial Completion Minor Deficiencies and a schedule for the completion and rectification of the Third Party Facility Conversion Substantial Completion Minor Deficiencies.
- (t) No later than the Expiry Date, review Project Co cash allowance expenditures against the installations in respect of the Cash Allowance Items and the Cash Allowance Amount.
- (u) No later than the Expiry Date, reconcile Project Co invoices for expenditure recovery against HMQ budgets and the Cash Allowance Amount.
- (v) Review and observe installation of all equipment, furniture, fixtures, information technology, communication equipment, telephone equipment and anything similar to the foregoing (collectively, the “**Installed Equipment**”) into or onto the Facilities by HMQ or any agent or contractor of HMQ either before or after Project Final Completion and provide a report to HMQ and Project Co identifying any damage to the Facilities which has been caused as a result of the installation of such Installed Equipment into or onto the Facilities by HMQ, its contractors and/or agents.
- (w) Provide any determinations contemplated in the Project Agreement, which determinations may be subject to final resolution between the PA Parties pursuant to Schedule 27 - Dispute Resolution Procedure to the Project Agreement.
- (x) Participate in and give the PA Parties and their counsel reasonable cooperation, access and assistance (including providing or making available documents, information and witnesses for attendance at hearings and other proceedings) in connection with any proceedings between the PA Parties that relate to the Certification Services.
- (y) Prepare estimates of the Cost of the Work in respect of the Third Party Facility Conversion Work in accordance with Sections 18.15(b) and 18.17(b) of the Project Agreement.

- (z) Certify the cost incurred to correct and make good all Warranty Period Works pursuant to Section 18.15(g) of the Project Agreement.
- (aa) Prepare an estimate of the value of completing the Third Party Facility Conversion Substantial Completion Minor Deficiencies and the seasonal work in respect of the Third Party Facilities for the purpose of Section 18.17(b) of the Project Agreement.
- (bb) Prepare estimates of the Cost of the Work in respect of the Municipal Works Facilities pursuant to Section 18.18(b) of the Project Agreement.
- (cc) Certify that the City of Toronto has assumed the last Municipal Works Facility pursuant to Section 18.18(h) of the Project Agreement.
- (dd) Certify that LEED Liquidated Damages are payable by Project Co to HMQ pursuant to Section 22.5(e) of the Project Agreement.
- (ee) Certify that all of the Project Co Stage 1 Conversion Work has been completed, including all applicable seasonal work.
- (ff) Perform the Turnover Process and the Turnback Process with Project Co and Toronto 2015.
- (gg) Prepare a monthly report which, at minimum, includes the following matters:
  - (i) Executive summary;
  - (ii) Schedule status – including milestones achieved, design status, construction status, and summary of the Works completed in the reporting period;
  - (iii) Permits, Licences, Approvals and Agreements;
  - (iv) Variations log;
  - (v) Cash allowances;
  - (vi) Disputes / issues log;
  - (vii) Delay Events and Compensation Events;
  - (viii) Completion and conversion status;
  - (ix) Commissioning status;
  - (x) Deficiency reporting; and
  - (xi) Photo and Site visit appendices.
- (hh) Review Municipal Works contract documents in Part 1 (Municipal Works and Additional Works Contract Documents) of Schedule 15 - Output Specifications, monitor progress of

Works, evaluate any requests for Variations and provide determinations if such Variations are in accordance with Section 1.2.3 (Municipal Works) of Part 1 of Schedule 15 – Output Specifications.

- (ii) Review documentation on scope and handover status of Bayview Avenue south and Mill Street completion Works and provide an opinion in the event of any Dispute related to scope and responsibility for the Works, deficiency or maintenance, including preparing cost estimates.
- (jj) If required, review and prepare estimates of costs in connection with renovation/repairs to heritage designated 409 Front Street.
- (kk) If required, review and prepare estimates in relation to improvements to the Project Co Stage 2 Lands.
- (ll) Provide advice on other matters that may arise that both PA Parties may jointly require.



**APPENDIX B**

**INDEPENDENT CERTIFIER FEE**

**1. Fee for all Certification Services (other than Certification Services identified in Item (II) of Appendix A to this Independent Certifier Agreement).**

The following is a breakdown of the Fee for all Certification Services (other than the Certification Services identified in Item (II) of Appendix A to this Independent Certifier Agreement).

	<b>CERTIFICATION SERVICES (as a reference to items in Appendix A to this Independent Certifier Agreement)</b>	<b>FEE (excluding HST)</b>
1.	Item (a) of Appendix A to this Independent Certifier Agreement	\$ [REDACTED]
2.	Item (b) of Appendix A to this Independent Certifier Agreement	\$ [REDACTED]
3.	Item (c) of Appendix A to this Independent Certifier Agreement	\$ [REDACTED]
4.	Item (d) of Appendix A to this Independent Certifier Agreement	\$ [REDACTED]
5.	Item (e) of Appendix A to this Independent Certifier Agreement	\$ [REDACTED]
6.	Item (f) of Appendix A to this Independent Certifier Agreement	\$ [REDACTED]
7.	Item (g) of Appendix A to this Independent Certifier Agreement	\$ [REDACTED]
8.	Item (h) of Appendix A to this Independent Certifier Agreement	\$ [REDACTED]
9.	Item (i) of Appendix A to this Independent Certifier Agreement	\$ [REDACTED]
10.	Item (j) of Appendix A to this Independent Certifier Agreement	\$ [REDACTED]
11.	Item (k) of Appendix A to this Independent Certifier Agreement	\$ [REDACTED]
12.	Item (l) of Appendix A to this Independent Certifier Agreement	\$ [REDACTED]
13.	Item (m) of Appendix A to this Independent Certifier Agreement	\$ [REDACTED]
14.	Item (n) of Appendix A to this Independent Certifier Agreement	\$ [REDACTED]
15.	Item (o) of Appendix A to this Independent Certifier Agreement	\$ [REDACTED]
16.	Item (p) of Appendix A to this Independent Certifier Agreement	\$ [REDACTED]
17.	Item (q) of Appendix A to this Independent Certifier Agreement	\$ [REDACTED]
18.	Item (r) of Appendix A to this Independent Certifier Agreement	\$ [REDACTED]
19.	Item (s) of Appendix A to this Independent Certifier Agreement	\$ [REDACTED]

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	<b>CERTIFICATION SERVICES (as a reference to items in Appendix A to this Independent Certifier Agreement)</b>	<b>FEE (excluding HST)</b>
20.	Item (t) of Appendix A to this Independent Certifier Agreement	\$ [REDACTED]
21.	Item (u) of Appendix A to this Independent Certifier Agreement	\$ [REDACTED]
22.	Item (v) of Appendix A to this Independent Certifier Agreement	\$ [REDACTED]
23.	Item (w) of Appendix A to this Independent Certifier Agreement	\$ [REDACTED]
24.	Item (x) of Appendix A to this Independent Certifier Agreement	\$ [REDACTED]
25.	Item (y) of Appendix A to this Independent Certifier Agreement	\$ [REDACTED]
26.	Item (z) of Appendix A to this Independent Certifier Agreement	\$ [REDACTED]
27.	Item (aa) of Appendix A to this Independent Certifier Agreement	\$ [REDACTED]
28.	Item (bb) of Appendix A to this Independent Certifier Agreement	\$ [REDACTED]
29.	Item (cc) of Appendix A to this Independent Certifier Agreement	\$ [REDACTED]
30.	Item (dd) of Appendix A to this Independent Certifier Agreement	\$ [REDACTED]
31.	Item (ee) of Appendix A to this Independent Certifier Agreement	\$ [REDACTED]
32.	Item (ff) of Appendix A to this Independent Certifier Agreement	\$ [REDACTED]
33.	Item (gg) of Appendix A to this Independent Certifier Agreement	\$ [REDACTED]
34.	Item (hh) of Appendix A to this Independent Certifier Agreement	\$ [REDACTED]
35.	Item (ii) of Appendix A to this Independent Certifier Agreement	\$ [REDACTED]
36.	Item (jj) of Appendix A to this Independent Certifier Agreement	\$ [REDACTED]
37.	Item (kk) of Appendix A to this Independent Certifier Agreement	\$ [REDACTED]
38.	Item (ll) of Appendix A to this Independent Certifier Agreement	\$ [REDACTED]
	<b>TOTAL FIXED FEE (not including item ll)</b>	<b>\$ [REDACTED]</b>

The Fee for all Certification Services (other than the Certification Services identified at item (ll) of Appendix A of this Independent Certifier Agreement) will be payable monthly in arrears, subject to the PA Parties receiving invoices reflecting the Certification Services which is in form and substance satisfactory to the PA Parties and subject to (i) the Fee for all Certification Services (other than the Certification Services identified in item (ll) of Appendix A to this Independent Certifier Agreement) not exceeding, in aggregate, an aggregate amount of Cdn. \$[REDACTED] (the “Total Fixed Fee”), and (ii) the Fee for each individual Certification Service identified in items (a) through (kk) of Appendix A to this Independent Certifier Agreement (excluding the Certification Services identified at item (ll) of Appendix A of this Independent Certifier Agreement) not exceeding, individually, the

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Fee set forth above in respect of such individual Certification Service. The Fee does not include travel and travel-related expenses.

**2. Hourly rate for Certification Services contemplated in item (II) of Appendix A to the Independent Certifier Agreement for each Independent Certifier team member**

<b>TEAM MEMBER</b>	<b>HOURLY RATE</b>
BTY Group – Partner-in-Charge	[\$[REDACTED]] Dollars Canadian per hour (excluding HST)
BTY Group – Back-up Partner	[\$[REDACTED]] Dollars Canadian per hour (excluding HST)
BTY Group – IC Team Leader	[\$[REDACTED]] Dollars Canadian per hour (excluding HST)
BTY Group – Back-up IC Team Leader	[\$[REDACTED]] Dollars Canadian per hour (excluding HST)
BTY Group – Architectural, Structural and Civil Compliance & Commissioning, Substantial Completion Team	[\$[REDACTED]] Dollars Canadian per hour (excluding HST)
BTY Group – Civil Compliance & Commissioning, Substantial Completion Team	[\$[REDACTED]] Dollars Canadian per hour (excluding HST)
BTY Group – Mechanical Compliance & Commissioning Team	[\$[REDACTED]] Dollars Canadian per hour (excluding HST)
BTY Group – Electrical Compliance & Commissioning Team	[\$[REDACTED]] Dollars Canadian per hour (excluding HST)

The hourly rates do not include travel and travel-related expenses.

The Fee for the Certification Services identified in item (II) of Appendix A of this Independent Certifier Agreement will be payable monthly in arrears, subject to the PA Parties receiving invoices reflecting the performance of such Certification Services which is in form and substance satisfactory to the PA Parties.

**3. Disbursements and Travel Related Expenses**

The Fee and hourly rates are all inclusive and include all labour and materials, insurance costs, disbursements (examples: duplicating, delivery and communications) and all other overhead including any fees or other charges required by law.

HMQ shall not reimburse the Independent Certifier for any hospitality, food or incidental expenses incurred. If applicable and subject to prior approval, HMQ shall reimburse the Independent Certifier for reasonable traveling expenses incurred in connection with the performance of the Certification

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Services, such reimbursement to be made in accordance with the Government of Ontario’s Travel, Meal, and Hospitality Expenses Directive.

**APPENDIX C**

**INDEPENDENT CERTIFIER PERSONNEL**

The following personnel shall be involved in the performance of the Certification Services:

<b><u>Name</u></b>	<b><u>Title/Role</u></b>
[REDACTED]	Partner-in-Charge
[REDACTED]	Back-up Partner
[REDACTED]	IC Team Lead
[REDACTED]	Back-up IC Lead and Compliance Costing - Architectural
[REDACTED]	Architectural, Structural and Civil Compliance & Commissioning, Substantial Completion Team
[REDACTED]	Civil Compliance & Commissioning, Substantial Completion Team
[REDACTED]	Mechanical Compliance & Commissioning Team
[REDACTED]	Electrical Compliance & Commissioning Team

**APPENDIX D**

**CONDUCT OF CLAIMS**

This Appendix D shall apply to the conduct of claims, made by a third person against a party having, or claiming to have, the benefit of an indemnity pursuant to this Independent Certifier Agreement. The party having, or claiming to have, the benefit of the indemnity is referred to as the “**Beneficiary**” and a party giving the indemnity is referred to as an “**Indemnifier**”.

1. If the Beneficiary receives any notice, demand, letter or other document concerning any claim for which it appears that the Beneficiary is, or may become entitled to, indemnification under Section 11 of the Independent Certifier Agreement, the Beneficiary shall give written notice to each Indemnifier potentially obligated in respect thereof, as soon as reasonably practicable and in any event within 10 Business Days of receipt of the same. Such notice shall specify with reasonable particularity, to the extent that information is available, the factual basis for the claim and the amount of the claim.
2. Subject to Sections 3, 4 and 5 of this Appendix D, on the giving of such notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from an Indemnifier in respect of all, but not part only, of the liability arising out of the claim, such Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to the Beneficiary’s reasonable satisfaction against all costs and expenses that the Beneficiary may incur by reason of such action) be entitled to dispute the claim in the name of the Beneficiary at the Indemnifier’s own expense and take conduct of any defence, dispute, compromise, or appeal of the claim and of any incidental negotiations. The Beneficiary shall give such Indemnifier all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim. The Beneficiary shall have the right to employ separate counsel in respect of such claim and the reasonable fees and expenses of such counsel shall be to the account of the Indemnifier only where representation of both the Indemnifier and the Beneficiary by common counsel would be inappropriate due to any actual or potential conflicting interests between the Indemnifier and the Beneficiary. If and to the extent that both HMQ and Project Co are given notice in respect of the same claim, they shall cooperate in the conduct of the claim and give each other such reasonable access and assistance as may be necessary or desirable for purposes of considering, resisting and defending such claim.
3. With respect to any claim conducted by an Indemnifier:
  - (i) the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the claim;
  - (ii) the Indemnifier shall not bring the name or reputation of the Beneficiary into disrepute;
  - (iii) the Indemnifier shall not pay, compromise or settle such claims without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed;

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- (iv) the Indemnifier shall not admit liability or fault to any third party without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and
  - (v) the Indemnifier shall use commercially reasonable efforts to have the Beneficiary named as a beneficiary under any release given by the persons bringing the claim to which this Section 3 relates.
- 4. The Beneficiary shall be free to pay or settle any such claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Independent Certifier Agreement if:
  - (i) none of the Indemnifiers is entitled to take conduct of the claim in accordance with Section 2;
  - (ii) none of the Indemnifiers notifies the Beneficiary of its intention to take conduct of the relevant claim as soon as reasonably practicable and in any event within 10 Business Days of the notice from the Beneficiary under Section 1 or each of the Indemnifiers notifies the Beneficiary that it does not intend to take conduct of the claim; or
  - (iii) none of the Indemnifiers complies in any material respect with Section 3.
- 5. The Beneficiary shall be free at any time to give notice to the applicable Indemnifier that the Beneficiary is retaining or taking over, as the case may be, the conduct of any defence, dispute, compromise or appeal of any claim, or of any incidental negotiations, to which Section 2 applies. For greater certainty, the Independent Certifier acknowledges and agrees that where HMQ is the Beneficiary, HMQ may retain or take over such conduct in any matter involving Personal Information (as it is defined in the Project Agreement) or any matter involving public policy. On receipt of such notice the applicable Indemnifier shall promptly take all steps necessary to transfer the conduct of such claim to the Beneficiary, and shall provide to the Beneficiary all relevant documentation and all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim. If the Beneficiary gives any notice pursuant to this Section 5, then the applicable Indemnifier shall be released from any liabilities arising under the applicable indemnity hereunder in respect of the applicable claim.
- 6. If an Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers, whether by payment, discount, credit, saving, relief or other benefit or otherwise, a sum or anything else of value (the “**Recovery Amount**”) which is directly referable to the fact, matter, event or circumstances giving rise to the claim under the indemnity, the Beneficiary shall forthwith repay to that Indemnifier whichever is the lesser of:
  - (i) an amount equal to the Recovery Amount less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering the same; and

- (ii) the amount paid to the Beneficiary by such Indemnifier in respect of the claim under the relevant indemnity,

provided that there shall be no obligation on the Beneficiary to pursue any Recovery Amount and that the Indemnifier shall be repaid only to the extent that the Recovery Amount, aggregated with any sum recovered from the Indemnifier, exceeds the loss sustained by the Beneficiary except, however, that if the Beneficiary elects not to pursue a Recovery Amount, the Indemnifier shall be entitled to require an assignment to it of the right to do so.

- 7. Any person taking any of the steps contemplated by this Appendix D shall comply with the requirements of any insurer who may have an obligation to provide an indemnity in respect of any liability arising under this Independent Certifier Agreement.



## **SCHEDULE 7**

### **SECURITY AND BACKGROUND CHECK REQUIREMENTS**

#### **1.1 Security and Background Checks**

- (a) For clarity, under the Project Agreement (including but not limited to this Schedule 7 – Security and Background Check Requirements) words importing persons or parties are to be broadly interpreted and include an individual, corporation, limited liability company, joint stock company, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.
- (b) Except as otherwise agreed by the Parties, Project Co shall, and shall cause each Project Co Party that is not an individual, to submit to a Security and Background Check, which may be carried out on HMQ's behalf by ISU or by any other entity selected by ISU in its sole discretion. The cost of such Security and Background Checks will be borne by HMQ and ISU.
- (c) Except as otherwise agreed by the Parties, Project Co shall cause each Designated Project Co Employee to submit to a Security and Background Check, which may be carried out on HMQ's behalf by ISU or by any other entity selected by ISU in its sole discretion, within 8 months of Financial Close (unless such period is extended by HMQ and ISU in their sole discretion upon the provision of notice to Project Co of such extension) and, following such 8 month period (or any extension thereof), prior to each Designated Project Co Employee's entry on to the Site or into a Facility for the performance of any of the Project Operations. The cost of each such Security and Background Check will be borne by HMQ and ISU.
- (d) Subject to Applicable Law, HMQ shall direct Project Co to submit the information relating to Project Co and to the Project Co Parties that are not individuals and Designated Project Co Employees required in order for the Security and Background Checks to be carried out on Project Co, such Project Co Parties and such Designated Project Co Employees. Project Co shall, and shall cause all Project Co Parties that are not individuals and Designated Project Co Employees, to cooperate with ISU or any other entity selected by ISU, as applicable, for the purpose of carrying out the Security and Background Checks and to obtain all consents as may be required by Applicable Law or otherwise authorizing the disclosure of such information to HMQ and ISU.
- (e) Notwithstanding Section 1.1(c), 8 months following Financial Close (or such longer period of time determined by HMQ and ISU pursuant to Section 1.1(c)) and in an Emergency situation only (as determined by HMQ or ISU, in their sole discretion), a Designated Project Co Employee who has not submitted to a Security and Background Check in accordance with Section 1.1(c) may be permitted access to the Site and/or in any Facility provided that

such person, while on the Site or in the Facility, is accompanied at all times by an HMQ, HMQ Party or ISU authorized representative, agent or employee.

- (f) HMQ may require the renewal of the Security and Background Checks with respect to Project Co, a Project Co Party that is not an individual, any Designated Project Co Employee, any class of Designated Project Co Employee, or all Designated Project Co Employees, at such times and/or intervals as HMQ or ISU may reasonably direct. The cost of such renewed Security and Background Checks shall be borne by HMQ and ISU.
- (g) Project Co shall obtain, maintain and renew, as applicable, a written consent and associated release, on prescribed Government of Ontario or ISU forms, as applicable, from Project Co, each Project Co Party that is not an individual and each Designated Project Co Employee, authorizing the conduct of a Security and Background Check.
- (h) Subject to Applicable Law, HMQ may, in its sole discretion, direct Project Co and Project Co shall ensure that any person shall not be:
  - (i) employed or engaged by Project Co or any Project Co Party with respect to the performance of any of Project Co’s responsibilities under this Agreement; or
  - (ii) otherwise have access to the Site or the Facilities,

where such person,

- A. refuses to submit to a Security and Background Check or fails to provide the required consent to permit such a check to be conducted; or
- B. is otherwise considered to constitute a security risk in the opinion of HMQ and/or ISU.

For greater certainty, HMQ’s discretion under Section 1.1(h) shall be interpreted to be absolute and unrestricted, subject to Applicable Law.

- (i) Where HMQ has exercised its rights under Section 1.1(h), the affected person may request,
  - (i) that a further inquiry be made to determine whether a subsequent pardon or acquittal on appeal has not been properly recorded in the records maintained by CPIC; or
  - (ii) that the alleged record be verified by way of a fingerprint search through CPIC,and HMQ may, at its sole discretion, withdraw its objection with respect to any such person who is exonerated or vindicated as a result of that inquiry or verification.
- (j) Where a person liable to a Security and Background Check is not an individual, a Security and Background Check may be required of each of such person’s partners, trustees, members, officers, or directors (the “**Individual Representatives**”) provided that HMQ will only require a Security and Background Check for such persons if:

- (i) the Individual Representative has or will have access to the Site; or
- (ii) the Individual Representative has or will have access to Confidential Information of HMQ or an HMQ Party.

No later than 10 days following Financial Close, Project Co shall provide HMQ and ISU with a list of Individual Representatives that are liable to a Security and Background Check pursuant to this Section 1.1(j), which list shall include a description of the Individual Representative's role on the Project and, if the individual has, or will have, access to Confidential Information of HMQ or an HMQ Party, a brief description of such Confidential Information, and shall update such list from time to time as Individual Representatives become liable to a Security and Background Check.

## **1.2 Change in Security and Security and Background Check Requirements**

- (a) Any change in Security and Security and Background Check Requirements from those in existence on the Submission Deadline shall, to the extent such change materially adversely interferes with Project Co's ability to perform the Project Operations or materially adversely affects Project Co's cost of performing the Project Operations, subject to and in accordance with Schedule 22 - Variation Procedure, result in a Variation.

## **1.3 Effect of Convictions**

- (a) Project Co (to the extent permitted by Applicable Law) shall, and shall cause each Project Co Party to, ensure that no person who:
  - (i) discloses that he or she has been arrested during the Project Term;
  - (ii) discloses that he or she has been detained for immigration purposes during the Project Term;
  - (iii) discloses any Relevant Convictions, or who is found to have any Relevant Convictions following the completion of a Security and Background Check; or
  - (iv) discloses that he or she has been charged with an offence that could lead to a Relevant Conviction (in all cases, of which Project Co or a Project Co Party is aware or ought to be aware),

is allowed access to the Site and/or the Facilities or is allowed to perform any of the Project Operations, without the prior written consent of HMQ, in its sole discretion.

## **1.4 Notification of Detention, Incarceration or Convictions**

- (a) To the extent permitted by Applicable Law, Project Co shall ensure that HMQ is kept advised at all times of any person employed or engaged by Project Co, or any Project Co Party, who, subsequent to the commencement of employment or engagement,

- (i) has been arrested;
- (ii) has been detained for immigration purposes;
- (iii) receives a Relevant Conviction; or
- (iv) is charged with an offence that could lead to a Relevant Conviction (of which Project Co or a Project Co Party becomes aware or whose previous Relevant Convictions become known to Project Co or a Project Co Party).

Project Co shall use commercially reasonable efforts to obtain, or to cause all Project Co Parties to obtain, all consents as may be required by Applicable Law or otherwise authorizing the disclosure of such information to HMQ and ISU.

**SCHEDULE 8**

**PROVINCIAL LOAN AGREEMENT**

**BETWEEN**

**DUNDEE KILMER DEVELOPMENTS L.P.**  
**as Borrower**

**AND**

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO**  
**as represented by the Minister of Infrastructure,**  
**as represented by Ontario Infrastructure and Lands Corporation**  
**as Lender**

**AND**

**[REDACTED]**

**MADE AS OF**

**THE \_\_\_\_\_ DAY OF DECEMBER, 2011**

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**LOAN AGREEMENT**

THIS AGREEMENT is made as of the \_\_\_\_ day of \_\_\_\_\_, 2011

BETWEEN

**DUNDEE KILMER DEVELOPMENTS L.P.**  
(the “**Borrower**”)

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO** as represented by the Minister of Infrastructure, as represented by Ontario Infrastructure and Lands Corporation, a non-share capital corporation continued and amalgamated under the *Ontario Infrastructure and Lands Corporation Act*, 2011, S.O. 2011, c. 9, Schedule 32, as amended  
(the “**Lender**”)

- and -

**[REDACTED]**

- and -

**EACH DECLARANT OR PERMITTED SUBSIDIARY  
THAT MAY BECOME A PARTY HERETO AS A  
GUARANTOR FROM TIME TO TIME**  
(each, including [REDACTED], a “**Guarantor**” and, collectively, the “**Guarantors**”)

WHEREAS the Borrower has requested that the Lender agree to provide the Loan, if requested, in order to repay the AFP Financing and the Lender has agreed to provide the Loan to the Borrower upon and subject to the terms and conditions set out in this Agreement; and

AND WHEREAS it is a condition of the provision of the Loan that the Guarantors provide limited guarantees for the obligations of the Borrower hereunder on the terms and conditions set forth herein (and the Guarantors have so agreed).

NOW THEREFORE, in consideration of the covenants and agreements herein contained, the parties agree as follows:

**ARTICLE 1 – INTERPRETATION**

1.01           Definitions

Except as otherwise expressly provided herein, capitalized terms used in this Agreement and its schedules shall have the meanings given to them in Schedule A-1.

1.02           Rules of Interpretation

Except as otherwise expressly provided herein, the rules of interpretation set forth in Schedule A-2 shall apply to this Agreement and the other Loan Documents.

1.03           Accounting Principles

Where the character or amount of any asset or liability or item of revenue or expense is required to be determined, or any consolidation or other accounting computation is required to be made, for the purpose of this Agreement or any Loan Document, such determination or calculation will, to the extent applicable and except as otherwise specified herein or as otherwise agreed in writing by the parties, be made in accordance with GAAP.

1.04           Interest Calculations and Payments

Unless otherwise stated, wherever in this Agreement reference is made to a rate of interest “*per annum*” or a similar expression is used, such interest will be calculated on the basis of a calendar year of 365 days or 366 days, as the case may be, and using the nominal rate method of calculation and not the effective rate method of calculation or on any other basis that gives effect to the principle of deemed reinvestment of interest. Interest will continue to accrue after maturity and default and/or judgment, if any, until payment thereof, and interest will accrue and be compounded monthly on overdue interest, if any.

1.05           Schedules

The following are the Schedules attached hereto and incorporated by reference and deemed to be part hereof:

Schedule A-1	-	Definitions
Schedule A-2	-	Rules of Interpretation
Schedule 1.01(A)	-	Legal Description of Project Lands
Schedule 1.01(B)	-	Form of Assignment of Condominium Sales Agreements and Deposits
Schedule 1.01(C)	-	Form of Assignment of Material Project Agreements
Schedule 1.01(D)	-	<b>[Intentionally Deleted]</b>
Schedule 1.01(E)	-	Dispute Resolution Procedures
Schedule 1.01(F)	-	Form of Debenture
Schedule 1.01(G)	-	Form of Drawdown Notice
Schedule 1.01(H)	-	Form of General Security Agreement

Schedule 1.01(I)	-	<b>[Intentionally Deleted]</b>
Schedule 1.01(J)	-	Form of Inter-Company Subordination Agreement
Schedule 1.01(K)	-	Material Licences
Schedule 1.01(L)	-	Material Project Agreements
Schedule 1.01(M)	-	Form of Notice of Intent to Borrow
Schedule 1.01(N)	-	List of Encumbrances
Schedule 1.01(O)	-	Project Budget
Schedule 1.01(P)	-	Relevant Jurisdiction
Schedule 1.01(Q)	-	Repayment Notice
Schedule 1.01(R)	-	Form of Limited Recourse Guarantee and Pledge
Schedule 1.01(S)	-	Proforma Sale Price
Schedule 7.01(12)	-	Ownership Structure

## **ARTICLE 2 – THE LOAN**

### **2.01        Loan**

Subject to the terms and conditions set forth in this Agreement, the Lender agrees to advance to the Borrower a non-revolving Loan in an amount up to the Advance Amount.

### **2.02        Purpose of the Loan**

The Loan will only be used for the purpose of repaying the AFP Financing on the AFP Financing Maturity Date in an amount not to exceed the Advance Amount.

### **2.03        Manner of Borrowing and Drawdown**

(1) Subject to the terms and conditions set forth in this Agreement, the Borrower or the AFP Lenders' Agent on the Borrower's behalf, may, in Canadian Dollars, make up to two Drawdowns to be effected only on the AFP Financing Maturity Date and, if applicable, the Final Settlement Date and will be in an aggregate principal amount up to the Advance Amount as calculated and determined in accordance with this Section 2.03.

(2) Subject to the provisions of this Agreement, the Borrower or the AFP Lenders' Agent on the Borrower's behalf may make the Drawdown hereunder by giving the Lender the Notice of Intention to Borrow and the Drawdown Notice. The date a Drawdown is made must be a Business Day.

(3) Notice of Intention to Borrower.

(a) The Borrower or the AFP Lenders' Agent, subject to the terms of the Intercreditor Agreement, must give the Lender the Notice of Intention to Borrow at least 30 days but not more than 60 days in advance of the AFP Financing Maturity Date.

- (b) The Notice of Intention to Borrow will include a notional Advance Amount calculation based on the most current available information, together with a certificate of the AFP Lenders’ Agent confirming the amount outstanding under the AFP Financing (including all amounts outstanding in each AFP Project Account pursuant to the AFP Lending Agreements) and a detailed calculation of the notional Advance Amount and supporting evidence to be attached thereto of all advances, repayments and prepayments under the AFP Lending Agreements, deposits and withdrawals from the AFP Project Accounts pursuant to the AFP Lending Agreements, the Net Sales Proceeds of each Unit, other Project Revenues and the Construction Budget.
  - (c) The Borrower and AFP Lenders’ Agent will provide such additional information reasonably requested by the Lender to support the calculation of the notional Advance Amount.
  - (d) If the Lender, Borrower and the AFP Lenders’ Agent are unable to agree on the notional Advance Amount within ten (10) days of receipt of the Notice of Intention to Borrow, then either party may refer the question of whether the notional Advance Amount has been accurately calculated in respect of the disputed portion of the notional Advance Amount (the “**Disputed Advance Amount**”) based on current and available information for resolution in accordance with the Dispute Resolution Procedures.
- (4) Drawdown Notice.
- (a) The Borrower or the AFP Lenders’ Agent, subject to the terms of the Intercreditor Agreement, must give the Lender the Drawdown Notice at least 15 days but not more than 30 days in advance of the AFP Financing Maturity Date.
  - (b) The Drawdown Notice will include the Advance Amount as calculated and determined in accordance with Section 2.03(3) (including, if applicable, a clear distinction between the Disputed Advance Amount and the agreed upon portion of the Advance Amount (the “**Agreed Advance Amount**”) and adjusted to reflect any additional drawdowns or payments pursuant to the AFP Lending Agreements that are relevant to the calculation of the Advance Amount, together with a certificate of the Lenders’ Agent confirming the amount outstanding under the AFP Financing (including all amounts outstanding in each project account pursuant to the AFP Lending Agreements) and a detailed calculation of the Advance Amount (including, if applicable, a clear distinction between the Disputed Advance Amount and the Agreed Advance Amount) and supporting evidence to be attached thereto of all advances, repayments and prepayments under the AFP Lending Agreements, deposits and withdrawals from the AFP Project Accounts pursuant to the AFP Lending Agreements, the Net Sales Proceeds of each Unit, other Project Revenues and the Construction Budget.
  - (c) If the Lender disagrees with the Advance Amount or any portion thereof (including the portion comprising the Disputed Advance Amount) set out in the Drawdown

Notice and the issue of disagreement was neither determined nor resolved through the Dispute Resolution Procedures under Section 2.03(3) (such disputed portion of the Advance Amount, the “**Revised Disputed Advance Amount**”), within two (2) Business Days following receipt of the Drawdown Notice the Lender may refer the question of whether the Advance Amount (including the portion comprising the Revised Disputed Advance Amount) has been accurately calculated with reference to the notional Advance Amount as determined pursuant to Section 2.03(3) and based on current and available information for resolution in accordance with the Dispute Resolution Procedures.

- (d) If the Lender, Borrower and the AFP Lenders’ Agent agree or are unable to agree on the Advance Amount within four (4) Business Days following receipt of the Drawdown Notice, then (i) the Borrower or the AFP Lenders’ Agent will issue a revised Drawdown Notice (the “**Revised Drawdown Notice**”) setting out a detailed calculation of the Advance Amount that clearly distinguishes, if applicable, the Revised Disputed Advance Amount and the agreed upon portion of the Advance Amount (the “**Revised Agreed Advance Amount**”) and (ii) if applicable, the Revised Disputed Advance Amount will be resolved in accordance with the Dispute Resolution Procedures.
- (e) The amount advanced by the Lender pursuant to the Revised Drawdown Notice will be, subject to satisfaction of the conditions in Section 3.01 and 3.02, either, as applicable, (i) the Revised Agreed Advance Amount or (ii) the agreed upon Advance Amount. The advance of either the Revised Agreed Advance Amount or the Advance Amount shall constitute a Drawdown and Obligation of the Loan Parties hereunder.
- (f) In the event the Revised Disputed Advance Amount calculation is to be resolved pursuant to the Dispute Resolution Procedures, within five (5) Business Days following final resolution pursuant to the Dispute Resolution Procedures of the Revised Disputed Advance Amount (the “**Final Settlement Date**”), the Lender shall advance the portion of the Revised Disputed Advance Amount as set out in the award issued pursuant to the Dispute Resolution Procedures (the “**Final Settlement Amount**”) to the AFP Lenders’ Agent and the advance of such amount shall constitute a Drawdown and an Obligation of the Loan Parties hereunder. Upon payment of such Final Settlement Amount, neither the Borrower, the AFP Lenders’ Agent nor any lender, bondholder or participant under the AFP Lending Agreements will have recourse against the Lender for any other amounts that may be outstanding or owing under the AFP Lending Agreements.

2.04 Account of Record

The Lender will open and maintain books of account evidencing the Loan and all other amounts owing by the Borrower to the Lender hereunder. The Lender will enter in the foregoing accounts details of all amounts from time to time owing, paid or repaid by the Borrower hereunder. The information entered in the foregoing accounts will, in the absence of manifest error, constitute prima facie evidence of the obligations of the Borrower to the Lender hereunder with

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respect to the Loan and all other amounts owing by the Borrower to the Lender hereunder. After a request by the Borrower, the Lender will promptly advise the Borrower of such entries made in the Lender's books of account.

2.05 Interest on Overdue Loan, Unpaid Costs and Expenses

Unless the payment of interest is otherwise specifically provided for herein, where the Borrower fails to pay any amount required to be paid by it hereunder when due having received notice that such amount is due, the Borrower shall pay interest on such unpaid amount from the time such amount is due until paid at an annual rate equal to the Interest Rate.

**ARTICLE 3 – CLOSING AND DISBURSEMENT CONDITIONS**

3.01 Conditions Precedent to Financial Close

The obligation of the Lender to make the Drawdown hereunder is subject to and conditional upon the prior satisfaction of the following conditions precedent to be satisfied on or by the date of this Agreement:

- (a) the Lender will have received an Order-in-Council approval to make loans pursuant to the *Ministry of Infrastructure Act, 2011*(Ontario) (section 7(4)(i)), together with any other approvals required from each applicable Governmental Authority, in respect of the Loan and this Agreement;
- (b) concurrently with the execution of this Agreement, the Project Agreement shall be executed and delivered by the Borrower to HMQ and Financial Close achieved;
- (c) the Lender will have received a certificate by the Borrower confirming that the representations in Article 7 are true and correct as of Financial Close;
- (d) duly executed copies of all Loan Documents (other than the Debentures and the Section 118 Restriction) and deliveries in connection therewith will have been delivered to the Lender and all such Loan Documents (other than the Debentures and the Section 118 Restriction) will have been duly registered, filed and recorded as a first priority Encumbrance in favour of the Lender (subject to the Intercreditor Agreement and the Permitted Encumbrances) in all Relevant Jurisdictions where required by Applicable Law or where the Lender considers it necessary or desirable, acting reasonably, to do so (such delivery, registration, filing and recordation shall be subject to customary refinancing and escrow arrangements satisfactory to the Lender and the AFP Lender, acting reasonably);
- (e) the Lender will have received certified copies of the Organizational Documents or applicable extracts thereof of each Loan Party, the resolutions authorizing the execution and delivery of, and performance of each Loan Party's respective obligations under, the Loan Documents and the transactions contemplated herein, and a certificate as to the incumbency of the officers of the Loan Parties executing

the Loan Documents and any other documents to be provided pursuant to the provisions hereof;

- (f) certificates of status, limited partnership reports or comparable certificates or reports for all Relevant Jurisdictions of each Loan Party will have been delivered to the Lender;
- (g) the Lender will have received copies of all shareholder, regulatory, governmental and other approvals, if any, required in order for the Borrower and the other Loan Parties to enter into this Agreement and to perform its obligations hereunder;
- (h) the Lender will have received copies of all AFP Lending Agreements and confirmation of the maximum amount of the Loan based on the Financial Model and the AFP Lending Agreements; and
- (i) a currently dated letter of opinion of Loan Parties' Counsel as to such matters relating to the execution and delivery of the Loan Documents (other than the Debentures and the Section 118 Restriction) (including, without limitation, existence and capacity, authorization, execution, delivery, enforceability, registration and perfections, non-contravention and *Securities Transfer Act, 2006* (Ontario) control opinion) and in such form as Lender's Counsel and Loan Parties' Counsel may agree, each acting reasonably, addressed to the Lender and to Lender's Counsel will have been delivered to the Lender,

provided that all documents delivered pursuant to this Section 3.01 must be in full force and effect and in form and substance satisfactory to the Lender, acting reasonably.

### 3.02 Conditions Precedent to the Drawdown

The obligation of the Lender to make the Drawdown hereunder is subject to and conditional upon the prior satisfaction of the following additional conditions precedent prior to or on the AFP Financing Maturity Date:

- (a) the Lender will have received a Notice of Intention to Borrow as required under Section 2.03(3);
- (b) the Lender will have received a Drawdown Notice as required under Section 2.03(4);
- (c) Project Substantial Completion shall have been achieved in accordance with the Project Agreement;
- (d) Project Co. Stage 1 Conversion Substantial Completion shall have been achieved in accordance with the Project Agreement;
- (e) the Project Agreement shall not have been terminated pursuant to its terms (other than a termination pursuant to Section 44.5(a) of the Project Agreement); provided that, for the purposes of this Section 3.02(e), a novation under and in accordance

with Section 10 of the AFP Lenders' Direct Agreement shall not be considered to be a termination of the Project Agreement;

- (f) the AFP Financing remains outstanding and there has been no Refinancing of the AFP Financing or amendment to the AFP Lending Agreements except in accordance with Section 8.01(34) and the terms of the Intercreditor Agreement;
- (g) the Lender shall have confirmation from the Independent Insurance Consultant confirming that the Loan Parties' insurance complies with Section 8.01(7), provided that, for clarity, the Loan Parties shall, subject to the terms and conditions of Schedule 25 of the Project Agreement, not be obligated to maintain or cause to be maintained insurance for any Uninsurable Risk (as defined in Section 8 of Schedule 25 of the Project Agreement); and
- (h) the Lender shall be satisfied that contemporaneously with the Drawdown taking place, an assignment or release of any AFP Lending Agreements and the Insurance Trust Agreement, as requested by the Lender, shall take place in each case in accordance with the terms of the Intercreditor Agreement (including the establishment of Project Accounts and/or transition of AFP Project Accounts under the AFP Lending Agreements).

3.03 Waiver

For the avoidance of doubt, the absence of a Default or Event of Default under this Loan Agreement shall not be a condition precedent to the Drawdown. The conditions set forth in Sections 3.01 and 3.02 are inserted for the sole benefit of the Lender and may be waived by the Lender, in whole or in part (with or without terms or conditions).

**ARTICLE 4 – PAYMENTS OF INTEREST**

4.01 Interest on Loan

The Borrower will pay interest on the Loan at a rate *per annum* equal to the Interest Rate. Such interest will be payable in arrears on each Cash Sweep Payment Date for such Loan for the period from and including the AFP Financing Maturity Date or preceding Cash Sweep Payment Date, as the case may be, for such Loan to but excluding such Cash Sweep Payment Date (or, if such Cash Sweep Payment Date follows the repayment of such Loan, to but excluding the date of such repayment) and will be calculated on the principal amount of the Loan outstanding during such period and on the basis of the actual number of days elapsed in a year of 365 days or 366 days, as the case may be. In the event that following the application of funds pursuant to Section 6.02(1)(e) on any Cash Sweep Payment Date there is a shortfall of funds available to pay the full amount of interest accrued and calculated pursuant to this Section 4.01 for the applicable Fiscal Quarter, such unpaid interest will be capitalized and be compounded and added to the principal balance of the Loan quarterly in arrears on the last Business Day of each Fiscal Quarter commencing in the Fiscal Quarter the Loan is advanced hereunder. All accrued and interest that has not been paid pursuant to



Section 6.02(1) shall be due and payable on full on the earlier of (a) the Maturity Date and (b) acceleration of the Loan pursuant to Section 11.02.

Each determination by the Lender of the interest calculated and payable from time to time hereunder will, in the absence of manifest error, be binding upon the Borrower.

4.02            Discharge Fees

The Borrower shall pay to the Lender, upon the delivery by the Lender of any partial discharge of a Unit from the Security, a discharge fee of \$[REDACTED] for each partial discharge of a Unit or \$[REDACTED] per Unit for each block of 10 or more Units discharged pursuant to a single document.

4.03            Maximum Rate of Interest

Notwithstanding anything contained herein to the contrary, the Borrower will not be obliged to make any payment of interest or other amounts payable to the Lender hereunder in excess of the amount or rate that would be permitted by Applicable Law or would result in the receipt by the Lender of interest at a criminal rate (as such terms are construed under the *Criminal Code* (Canada)). If the making of any payment by the Borrower would result in a payment being made that is in excess of such amount or rate, the Lender will determine the payment or payments that are to be reduced or refunded, as the case may be, so that such result does not occur.

**ARTICLE 5 – REPAYMENT**

5.01            Mandatory Repayment

(1)     The Borrower will repay in full the outstanding principal amount of the Loan and the other Obligations on the Maturity Date.

(2)     The Borrower shall prepay the Loan from the following amounts (any such repayments shall result in a corresponding reduction in the Loan):

- (a)     the Net Project Revenues, such payments to be made on each Cash Sweep Payment Date;
- (b)     to the extent permitted under the Insurance Trust Agreement, the amount of any Insurance Proceeds received by the Borrower or any Guarantor if not required to be applied towards replacement, restoration or rebuilding of same, on the terms and conditions set out herein, subject to any provisions of the Material Project Agreements relating to the application of such Insurance Proceeds; and
- (c)     the amount of any proceeds or compensation for any partial or total expropriation, compulsory acquisition of any asset or right or interest of the Borrower or any Guarantor or the revocation of any approval, authorization, exemption, filing, license, order, permission, recording or registration in connection with the Project,

provided that the Borrower shall give the Lender a Repayment Notice (which shall include the details of calculation of the prepaid amounts) prior to the proposed prepayment date.

5.02 Voluntary Prepayments and Reductions

If the Lender has received a Repayment Notice from the Borrower not less than 30 days prior to the proposed prepayment date, the Borrower may from time to time prepay the Loan without penalty provided that (a) each such prepayment must be in a minimum amount of the lesser of (i) \$[REDACTED] and (ii) the principal amount of all Loans and interest thereon outstanding immediately prior to such prepayment, (b) any such prepayment in excess of \$[REDACTED] shall be in increments of and a minimum of the lesser of \$[REDACTED] and the principal amount of all Loans outstanding immediately prior to such prepayment.

5.03 Non-Revolving Loan

This Loan is not a revolving loan. Any payments of principal made pursuant to this Agreement shall be a permanent repayment of the Loan and not available for re-borrowing.

**ARTICLE 6 – PLACE AND APPLICATION OF PAYMENTS/FUNDS**

6.01 Place of Payment of Principal, Interest and Fees

All payments of principal, interest, fees and other amounts to be made by the Borrower to the Lender pursuant to this Agreement will be made in the currency in which the Loan is outstanding for value on the day such amount is due or, if such day is not a Business Day, on the Business Day next following with interest, by deposit or transfer thereof to the account of the Lender maintained at the Lender's Office or at such other place as the Borrower and the Lender may from time to time agree.

6.02 Application of Funds

(1) Subject to Section 6.02(3), after the AFP Financing Maturity Date and prior to an Event of Default, the Borrower shall direct and deposit all Project Revenues to the Project Operating Account (including all amounts in the AFP Project Accounts transitioned on the AFP Financing Maturity Date pursuant to Section 3.02(h)) and shall apply the balance in the Project Operating Account, or cause the balance in the Project Operating Account, to be applied on the following applicable Payment Dates, in or towards payment of the amounts referred to below in the following manner and in the following order of priority and in each case only if and to the extent that payments or provisions of a higher order of priority have been made in full:

- (a) *first*, on each Monthly Payment Date, to payment of any outstanding costs and expenses pursuant to Section 14.01, security trustee fees, the insurance trustee's fees, the Account Bank's fees and/or transaction expenses then due or to become due prior to the next Payment Date;
- (b) *second*, on each Monthly Payment Date, to payment of Taxes of the Loan Parties and the Project then due or to become due prior to the next Payment Date which if

not paid would give rise to an Encumbrance on the Project Lands that would be in priority to the Security;

- (c) *third*, to payment of the insurance required pursuant to Section 8.01(6) then due or to become due prior to the next Payment Date;
- (d) *fourth*, to the payment of Project Expenses then due or to become due prior to the next Payment Date,

any remaining funds in the Project Operating Account following application on each Monthly Payment Date pursuant to Section 6.02(1)(a) to (d) shall remain in the Project Operating Account unless a balance exists on each Cash Sweep Payment Date, in which case such balance shall be applied as follows:

- (e) *fifth*, to the payment of interest accrued for the applicable Fiscal Quarter as calculated pursuant to Section 4.01, followed by fees, commissions, and scheduled payments (other than principal repayments) under this Agreement; and
- (f) *sixth*, any remaining funds in the Project Operating Account, being the Net Project Revenues, to be applied in accordance with Section 5.01(2)(a).

(2) All payments and distribution contemplated in Section 6.02(1) shall be paid by the applicable Loan Parties when due and payable with the exception of amounts on account of the payments referenced in Section 6.02(f) which shall be applied in accordance with Section 5.01(2)(a).

(3) The Lender may elect to have some or all of the AFP Project Accounts transferred to it in which event such AFP Project Accounts shall constitute the Project Accounts for the purposes hereof provided that this shall be effected on a basis consistent with Section 6.02(1) and in accordance with the Intercreditor Agreement.

## **ARTICLE 7 – REPRESENTATIONS AND WARRANTIES**

### **7.01 Representations and Warranties**

Subject to Section 7.02, each of the Loan Parties represents and warrants to the Lender as follows and acknowledges and confirms that the Lender is relying upon such representations and warranties:

(1) **Existence and Qualification** Each of the Loan Parties (a) that is a corporation or company has been duly incorporated, amalgamated or continued, as the case may be, and is validly subsisting as a corporation or company under the laws of its jurisdiction of incorporation, amalgamation, or continuance, as the case may be, (b) that is a partnership or trust has been duly created or established as a partnership or trust and validly exists under the laws of the jurisdiction in which it has been created or established, and (c) is duly qualified to carry on business in all jurisdictions in which it carries on its business and has all Material Licences required to conduct such business.

(2) Power and Authority Each of the Loan Parties has the power, authority and right (a) to enter into and deliver, and to exercise its rights and perform its obligations under, the Loan Documents to which it is a party and all other instruments and agreements delivered by it pursuant to any of the Loan Documents and any Material Project Agreement, and (b) to own its Property and carry on its business as currently conducted and as currently proposed to be conducted by it. Without limiting the foregoing, each Loan Party has all necessary power and authority to own its interest in the Project Lands and to develop and complete the Project and is duly licensed, registered and qualified to carry out such activities and its respective obligations under the Material Project Agreements.

(3) Execution, Delivery, Performance and Enforceability of Documents The execution, delivery and performance of each of the Loan Documents (other than Debentures prior to Project Co Lands Transfer Date) and Material Project Agreement to which a Loan Party is a party, and every other instrument or agreement delivered by it pursuant to any Loan Document or any Material Project Agreement, has been duly authorized by all actions, if any, required on its part and by its directors (or where applicable partners, members or managers), and each of such documents has been duly executed and delivered and constitutes a valid and legally binding obligation of the particular Loan Party enforceable against it in accordance with its terms subject to bankruptcy, insolvency, reorganization, arrangement, winding-up, moratorium and other similar laws of general application limiting the enforcement of creditors' rights generally and to general equitable principles.

(4) Documents Comply with Applicable Laws, Organizational Documents and Contractual Obligations Neither the entering into nor the delivery of, and neither the consummation of the transactions contemplated in nor compliance with the terms, conditions and provisions of, the Loan Documents and the Material Project Agreements by any Loan Party conflicts with or will conflict with, or results or will result in any breach of, or constitutes a default under or contravention of, any Requirements of Law applicable to it, or Organizational Documents, or results or will result in the creation or imposition of any Encumbrance other than Permitted Encumbrances except in favour of the Lender upon any of its Property.

(5) Consents Each of the Loan Parties has obtained, made or taken all consents, approvals, authorizations, declarations, registrations, filings, notices and other actions whatsoever required as to the date hereof in connection with the execution and delivery by it of each of the Loan Documents and the Material Project Agreements to which it is a party and the consummation of the transactions contemplated in the Loan Documents and the Material Project Agreements.

(6) Taxes Each of the Loan Parties has paid or made adequate provision for the payment of all Taxes levied on it or on its Property or income that are due and payable, including interest and penalties, or has accrued such amounts in its financial statements for the payment of such Taxes, and there is no material action, suit, proceeding, investigation, audit or claim now pending, or to its knowledge threatened, by any Governmental Authority regarding any Taxes nor has it agreed to waive or extend any statute of limitations with respect to the payment or collection of Taxes.

(7) Judgments, Etc. None of the Loan Parties is subject to any judgment, order, writ, injunction, decree or award, or to any restriction, rule or regulation (other than customary or ordinary course restrictions, rules and regulations consistent or similar with those imposed on other Persons

engaged in similar businesses) that has not been stayed or of which enforcement has not been suspended.

(8) Absence of Litigation There are no actions, suits or proceedings pending or, to the best of the Loan Parties’ knowledge and belief, after due inquiry and all reasonable investigation, threatened against or affecting any Loan Party that are reasonably likely to cause, either separately or in the aggregate, a Material Adverse Change. None of the Loan Parties is in default with respect to any Applicable Law in a manner or to an extent that could reasonably be expected to cause a Material Adverse Change.

(9) Labour Relations None of the Loan Parties is engaged in any unfair labour practice that could reasonably be expected to cause a Material Adverse Change; and there is no unfair labour practice complaint pending against any of the Loan Parties or, to the best of the knowledge of the Loan Parties, threatened against any of them, before any Governmental Authority that if adversely determined could reasonably be expected to cause a Material Adverse Change. No grievance or arbitration arising out of or under any collective bargaining agreement is pending against any of the Loan Parties or to the best of the Loan Parties’ knowledge, threatened against any of them that is reasonably likely to cause, a Material Adverse Change. To the best of the Loan Parties’ knowledge, no strike, labour dispute, slowdown or stoppage is pending against any of the Loan Parties or, to the best of their knowledge, threatened against any of them and no union representation proceeding is pending with respect to any employees of any Loan Parties, except (with respect to any matter specified in this sentence, either individually or in the aggregate) such as could not reasonably be expected to cause a Material Adverse Change.

(10) Insolvency None of the Loan Parties (i) has committed any act of bankruptcy, (ii) is insolvent, or has proposed, or given notice of its intention to propose, a compromise or arrangement to its creditors generally, (iii) has made any petition for a receiving order in bankruptcy filed against it, made a voluntary assignment in bankruptcy, taken any proceeding with respect to any compromise or arrangement, taken any proceeding to have itself declared bankrupt or wound-up, taken any proceeding to have a receiver appointed of any part of its assets, has had any Encumbrancer take possession of its Property, or (iv) has had an execution or distress become enforceable or become levied on its Property.

(11) Changes to Applicable Law None of the Loan Parties is aware of any pending or proposed changes to Applicable Law which would render illegal or materially restrict the Works, operation of the Project or the sale of the Units.

(12) Ownership Structure The ownership structure of the Loan Parties is as set out in Schedule 7.01(12). Each Guarantor, other than [REDACTED], is a wholly owned Subsidiary of the Borrower or a wholly owned Subsidiary of a Guarantor.

(13) Relevant Jurisdictions The Relevant Jurisdictions for the Loan Parties is the Province of Ontario.

(14) Material Project Agreements and Material Licences

- (a) True copies of each of the Material Project Agreements and Material Licences existing as of the date of this Agreement have been delivered to the Lender.
- (b) No event has occurred and is continuing that would constitute a material breach of or a material default under any Material Project Agreement or Material Licence.

(15) Financial Model The Financial Model and all estimates, budgets, forecasts and projections provided by or on behalf of the Loan Parties to the Lender have been prepared with due care and skill, based on all information known at the time of preparation which could reasonably be relevant to the preparation thereof and are subject only to assumptions that are reasonable in the circumstances.

(16) No Material Adverse Change Since Financial Close, there has been no condition (financial or otherwise), event or change in any Loan Parties' business, liabilities, operations, results of operations, assets or prospects which constitutes, or could reasonably be expected to constitute, or cause, a Material Adverse Change.

(17) Security The Security (other than the Debentures and the Section 118 Restriction prior to the Project Co Lands Transfer Date) is effective to create in favour of the Lender, as security for the Obligations described therein, a legal, valid, binding and enforceable security interest in the collateral described therein and proceeds thereof.

(18) Sufficiency of Material Project Agreements.

- (a) The Material Licenses and the Material Project Agreements:
  - (i) comprise all of the property interests (both real and personal) necessary to secure any right material to the acquisition, leasing, development, construction, installation, completion, operation and maintenance of the Project in accordance with all Requirements of Law and the Material Project Documents all without reference to any proprietary information not owned by the applicable Loan Party or available to any Loan Party, as applicable, under the Material Project Agreements;
  - (ii) are sufficient to enable the Project to be located, constructed, operated and maintained on the Project Lands; and
  - (iii) provide adequate ingress and egress for any reasonable purpose in connection with the construction, operation, interconnection and maintenance of the Project under the Material Project Agreements.
- (b) There are no material services, materials or rights required for the construction, operation, or maintenance of the Project in accordance with the Material Project Agreements and the Plans and Specifications other than those available under the Material Project Agreements.

(19) Environmental Matters

- (a) Other than contamination that arose prior to the Project Co Lands Transfer Date or that is described in or can be inferred from the Technical Reports, the Project Lands are in full compliance with all Environmental Law; none of the Loan Parties is aware of, nor has it received notice of, any past, present or future condition, event, activity, practice or incident that may interfere with or prevent the compliance or continued compliance of the Project or the Loan Parties in all respects with all Environmental Law; and the Loan Parties have obtained all Permits in connection with the Project that are currently required under all Environmental Law and is in full compliance with the provisions of such licences, permits and approvals.
- (b) Other than contamination that arose prior to the Project Co Lands Transfer Date or that is described in or can be inferred from the Technical Reports, the Loan Parties are not aware that any Hazardous Substances exist on, about or within or have been used, generated, stored, transported, disposed of on, or Released from the Project Lands other than in material accordance and compliance with all Environmental Law.
- (c) Following the Project Co Lands Transfer Date, no Loan Party has (i) with respect to the Project Lands, incurred any current and outstanding liability for any clean-up or remedial action under any Environmental Law with respect to current or past operations, events, activities, practices or incidents relating thereto, (ii) received any outstanding written request for information (other than information to be provided in the normal course in connection with applications for Permits) by any Person under any Environmental Law with respect to the condition, use or operation of the Project Lands, (iii) received any outstanding written notice or claim under any Environmental Law with respect to any violation of or liability under any Environmental Law or relating to the presence of Hazardous Substance on or originating from the Project Lands, or (iv) ever been convicted of an offence or subjected to any judgment, injunction or other proceeding for non-compliance with any Environmental Law or been fined or otherwise sentenced or settled such prosecution or other proceeding short of conviction for non-compliance with any Environmental Law.
- (d) Copies of all material analysis and monitoring data for soil, ground water, surface water and the like and reports pertaining to any environmental assessments/audits, including without limitation any inspections, investigations and tests, relating to the Project Lands that were obtained, are in the possession or control of, or were carried out on behalf of, the Loan Parties have been delivered to the Lender.
- (e) Since acquiring its interest in the Project Lands, each applicable Loan Party having an interest in such Project Lands has maintained all environmental and operating documents and records relating to the Project Lands substantially in the manner and for the time periods required by Environmental Law and Material Licences.

- (f) Since acquiring its interest in the Project Lands, no Loan Party has defaulted in reporting in any material respect to any applicable Governmental Authority in relation to the Project Lands on the happening of an occurrence which it is or was required by any Environmental Law to report.

(20) Material Licenses All Material Licences from third parties and Governmental Authorities, being as of the date hereof those listed in Schedule 1.01(K), have been obtained or, in the case of those not obtained may be reasonably expected to be received in the ordinary course of business prior to the date when required to permit the Borrower to complete the transactions provided for in the Material Project Agreements and to construct and operate the Project.

(21) Zoning, Uses and Expropriation

- (a) The Project Lands are zoned to permit the Project and operation of the Project.
- (b) The existing and proposed uses of the Project comply in all material respects with Applicable Law.
- (c) It has not received written notice of any proposed rezoning of all or any part of the Project.
- (d) It has not received written notice of any expropriation of all or any part of the Project Lands.

(22) Liens No Loan Party is aware of any Encumbrances related to the Property of the Loan Parties, other than Permitted Encumbrances.

(23) Intellectual Property To the best of the knowledge of the Loan Parties, none of the Loan Parties has infringed upon any patents, trademarks, trade names, service marks, or copyrights, domestic or foreign, or any other industrial property or intellectual property of any other Person. All intellectual property rights necessary for the implementation of the Project and the provision of the Loan Parties' services pursuant to the Material Project Agreements are available to the applicable Loan Parties.

(24) Title Each Loan Party has good, legal and valid title or otherwise has the right to use all Property, tangible or intangible, which is used in the day-to-day operation and maintenance of the business of the Projects and which is necessary to conduct the business of the Projects in accordance with Requirements of Law, Permits and the Material Project Agreements, free and clear of any Liens, other than Liens created under or permitted to exist under the Loan Documents. On the Project Co Lands Transfer Date, one or more the Loan Parties in each case will have good and marketable legal and beneficial title to the Project Lands, and any other real and personal property of any nature which is part of the Project, in each case free and clear of all Encumbrances except Permitted Encumbrances, and no Person has any agreement or right to acquire an interest in the Project.

(25) Loan Parties' Business Each Loan Party is a Single Purpose Entity.



(26) Full Disclosure All information provided or to be provided to the Lender in connection with the Loan is, to the Loan Parties' knowledge, true and correct in all material respects and none of the documentation furnished to the Lender by or on behalf of it, to its knowledge, omits or will omit as of such time, a material fact necessary to make the statements contained therein not misleading in any material way, and all expressions of expectation, intention, belief and opinion contained therein were honestly made on reasonable grounds after due and careful inquiry by it (and any other Person who furnished such material on behalf of it).

(27) Residency No Loan Party is a non-resident for the purposes of Section 116 of the *Income Tax Act* (Canada).

(28) Compliance with Laws On the Project Co Lands Transfer Date, the Project Lands are in compliance in all material respects with all Applicable Law, including, without limitation, all Environmental Law. Further, there are no facts known or which ought reasonably to be known, in either case after due enquiry by the Loan Parties, which could give rise to a notice of non-compliance to such extent with any Applicable Law.

(29) Setbacks On the Project Co Lands Transfer Date, the location of any buildings on the Project Lands are or will be, to the extent they have been constructed or will be constructed in accordance with the Plans and Specifications, within the boundary lines of the Project Lands as a whole and are in compliance with all applicable setback requirements as such requirements may have been varied by any minor variance.

(30) Real Property On the Project Co Lands Transfer Date, the only real property interests necessary for the Project in accordance with the Plans and Specifications are the real property interests comprising the Project Lands and the Permitted Encumbrances.

## **7.02 Survival and Repetition of Representations and Warranties**

Save and except as set out in this Section 7.02, the representations and warranties set out in Section 7.01 shall be given and made as at Financial Close and will be deemed to be repeated by the Loan Parties immediately following the Drawdown, provided that notwithstanding the foregoing, the representations and warranties in Sections 7.01(19), 7.01(21), 7.01(24) (last sentence) and 7.01(28) to 7.01(30) shall only be given on the Project Co Lands Transfer Date and immediately after the Drawdown, except in each case, to the extent that on or prior to such date (a) the Loan Parties have advised the Lender in writing of a variation in any such representation or warranty, and (b) if such variation, in the opinion of the Lender, acting reasonably, is material to the Project or the Property, liabilities, affairs, business, operations, prospects or condition (financial or otherwise) of any Loan Party considered as a whole or could have, or be reasonably likely to result in, a Material Adverse Change, the Lender has approved such variation.

**ARTICLE 8 – COVENANTS**

**8.01** Positive Covenants

Subject to Section 8.04, so long as this Agreement is in force and except as otherwise permitted by the prior written consent of the Lender, each Loan Party, on a joint and several basis, will:

(1) Timely payment Make due and timely payment of the Obligations required to be paid by it hereunder.

(2) Conduct of Business, Maintenance of Existence, Compliance with Laws Engage in the business of designing and developing the Project; carry on and conduct its business and operations in a proper, efficient and businesslike manner, in accordance with good business practice; subject to Section 8.03(3), preserve, renew and keep in full force and effect its existence; and take all reasonable action to maintain all rights, privileges and franchises necessary in the normal conduct of its business and to comply in all material respects with all Material Project Agreements, Material Licences and Requirements of Law, including Requirements of Environmental Law.

(3) Further Assurances Use reasonable efforts to provide the Lender with such other documents, opinions, consents, acknowledgments and agreements as are reasonably necessary to implement this Agreement and the other Loan Documents and the Material Project Agreements from time to time.

(4) Obligations and Taxes Pay or discharge, or cause to be paid or discharged, before the same will become delinquent (i) all Taxes imposed upon it or upon its income or profits or in respect of its business or Property (including the Project) and file all tax returns in respect thereof, (ii) all lawful claims for labour, materials and supplies, (iii) all required payments under any of its Debt, and (iv) all Potential Prior-Ranking Claims and other obligations. Each Loan Party hereby grants its consent (such consent to remain in force as long as this Agreement is in effect or any Loans are outstanding) to any Person having information relating to any Potential Prior-Ranking Claim arising by Applicable Law or otherwise and including, without limitation, claims by or on behalf of government to release such information to the Lender at any time upon its written request for the purpose of assisting the Lender to evaluate the financial condition of the Loan Parties and/or its Property.

(5) Use of Loan Use the proceeds of the Loan only for the purposes specified in Section 2.02. For greater certainty, the proceeds of the Loan are not needed/being invested in order to support international terrorism and are not directly or indirectly derived from activities that may contravene Applicable Law, including anti-money laundering laws and regulations.

(6) Operating Insurance On the earlier of Project Co. Stage 1 Conversion Substantial Completion of the Project having been achieved and the AFP Financing Maturity Date and so long as the applicable Loan Party has an ownership interest in same, and so long as any amounts are due hereunder:

- (a) Each Loan Party will maintain or cause to be maintained the following insurance coverage, to be in accordance with all of the terms, conditions and specifications in Schedule 25 and Appendix A of Schedule 25 of the Project Agreement:
- (i) “All Risk” Property;
  - (ii) Boiler and Machinery;
  - (iii) Commercial General Liability and Non-Owned Automobile Liability;
  - (iv) Environmental Impairment (Pollution) Liability;
  - (v) Comprehensive Crime;
  - (vi) WSIB;
  - (vii) such other insurance as may be required to meet the obligations of the applicable Loan Party under any of the Material Project Documents and the Condominium Corporation(s) in accordance with the Condominium Requirements; and
  - (viii) such other insurance as the Lender upon consultation with the Independent Insurance Consultant may reasonably require from time to time;

Where any of the foregoing insurance is maintained in compliance with the terms of the relevant Condominium Documents then in force and effect affecting the Project or portion thereof, such insurance shall be deemed to be maintained hereunder provided the Lender’s interest is as mortgagee and loss payee or otherwise as is approved by the Lender upon the recommendation of the Independent Insurance Consultant.

- (b) The insurance policies referred to in Section 8.01(6)(a) and (ii) shall:
- (i) name the applicable Loan Party as first named insureds thereunder and as additional insureds all those required to be named as additional insureds under any of the Material Project Documents,
  - (ii) name the Lender as mortgagee and first loss payee and have attached the standard Insurance Bureau of Canada mortgage clause with respect to the all risk and business interruption policies, and the boiler and machinery underwriters’ standard mortgage clause with respect to the machinery insurance policy; and
  - (iii) otherwise be in such form as the Lender shall reasonably require.
- (c) The Commercial General Liability and Non-Owned Automobile Liability and Environmental Impairment (Pollution) Liability insurance policies shall:

- (i) name the Lender as an additional insured; and
    - (ii) otherwise be in such form as the Lender shall reasonably require.
  - (d) Each Loan Party will provide insurance documentation for all policies required hereunder to be purchased and maintained by the Loan Parties in form set forth in Schedule 25 of the Project Agreement.
- (7) Proceeds of Insurance With regard to the insurance described in Section 8.01(6), subject to the terms of Insurance Trust Agreement, and the Permitted Encumbrances and Material Project Agreements having priority over the Security, the following shall apply:
- (a) So long as no Default or Event of Default has occurred and is continuing, any Insurance Proceeds (other than Commercial General Liability and Non-Owned Automobile Liability, Environmental Impairment (Pollution) Liability, Automobile Liability, Comprehensive Crime and WSIB (as such terms are defined and described in Appendix A of Schedule 25 of the Project Agreement) which may be remitted to the Borrower without condition or further action by the Lender) shall be dealt with as follows:
    - (i) any such Insurance Proceeds shall be payable directly into an escrow account of the Borrower (which account shall be held in an account in the name of the Lender and subject to the security interest created by the Security) to be disbursed by the Lender against receipts payable in not more than 30 days for expenses incurred in repairing the damage or destruction or replacing property in respect of which the insurance is payable, for release by the Lender to the Borrower to be applied by the Borrower in repairing the damage or destruction or replacing property in respect of which the insurance is payable upon receipt of:
      - (A) an Officer's Certificate of the Borrower stating that the proceeds of such insurance together with other funds held or arranged by the Borrower are sufficient to fully repair, rebuild or replace the damage or destruction in respect of which the insurance proceeds are payable;
      - (B) a letter of undertaking of the Borrower to fully repair, rebuild and replace the damage or destruction in respect of which the insurance proceeds are payable; and
      - (C) evidence satisfactory to the Lender that the Insurance Proceeds together with the other funds held or arranged by the Borrower will be sufficient to repair, replace or rebuild the damage or destruction in respect of which the insurance proceeds are payable.
    - (ii) The proceeds of any business interruption insurance shall be payable to the Lender to be held by the Lender as additional security for the payment of all amounts payable hereunder, to be applied on account of ongoing obligations

of the Borrower hereunder or in respect of the Project as the same fall due from time to time and, to the extent of any surplus, firstly to arrears of such payments and thereafter, if the Lender has opted to release proceeds of insurance to the Borrower pursuant to and in accordance with Section 8.01(7)(a)(i), then the balance of the proceeds of business interruption insurance shall be payable to the Borrower, failing which the balance, if any, remaining after application of such proceeds as aforesaid shall be paid to the Lender as partial prepayment of the Loan.

- (iii) The Insurance Proceeds 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 interest-bearing term deposits with the interest thereon to accrue to the benefit of the Borrower.

(b) If an Event of Default has occurred and is continuing:

- (i) All Insurance Proceeds other than workers' compensation insurance, errors and omissions insurance and third party liability insurance shall be payable to the Lender and subject to the Security, to be applied by it, at its option, in reduction of the amounts outstanding hereunder or released by the Lender to the Borrower upon receipt of:
  - (A) an Officer's Certificate of the Borrower stating that the proceeds of such insurance together with other funds held or arranged by the Borrower are sufficient to fully repair, rebuild or replace the damage or destruction in respect of which the insurance proceeds are payable;
  - (B) a letter of undertaking of the Borrower to fully repair, rebuild and replace the damage or destruction in respect of which the insurance proceeds are payable; and
  - (C) evidence satisfactory to the Lender that the proceeds of insurance together with the other funds held or arranged by the Borrower will be sufficient to repair, replace or rebuild the damage or destruction in respect of which the insurance proceeds are payable.
- (ii) The proceeds of any business interruption insurance shall be payable to the Lender to be held by the Lender as additional security for the payment of all amounts payable hereunder, to be applied on account of ongoing obligations of the Borrower hereunder or in respect of the Project as the same fall due from time to time and, to the extent of any surplus, firstly to arrears of such payments and thereafter, if the Lender has opted to release proceeds of insurance to the Borrower pursuant to and in accordance with Section 8.01(7)(b)(i), then the balance of the proceeds of business interruption insurance shall be payable to the Borrower, failing which the balance, if any,

remaining after application of such proceeds as aforesaid shall be paid to the Lender as partial prepayment of the Loans.

- (iii) 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 interest-bearing term deposits with the interest thereon to accrue to the benefit of the Borrower (but subject to the security interest created under the Security).

(8) Notice of Default Promptly notify the Lender of any Default or Event of Default that would apply to it of which it becomes aware, using reasonable diligence.

(9) Notice of Material Adverse Change Promptly notify the Lender of any Material Adverse Change or any matter that is likely to have a Material Adverse Change that would apply to it of which it becomes aware, using reasonable diligence.

(10) Notice of Litigation Promptly notify the Lender on becoming aware of the occurrence of any litigation, dispute, arbitration or other proceeding the result of which if determined adversely would be a judgment or award against it that would result in a Material Adverse Change to it, and from time to time provide the Lender with all reasonable information requested by the Lender concerning the status of any such proceeding.

(11) Other Notices Promptly notify the Lender on becoming aware:

- (a) of any Change of Control;
- (b) of any circumstance of which it has notice or is aware which could result in a material breach of or default or non-performance by any party under the Material Project Agreements or of any condition entitling any party to terminate its obligations thereunder;
- (c) of any damage to or destruction of any Property that forms part of the Project, which might give rise to an insurance claim, if the cost of any repairs to or replacement of assets of any Loan Party exceeds \$[REDACTED];
- (d) of any material instrument related to the Project of which any Loan Party has notice or is registered against title to the Project and provide to the Lender a true copy of such instrument;
- (e) of any threatened expropriation or notice of expropriation with respect to the Project Lands, such notice to be delivered forthwith upon any Loan Party becoming aware of such threatened expropriation or its receipt of notice of such proceedings and each Loan Party hereby covenants and agrees that no such claim shall be compromised or settled without the prior written consent of the Lender; or

- (f) of any non-compliance in any material respect with Environmental Law relating to the Project Lands, and of any notice, investigation, non-routine inspection or material inquiry by any Governmental Authority in connection with any Environmental Law relating to the Project.
- (12) Environmental Compliance
  - (a) Save and except for obligations for which HMQ is responsible under the Project Agreement and save as contemplated in the Record(s) of Site Condition or Certificates of Property Use, operate the Project Lands in a manner such that no material obligation, including a clean-up or remedial obligation, will arise under any Environmental Law; provided, however, that if any such claim is made or any such obligation arises, it will immediately satisfy or contest such claim or obligation at its own cost and expense, and, save and except for obligations for which HMQ is responsible under the Project Agreement and save as contemplated in the Record(s) of Site Condition, promptly notify the Lender upon learning of (a) the existence of Hazardous Substances located on, above or below the surface of the Project Lands or contained in the soil or water constituting such land (except those being stored, used, contained or otherwise handled in substantial compliance with Environmental Law), or (b) the occurrence of any reportable Release of Hazardous Substances into the air, land surface water or ground water that has occurred on or from such land or (c) any other event or occurrence relating to the Project which is likely to give rise to a notice of non-compliance in any material respect with any Environmental Law;
  - (b) save and except for obligations for which HMQ is responsible under the Project Agreement and save as contemplated in the Record(s) of Site Condition or Certificates of Property Use, comply, and cause any other party that is acting under its authority to comply, in all material respects with all Environmental Law (including, but not limited to, obtaining any Material Licences or similar authorizations) relating to the Project;
  - (c) save and except for obligations for which HMQ is responsible under the Project Agreement and save as contemplated in the Record(s) of Site Condition or Certificates of Property Use, use its reasonable commercial efforts not to cause or permit a Release of any Hazardous Substance at, on, under, or near, the Project except in compliance with Environmental Law;
  - (d) Provide the Lender with an environmental site assessment/audit report of the Project, or an update of such assessment/audit report: (i) upon the written request of the Lender if in its reasonable opinion there is a concern about any Loan Party's compliance (as it relates to the Project) or the Project's compliance with Environmental Law, all in scope, form and content satisfactory to the Lender, save and except for obligations for which HMQ is responsible under the Project Agreement and save as contemplated in the Record(s) of Site Condition; (ii) if such assessment/audit report has been prepared at the request of or on behalf of any Governmental Authority; or (iii) if an Event of Default relating to an environmental matter has occurred, and the Lender has made a written request to the Borrower for

such an assessment/audit report or update, within 30 days after such request, and all such assessments/audits reports or updates thereof shall be at the Borrower's expense and risk; an environmental site assessment/audit may include, for purposes of this Section, without limitation, any inspection, investigation, test, sampling, analysis, monitoring pertaining to air, land and water relating to the Project reasonably required under the circumstances giving rise to the request for the assessment/audit report;

- (e) Not use the Project, or permit it to be used, to generate, manufacture, refine, treat, transport, store, handle, dispose, transfer, produce or process Hazardous Substances except in compliance with all Environmental Law in all material respects; and
- (f) Maintain in all material respects all material environmental and operating documents and records, including, Material Licences, the Material Project Agreements and Requirements of Law, relating to the Project in the manner and for the time periods required by Environmental Law.

(13) Security Provide the Lender with the Security required from time to time pursuant to Article 9 in accordance with the provisions of such Article, accompanied by supporting resolutions, certificates and opinions in form and substance satisfactory to the Lender, acting reasonably, and do all such further acts and execute and deliver all such documents and instruments as may from time to time be requested by the Lender, acting reasonably, to ensure that the Security constitutes at all times valid, enforceable, and perfected first priority Encumbrances against the Project Lands and the other Collateral (subject only to Permitted Encumbrances).

(14) Acknowledgement of Assignment of Material Project Agreements Use its best efforts to cause each counterparty to the Material Project Agreements to cause such counterparty to execute and deliver a Direct Agreement of the assignment thereof in favour of the Lender following written notice by the Lender to the Borrower requesting same, provided that the Lender shall only request a Direct Agreement with respect to Material Project Agreements entered into on or by Financial Close to the extent that a similar agreement is required pursuant to the AFP Lending Agreements.

(15) Maintenance of Property Keep all Property necessary for its business in good working order and condition, normal wear and tear excepted.

(16) Adequate Books Maintain adequate books, accounts and records in accordance with GAAP consistently applied.

(17) GST/HST Refunds File on a monthly basis all returns and other documents necessary to obtain the refund of GST/HST in respect of the Project and apply the amount of any such refund to payment of Aggregate Project Costs.

(18) Single Purpose Entity Remain a Single Purpose Entity.



(19) Project Accounts

- (a) Operate the Project Accounts in accordance with this Agreement and the other Loan Documents. None of the restrictions contained in this Agreement or the Loan Documents on the withdrawal or application of funds from the Project Accounts shall affect the obligation of the applicable Loan Parties to make all payments required to be made to the Lender on the due date for payment thereof in accordance with this Agreement and the other Loan Documents. Each Project Account shall be maintained at the Borrower's sole cost and expense. The Borrower shall pay the Account Bank such transaction charges as are set out in the relevant agreement with the Account Bank and the Lender shall not be liable to the Account Bank for any such charges. Establish, maintain and operate separate accounts with the Lender for the Project and all funds received relating to the Project shall be deposited to and all disbursements for accounts payable and otherwise shall be paid from such accounts.
- (b) Except as otherwise provided herein, to ensure that all Project Revenue is directed to the Project Operating Account and disbursed in accordance with Section 6.02.
- (c) (i) During an Event of Default which has occurred that is continuing, the Lender may make direct distribution of funds from any Project Account to any Person entitled thereto. (ii) Each Loan Party hereby constitutes and appoints the Lender its true and lawful attorney-in-fact to direct the Account Bank to make such direct payments following an Event of Default that is continuing. This power of attorney shall be deemed to be a coupled with an interest and shall be irrevocable.

(20) Title Warrant and defend its title to its Property (including the Project Lands following the Project Co Transfer Date) and every part thereof against the claims of all persons whomsoever and do, observe and perform all of its obligations and all things necessary or expedient to be done, observed or performed by virtue of any Applicable Law for the purpose of creating, maintaining and keeping maintained the Security constituted by the Loan Documents as valid and effective security with the priority required hereunder. Following the determination of the Project Lands pursuant to Section 26.2 of the Project Agreement, the Borrower will prepare, with approval of the Lender, acting reasonably, a revised Schedule 1.01(A) and Schedule 1.01(N) and deliver same to the Lender concurrently with the registration of the prepared reference plans against the relevant parcels.

(21) Completion of the Project. Diligently Market the Project Co Stage 1 Condominium Facilities and, following the Project Co. Lands Transfer Date, use commercially reasonable efforts to sell Units as Qualified Unit Sales.

(22) Material Project Agreements and Permitted Encumbrances

- (a) At all times be and remain in full compliance in all material respects with all of its covenants, agreements and obligations in and diligently enforce all its material rights under all Permitted Encumbrances and Material Project Agreements. Each Loan Party will ensure that each counterparty to each of the Material Project Agreements shall perform its obligations under, and observe all of the provisions of, each of the

Material Project Agreements, so as to ensure that other parties to such Material Project Agreement shall not be entitled to terminate same.

- (b) Each Loan Party shall advise the Lender in writing of all new Material Project Agreements (or any material amendments of existing Material Project Agreements), agreements permitted pursuant to Section 8.03(23) and Leases entered into forthwith following the entering into thereof and shall deliver forthwith a copy thereof to the Lender. The Borrower shall provide written notice to the Lender of any assignment made by a contracting party to a Material Project Agreement.

(23) Access Permit the Lender (through its agents, officers or employees), for the purposes of monitoring compliance with the covenants and obligations of the Loan Parties hereunder, at its risk, to visit and inspect the Project Lands to conduct tests, measurements and surveys in relation to the Project, provided that such tests, measurements and surveys are conducted in accordance with prudent industry practice and Applicable Law and/or are required as a result of the reasonable concerns of the Lender as to non-compliance with such covenant and obligation, and to be advised as to the same by the officers, engineers and advisers of the Borrower (or such other Persons as may be appropriate), all at such reasonable times and intervals as the Lender may desire upon reasonable prior notice and in the presence of the Borrower if it so desires. Such visits, inspections, measurements, reviews and tests etc. shall be at the cost of the Borrower, provided such expenses are reasonably incurred. Any such visit, inspection, examination, discussion or tests shall not be deemed to be supervision, charge, management, control or occupation by the Lender for purposes of any environmental or other liabilities.

(24) Access to Information Promptly provide the Lender, the Independent Insurance Consultant and the Independent Certifier with all information reasonably requested by any of them from time to time at reasonable intervals in connection with this Agreement concerning its financial condition, and the Project (including, without limitation, the Plans and Specifications, the Project Budget, Material Project Agreements and Material Licences), and during normal business hours and from time to time at reasonable intervals upon reasonable notice, permit representatives of the Lender to inspect the Project and to examine and take extracts from its financial records, including records stored in computer data banks and computer software systems regarding the Project only, and to discuss its financial condition with its senior officers and (in the presence of such of its representatives as it may designate) its auditors, the reasonable expense of all of which will be paid by the Borrower. All such examinations, visits and inspections of the Lender shall be coordinated through the Lender for logistics purposes in order to minimize the number of such examinations, visits and inspections.

(25) Independent Certifier Permit the Lender, and the Lender shall have the right, to appoint the Independent Certifier to assist the Lender with (i) reviewing and approving the Project Budget, the Construction Schedule, the Plans and Specifications, Condominium Requirements and the Material Project Agreements, (ii) advising the Lender as to whether the Project has been constructed in accordance with prudent industry practice, Applicable Law, the Project Budget, the Plans and Specifications, the Condominium Requirements and the Material Project Agreements and the Material Licences, and (iii) performing such additional functions as the Lender shall reasonably request. The Borrower shall pay all reasonable fees, costs and expenses of the Independent Certifier.

(26) Reporting to the Provincial Auditor/Standing Committee If the Auditor General or the Standing Committee on Public Accounts request additional information regarding any Loan Party’s finances, the Ministry of Infrastructure will work together to satisfy such requests. Each Loan Party agrees to deliver information requested by the Auditor General to the extent that the information will not harm the Loan Parties in a competitive marketplace should the information be disclosed as a by-product of government processes.

(27) Management and Control of Project Manage, control and operate, the Project in all material respects in accordance with: (i) Good Industry Practice; (ii) the Material Project Agreements and Material Licences; (iii) the Project Budget; (iv) all warranties; (v) the Plans and Specifications; and (vi) the Construction Schedule.

(28) Construction Lien Act (Ontario) Comply with the provisions of the *Construction Lien Act* (Ontario), including, without limitation, retaining the Holdbacks required thereby.

(29) “As-Built” Survey – (Survey of Foundations) Not later than 120 days after the foundations are completed, provide the Lender with a survey of the foundations of the buildings on the Project Lands, prepared and certified by a land surveyor qualified to practise in Ontario.

(30) “As-Built” Survey – (Survey of Permanent Structures) Within 120 days after Project Co. Stage 1 Conversion Substantial Completion of the Project, deliver to the Lender an “As-Built” survey of the Project, prepared and certified by a land surveyor qualified to practise in Ontario which will identify, *inter alia*, the location of all easements and rights of way affecting the Project.

(31) Condominium Sales Agreement. Upon preparation of the Standard Form Condominium Sales Agreement, provide a copy of same to the Lender for its review and approval, such approval not to be unreasonably withheld. Provide copies of all Condominium Sales Agreements entered into by the applicable Loan Party to the Lender for review.

(32) Sales/Refinancing. Keep the Lender informed of any material developments in any sales of the Units or refinancing of the Loan and shall provide Lender with copies of any letters of intent, term sheets, applications, offers or commitments received or delivered by Borrower regarding the sale of the Units or refinancing of the Loan upon receipt or concurrently with delivery to the proposed buyer or lender.

(33) Additional Condominium Covenants.

- (a) Obtain the prior written approval of the Independent Certifier, such approval not to be unreasonably withheld, to the Condominium Documents for the Condominium Corporations.
- (b) Cause the Condominium Corporation to comply with the Loan Documents (including without limitation all insurance requirements therein), the Condominium Documents and all Applicable Laws, including but not limited to the maintenance of adequate reserves.

- (c) Promptly and diligently register Declarations for each of the Condominium Corporations against the Project Lands in accordance with all Condominium Requirements.
- (d) Promptly and diligently comply (or cause compliance) with the Condominium Requirements and applicable Laws and all orders, rules and regulations promulgated thereunder by any Governmental Authority, as the same may apply to the Project or the Condominium Corporation(s) from time to time, including the filing of any amendments, supplements, renewals or extensions of the Condominium Requirements as may be required by any Governmental Authority or Applicable Laws. Each Loan Party shall comply with and shall perform all of the obligations under the Condominium Documents, all covenants or restrictions applicable to the Project, and all by-laws and rules and regulations of the Condominium Corporation(s). No Loan Party shall permit a change of control of the board of the Condominium Corporation(s) prior to the time Borrower is required to do so by the Condominium Requirements. Borrower shall promptly pay, when due, all dues, assessments, contributions, fees, fines and other charges imposed or levied pursuant to the Condominium Documents relating to property owned by a Loan Party, any such covenants or restrictions, or any such by-laws or rules or regulations.
- (e) Promptly notify Lender of all matters of which any Loan Party has received notice or otherwise knows which indicate that a material default by any Loan Party under, or material variance from, or material non-compliance with, the Condominium Documents exists, and the Loan Parties shall do all things necessary to cure such default, variance or noncompliance. Each applicable Loan Party will timely comply, in all material respects, with each of its obligations under the Condominium Documents.
- (f) Pay all charges due with respect to the Units and will not permit any Affiliate of any Loan Party to vote or take any other action whatsoever at any meeting of the Unit owners, or permit its representatives on the board of directors or other governing board for the Condominium Corporation(s) to vote to take any action whatsoever respecting any matter which may affect in any manner the Declaration(s), the bylaws, the rules and regulations or any other Condominium Documents, the condominium form of ownership or which may result in any charge, assessment or lien against the Units other than customary common charges which are consistent with the Project Budget, or which may adversely affect the rights of any Unit owner.
- (g) Promptly pay, when due, all taxes, dues and assessments imposed against any Loan Party and the Units owned by the applicable Loan Parties, and the applicable Loan Party's or Loan Parties' percentage interest in and to the common elements by the Condominium Corporation(s) or other governing body of the Condominium Corporation(s) pursuant to the provisions of the Condominium Documents.
- (h) Prior to the AFP Financing Maturity Date, full registration of the Borrower and the other applicable Loan Parties with Tarion and remain in good standing at all times with Tarion. Deliver to the Lender copies of the Tarion bond with respect to

Purchaser Deposits. All Units will have an assigned registration number under Tarion.

(34) Changes to AFP Lending Agreements and Refinancing. (a) Subject to Section 8.01(35)(b), for so long as the AFP Financing remains outstanding and subject to the terms of the AFP Lenders’ Direct Agreement and the Intercreditor Agreement, the Borrower shall not terminate, amend or otherwise modify the AFP Lending Agreements, or waive or exercise any of its rights under the AFP Lending Agreements, if, at the time such action is contemplated and effected, it would materially adversely affect any Loan Party’s ability to perform its obligations under the Project Agreement or the Material Project Agreements. (b) No Loan Party shall permit, suffer to exist or enter into any Refinancing except in accordance with Schedule 12 of the Project Agreement.

(35) Compliance with Lending Agreements. For so long as the AFP Financing remains outstanding and subject to the terms of the Intercreditor Agreement, the Borrower shall keep the AFP Lending Agreements in good standing to the extent necessary to perform its obligations under the Project Agreement and the Material Project Agreements, and shall ensure that none of the terms and conditions of the AFP Lending Agreements shall prevent the Borrower from performing its obligations under the Project Agreement or the Material Project Agreements.

## 8.02 Reporting Requirements

Subject to Section 8.04, so long as this Agreement is in force and except as otherwise permitted by the prior written consent of the Lender, the Borrower will deliver or cause to be delivered to the Lender:

(1) as soon as available and, in any event, within forty-five (45) days after the end of each of the first three (3) fiscal quarters of the Borrower and each of the other Major Project Parties and Sponsors (other than [REDACTED]) in each Fiscal Year the quarterly unaudited management financial statements of the Borrower and each of the other Major Project Parties and Sponsors (other than [REDACTED]), for each such fiscal quarter, all prepared in accordance with GAAP;

(2) as soon as available and, in any event, within 120 days after the end of each Fiscal Year of the Borrower and each of the other Major Project Parties and Sponsors (other than [REDACTED]), the annual audited financial statements of the Borrower and each of the other Major Project Parties and Sponsors (other than [REDACTED]) each consisting of a balance sheet, statements of income and of surplus, and a statement of changes in financial position, accompanied by a certificate of the Auditors for the Borrower and each of the other Major Project Parties and Sponsors (other than [REDACTED]) setting forth that they have examined such statements and have conducted a general review of accounting procedures and such tests of accounting records and other supporting evidence as they consider necessary and confirming that in their opinion such statements present fairly the financial position of the Borrower and each of the other Major Project Parties and Sponsors (other than [REDACTED]), and the results of its operations for the Fiscal Year reported on, and have been prepared in accordance with GAAP applied on a basis consistent with that of the preceding year;

(3) as soon as reasonably practicable after any reasonable written request therefor from the Lender, information in relation to the assets, liabilities, financial condition, business, operations or prospects of the Borrower or the Project;

(4) as soon as reasonably practicable upon receipt by the Borrower, any additional information received by the Borrower or [REDACTED] or any Declarant in respect of the assets, liabilities, financial condition, business, operations or prospects of the Borrower or [REDACTED] or any Declarant, with respect to the Project, or any additional information material to the Project or to a determination of whether a Material Adverse Change has occurred received by the Borrower or [REDACTED] or any Declarant in respect of the assets, liabilities, financial condition, business, operations or prospects of the other Major Project Parties or Sponsors;

(5) promptly after request by the Lender, if it considers in good faith that an Event of Default or Default may have occurred, provide an officer’s certificate signed by a Responsible Officer of the Borrower which states whether or not an Event of Default or Default has occurred and continues unremedied;

(6) monthly, no later than the twelfth (12) Business Day following receipt thereof by the Borrower, the Works Report (as such term is defined in the Project Agreement) prepared under and pursuant to the terms of the Construction Contract;

(7) monthly, no later than the twelfth (12) Business Day after the end of each month, a report of the Technical Advisor with respect to the progress of the Works;

(8) following Project Substantial Completion, monthly, no later than the twelfth (12) Business Day after the end of each month, a report from the Borrower with respect to all advances, repayments and prepayments under the AFP Lending Agreements, deposits and withdrawals from, and current account in respect of, the Project Accounts pursuant to AFP Lending Agreements, including the Net Sales Proceeds of each Unit and other Project Revenues;

(9) monthly, no later than the twelfth (12) Business Day after the end of each month a report detailing all sales and pre-sales of Condo Assets that have taken place in such month (including copies of all Condominium Sales Agreements) and year-to-date sales, including reporting in respect of estimated gross proceeds and Net Cash Proceeds from sales of Condo Assets in the next following three (3) months and in respect of each sale and pre-sale that has taken place in such month information as to (i) number of Units, Unit number and Unit type, (ii) purchaser’s name, anticipated possession dates, firm or conditional status, sale price for each Unit and amount of deposit received for each Unit and the dates of payment of such deposits, (iii) gross proceeds of the sale, (iv) Net Sale Proceeds of the sale, and (v) the amount of proceeds received and deposited to, and transferred from, the Project Operating Account or, if applicable, the AFP Project Account that is entitled the “Condominium Proceeds Account” in such month;

(10) upon the request of the Lender, evidence that it has paid to date the Taxes in respect of the Project;

(11) monthly, no later than the twelfth (12) Business Day after the end of each month, an Officer’s Certificate signed by a Responsible Officer of the Borrower (a “**Compliance Certificate**”)

which states whether (to the best of the applicable Responsible Officer's knowledge, information and belief having made your inquiry) any Event of Default or Default has occurred and is subsisting; and

(12) such other information as it may reasonable request respecting the Loan Parties or the Project.

8.03 Negative Covenants

Subject to Section 8.04, so long as this Agreement is in force and except as otherwise permitted by the prior written consent of the Lender, each Loan Party, on a joint and several basis, will not:

(1) No Sale of Project Other than: (a) Qualified Unit Sales, (b) Qualified Building Sales, (c) Leases entered into accordance with this Agreement, (d) subject to the Intercreditor Agreement, as security granted pursuant to the AFP Lending Agreements or (e) Dispositions otherwise contemplated in Section 9.04, Dispose of the Project or any other Property of any Loan Party or any part thereof or interest therein unless:

- (i) prior to the advance of the Loan, the Borrower and the AFP Lenders' Agent indefeasibly waive their rights to draw the Loan; or
- (ii) after the advance of the Loan, the proceeds of such Disposition are sufficient to, and are applied to, repay all amounts outstanding hereunder.

(2) No Transfer of Interest in Loan Party Permit any Disposition of, grant or suffer to exist any Encumbrance (other than Permitted Encumbrances) in, any interest in any Loan Party.

(3) No Consolidation, Amalgamation, etc. Consolidate, amalgamate or merge with any other Person, enter into any corporate reorganization or other transaction intended to effect or otherwise permit a change in its existing corporate structure, liquidate, wind-up or dissolve itself, or permit any liquidation, winding-up or dissolution (including, without limitation, any partner of the Borrower).

(4) No Change of Name Change its name.

(5) No Debt Create, incur, assume or permit any Debt to remain outstanding other than (a) Inter-Company Debt and (b) as set out in paragraph (ii) of the definition of "Single Purpose Entity" in Section 1.01.

(6) No Financial Assistance Give any Financial Assistance.

(7) No Distributions Make any Distributions.

(8) No Encumbrances Create, incur, assume or permit or suffer to exist any Encumbrance against the Collateral except Permitted Encumbrances.

(9) No Change to Year End Make any change to its Fiscal Year end.

- (10) No Continuance Continue into any other jurisdiction.
- (11) Amendments to Organizational Documents Amend any of its Organizational Documents.
- (12) Amendments to Material Project Agreements Terminate, repudiate or surrender (otherwise than expressly required or permitted so to do pursuant to the terms of the Project Agreement or any other Material Project Agreement), or in any material respect to vary, alter, amend, supplement, revise or modify any Material Project Agreement, or amend, vary or alter, consent to any assignment or transfer of, or waive or surrender any of its material rights or material entitlements under, any Material Project Agreement (otherwise expressly required or permitted so to do pursuant to the terms of the Project Agreement), in each case if same could reasonably be expected to cause a Material Adverse Change.
- (13) Unit Vendor Take Back Mortgages Without the approval of the Lender in writing, enter into any Condominium Sales Agreement which contains a provision allowing for partial or full payment of the purchase price payable thereunder by way of a vendor take back mortgage or other Debt instrument in favour of the applicable Loan Party (the intent being that all net proceeds of the sale of Units shall be in the form of cash).
- (14) Condominium Sales Agreements. Enter into any agreements for the sale or other Disposition of any Units other than Qualifying Unit Sales.
- (15) Leasing Enter into any Leases or renew, amend, terminate, forfeit or cancel any Leases other than any retail Lease entered into in connection with the Project Lands which has a term of not more than ten (10) years and which provides for a rental rate not less than the applicable rate described in the Financial Model at the tab “Inputs”, lines 376-395.
- (16) Residency Become a non-resident of Canada within the meaning of Section 116 of the *Income Tax Act* (Canada).
- (17) Accounting Policies Change its accounting policies or reporting practices.
- (18) No Partition/Subdivision. Partition or subdivide the condominium regime beyond that contemplated in the Condominium Documents or consent to: (A) the abandonment or termination of the condominium regime or Condominium Property or any part thereof, or (B) the effectuation of any decision by the Condominium Property to terminate professional management and assume self-management of the condominium regime.
- (19) Non-Arm’s Length Transactions Enter into any transaction for the purchase, sale or exchange of any property or the rendering of any services, with any of its Affiliates, or with any Affiliate of any of its partners or shareholders, except a transaction which is upon fair and reasonable terms not less favourable to such Loan Party than would be obtained in a comparable arms-length transaction for fair market value.



(20) No Investments Make, directly or indirectly any Investment, except for any Investment expressly provided for in any Material Project Agreement and the requirements set out in the definition of “Single Purpose Entity”.

(21) Project Accounts Except as required under the AFP Lending Agreements but subject to the Intercreditor Agreement, open or maintain any bank accounts other than the Project Accounts.

(22) Subsidiaries Become a general partner in any general or limited partnership, a trustee of a trust or joint venture or organize any new Subsidiary other than a Declarant. Subject to the foregoing, in the event that the Lender consents to the organization of a new Subsidiary of the Borrower, the Borrower shall, and shall cause such Subsidiaries to, execute and deliver the agreements and documents described in Section 9.02 of this Agreement.

(23) No Other Material Agreements Subject to Section 8.03(19), not to enter into any contracts or agreements that provide for a commitment by any Loan Party in excess of \$[REDACTED], provided any such permitted agreement or contract is contemplated in the Financial Model.

(24) Competition with Project Co Stage 2 Lands. Market, Sell or Develop any condominium facilities on or in any of the Project Co Stage 2 Lands without the consent of the Lender, which consent may be withheld in the Lender's sole discretion. Notwithstanding the foregoing, after the Loan Parties sell [REDACTED]% of the Project Co Stage 1 Condominium Facilities as Qualified Unit Sales, it may begin Marketing (but, for clarity, not Selling) in respect of condominium facilities to be Developed on and in the Project Co Stage 2 Lands. For the purposes of this Section 8.03(24), the terms “Marketing”, “Sell” and “Develop” shall have the meanings ascribed thereto in the Project Agreement.

#### 8.04 Effective Date of Covenants

The covenants set out in this Article 8 shall have effect and be binding upon the Loan Parties as follows:

(a) each of the covenants set out in Sections 8.01(8) to 8.01(11), 8.01(13) to 8.01(18), , 8.01(20) to 8.01(26), 8.01(29) to 8.01(34), 8.02 and 8.03 shall have effect and be binding upon the Loan Parties from and after Financial Close;

(b) each of the covenants set out in Sections 8.01(4), 8.01(6), 8.01(7), 8.01(12) and 8.01(28) shall have effect and be binding upon the Loan Parties from and after Project Co Lands Transfer Date; and

(c) each of the covenants set out in Sections 8.01(1) to 8.01(3), 8.01(5), 8.01(19) and 8.01(27) shall have effect and be binding upon the Loan Parties from and after the AFP Financing Maturity Date.

**ARTICLE 9 – SECURITY**

**9.01**            **Security**

As general and continuing security for the payment and performance of the Obligations, the security described below will be granted to the Lender:

- (a) the General Security Agreements;
- (b) the Debentures (and any Replacement Charge granted to the Lender pursuant to Section 9.05);
- (c) each Limited Recourse Guarantee and Pledge;
- (d) the Assignment of Material Project Agreements;
- (e) the Assignment of Condominium Sales Agreements and Deposits;
- (f) directions from the applicable Loan Party in respect of the mandatory prepayments in Section 5.01(2);
- (g) the Section 118 Restriction;
- (h) the Project Accounts and, on or before the advance of the Advance Amount, the assignment by the AFP Lenders to the Lender of all Blocked Account Agreements and the Insurance Trust Agreement, relating, as applicable, to operating accounts, insurance accounts and other accounts under the AFP Financing;
- (i) assignment by AFP Lender's Agent of its interest in the Insurance Trust Agreement;
- (j) such other security as the Lender requires, which is contemplated by this Agreement or which security more fully gives effect to the security contemplated by this Agreement.

**9.02**            **After Acquired Property and Further Assurances**

(1) Upon the transfer of any of the Project Lands pursuant to the Project Co Lands Agreements of Purchase and Sale, the Borrower shall:

- (a) concurrently enter into and/or, cause any other Loan Party that acquires all or any part of the Project Lands to enter into, a Debenture with respect to such Project Lands and such other Loan Documents as the Lender requires in order to grant to the Lender a first priority charge, mortgage and security interest against such applicable Project Lands (subject to Permitted Encumbrances) as Security for its Obligations hereunder,
- (b) duly register, file and record as a first priority charge, mortgage and security interest in favour of the Lender in all Relevant Jurisdictions where required by Applicable

Law or where the Lender considers it necessary or desirable, in its sole discretion, all such Loan Documents delivered pursuant to Section 9.02(a), and deliver evidence of same to the Lender;

- (c) deliver to the Lender releases, discharges and postponements that are required in the discretion of the Lender (in registrable form where necessary) with respect to any Encumbrances affecting the collateral Encumbered by the Loan Documents delivered pursuant to Section 9.02(a) that are not Permitted Encumbrances, if any;
  - (d) the Lender will have received either (i) a title opinion (which shall include a report as to off-title matters) from Loan Parties’ Counsel dated the transfer date of the applicable Project Lands or (ii) a title insurance commitment from a title insurance company satisfactory to the Lender, confirming or insuring, among other things, that (A) the applicable Loan Party has good and marketable title to the Project, subject only to Permitted Encumbrances, and (B) the Debenture constitutes a good and valid first charge on the Project Lands subject only to Permitted Encumbrances;
  - (e) the Lender will have received a report from the Independent Insurance Consultant certifying that the Loan Parties’ insurance is satisfactory and complies with this Agreement, together with the required insurance certificates; and
  - (f) each of the applicable Loan Parties having a registered interest in the Project Lands shall apply to the land registrar pursuant to Section 118 of the *Land Titles Act* (Ontario) to make an entry on each register of the Project Lands that no transfer shall be made or charge created unless the consent of the Lender is given to the transfer or the creation of the charge, in a form satisfactory to the Lender, and the land registrar shall make a note of them on each register of the Project Lands that no transfer shall be made or charged created (the “**Section 118 Restriction**”).
  - (g) If the land registrar is satisfied of the right of the applicant to impose such restrictions, he or she shall make a note of them on the register and no transfer shall be made or charge created except in conformity therewith.
- (2) In the event that the Lender consents to the organization of a new Subsidiary of the Borrower pursuant to Section 8.03(22), the Borrower shall:
- (a) concurrently cause such Subsidiary to enter into a joinder agreement to become bound as a “Guarantor” hereunder guaranteeing the Obligations and to enter into such Security and other Loan Documents as the Lender requires in order to grant to the Lender a first priority security interest (subject to the terms of the Intercreditor Agreement and the Permitted Encumbrances) over all of such Subsidiary’s Property as Security for its Obligations hereunder;
  - (b) duly register, file and record as a first priority charge, mortgage and security interest in favour of the Lender in all Relevant Jurisdictions where required by Applicable Law or where the Lender considers it necessary or desirable, acting reasonably, all

such Loan Documents delivered pursuant to Section 9.02(2)(a), and deliver evidence of same to the Lender;

- (c) subject to the terms of the Intercreditor Agreement, deliver the certificates representing all Equity Interests and Inter-Company Notes of such Subsidiary pledged (along with transfer power executed in blank) to the Lender,
- (d) deliver to the Lender certified copies of the Organizational Documents or applicable extracts thereof of each Subsidiaries, the resolutions authorizing the execution and delivery of, and performance of each Subsidiaries' respective obligations under, the Loan Documents delivered pursuant to Section 9.02(2)(a) and the transactions contemplated herein (including direction and acknowledgements by each beneficial owner of the applicable Project Lands to its nominee authorizing same), and a certificate as to the incumbency of the officers of the Subsidiaries executing the Loan Documents delivered pursuant to Section 9.02(2)(a) and any other documents to be provided pursuant to the provisions hereof;
- (e) deliver to the Lender certificates of status, limited partnership reports or comparable certificates or reports for all Relevant Jurisdictions of such Subsidiary will have been delivered to the Lender;
- (f) deliver to the Lender copies of all shareholder, regulatory, governmental and other approvals, if any, required in order for each such Subsidiary to enter into and deliver the Loan Documents delivered pursuant to Section 9.02(2)(a) and to perform its obligations hereunder;
- (g) deliver to the Lender releases, discharges and postponements that are required in the discretion of the Lender (in registrable form where necessary) with respect to all Encumbrances affecting the collateral Encumbered by the Security delivered pursuant to Section 9.02(2)(a) that are not Permitted Encumbrances, if any;
- (h) deliver to the Lender a currently dated letter of opinion of Loan Parties' Counsel as to such matters relating to the execution and delivery of the Loan Documents delivered pursuant to Section 9.02(2)(a) (including, without limitation, corporate existence and capacity, authorization, execution, delivery, enforceability, registration and perfection, non-contravention and *Securities Transfer Act, 2006* (Ontario) control opinion) and in such form as Lender's Counsel and Loan Parties' Counsel may agree, each acting reasonably, addressed to the Lender and to Lender's Counsel; and
- (i) the Lender will have received a report from the Independent Insurance Consultant certifying that such new Subsidiary's insurance is satisfactory and complies with this Agreement, together with the required insurance certificates.

(3) Prior to or concurrently with the incurrence by any Loan Party of any Inter-Company Debt after the AFP Financing Maturity Date or if such Inter-Company Debt has been incurred by any Loan Party prior to the AFP Financing Maturity Date, the Loan Party or Sponsor(s) providing

such Inter-Company Debt shall provide the Lender with all waivers, estoppels and acknowledgement as the Lender may reasonably require from any Person that has or purports to have an Encumbrance against any such Inter-Company Debt.

(4) Each Loan Party will from time to time execute and deliver all such further deeds or other instruments of conveyance, assignment, transfer, mortgage, pledge or charge in connection with all Property acquired by each Loan Party after the date hereof, or as may be required to properly perfect the security interest of the Lender in any Property of any Loan Party.

9.03 Development Rights of the Borrower

Unless there is an Event of Default that is continuing, any Loan Party may in the ordinary course of business at any time and from time to time:

- (a) enter into any instrument or agreement described in items (iv), (xii) and (xiv) of the definition of Permitted Encumbrances without the consent of the Lender, and the Lender shall, without receiving any consideration therefor, postpone or subordinate the Security to such instrument or agreement and, if required by the other party to such instrument or agreement, concur in and/or consent to such instrument or agreement, in each case upon receipt by the Lender of the following:
  - (i) a written request of the Borrower or Loan Parties' Counsel so to do setting forth the required action and the details of same (including explanation as to the necessity thereof); and
  - (ii) an Officers' Certificate of the Borrower, together with supporting evidence, such certificate and evidence to be in form and content acceptable to the Lender, acting reasonably, stating that:
    - (A) the entering into of such instrument or agreement shall not result in a Material Adverse Change (provided that the Lender may require such opinions of Loan Parties' Counsel to be delivered in conjunction therewith as the Lender may require, acting reasonably);
    - (B) the entering into of such instrument or agreement will not result in a default under any agreements to which any Loan Party is bound or will not result in the occurrence of a Default; and
    - (C) each Loan Party has complied with the provisions of this Agreement relating thereto,
- (b) without receiving any consideration therefor, sell, lease, assign, exchange, surrender, grant or otherwise dispose of any part or parts of any of the Project (not constituting a material portion thereof) or any licenses, easements, rights-of-way or rights in the nature of easements in respect of any part or parts of the Project to a Governmental Authority, or to an arm's length owner, lessee or licensee of any lands adjacent to the Project or separated therefrom by a public street or to such other person as shall be

designated by a Governmental Authority or such aforementioned owner, lessee or licensee on such terms (which may or may not include the grant, sale, lease, assignment or other conveyance to a Loan Party of any land or any license or licenses, or easements, rights of way or rights in the nature of easements in, over, under or in respect of other lands) as the Borrower may determine acting in the best interests of the Project and the Lender shall release same from the Security (or, if applicable, postpone its Security), upon receipt of the following:

- (i) a written request of the Borrower or Loan Parties’ Counsel so to do setting forth the required action and the details of same (including explanation as to the necessity thereof); and
- (ii) an Officers’ Certificate of the Borrower, together with supporting evidence, such certificate and evidence to be in form and content acceptable to the Administrative Agent, acting reasonably, stating that:
  - (A) such grant, sale, lease, assignment, exchange, surrender or other disposition shall not result in a Material Adverse Change (provided that the Lender may require such opinions of Loan Parties’ Counsel to be delivered in conjunction therewith as the Lender may require, acting reasonably);
  - (B) such grant, sale, lease, assignment, exchange, surrender or other disposition is necessary or desirable without regard to any consideration received by the applicable Loan Party therefor for the construction, development or operation of the Project or is of no adverse effect;
  - (C) such grant, sale, lease, assignment, surrender or other disposition will not adversely affect the value of the Project or impair the ability of any Loan Party to maintain and operate the Project;
  - (D) such grant, sale, lease, assignment, exchange, surrender or other disposition, in the circumstances thereof, will not result in a default under any agreements to which any Loan Party is bound;
  - (E) such grant, sale, lease, assignment, exchange, surrender or other disposition, in the circumstances thereof, will not result in the occurrence of a Default; and
  - (F) each Loan Party has complied with the provisions of this Agreement relating thereto, and
- (c) apply to bring the Project Lands under the Condominium Act and register any condominium plan and the Lender will consent to any and all requisite applications and registrations with respect thereto, in each case upon receipt by the Lender of the following:

- (i) a written request of the Borrower or Loan Parties’ Counsel so to do setting forth the required action and the details of same (including explanation as to the necessity thereof); and
- (ii) an Officers’ Certificate of the Borrower, together with supporting evidence, such certificate and evidence to be in form and content acceptable to the Lender, acting reasonably, stating that:
  - (A) such application shall not result in a Material Adverse Change and the Lender is authorized to take such actions as may be necessary to effect same (provided that the Lender may require such opinions of Loan Parties’ Counsel to be delivered in conjunction therewith as the Lender may require, acting reasonably);
  - (B) such application will not result in a default under any agreements to which any Loan Party is bound or will not result in the occurrence of a Default; and
  - (C) each Loan Party has complied with the provisions of this Agreement relating thereto, and
- (d) apply for minor variances and consents to severance with respect to the Projects Lands and the Lender shall execute any and all authorizations, applications and consents necessary for the applications for minor variances and consents to severance which the Borrower shall reasonably require in connection with development of the Project Lands, in each case upon receipt by the Lender of the following:
  - (i) a written request of the Borrower or Loan Parties’ Counsel so to do setting forth the required action and the details of same (including explanation as to the necessity thereof); and
  - (ii) an Officers’ Certificate of the Borrower, together with supporting evidence, such certificate and evidence to be in form and content acceptable to the Lender, acting reasonably, stating that:
    - (A) such application shall not result in a Material Adverse Change and the Lender is authorized to take such actions as may be necessary to effect same (provided that the Lender may require such opinions of Loan Parties’ Counsel to be delivered in conjunction therewith as the Lender may require, acting reasonably);
    - (B) such application will not result in a default under any agreements to which any Loan Party is bound or will not result in the occurrence of a Default; and
    - (C) each Loan Party has complied with the provisions of this Agreement relating thereto.

The Borrower shall pay all reasonable fees and costs of the Lender in connection with the foregoing, including, without limitation, reasonable legal fees and disbursements.

9.04            Unit Discharge Program

(1)        The Loan Parties shall be entitled to a partial discharge of the Security as it relates to the applicable Units (and the corresponding parking, locker, communication units, sign units and common areas of the Project), provided the following occur:

- (a)        delivery to the Lender and, prior to the AFP Financing Maturity Date, the AFP Lenders' Agent of an officer's certificate of the Borrower detailing the calculation of the Net Sale Proceeds of such Units and certifying that the sale of the applicable Unit is a Qualified Unit Sale or a Qualified Building Sale, such certificate to be approved by the Independent Certifier;
- (b)        prior to the delivery of the Drawdown Notice pursuant to Section 2.03(4), upon payment to the AFP Lenders' Agent pursuant to the AFP Lending Agreements towards a permanent repayment of the AFP Financing of the Net Sale Proceeds of such applicable Units;
- (c)        after delivery of the Drawdown Notice and prior to the AFP Financing Maturity Date, upon payment to the AFP Lenders' Agent for deposit in a segregated account controlled by the AFP Lenders' Agent pursuant to the AFP Lending Agreements (being the AFP Project Account that is identified as the Condominium Proceeds Account), such deposited funds to be transferred to the Lender on the AFP Financing Maturity Date pursuant to Section 9.01(h) and the Intercreditor Agreement; and
- (d)        after the AFP Financing Maturity Date, upon payment to the Lender, for application in accordance with Section 9.04(2), of the Net Sale Proceeds of such applicable Units.

(2)        Any payments received by the Lender pursuant to Section 9.04(1) above shall be applied, first, towards repayment of the Loan outstanding and second, towards any other Obligations payable hereunder. All such amounts repaid in respect of Loan shall result in a permanent reduction of the Loan.

(3)        The Lender shall execute such releases of the Security in respect of any Unit or component in respect of which a partial discharge is sought pursuant to Section 9.04(1) above in form and substance as the Borrower may reasonably require and shall deliver same to the Loan Parties' Counsel in escrow for delivery or release upon delivery to, prior to the AFP Financing Maturity Date, the AFP Lenders' Agent or delivery to, after the AFP Financing Maturity Date, the Lender of the amount described in Section 9.04(1) above, as applicable.

9.05            Condominium Documents/Replacement Charge

Provided that no Default or Event of Default has occurred after Drawdown and is continuing, the Lender agrees, from time to time upon the request of and at the expense of the



Borrower, to execute and deliver a consent and postponement of charge to the applicable Loan Party registering the Declaration pursuant to the Condominium Act, provided that all Condominium Requirements are provided to and found in all respects satisfactory to the Lender, acting reasonably, and provided further that the applicable Loan Party shall deliver to the Lender a further charge of the Project (in substantially the same form as the Debenture) with respect to all Units and the pro-rata share of common elements (the “**Replacement Charge**”), which charge shall be registered after the date of registration of the Declaration on title to the Project.

## **ARTICLE 10 – GUARANTEE**

### **10.01**      **Guarantees and Indemnity**

(1)      The Guarantor hereby jointly and severally, unconditionally and irrevocably, guarantees payment and performance of the Obligations of the Borrower and each other Loan Party.

(2)      If any or all of the Obligations are not duly paid and are not recoverable or remain unperformed under Section 10.01(1) for any reason whatsoever, the Guarantor hereby jointly and severally, unconditionally and irrevocably, will, as a separate and distinct obligation, indemnify and save harmless the Lender and the Guarantor from and against any losses resulting from the failure of any Loan Party to pay or perform the Obligations.

(3)      If any or all of the Obligations are not duly paid and are not recoverable or remain unperformed under Section 10.01(1) or the Lender is not indemnified under Section 10.01(2), in each case, for any reason whatsoever, the Obligations will, unconditionally and irrevocably, as a separate and distinct obligation, be recoverable jointly and severally from the Guarantor as primary obligor.

### **10.02**      **Obligations Absolute**

The liability of each Guarantor hereunder is absolute and unconditional and is not affected by:

- (a)      any illegality, lack of validity or enforceability of this Agreement or any other Loan Document;
- (b)      any impossibility, impracticability, frustration of purpose, illegality, *force majeure* or act of Governmental Authority;
- (c)      the bankruptcy, winding-up, liquidation, dissolution, moratorium, readjustment of debt, arrangement, insolvency or other similar proceeding affecting any Loan Party or any other Person, including any discharge or bar against collection of any of the Obligations, the amalgamation of or any change in the existence, status, function, control, constitution or ownership of any Loan Party, the Lender or any other Person;
- (d)      any lack or limitation of power, incapacity or disability on the part of any Loan Party or of the directors, partners or agents thereof or any other irregularity, defect or informality on the part of any Loan Party in its Obligations;

- (e) any limitation, postponement, prohibition, subordination or other restriction on the rights of the Lender to payment of the Obligations;
- (f) any interest of the Lender in any Security whether as owner thereof or as holder of a security interest therein or thereon, being invalidated, voided, declared fraudulent or preferential or otherwise set aside, or by reason of any impairment of any right or recourse to any Security; or
- (g) any other law, regulation, event, condition or other circumstance or any other act, delay, abstention or omission to act of any kind by any Loan Party or another Person that might otherwise constitute a legal or equitable defence available to any Loan Party, or a discharge, limitation or reduction of the Obligations hereunder.

Each of the foregoing is hereby waived by each Guarantor to the fullest extent permitted under Applicable Law. The foregoing provisions apply and the foregoing waivers will be effective to the fullest extent permitted under Applicable Law even if the effect of any action or failure to take action by the Lender is to destroy or diminish any Guarantor's subrogations rights, any Guarantor's right to proceed against any Loan Party for reimbursement, any Guarantor's right to recover contribution from any other Person or any other right or remedy of any Guarantor.

10.03 No Release

The liability of each Guarantor hereunder will not be released, discharged, limited or in any way affected by anything done, suffered, permitted or omitted to be done by the Lender or any other Person in connection with any duties or liabilities of any Loan Party to the Lender or any Security including any loss of or in respect of any Security. Without limiting the generality of the foregoing and without releasing, discharging, limiting or otherwise affecting in whole or in part the liability of any Guarantor hereunder, without obtaining the consent of or giving notice to any Guarantor, the Lender may, subject to the terms of this Agreement:

- (a) discontinue, reduce, increase or otherwise vary the credit of each Loan Party in any manner whatsoever;
- (b) make any change in the time, manner or place of payment under, or in any other term of, any Loan Document or the failure on the part of any Loan Party to carry out any of its obligations under any Loan Document;
- (c) grant time, renewals, extensions, indulgences, releases and discharges to any Loan Party or any other Person;
- (d) subordinate, release, take or enforce, refrain from taking or enforcing or omit to take or enforce the Loan Documents or perfect, refrain from perfecting or omit to perfect the Loan Documents, whether occasioned by the fault of the Lender or otherwise;
- (e) to the extent permitted under Applicable Law, give or refrain from giving to any Loan Party or any other Person notice of any sale or other disposition of any Collateral securing any of the Obligations or any other guarantee thereof, or any

notice that may be given in connection with any sale or other disposition of any such property;

- (f) accept compromises from any Loan Party or any other Person;
- (g) marshal, refrain from marshalling or omit to marshal assets;
- (h) apply all money or other property at any time received from any Loan Party or from the Security upon such part of the Obligations as the Lender may see fit or change any such application in whole or in part from time to time as the Lender may see fit; and
- (i) otherwise deal, delay or refrain from dealing or omit to deal with any Loan Party and all other Persons and the Security as the Lender may see fit, delay or refrain from doing or omit to do any other act or thing that under Applicable Law might otherwise have the effect, directly or indirectly, of releasing, discharging, limiting or otherwise affecting in whole or in part any Guarantor's liability hereunder.

10.04 No Exhaustion of Remedies

The Lender is not bound or obligated to exhaust its or their recourse against any Loan Party or other Person or any Security it or they may hold, or take any other action before being entitled to demand payment from any Guarantor hereunder.

10.05 Prima Facie Evidence

Any account settled or stated in writing by or between the Lender and any Loan Party will be prima facie evidence that the balance or amount thereof appearing due to the Lender is so due.

10.06 No Set-Off

In any claim by the Lender against any Guarantor, such Guarantor may not assert any set-off or counterclaim, claim or other right that either such Guarantor or any Loan Party may have against the Lender or any other Person.

10.07 Continuing Guarantee

The Obligations of each Guarantor hereunder will constitute and be continuing obligations and will apply to and secure any ultimate balance due or remaining due to the Lender and will not be considered as wholly or partially satisfied by the payment or liquidation at any time of any sum of money for the time being due or remaining unpaid to any such Person. The Obligations of each Guarantor hereunder will continue to be effective even if at any time any payment of any of the Obligations is rendered unenforceable or is rescinded or must otherwise be returned by the recipient of such payment upon the occurrence of any action or event including the insolvency, bankruptcy or reorganization of any Loan Party or otherwise, all as though such payment had not been made.

10.08      Waivers by Guarantor

Each Guarantor hereby irrevocably waives acceptance hereof, presentation, demand, protest and any notice, as well as any requirement that at any time any action be taken by any Person against such Guarantor, any other Loan Party or any other Person.

10.09      Demand

Each Guarantor will make payment to the Lender of the full amount of the Obligations and all other amounts payable by it hereunder forthwith after demand therefor is made to it. Each Guarantor will also make payment to the Lender of all costs and expenses incurred by the Lender in enforcing the provisions of this Article 10.

10.10      Interest

Each Guarantor will pay interest to the Lender at the Interest Rate, in respect of all amounts payable by such Guarantor hereunder, such interest to accrue from and including the date of demand on the Guarantor, and will be compounded monthly.

10.11      Assignment and Postponement of Claims

All debts and liabilities, present and future, of each Loan Party to each other Loan Party are hereby assigned to the Lender, and postponed and subordinated to the Obligations, and all money received by such Loan Party in respect thereof will be held in trust for the Lender and forthwith upon receipt will be paid over to the Lender, the whole without in any way lessening or limiting the liability of any of the Loan Parties hereunder and this assignment and postponement is independent of the guarantee herein and will remain in full force and effect until, in the case of the assignment, the liability of the Loan Parties under this Guarantee has been discharged or terminated and, in the case of the postponement, until all Obligations are performed and paid in full.

10.12      Subrogation; Contribution

No Guarantor will be entitled to subrogation or to contribution from any other Guarantor by reason of any payment hereunder until indefeasible payment in full and satisfaction of all Obligations of the Guarantor, and the termination of the Commitments. Thereafter, the Lender will, at each Guarantor's request and expense, execute and deliver to such Guarantor appropriate documents, without recourse and without representation and warranty, except as to the amount owing, necessary to evidence the transfer by subrogation to such Guarantor of an interest in the Obligations and any Security held therefore resulting from such payment by the Guarantor.

10.13      Stay of Acceleration

If acceleration of the payment of any Obligations payable by any Guarantor is stayed upon the insolvency, bankruptcy or reorganization of such Guarantor or otherwise, all such Obligations otherwise subject to acceleration under the laws of any Loan Document will nonetheless be payable by each other Guarantor herewith in accordance with the terms hereof.

**ARTICLE 11 – DEFAULT**

**11.01**      **Events of Default**

The occurrence of any one or more of the following events (each such event being referred to as an “**Event of Default**”) will constitute a default under this Agreement, provided that, for greater certainty, the occurrence of a default or an Event of Default shall not affect or prevent the Drawdown:

- (a) if the Borrower fails to pay any amount of principal of any Loan when due;
- (b) if the Borrower fails to pay any interest, fees or other Obligations (other than any principal amount) when due;
- (c) if any Loan Party breaches or fails to perform any of the covenants in Section 8.01(35) and Section 8.03;
- (d) if any Loan Party neglects to observe or perform, in any material respect, any covenant or obligation contained in this Agreement or any other Loan 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 11.01 or such Loan Document) and such Loan Party fails to remedy such default within 15 days from the earlier of (i) the date such Loan Party becomes aware of such default, and (ii) the date the Lender delivers written notice of the default to such Loan Party;
- (e) if any information, representation or warranty given or made by any Loan Party in this Agreement, any Loan Document or in any certificate or other document at any time delivered hereunder to the Lender proves to have been incorrect or misleading in any material respect on and as of the date that it was made or was deemed to have been made and such Loan Party fails to remedy such default within 15 days of the occurrence of such event (or such longer period as the Lender may agree to having regard to the nature of such default and provided the affected Loan Party is proceeding diligently to cure such default);
- (f) if any Loan Party ceases or threatens to cease to carry on business generally or admits its inability or fails to pay its Debts generally;
- (g) if any Loan Party denies, to any material extent, its Obligations under any Loan Document or claims any of the Loan Documents to be invalid or withdrawn in whole or in part;
- (h) any of the Loan Documents or any material provision of any of them becomes unlawful or is changed by virtue of legislation or by a Governmental Authority, if any Loan Party does not, within 15 days of receipt of notice of such Loan Document or material provision becoming unlawful or being changed, replace such Loan Document with a new agreement that is in form and substance satisfactory to the

Lender acting reasonably, or amend such Loan Document to the satisfaction of the Lender acting reasonably;

- (i) if a decree or order of a court of competent jurisdiction is entered adjudging any Loan Party or Sponsor a bankrupt or insolvent or approving as properly filed a petition seeking the winding-up of a Loan Party or Sponsor under the *Companies' Creditors Arrangement Act* (Canada), the *Bankruptcy and Insolvency Act* (Canada), the *United States Bankruptcy Code* or the *Winding-up and Restructuring Act* (Canada) or any other bankruptcy, insolvency or analogous laws or issuing sequestration or process of execution against any substantial part of the assets of a Loan Party or a Sponsor 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 30 days;
- (j) if any Loan Party or Sponsor 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 *United States Bankruptcy Code*, 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, consents to or acquiesces in the appointment of a trustee, receiver, receiver and manager, interim receiver, custodian, sequestrator or other Person with similar powers of itself or of all or any substantial portion of its assets, or files a petition or otherwise commences any proceeding seeking any reorganization, arrangement, composition or readjustment under any applicable bankruptcy, insolvency, moratorium, reorganization or other similar law affecting creditors' rights or consents to, or acquiesces in, the filing of such a petition;
- (k) if an Encumbrancer takes possession, by appointment of a receiver, receiver and manager or otherwise, of all or any part of the Project Lands;
- (l) if proceedings are commenced for the dissolution, liquidation or voluntary winding-up of any Loan Party, or for the suspension of the operations of any Loan Party unless such proceedings are being actively and diligently contested in good faith;
- (m) if a final judgment or decree for the payment of money due has been obtained or entered against any Loan Party in an amount, when combined with any other such judgment or decrees, that, in the reasonable opinion of the Lender, would materially and adversely affect the ability of any such Loan Party to fulfil its obligations to the Lender under this Agreement, and such judgment or decree has not been and remained vacated, discharged or stayed pending appeal within the applicable appeal period or the applicable Loan Party has not demonstrated to the satisfaction of the Lender that it has the financial ability to satisfy such judgement or decree without adversely affecting in any material way, such Loan Party's ability to perform its obligations under the Loan Documents;

- (n) if an event of default as defined in any indenture or instrument evidencing, or under which, any Debt of any Loan Party is outstanding shall happen and be continuing;
- (o) if any Security ceases to constitute a valid and perfected first priority security interest (subject only to Permitted Encumbrances) and, provided the Lender is satisfied that its position will not be prejudiced, the applicable Loan Party has failed to remedy such default within five (5) days of becoming aware of such fact;
- (p) if an event of default occurs under the Organizational Documents of any Loan Party;
- (q) if a Material Project Agreement ceases to be legal, binding and enforceable (other than in accordance with Section 8.03(12) herein) or if an event of default occurs under any Material Project Agreement in respect of any Loan Party and such event of default is not remedied within 2/3 of the time available to cure such default or is being contested in good faith by appropriate proceedings and the Lender is satisfied in its sole and absolute discretion that neither the position of the Lender nor the Security is being adversely affected;
- (r) if any Loan Party enters into or becomes subject to any transaction or agreement which results or could result in a Change of Control or if any Change of Control occurs,
- (s) if any Governmental Authority shall condemn, expropriate, seize or appropriate any substantial portion of the property of any Loan Party which relates to or forms a material part of the Project without fair value being paid therefor;
- (t) if any Loan Party fails to remain a Single Purpose Entity; or
- (u) if in the opinion of the Lender, acting reasonably, a Material Adverse Change has occurred.

**11.02**      **Acceleration and Enforcement**

- (1) If any Event of Default occurs:
  - (a) the outstanding principal amount of the Loan and all other Obligations will, at the option of the Lender, become immediately due and payable with interest thereon, at the rate or rates determined as herein provided, to the date of actual payment thereof, all without notice, presentment, protest, demand, notice of dishonour or any other demand or notice whatsoever, all of which are hereby expressly waived by the Borrower; provided, if any Event of Default described in Section 11.01(i) or (j) with respect to any Loan Party or Sponsor occurs, the outstanding principal amount of the Loan and all other Obligations will automatically be and become immediately due and payable; and
  - (b) the Lender may, in its discretion, exercise any right or recourse and proceed by any action, suit, remedy or proceeding against any Loan Party or Collateral authorized or

permitted by law for the recovery and enforcement of all the Obligations to the Lender or otherwise and, whether or not the Lender has exercised any of its rights under the foregoing clause (a), proceed to exercise any and all rights hereunder and under the Loan Documents, provided however, that the Lender may not prevent the Drawdown by reason of the occurrence of a default or an Event of Default.

(2) The Lender is not under any obligation to the Loan Parties or any other Person to realize upon any collateral or enforce the Security or any part thereof or to allow any of the collateral to be dealt with or Disposed of. The Lender is not responsible or liable to the Loan Parties or any other Person for any loss or damage arising from such realization or enforcement or the failure to do so or for any act or omission on their respective parts or on the part of any director, officer, employee, agent or adviser of any of them in connection with any of the foregoing.

11.03 Remedies Cumulative

For greater certainty, it is expressly understood that the respective rights and remedies of the Lender hereunder or under any other Loan Document or instrument executed pursuant to this Agreement are cumulative and are in addition to and not in substitution for any rights or remedies provided by law or by equity; and 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 contained in this Agreement or any other Loan Document will 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 in connection with such default or breach.

11.04 Perform Obligations

If an Event of Default has occurred and is continuing and if any Loan Party has failed to perform any of its covenants or agreements in the Loan Documents, the Lender, may, but will be under no obligation to, perform any such covenants or agreements in any manner deemed fit by the Lender without thereby waiving any rights to enforce the Loan Documents. The expenses (including any legal costs) incurred and paid by the Lender in respect of the foregoing will be an Obligation and will be secured by the Security.

11.05 Third Parties

It is not necessary for any Person dealing with the Lender to inquire whether the Security has become enforceable, or whether the powers that the Lender is purporting to exercise may be exercised, or whether any Obligations remain outstanding upon the security thereof, or as to the necessity or expediency of the stipulations and conditions subject to which any sale is to be made, or otherwise as to the propriety or regularity of any Disposition or any other dealing with the collateral charged by such Security or any part thereof.

11.06 Application of Payments

All payments made by the Loan Parties hereunder or received from proceeds of realization of any Security will be applied to amounts due under the Obligations, all as determined by the Lender in its sole discretion but subject to the terms of the Intercreditor Agreement.



**ARTICLE 12 – CHANGE IN CIRCUMSTANCES AND INDEMNITIES**

12.01 **[Intentionally Deleted]**

12.02 **Taxes**

(1) If any Loan Party or the Lender is required by Applicable Law to deduct or pay any Indemnified Taxes (including any Other Taxes) in respect of any payment by or on account of any obligation of a Loan Party hereunder or under any other Loan Document, then (i) the sum payable will be increased by that Loan Party when payable as necessary so that after making or allowing for all required deductions and payments (including deductions and payments applicable to additional sums payable under this Section) the Lender receives an amount equal to the sum it would have received had no such deductions or payments been required, (ii) such Loan Party will make any such deductions required to be made by it under Applicable Law and (iii) such Loan Party will pay when due the full amount required to be deducted to the relevant Governmental Authority in accordance with Applicable Law.

(2) Without limiting the provisions of Section 12.02(1), each Loan Party will timely pay any Other Taxes to the relevant Governmental Authority in accordance with Applicable Law.

(3) The Borrower will indemnify the Lender, within 10 days after demand therefor, for the full amount of (i) any amount owing under Section 12.02(1) by any Loan Party that is not a party to this Agreement, and (ii) any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) paid by the Lender and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by the Lender will be conclusive absent manifest error.

(4) As soon as practicable after any payment of Indemnified Taxes or Other Taxes by a Loan Party to a Governmental Authority, such affected Loan Party will (or the Borrower will cause such affected Loan Party to) deliver to the Lender the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Lender.

(5) If the Lender determines, in its sole discretion, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified by the Borrower or with respect to which a Loan Party has paid additional amounts pursuant to this Section 12.02 or that, because of the payment of such Taxes or Other Taxes, it has benefited from a reduction in Excluded Taxes otherwise payable by it, it will pay to the Borrower or other Loan Party, as applicable, an amount equal to such refund or reduction (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower or other Loan Party under this Section with respect to the Taxes or Other Taxes giving rise to such refund or reduction), net of all out-of-pocket expenses of the Lender and without interest (other than any net after-Tax interest paid by the relevant Governmental Authority with respect to such refund). The Borrower or other Loan Party as applicable, upon the request of the Lender, agrees to repay the amount paid over to the Borrower or other Loan Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the

Lender if the Lender is required to repay such refund or reduction to such Governmental Authority. This paragraph will not be construed to require the Lender to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Borrower or any other Person, to arrange its affairs in any particular manner or to claim any available refund or reduction.

12.03 **[Intentionally Deleted]**

12.04 Indemnity by the Loan Parties

(1) Each Loan Party will indemnify the Lender, the Province Persons and each of their respective directors, officers, employees and representatives (each such Person being called an “**Indemnatee**”) against, and hold each Indemnatee harmless from, any and all losses, claims, damages, liabilities and related expenses, including the fees, charges and disbursements of any counsel for any Indemnatee, incurred by any Indemnatee or asserted against any Indemnatee by any third party or by any Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance or non-performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation or non-consummation of the transactions contemplated hereby or thereby, (ii) any Loan or the use or proposed use of the proceeds therefrom, (iii) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by any Loan Party and regardless of whether any Indemnatee is a party thereto, provided that such indemnity will not, as to any Indemnatee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or wilful misconduct of such Indemnatee or (y) result from a claim brought by the Borrower or any other Loan Party against an Indemnatee for breach in bad faith of such Indemnatee’s obligations hereunder or under any other Loan Document, if such Loan Party has obtained a final and non-appealable judgment in its favour on such claim as determined by a court of competent jurisdiction, nor will an indemnity be available in respect of matters specifically addressed in Sections 12.02 or 14.01.

(2) To the fullest extent permitted by Applicable Law, each Loan Party will not assert, and hereby waives, any claim against any Indemnatee, on any theory of liability, for indirect, consequential, punitive, aggravated or exemplary damages (as opposed to direct damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby (or any breach thereof), the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof. No Indemnatee will be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

(3) All amounts due under Section 12.04 will be payable promptly after demand therefor. A certificate of the Lender setting forth the amount or amounts owing to the Lender or Related Party, as the case may be, as specified in Section 12.04, including reasonable detail of the basis of calculation of the amount or amounts, that is delivered to the Borrower will be conclusive absent manifest error.

12.05      Specific Environmental Indemnification

Each Loan Party shall indemnify the Indemnitees and hold them harmless at all times from and against any and all losses, damages and costs (including reasonable counsel fees and out-of-pocket expenses) resulting from any legal action commenced or claim made by a third party against the Indemnitees or any of them related to or as a result of actions or omissions on the part of any Loan Party related to or as a consequence of environmental matters or any requirements of Environmental Laws concerning the Project or the Project Lands, except to the extent same is the obligation and liability of HMQ under the Project Agreement. The Borrower shall have the sole right, at its expense, to control any such legal action or claim and to settle on terms and conditions approved by the Borrower and approved by the party named in such legal action or claim, acting reasonably, provided that if, in the opinion of the Lender, the interests of an Indemnitee are different from those of the Borrower in connection with such legal action or claim, such Indemnitee shall have the sole right, at the Borrower’s expense, to defend its own interests provided that any settlement of such legal action or claim shall be on terms and conditions approved by the Borrower, acting reasonably. If an Indemnitee elects to defend such legal action or claim, it shall promptly notify the Borrower of same and shall make reasonable efforts to consult with the Borrower on an ongoing basis in connection with such matter. If the Borrower does not defend the legal action or claim, the Indemnitee shall have the right to do so on its own behalf and on behalf of the Borrower at the expense of the Borrower.

**ARTICLE 13 – NATURE OF OBLIGATIONS**

13.01      Nature of Obligations under this Agreement and Recourse

(1)      The obligations of the Loan Parties hereunder and under the other Loan Documents are joint and several and the Lender may pursue their remedies against one or more of the Loan Parties at its sole, absolute and unfettered discretion. Each of the Loan Parties acknowledges that additional Loan Parties may become parties to this Agreement and the other Loan Documents from time to time without any agreement with, acknowledgement or approval from or notice to the Loan Parties and that upon such additional Loan Party becoming a party to this Agreement or any other Loan Documents, such additional Loan Party’s obligations hereunder and under the Loan Documents shall be joint and several with the obligations of all Loan Parties hereunder and under the Loan Documents.

(2)      Nothing in this Agreement or in any of the other Loan Documents shall mean, nor be construed to mean, that the recourse of the Lender against each Loan Party and the Collateral is anything other than full recourse with regard to the Obligations hereunder, the manner and order of realization or the exercise of remedies hereunder or under the Loan Documents.

(3)      Each of the Loan Parties acknowledges and agrees that the Borrower shall execute any amendment to this Agreement, any Drawdown Notice, any written request, Officer Certificate or any document or agreement contemplated under the Loan Documents and each of the other Loan Parties acknowledges and agrees that it shall be bound by any such amendment, notice, request, certificate, document or agreement executed and delivered by the Borrower and each of the Loan Parties will be jointly and severally liable thereunder.

**ARTICLE 14 – GENERAL**

**14.01**      **Costs and Expenses**

The Borrower will pay (i) all reasonable out-of-pocket expenses incurred by the Lender, including the reasonable fees, charges and disbursements of Lender's Counsel and other consultants, experts and advisors, in connection with the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby will be consummated), and (ii) all out-of-pocket expenses incurred by the Lender, including the fees, charges and disbursements of Lender's Counsel and other consultants, experts and advisors, in connection with the enforcement or protection of its rights in connection with this Agreement and the other Loan Documents, including its rights under this Section 14.01, or in connection with the Loans made hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans.

**14.02**      **Governing Law, Jurisdiction, Etc.**

(1) This Agreement and each other Loan Document (unless otherwise specified in such Loan Document) will be governed by, and construed in accordance with, the laws of the Province of Ontario and the laws of Canada applicable therein.

(2) Each of the Loan Parties irrevocably and unconditionally submits, for itself and its Property, to the non-exclusive jurisdiction of the courts of the Province of Ontario and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or any other Loan Document, or for recognition or enforcement of any judgment, and each of the parties hereto irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such court. Each Loan Party agrees that a final judgment in any such action or proceeding will be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or in any other Loan Document will affect any right that the Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against any Loan Party or its properties in the courts of any jurisdiction.

(3) Each Loan Party irrevocably and unconditionally waives, to the fullest extent permitted by Applicable Law, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in Section 14.02(2). Each Loan Party hereby irrevocably waives, to the fullest extent permitted by Applicable Law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

**14.03**      **Confidentiality**

(1) The Lender agrees to maintain the confidentiality of the Information (as defined in Section 14.03(2) below), except that Information may be disclosed (a) to any other Government Entity and its partners, directors, officers, employees, agents, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential

nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority), (c) to the extent required by Applicable Law or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section 14.03(1), to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap, derivative, credit-linked note or similar transaction relating to the Borrower and its obligations, (g) with the consent of the Borrower or (h) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section 14.03(1) or (y) becomes available to the Lender on a non-confidential basis from a source other than a Relevant Party.

(2) For purposes of this Section, “Information” means all information received in connection with this Agreement from any Loan Party relating to any Loan Party or any of its Subsidiaries or any of their respective businesses, other than any such information that is available to the Lender on a non-confidential basis prior to such receipt. Any Person required to maintain the confidentiality of Information as provided in Section 14.03(1) will be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

#### 14.04 Benefit and Burden of Agreement

This Agreement will be binding upon the Loan Parties and their respective heirs, executors, administrators, successors and assigns. This Agreement will enure to the benefit of and will be binding upon the Lender and its successors and assigns.

#### 14.05 No Assignment by the Borrower

The rights and benefits of the Loan Parties hereunder may not be assigned by any Loan Party; provided that the Lender acknowledges that the Borrower has assigned the benefit of this Agreement to the AFP Lenders' Agent as part of the security pursuant to the AFP Lending Agreements, and that in accordance with such assignment the security pursuant to the AFP Lending Agreements the AFP Lenders' Agent may, in its capacity as agent for the AFP Lenders or as attorney of the Borrower, request a Drawdown hereunder.

#### 14.06 Assignment or Participation by Lender

(1) The rights, benefits and obligations of the Lender under or in respect of this Agreement (the “**Rights**”) may not be assigned, in whole or in part, (“**Assign**”, “**Assigned**” or an “**Assignment**”) or participated (“**Participated**” or a “**Participation**”) by the Lender with one or more Persons (each an “**Assignee**” or a “**Participant**”, as the case may be), except with the prior written consent of the Borrower and the AFP Lenders' Agent (provided that the consent of the Borrower and the AFP Lenders' Agent shall not be required following the AFP Financing Maturity Date or pursuant to an Assignment or Participation pursuant to Section 14.06(2)). An Assignment or

Participation hereunder will become effective upon execution of the applicable documentation by the Lender, as applicable, and the Participant or Assignee, as the case may be. The Borrower will execute all such further documentation as the Lender may reasonably request with respect to any Assignment or Participation and any prospective Assignee will execute such documentation as the Borrower may reasonably request for the purpose of ensuring that the Assignee is bound by the terms of this Agreement.

(2) The Lender may assign, transfer, dispose of or otherwise alienate any interest in the Loan Documents:

- (a) to the Province;
- (b) in circumstances other than those described in Section 14.06(2)(a), as may be required to comply with Applicable Law;
- (c) to any minister of the Crown;
- (d) to a Crown agency having the legal capacity, power, authority and ability to become a party to and to perform the obligations of the Lender under the Loan Documents provided that such person confirms in writing to the Borrower that it will perform all of the Lender's obligations hereunder and under the other Loan Documents to which the Lender is a party in respect of the period from and after the assignment; and
- (e) in circumstances other than those described in Sections 14.06(2)(a) to (d), with the prior written consent of the Borrower and the AFP Lenders' Agent, not to be unreasonably withheld or delayed; provided that the person to whom any such assignment, transfer, disposition or other alienation is made has the capacity to perform, and confirms in writing to the Borrower that it will perform all the obligations of the Lender hereunder and under the other Loan Documents in respect of the period from and after the assignment.

(3) The Lender shall not be released of any of its obligations under the Loan Documents except upon an assignment, transfer, disposition or other alienation of its interest in this Agreement and the other Loan Documents in accordance with this Section 14.06 and only to the extent such obligations are assumed in writing by the Assignee. Notwithstanding the foregoing, in respect of an assignment, transfer, disposition or other alienation of any of the Lender's interest in the Loan Documents pursuant to Section 14.06(2)(b) or Section 14.06(2)(d), HMQ agrees with Project Co not to be released from its obligations hereunder following such assignment, transfer, disposition or other alienation.

(4) Any Assignee of Rights will be and be treated in respect of such Rights as if it were the Lender for all purposes of this Agreement, will be entitled to the benefit hereof, and will be subject to the obligations of the Lender in respect of such Rights, to the same extent as if it were an original party in respect of the Rights and the Lender assigning such Rights will be released and discharged from its obligations hereunder in respect of such Rights. To the extent that the Rights are the subject of a Participation, all references in this Agreement to the Lender will, with respect to such Rights that are subject to the Participation, continue to be construed as a reference to the

Lender, and the Borrower will be entitled to deal with the Lender as if it were the sole owner of the Rights and the Lender will not be released from obligations hereunder by virtue of the Participation. The Borrower acknowledges and agrees that the Lender will be entitled, in its own name, to enforce for the benefit of, or as agent for, any Participants, any and all rights, claims and interests of such Participants, in respect of the Rights and that Participants will not be entitled to demand payment or exercise any other right or remedy pursuant hereto.

(5) For the purposes of any Assignment or Participation hereunder, the Lender may disclose on a confidential basis to a potential Assignee or Participant such information about the Borrower as the Lender may see fit, provided that such potential Assignee or Participant has executed a confidentiality agreement in favour of the Lender.

14.07      Notices

Any demand, notice or other communication to be given in connection with this Agreement must be given in writing and will be given by personal delivery, by registered mail or by electronic means of communication addressed to the recipient at the address or facsimile number set forth on the signature pages to this Agreement, or to such other street address, individual or electronic communication number or address as may be designated by notice given by either party to the other. Any demand, notice or other communication given by personal delivery will be conclusively deemed to have been given on the day of actual delivery thereof or, if given by registered mail, on the third Business Day following the deposit thereof in the mail or, if given by electronic communication, on the day of transmittal thereof if given during the normal business hours of the recipient and on the Business Day during which such normal business hours next occur if not given during such hours on any day. If the party giving any demand, notice or other communication knows or ought reasonably to know of any difficulties with the postal system that might affect the delivery of mail, any such demand, notice or other communication may not be mailed but must be given by personal delivery or by electronic communication.

14.08      Effect of Assignment

For greater certainty, an assignment by the Lender of its rights hereunder will not constitute a repayment, discharge, rescission, extinguishment or novation of any extension of credit by such Lender under this Agreement or interest therein, and the obligations so assigned will continue to be the same obligations and not new obligations.

14.09      Survival

The provisions of Sections 12.04, 12.05 and 14.01 will survive the repayment of all Loans, whether on account of principal, interest or fees, and the termination of this Agreement, unless a specific release of such provisions by the Lender, on behalf of the Lender, is delivered to the Loan Parties.

14.10      Severability

If any provision of this Agreement is determined by any court of competent jurisdiction to be illegal or unenforceable, that provision will be severed from this Agreement and

the remaining provisions will continue in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any of the parties.

14.11 Further Assurances

Each Loan Party, the Lender will promptly cure any default by it in the execution and delivery of this Agreement, the Loan Documents or of any of the agreements provided for hereunder to which it is a party. Each Loan Party, at its expense, will promptly execute and deliver to the Lender, upon request by the Lender, all such other and further documents, agreements, opinions, certificates and instruments in compliance with, or for the accomplishment of the covenants and agreements of such Loan Party hereunder or more fully to state the obligations of such Loan Party as set forth herein or to make any recording, file any notice or obtain any consent, all as may be reasonably necessary or appropriate in connection therewith.

14.12 Amendments and Waivers

No amendment to this Agreement will be valid or binding unless set forth in writing and duly executed by the Loan Parties and the Lender. No waiver of any breach of any provision of this Agreement and no consent required hereunder will be effective or binding unless made in writing and signed by the party purporting to give the same. Unless otherwise provided, any waiver or consent given hereunder will be limited to the specific breach waived or matter consented to, as the case may be, and may be subject to such conditions as the party giving such waiver or consent considers appropriate.

14.13 Time of the Essence

Time is of the essence of this Agreement.

***Remainder of this page intentionally left blank***



**Amended and Restated Project Agreement – Schedule 8**  
**2015 Pan/Parapan American Games Athletes' Village Project** **Execution Version**

IN WITNESS WHEREOF the parties have executed this Agreement.

**BORROWER:**

**DUNDEE KILMER DEVELOPMENTS L.P.,**  
**[REDACTED]**

**[REDACTED]**

Attention: **[REDACTED]**  
Facsimile No.: **[REDACTED]**

By: \_\_\_\_\_

Name: **[REDACTED]**  
Title: **[REDACTED]**

**[REDACTED]**

Attention: **[REDACTED]**  
Facsimile: **[REDACTED]**

\_\_\_\_\_  
Name: **[REDACTED]**  
Title: **[REDACTED]**

I/We have authority to bind the Partnership

**GUARANTOR:**

**[REDACTED]**, as a Guarantor

**[REDACTED]**

By:

\_\_\_\_\_  
Name: **[REDACTED]**

Title: **[REDACTED]**

Attention: **[REDACTED]**

Facsimile No.: **[REDACTED]**

and to:

\_\_\_\_\_  
Name: **[REDACTED]**

Title: **[REDACTED]**

**[REDACTED]**

Attention: **[REDACTED]**

Facsimile: **[REDACTED]**

I/We have authority to bind the Corporation

**LENDER:**

**HER MAJESTY THE QUEEN IN RIGHT  
OF ONTARIO as represented by the  
Minister of Infrastructure, as represented  
by Ontario Infrastructure and Lands  
Corporation**

**[REDACTED]**

By: \_\_\_\_\_

Name: **[REDACTED]**

Title: **[REDACTED]**

Fax No.: **[REDACTED]**

Attn.: **[REDACTED]**

and to:

\_\_\_\_\_  
Name: **[REDACTED]**

Title: **[REDACTED]**

**[REDACTED]**

Fax No.: **[REDACTED]**

Attn.: **[REDACTED]**

**Schedule A-1**

**Definitions**

“**Account Bank**” means [REDACTED] and any successor, assignee or replacement bank or financial institution, in each case being a Schedule I Bank approved by the Borrower with a long-term issuer credit rating of at least A by S&P and A2 by Moody’s and otherwise acceptable to the Lender, provided that if at any time the long-term issuer credit rating of any financial institution then acting as the Account Bank should fall below A by S&P and A2 by Moody’s (a “Credit Downgrade Event”), the Borrower shall designate a replacement Account Bank, and transfer to it all funds on deposit with the Project Accounts, as soon as is commercially possible and in any event within 20 Business Days of the date of such Credit Downgrade Event, which Account Bank shall be, in the following order of preference (i) a Schedule I Bank with a long-term issuer credit rating of at least A by S&P and A2 by Moody’s, or (ii) if there are no Schedule I Banks with such credit rating, any other financial institution in Canada acceptable to the Lenders, and in each case such transferee shall become the Account Bank, and the Borrower and the Lender shall use reasonable commercial efforts to enter into a Blocked Accounts Agreement with such replacement Account Bank and the Lender within twenty (20) Business Days after notice of such Credit Downgrade Event.

“**Additional Rent**” means that component of monthly rental payments (paid by a proposed unit or unit occupier of part of the Project Lands, other than a residential unit occupier) constituting reimbursement for a landlord’s estimated expenses incurred by it with arm’s length third parties, including realty taxes, utility charges and other general expenses (which for greater certainty do not include overhead or other such indirect expenses), and for greater certainty does not include base rent or percentage rent.

“**Advance Amount**” means the lowest of:

- (i) the outstanding principal amount of the AFP Financing on the AFP Financing Maturity Date as set out in the Drawdown Notice delivered pursuant to Section 2.03(4);
- (ii) \$[REDACTED]; and
- (iii) the aggregate borrowings under the AFP Financing as shown in the Financial Model (for clarity such borrowings to exclude any additional borrowings above and beyond what was shown in the Financial Model at Financial Close except for adjustments for increased or decreased utilization of the AFP Financing post Project Substantial Completion as a result of actual market Unit sales differing from forecast) less, without duplication, and to the extent such amounts are identified in the Financial Model under the AFP Lending Agreements and applied to the outstanding principal amount of the AFP Financing (a) the Interim Completion Payment, the Tarion Payment and the Project Substantial Completion Payment from HMQ under the Project Agreement, (b) all amounts of HMQ Holdbacks which have been released pursuant to the Project Agreement, if any, (c) all amounts of Legislative Holdback which have been released pursuant to the Project Agreement, (d) without duplication, any mandatory and voluntary prepayments pursuant to the AFP Lending Agreements, (e) the Net Sale Proceeds received by any Loan Party from the sale of the Units (either as Qualified Unit Sales or Qualified Building Sales, as applicable) as calculated pursuant to Section 9.04, (f)

any Refinancing Gain pursuant to a Qualifying Refinancing applied in accordance with Section 2.4 of Schedule 12 of the Project Agreement and (g) any amounts on deposit in the Construction Delay Account unless such Construction Delay Account has been assigned to the Lender. For clarity, the Advance Amount shall not include additional borrowings (or interest thereon) arising from delays or cost over-runs.

**“Affiliate”** means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under direct or indirect common Control with the Person specified.

**“AFP Credit Agreement”** means the credit agreement dated as of the date hereof between [REDACTED], which credit agreement comprises one of the AFP Lending Agreements.

**“AFP Financing”** means the financing by the Borrower pursuant to the AFP Lending Agreements and any Replacement AFP Financing pursuant to the Replacement AFP Lending Agreements.

**“AFP Financing Maturity Date”** means [REDACTED].

**“AFP Lenders’ Agent”** means the Lenders’ Agent as defined in the AFP Lenders’ Direct Agreement and any other Person that becomes the agent for the lenders pursuant to the AFP Lending Agreements.

**“AFP Lenders’ Direct Agreement”** means the Lenders’ Direct Agreement as defined in the Project Agreement.

**“AFP Lenders’ Technical Advisor”** means Mott Macdonald Canada Inc. and any successor thereto or replacement thereof.

**“AFP Lending Agreements”** means the Lending Agreements as defined in the Project Agreement and any Replacement AFP Lending Agreements.

**“AFP Project Accounts”** means the following Project Accounts as defined and described in the AFP Credit Agreement:

- the Proceeds Account
- the Operating Account
- the Insurance Trust Account
- the Insurance Account
- the Condominium Proceeds Account

**“Aggregate Project Costs”** means the cost of Works (including all costs to be incurred pursuant to the Project Co Services Agreement, as defined in the Project Agreement) plus the cost of financing plus any other cost incurred during the construction phase, each as set out in the Financial Model.

**“Agreement”** means this credit agreement, including its recitals and schedules.

**“Applicable Law”** means:

- (i) any domestic or foreign statute, law (including common and civil law), treaty, code, ordinance, rule, regulation, restriction or by-law (zoning or otherwise);
- (ii) any judgment, order, writ, injunction, decision, ruling, decree or award;
- (iii) any regulatory policy, practice, guideline or directive; or
- (iv) any franchise, licence, qualification, authorization, consent, exemption, waiver, right, permit or other approval of any Governmental Authority, binding on or affecting the Person referred to in the context in which the term is used or binding on or affecting the property of such Person, in each case whether or not having the force of law.

**“Arm’s Length”** has the meaning ascribed to such term as set out in section 251 of the *Income Tax Act* (Canada).

**“Assignment of Condominium Sales Agreements and Deposits”** means the assignment by the applicable Loan Parties of their rights under Condominium Sales Agreements, together with the Purchaser Deposits, in the form attached hereto as Schedule 1.01(B).

**“Assignment of Material Project Agreements”** means the assignment of Material Project Agreements given by the applicable Loan Parties of their rights therein to the Lender in the form attached hereto as Schedule 1.01(C), which assignment will be acknowledged by the Construction Contractor and all major Contractors required by the Lender.

**“Blocked Account Agreement”** means those certain Blocked Account Agreements among the applicable Loan Parties, the Lender and the Account Bank respecting the AFP Project Accounts which are either assigned to the Lender by the AFP Lenders’ Agent on the AFP Financing Maturity Date or established by the Lender and the Account Bank on the AFP Financing Maturity Date.

**“Business Day”** has the meaning ascribed to such term in the Project Agreement.

**“Canadian Dollars”** and **“Cdn. \$”** mean the lawful money of Canada.

**“Capital Lease”** means a capital lease or a lease that should be treated as a capital lease under GAAP.

**“Cash Sweep Payment Date”** means the first Business Day of each Fiscal Quarter.

**“Certificates of Property Use”** has the meaning described in Item 4.2 in Section 1.2.1 of Part 1 of the Output Specifications of the Project Agreement.

**“Change in Law”** means the occurrence, after the date of this Agreement, of any of the following:

- (i) the adoption or taking effect of any Applicable Law,
- (ii) any change in any Applicable Law or in the administration, interpretation or application thereof by any Governmental Authority; or

(iii) the making or issuance of any Applicable Law by any Governmental Authority.

**“Change of Control”** means:

- (i) any transfer Control in the Borrower or [REDACTED]; or
- (ii) any Guarantor (including any general partners thereof) is no longer a wholly-owned subsidiary, directly or indirectly, of the Borrower.

**“City”** means the City of Toronto.

**“Collateral”** means all Property (and the revenues, insurance proceeds, issues, profits, proceeds and products of the foregoing) which are subject, or are intended or required to become subject, to the security or Encumbrance granted under any of the Loan Documents.

**“Condo Assets”** means any condominium units and all their appurtenant common elements, buildings or facilities constructed as part of the Project excluding any Third Party Facilities (as defined in the Project Agreement).

**“Condominium Act”** means the *Condominium Act, 1998* (Ontario).

**“Condominium Corporation”** means each of the condominium corporations relating to the condominiums established by each Declarant that form part of the Project.

**“Condominium Documents”** means the Declaration, condominium corporation by-laws (or agreements relating thereto), disclosure statements, shared facility agreements, insurance trust agreement (if any) or other documents relating to the creation and operation of each Condominium Corporation that will form part of the Project.

**“Condominium Requirements”** means the Condominium Documents and all Permits and all Applicable Laws relating thereto and/or to the creation, formation and/or maintenance of condominium property and/or the registration, marketing, sale and/or conveyance of the Units, including, without limitation, the Condominium Act.

**“Condominium Sales Agreements”** means purchase and sale agreements in respect of the Units.

**“Construction Contract”** means the construction contract between the Borrower and the Construction Contractor dated on or about the date of Financial Close for the Project.

**“Construction Contractor”** means Ellisdon Ledcor PAAV Inc., engaged by the Borrower to perform the Works and any substitute building contractor engaged by the Borrower as may be permitted by the Project Agreement.

**“Construction Contractor’s Direct Agreement”** has the meaning ascribed thereto in the Project Agreement.

**“Construction Schedule”** means the construction schedule provided to and approved by the Lender, as it may be amended from time to time pursuant to the provisions of the Project Agreement.

**“Contingent Obligation”** means, with respect to any Person, any obligation, whether secured or unsecured, of such Person guaranteeing or indemnifying, or in effect guaranteeing or indemnifying, any indebtedness, leases, dividends, letters of credit or other monetary obligations (the “primary obligations”) of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, including any obligation of such Person as an account party in respect of a letter of credit or letter of guarantee issued to assure payment by the primary obligor of any such primary obligation and any obligations of such Person, whether or not contingent, (i) to purchase any such primary obligation or any Property constituting direct or indirect security therefor, (ii) to advance or supply funds for the purchase or payment of any such primary obligation or to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to purchase Property, securities or services primarily for the purpose of assuring the obligee under any such primary obligation of the ability of the primary obligor to make payment of such primary obligation, or (iv) otherwise to assure or hold harmless the obligee under such primary obligation against loss in respect of such primary obligation; provided, however, that the term Contingent Obligation does not include endorsements of instruments for deposit or collection in the ordinary course of business.

**“Contractors”** means the contractors, sub-contractors and suppliers retained by or on behalf of the Borrower in connection with the Works.

**“Control”** means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have corresponding meanings.

**“Debentures”** means each demand debenture to be granted by each Loan Party having an interest in the Project Lands (whether registered, beneficial or both) in favour of, and in a form acceptable to, the Lender constituting a first charge on the Project Lands and assets related to the Project (other than Permitted Encumbrances), in the form attached hereto as Schedule 1.01(F).

**“Debt”** means, with respect to any Person, all obligations that, in accordance with GAAP, would then be classified as a liability of such Person, and, without duplication, includes, with respect to such Person,

- (i) an obligation in respect of borrowed money or for the deferred purchase price of Property or services or an obligation that is evidenced by a note, bond, debenture or any other similar instrument;
- (ii) a transfer with an obligation to repurchase, to the extent of the liability of such Person with respect thereto;
- (iii) an obligation under a Capital Lease;
- (iv) an obligation under a residual value guarantee made with respect to an operating lease in which such Person is the lessee;



- (v) a reimbursement obligation or other obligation in connection with a bankers’ acceptance or any similar instrument, or letter of credit or letter of guarantee issued by or for the account of such Person;
- (vi) a Contingent Obligation to the extent that the primary obligation so guaranteed would be classified as “Debt” (within the meaning of this definition) of such Person; or
- (vii) the aggregate amount at which any shares of such Person that are redeemable or retractable at the option of the holder of such shares (except where the holder is such Person) may be redeemed or retracted prior to the Maturity Date for cash or obligations constituting Debt or any combination thereof;

provided, however, that there will not be included for the purpose of this definition any obligation that is on account of (A) reserves for deferred income taxes or general contingencies, (B) minority interests in subsidiaries, (C) trade accounts payable and accrued liabilities (including contract loans and income taxes payable) incurred in the ordinary course of business, or (D) Purchaser Deposits or deposits made by tenants pursuant to the terms of their related Leases.

**“Declarant”** means a Person who owns the freehold or leasehold estate in that part of the Project Lands described in a description (as defined pursuant to the Condominium Act), and which registers a Declaration under the Condominium Act, and includes any successor or assignee of that Person, but does not include a third party purchaser in good faith of a unit (as defined pursuant to the Condominium Act) who pays fair market value or a successor or assignee of such purchaser.

**“Declaration”** means the declaration or declarations which, together with the description(s), shall be registered under the Condominium Act and will subject the Project or portion(s) thereof to the provisions of the Condominium Act, and all amendments to such declaration or declarations.

**“Default”** means any event or condition that would constitute an Event of Default upon satisfaction of any condition subsequent required to make the event or condition an Event of Default, including giving of any notice, passage of time, or both.

**“Delay Event”** has the meaning ascribed thereto in the Project Agreement.

**“Direct Agreements”** means (a) the Construction Contractor’s Direct Agreement, (b) each other consent and acknowledgement agreement between the applicable Loan Parties, the Lender, and the Persons identified therein, granting certain rights to Lender in respect of each Material Project Agreement as required by the Lender (in the form provided by the Lender or such other form as may be acceptable to the Lender, acting reasonably).

**“Disposition”** means, with respect to a Person, any sale, assignment, transfer, conveyance, lease, licence or other disposition of any nature or kind whatsoever of any Property or of any right, title or interest in or to any Property, and the verb **“Dispose”** has a corresponding meaning.

**“Dispute Resolution Procedure”** means the dispute resolution procedure set out in Schedule 1.01(E).

**“Distribution”** means:

- (i) any payment, declaration of dividend or other distribution, whether in cash or Property (but expressly excluding any distribution by way of the payment of dividends by the issuance of equity securities of an issuer) to any holder of shares or units of any class of such Person; or
- (ii) any repurchase, redemption, retraction or other retirement or purchase for cancellation of shares or units of such Person, or of any options, warrants or other rights to acquire any of such shares or units.

**“Drawdown”** means an advance of the Loan.

**“Drawdown Notice”** means a notice and direction, substantially in the form set out in Schedule 1.01(G), to be given to the Lender by the Borrower or by the AFP Lenders’ Agent pursuant to Section 2.03(4).

**“Encumbrance”** means, with respect to any Person, any mortgage, debenture, pledge, hypothec, lien, charge, assignment by way of security, hypothecation or security interest granted or permitted by such Person or arising by operation of law, in respect of any of such Person’s Property, or any consignment by way of security or Capital Lease of Property by such Person as consignee or lessee, as the case may be, or any other security agreement, trust or arrangement having the effect of security for the payment of any debt, liability or other obligation, and **“Encumbrances”**, **“Encumbrancer”**, **“Encumber”** and **“Encumbered”** have corresponding meanings.

**“Environmental Law”** means any Applicable Law relating to the environment, including those pertaining to:

- (i) reporting, licensing, permitting, investigating, remediating and cleaning up in connection with any presence or Release, or the threat of the same, of Hazardous Substances, and
- (ii) the manufacture, processing, distribution, use, treatment, storage, disposal, transport, handling and the like of Hazardous Substances, including those pertaining to occupational health and safety.

**“Equity Interests”** means, with respect to any Person, shares of capital stock of (or other ownership or profit interests in) such Person, warrants, options or other rights for the purchase or other acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or other acquisition from such Person of such shares (or such other interests), and other ownership or profit interests in such Person (including, without limitation, partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are authorized on any date of determination.

**“Event of Default”** has the meaning set out in Section 11.01.

**“Excluded Taxes”** means, with respect to the Lender, (i) taxes imposed on or measured by its net income, and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the laws of which its lending office is located, and (ii) any branch profits taxes or any similar tax imposed by any jurisdiction in which the Lender is located.

**“Financial Assistance”** means, without duplication and with respect to any Person, all loans granted by that Person and guarantees or Contingent Obligations incurred by that Person for the purpose of or having the effect of providing financial assistance to another Person or Persons, including letters of guarantee, letters of credit, legally binding comfort letters or indemnities issued in connection therewith, endorsements of bills of exchange (other than for collection or deposit in the ordinary course of business), obligations to purchase assets regardless of the delivery or non-delivery thereof and obligations to make advances or otherwise provide financial assistance to any other Person.

**“Financial Close”** has the meaning ascribed thereto in the Project Agreement.

**“Financial Close Target Date”** has the meaning ascribed thereto in the Project Agreement.

**“Financial Model”** has the meaning ascribed thereto in the Project Agreement.

**“Fiscal Quarter”** means the three-month period commencing on the first day of each Fiscal Year and each such successive three-month period thereafter during such Fiscal Year.

**“Fiscal Year”** means the fiscal year of a Person, which, in the case of the Borrower and the Guarantor, currently ends on December 31<sup>st</sup>, and in the case of Sponsor(s), currently ends on December 31<sup>st</sup>.

**“GAAP”** means those accounting principles that are from time to time approved by the Canadian Institute of Chartered Accountants, or any successor institute.

**“General Security Agreements”** means each general security agreement relating to all present and future Property of each Loan Party, including purchase and sale agreements, plans, contracts, drawings, agreements, permits, approvals, equipment, receivables, inventory, intellectual property and insurance proceeds, in the form attached hereto as Schedule 1.01(H).

**“GST/HST”** means the goods and services tax or harmonized sales tax (“**HST**”), as applicable, under the *Excise Tax Act* (Canada).

**“Good Industry Practice”** means using standards, practices, methods and procedures to a good commercial standard, conforming to Applicable Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a qualified, skilled and experienced person engaged in a similar type of undertaking under the same or similar circumstances.

**“Government Entity”** has the meaning given in the Project Agreement.

**“Governmental Authority”** means the government of Canada or any other nation, or of any political subdivision thereof, whether state, provincial or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, Ontario Infrastructure and Lands Corporation © Copyright 2011 – This document must not be copied or reproduced in any manner without the written permission of Ontario Infrastructure and Lands Corporation.

judicial, taxing, regulatory or administrative powers or functions of or pertaining to government, including any supra-national bodies such as the European Union or the European Central Bank and including a Minister of the Crown, the Superintendent of Financial Institutions or other comparable authority or agency.

**“Hazardous Substance”** means any substance or material that is prohibited, controlled or regulated by any Governmental Authority pursuant to Environmental Law, including pollutants, contaminants, dangerous goods or substances, toxic or hazardous substances or materials, wastes (including solid non-hazardous wastes and subject wastes), petroleum and its derivatives and by-products and other hydrocarbons, all as defined in or pursuant to any Environmental Law.

**“HMQ”** has the meaning ascribed thereto in the Project Agreement.

**“HMQ Holdbacks”** has the meaning ascribed thereto in the Project Agreement.

**“Holdback”** means any amount required to be retained by or on behalf of the Borrower in respect of the value of work, services and materials actually done, performed, placed or furnished on or in the Project in accordance with the *Construction Lien Act* (Ontario).

**“Indemnified Taxes”** means Taxes other than Excluded Taxes.

**“Indemnitee”** has the meaning ascribed thereto in Section 12.04.

**“Independent Certifier”** means BTY Consultancy Group Inc., or such other replacement consultant appointed by the Lender.

**“Independent Insurance Consultant”** means AON Reed Stenhouse Inc. or such other insurance consultant appointed by the Lender.

**“Insurance Proceeds”** means any amount payable by insurers in respect of insurance required to be obtained and maintained pursuant to Section 8.01(7) of this Agreement, including proceeds of claims and return premiums.

**“Insurance Trust Agreement”** means the Insurance Trust Agreement contemplated pursuant to the Project Agreement, dated the date hereof among the Lender, the AFP Lender’s Agent, the Borrower and Computershare Trust Company of Canada.

**“Inter-Company Debt”** means unsecured, assigned, subordinated and postponed Debt incurred by (a) a Guarantor from the Borrower or (b) the Borrower from the Sponsor(s), in each case that is subject to this Agreement, is evidenced by an Inter-Company Note (which shall be delivered to the Lender), is not subject to any Encumbrance (other than Encumbrances pursuant to the Loan Documents) and forms part of the collateral under a each Limited Recourse Guarantee and Pledge and the Inter-Company Subordination Agreement, as applicable.

**“Inter-Company Notes”** means (a) each promissory note or other evidence of indebtedness granted by a Guarantor in favour of the Borrower and (b) a promissory note or other evidence of indebtedness granted by the Borrower in favour of the Sponsor(s), in each case evidencing all or a portion of the applicable Inter-Company Debt that can be perfected by possession by the Lender as

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pledged to Agent for the benefit of the Lender pursuant to the applicable Limited Recourse Guarantee and Pledge.

**“Inter-Company Subordination Agreement”** means an assignment, subordination and postponement agreement to be entered into by the Sponsor(s), the Borrower and the Lender providing for the assignment, subordination and postponement of all Inter-Company Debt, in form attached hereto as Schedule 1.01(J).

**“Intercreditor Agreement”** means the intercreditor agreement between the Lender and the AFP Lenders' Agent dated as of and delivered at Financial Close pursuant to which the Lender agrees, inter alia, to subordinate and postpone its rights against the Borrower under this Agreement and the other Loan Documents to the rights of the AFP Lenders' Agent and the AFP Lenders under the Lending Agreements at all times prior to the Drawdown taking place hereunder and application of such Drawdown to repayment of the AFP Financing.

**“Interest Rate”** means [REDACTED] per cent ([REDACTED]%) *per annum*.

**“Interim Completion Payment”** has the meaning set out in the Project Agreement.

**“Interim Occupancy Fees”** means the monthly fee permitted to be charged by a Declarant to each purchaser who assumes interim occupancy of a proposed unit pursuant to Section 80(4) of the Condominium Act which, for greater certainty, shall not exceed (a) interest on the unpaid balance of the purchase price, calculated monthly, at the rate prescribed pursuant to the regulations under the Condominium Act; (b) a reasonable estimate for monthly municipal taxes attributable to the proposed unit; and (c) the projected monthly common expense contributions for the proposed unit.

**“Investment”** means any direct or indirect (i) acquisition of any shares, partnership interests, participation interests in any arrangement, options or warrants, or any indebtedness, whether or not evidenced by any bond, debenture or other written evidence of a Person, (ii) an investment (including, without limitation, by way of loan) made or held by a Person, directly or indirectly, in another Person (whether such investment was made by the first-mentioned Person in such other Person or acquired from a third party), (iii) acquisition, by purchase or otherwise, of all or substantially all of the business, assets or stock or other evidence of beneficial ownership of a Person, or (iv) acquisition by purchase or otherwise of any real property and related personal property of a Person. Any binding commitment to make an Investment in any Person or property and assets, as well as any option of another Person to require an Investment in such Person or property and assets, shall constitute an Investment. The amount of any Investment will be the original cost of such Investment, plus the cost of all additions thereto and minus the amount of any portion of such Investment repaid to such Person in cash as a return of capital, but without any other adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect to such Investment. In determining the amount of any Investment involving a transfer of any property other than cash, such property will be valued at its fair market value at the time of such transfer.

**“Lease”** means any lease, sublease, agreement to lease, offer to lease, licence or right of occupation granted from time to time, by or on behalf of any Loan Party entitling the lessee, sublessee or grantee thereunder to use or occupy all or any part of the Project, together with all related credits, options, claims, causes of action, guarantees, indemnities, security deposits and other security.

“**Legislative Holdbacks**” has the meaning set out in the Project Agreement.

“**Lender**” means, collectively, Her Majesty the Queen in right of Ontario as represented by the Minister of Infrastructure, as represented by Ontario Infrastructure and Lands Corporation, a non-share capital corporation continued and amalgamated under the *Ontario Infrastructure and Lands Corporation Act*, 2011, S.O. 2011, c. 9, Schedule 32, as amended, and any other Persons that become a party hereto as a Lender in accordance with the provisions hereof, and each of their permitted successors and assigns.

“**Lender’s Counsel**” means the firm of McCarthy Tétrault LLP or such other firm of legal counsel as the Lender may from time to time designate.

“**Lender’s Office**” means the office of the Lender located at 777 Bay Street, 6<sup>th</sup> Floor, Toronto, ON M5G 2C8, or such other office in Canada that the Lender may from time to time designate by notice to the Borrower.

“**Limited Recourse Guarantors**” means [REDACTED] and each individually, a “**Limited Recourse Guarantor**”.

“**Limited Recourse Guarantee and Pledge**” means a guarantee of the Obligations given by each Limited Recourse Guarantor in favour of the Lender, recourse in respect of which is limited to the Equity Interests pledged by such Limited Recourse Guarantor pursuant to the terms therein, in the form attached hereto as Schedule 1.01(R).

“**Loan**” means, collectively, the loans in Canadian Dollars made by the Lender to the Borrower advanced pursuant to the terms of this Agreement in an amount not to exceed the Advance Amount as calculated and determined in accordance with Section 2.03.

“**Loan Documents**” means (a) this Agreement, (b) the Security, (c) each Limited Recourse Guarantee and Pledge, (d) the Direct Agreements, (e) Inter-Company Subordination Agreement, (f) the Trust Account Agreement, (g) Intercreditor Agreement, (h) each joinder agreement of any permitted new Subsidiary pursuant to Section 9.02(2)(a) and (i) all present and future agreements, documents, certificates and instruments delivered by any Loan Party to the Lender pursuant to or in respect of this Agreement or the Security, and “**Loan Document**” means any one of the Loan Documents.

“**Loan Parties**” means, collectively, the Borrower and [REDACTED] and “**Loan Party**” means the relevant Person, as applicable.

“**Loan Parties’ Counsel**” means Goodmans LLP or such other firm of legal counsel as one or more of the Loan Parties may from time to time designate, as acceptable to the Lender.

“**Major Project Party**” means each of:

- (i) the Borrower;
- (ii) [REDACTED];

- (iii) the Limited Recourse Guarantors;
- (iv) the other Guarantors;
- (v) any other parties which the Borrower and the Lender, agree in writing shall be named as Major Project Parties.

“**Market**” has the meaning set out in the Project Agreement.

“**Material Adverse Change**” means any event or occurrence which, when considered individually or together with other events or occurrences, has a material adverse effect on (i) the business, assets, liabilities, operations, results of operations, condition (financial or other) or prospects of an Loan Party, (ii) the Works and/or operation of the Project, or (iii) the ability of any Loan Party to perform its Obligations in all material respects.

“**Material Licences**” means all licences, permits or approvals issued by any Governmental Authority, or any applicable stock exchange or securities commission, to the Borrower or any other Loan Party, and which are at any time on or after the date of this Agreement,

- (vi) necessary or material to the business and operations of the Project, the breach or default of which would result in a Material Adverse Change, provided those not obtained may be reasonably expected to be received in the ordinary course of business prior to the date when required to complete the transactions provided for in the Material Project Agreements and to Construct and operate the Project; or
- (vii) designated by the Lender as a Material Licence with respect to the Project, provided that the Lender has notified the Borrower of such designation,

including, without limitation, those Material Licences existing as of the date of this Agreement listed in Schedule 1.01(K).

“**Material Project Agreements**” means, once such agreements are executed and in full force and effect:

- (i) the Construction Contract;
- (ii) the Condominium Documents;
- (iii) all other material development, management, operating and other contracts with respect to the Project, including, without limitation, parking, shared used and reciprocal agreements, and
- (iv) as of the date of this Agreement, those agreements listed in Schedule 1.01(L),

and “**Material Project Agreement**” means any one of the Material Project Agreements.

**“Maturity Date”** means the second anniversary of the AFP Financing Maturity Date (provided that where such date is not a Business Day, the Maturity Date shall be the Business Day first preceding such date).

**“Monthly Payment Date”** means the first Business Day of each calendar month.

**“Net Project Revenues”** means the amount, determined on an Cash Sweep Payment Date, of cash in the Project Operating Account in excess of the amounts applied pursuant to Section 6.02(a) to Section 6.02(1)(e) (inclusive).

**“Net Sale Proceeds”** means, with respect to any Disposition, the cash proceeds received by the Borrower or any Declarants from such Disposition, including cash proceeds received from Rent Revenue or the sale of any Condo Assets, including all deposits received, net of: (i) in the case of Rent Revenue, Additional Rents, (ii) in case of sale of Condo Assets, Interim Occupancy Fees, (iii) costs of partial discharge of the mortgage in favour of the Lender and (iv) reasonable, bona fide direct closing costs and expenses on Arm's Length terms incurred in connection with such Disposition, including customary fees and commissions of agents and brokers, reasonable legal fees, adjustments which are disbursements as agreed to between a Declarant and the purchaser of the Condo Assets pursuant to the applicable Condominium Sales Agreement; provided that such costs and expenses are paid on the closing date or deposited into the Project Operating Account (or if applicable, the AFP Project Account that is identified as the Condominium Proceeds Account) on such closing date to be paid in accordance with Section 6.02 out of the gross proceeds of such transaction to the Persons entitled to such costs and expenses and, for greater certainty, such costs and expenses shall not constitute Project Expenses.

**“Notice of Intent to Borrow”** means a notice, substantially in the form set out in Schedule 1.01(M), to be given to the Lender by the Borrower pursuant to Section 2.03(3).

**“Obligations”** means all obligations of the Loan Parties or any of them to the Lender under or in connection with this Agreement or the other Loan Documents from time to time, including all debts and liabilities, present or future, direct or indirect, absolute or contingent, matured or not, at any time owing by the Loan Parties or any of them to the Lender in any currency or remaining unpaid by the Loan Parties or any of them to the Lender under or in connection with this Agreement or the other Loan Documents whether arising from dealings between the Lender and the Loan Parties, or any of them, or from any other dealings or proceedings by which the Lender may be or become in any manner whatsoever a creditor or obligee of the Loan Parties or any of them pursuant to this Agreement or the other Loan Documents, and wherever incurred, and whether incurred by any Loan Party alone or with another or others and whether as principal or surety, and all interest, fees, legal and other costs, charges and expenses relating thereto.

**“Organizational Documents”** means, with respect to any Person, as applicable, such Person's articles, memorandum or other charter documents, partnership agreement, joint venture agreement, declaration of trust, trust agreement, by-laws, unanimous shareholder agreement, or any and all other similar agreements, documents and instruments pursuant to which such Person is constituted, organized or governed.



**“Other Taxes”** means all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or under any other Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document.

**“Payment Date”** means a Monthly Payment Date and a Cash Sweep Payment Date.

**“Performance and Payment Bonds”** means labour and material or performance bonds issued by a surety acceptable to the Lender relating to all or any portion of the Works, such bonds to be in customary form typically utilized within the construction industry and otherwise acceptable to the Lender (which bonds shall contain dual obligee riders in favour of the Lender) and in such amount as may be required hereunder.

**“Permit”** means any action, certificate, certificate of authorization, registration, notice, decree, filing, approval, consent, waiver, exemption, variance, franchise, order, permit, right, license or other authorization of or from a Governmental Authority or the giving of notice to any Governmental Authority.

**“Permitted Encumbrances”** means the following:

- (i) liens for Taxes, rates, assessments or other governmental charges or levies not yet due, or for which instalments have been paid based on reasonable estimates pending final assessments, or if due, the validity of which is being contested diligently and in good faith by appropriate proceedings, provided that, if the aggregate amount being contested is in excess of \$[REDACTED], the Borrower shall have deposited with the Lender collateral satisfactory to the Lender to secure the payment of such Taxes and assessments;
- (ii) undetermined or inchoate liens, rights of distress and charges incidental to construction, maintenance or current operations that have not at such time been filed or exercised and of which the Lender has not been given notice, or that relate to obligations not due or payable, or if due, the validity of which is being contested diligently and in good faith by appropriate proceedings;
- (iii) reservations, limitations, provisos and conditions expressed in any original grant from the Crown or other grants of real or immovable property, or interests therein, that do not materially affect the use of the affected land for the purpose for which it is used;
- (iv) permits, reservations, covenants, servitudes, right of access or user licenses, easements, rights of way and rights in the nature of easements (including, without limitation, licenses, easements, rights of way and rights in the nature of easements for railways, sidewalks, public ways, sewers, drains, gas and oil pipelines, steam and water mains or electric light and power, or telephone, telecommunication, television and telegraph conduits, poles, wires and cables) that do not materially impair the use of the affected land for the purpose for which it is used, or in respect of which satisfactory arrangements have been made for relocation so that such use will not, in the aggregate, be materially and adversely impaired, or which the a Loan Party is bound to enter into pursuant to any agreement with a Governmental Authority

- or a counterparty to a Material Project Agreement entered into in connection with the development of the Project;
- (v) title defects, irregularities or other matters relating to title that are of a minor nature and that in the aggregate do not materially impair the use of the affected property for the purpose for which it is used;
  - (vi) the right reserved to or vested in any Governmental Authority by the terms of any lease, licence, franchise, grant or permit or by any statutory provision to terminate any such lease, licence, franchise, grant or permit, or to require annual or other payments as a condition to the continuance thereof;
  - (vii) the Encumbrance resulting from the deposit of cash or securities in connection with contracts, tenders or expropriation proceedings, or to secure workers' compensation, employment insurance, surety or appeal bonds, costs of litigation when required by law, liens and claims incidental to current construction, mechanics', warehousemen's, carriers' and other similar liens, and public, statutory and other like obligations incurred in the ordinary course of business;
  - (viii) security given to a public utility or any Governmental Authority when required by such utility or authority in connection with the operations of the Borrower in the ordinary course of its business;
  - (ix) the Encumbrance created by a judgment of a court of competent jurisdiction, or claim (including claims pursuant to the *Construction Lien Act* (Ontario)) filed, against the Borrower or Nominee as long as the judgment is being contested diligently and in good faith by appropriate proceedings by that Person and does not result in an Event of Default, provided that if such judgment or claim is a construction lien or is in the aggregate greater than \$[REDACTED], the Borrower shall have either (A) in the case of any such judgment or claim that is not a construction lien, if acceptable to the Lender, deposited with the Lender collateral satisfactory to the Lender to secure the payment of such judgment or claim, or (ii) posted a payment bond, or made payment into court, of such amount as is necessary to remove such Encumbrance;
  - (x) the Security;
  - (xi) encroachments by the Project or structures thereon over neighbouring lands (including public streets) and minor encroachments by neighbouring lands or structures thereon over the Project Lands, so long as, in the former case, there are written agreements permitting such encroachments;
  - (xii) subdivision, development, servicing and site plan agreements, undertakings and agreements made pursuant to applicable planning and development legislation, entered into with or made in favour of any Governmental Authority, or public or private utility;
  - (xiii) Leases that have been approved by the Lender or entered into in accordance with this Agreement and notices of them;

- (xiv) all municipal by-laws and regulations and other municipal land use instruments, including, without limitation, official plans, zoning and building by-laws, restrictive covenants and other land use limitations, public or private, and other restrictions as to the use of the Project Lands;
- (xv) prior to the AFP Financing Maturity Date, the Encumbrances pursuant to the AFP Lending Agreements;
- (xvi) any Encumbrance described in Schedule 1.01(N);
- (xvii) any Encumbrance granted in favour of HMQ pursuant to the Project Co Lands Agreements of Purchase and Sale; and
- (xviii) such other Encumbrances as are agreed to in writing by the Lender.

**“Person”** means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

**“Plans and Specifications”** means the plans and specifications pertaining to the development and construction of the Project prepared by or at the direction of the Borrower and as approved by the Lender and the Independent Certifier, as amended from time to time pursuant to the Project Agreement.

**“Potential Prior-Ranking Claims”** means all amounts owing or required to be paid, where the failure to pay any such amount could give rise to a claim pursuant to Applicable Law or otherwise, which ranks or is capable of ranking in priority to the Security or otherwise in priority to any claim by the Lender for repayment of any amounts owing under this Agreement.

**“Proforma Sale Price”** means in respect of any Unit, the sale price applicable thereto as set out in Schedule 1.01(S), as amended and replaced from time to time subject to the prior written approval of the Lender in its sole discretion.

**“Project”** means, (a) for the period from the Financial Close Target Date to the Project Co Lands Transfer Date, the Project Co Stage 1 Condominium Facilities and (b) for the period following the Project Co Lands Transfer Date, Project Lands and the Project Co Stage 1 Condominium Facilities, and all related Works, landscaping and interior decoration, all plants, machinery, improvements and equipment and all other Property, whether free-standing or otherwise, auxiliary or ancillary thereto or connected therewith or added thereto, to be constructed on, above or under the surface of the Project Lands in accordance with the Plans and Specifications and the Project Budget.

**“Project Accounts”** means the Project Operating Account.

**“Project Agreement”** the project agreement dated the date hereof between HMQ and the Borrower, which sets out the terms and conditions upon which the Borrower shall perform the Project Operations (as defined therein) with the objective of having the Pan/Parapan American Games Athletes' Village in operation for the Pan/Parapan American Games in 2015, as amended, restated, replaced or modified from time to time.

**“Project Budget”** means the budgeted costs relating to the Project which has specified a line by line itemization of such costs as set out in the Financial Model, as amended from time to time subject to the requirements of the Project Agreement, the Project Budget as at the date hereof being that attached as Schedule 1.01(O).

**“Project Co Lands Agreements of Purchase and Sale”** has the meaning ascribed thereto in the Project Agreement.

**“Project Co Lands Transfer Date”** means has the meaning ascribed thereto in the Project Agreement.

**“Project Co Stage 1 Condominium Facilities”** has the meaning ascribed thereto in the Project Agreement.

**“Project Co. Stage 1 Conversion Substantial Completion”** has the meaning set out in the Project Agreement.

**“Project Expenses”** means, without duplication of the amount of costs and expenses applied in calculating Net Sale Proceeds, the reasonable, bona fide direct costs and expenses on Arm's Length terms incurred in connection with (a) the marketing of the Project and the Units and (b) completion of the interior finishes of the Units in accordance with each Condominium Sales Agreement the sale of which would constitute a Qualifying Unit Sale; provided, in each case, such costs and expenses are reflected and consistent with the Financial Model.

**“Project Lands”** means the lands and premises defined as the “Project Co Stage 1 Lands” and the “Project Co Stage 2 Lands” in the Project Agreement and more particularly described in Schedule 1.01(A) hereto, as such description of these lands and premises in Schedule 1.01(A) may be amended and revised pursuant to the process set out in Section 26.2 of the Project Agreement.

**“Project Operating Account”** means the “Proceeds Account” and bearing account number 1644-024 held by the Borrower at the Account Bank, together with any replacement and substitute accounts opened with the consent of the Lender.

**“Project Revenue”** means, for any period, all revenues, payments, cash and proceeds arising from the business or operations of each Loan Party during such period from whatever source received, including, (a) Net Sale Proceeds from the Disposition of any Property (including Units), and (b) interest and other income earned on amounts in the Project Accounts, but excluding the amounts described in subsections 5.01(2)(b) and (c).

**“Project Substantial Completion”** has the meaning set out in the Project Agreement.

**“Project Substantial Completion Payment”** has the meaning set out in the Project Agreement.

**“Property”** means, with respect to any Person, all or any portion of that Person's undertaking and property, both real and personal.

**“Province”** or **“Crown”** means Her Majesty the Queen in Right of Ontario.

“**Province Persons**” has the meaning set out in the Project Agreement.

“**Purchaser Deposits**” means deposits paid by purchasers of Units under the Condominium Sales Agreements.

“**Qualifying Refinancing**” has the meaning set out in Schedule 12 of the Project Agreement.

“**Qualified Building Sale**” means the sale of a single building comprising part of the Project meeting the following criteria:

- (i) the purchaser under such agreement of purchase and sale for such single building comprising part of the Project must be Arm’s Length with each Loan Party, the Sponsor(s) or any of the Loan Parties’ or Sponsor(s) Affiliates; and
- (ii) the purchase price payable under the agreement of purchase and sale for such building is not less than the [REDACTED]% of the aggregate of the Proforma Sale Price for each Unit in the building unless otherwise approved by the Lender.

“**Qualified Unit Sale**” means the sale of a Unit meeting the following criteria:

- (i) such sale must be pursuant to a binding and enforceable Condominium Sales Agreement, a copy of which has been provided to the Lender and which is in the form of the Standard Form Condominium Sales Agreement or a form satisfactory to the Lender, acting reasonably;
- (ii) unless approved by the Lender, acting reasonably, the purchaser under such Condominium Sales Agreement must be Arm’s Length with each Loan Party, the Sponsor(s) or any of the Loan Parties’ or Sponsor(s) Affiliates;
- (iii) unless approved by the Lender, acting reasonably, if the purchaser either individually or in conjunction with a spouse or child or, in the case of Persons which are not individuals, together with Affiliates thereof (in each case where such relationship is known to any Loan Party, the Sponsor(s) or any of its Affiliates) is purchasing five or more Units (provided that such limit shall not apply in respect of the sale of 5 Units to principals of Sponsor, which shall not be subject to this restriction), the sale of only one of such Units may be designated a Qualified Unit Sale; and
- (iv) the purchase price payable under the Condominium Sales Agreement is not less than [REDACTED]% of the Unit’s Proforma Sale Price unless otherwise approved by the Lender and the Lender shall act reasonably if it is satisfied that the market price is less than [REDACTED]% of the Unit’s Proforma Sale Price.

“**Refinancing**” has the meaning set out in Schedule 12 of the Project Agreement.

“**Refinancing Gain**” has the meaning set out in Schedule 12 of the Project Agreement.

“**Related Parties**” means, with respect to any Person, such Person’s Affiliates and the directors, officers, employees, agents and advisors of such Person or of such Person’s Affiliates.

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**“Release”** means any release or discharge of any Hazardous Substance including any discharge, spray, injection, inoculation, abandonment, deposit, spillage, leakage, seepage, pouring, emission, emptying, throwing, dumping, placing, exhausting, escape, leach, migration, dispersal, dispensing or disposal.

**“Relevant Jurisdiction”** means, from time to time, with respect to a Person that is granting Security hereunder, any province or territory of Canada, any state of the United States or any other country or political subdivision thereof in which such Person has its chief executive office or chief place of business or has Property that is subject to the Security and, for greater certainty, includes the provinces and states set out in Schedule 1.01(P).

**“Rent Revenue”** means all rent revenue received by the Borrower or any Declarant in respect of the lease of retail space at the Project Lands.

**“Repayment Notice”** means a notice substantially in the form set out in Schedule 1.01(Q).

**“Replacement AFP Financing”** means each Qualifying Refinancing.

**“Replacement AFP Lending Agreements”** means the lending agreements granted by the applicable Loan Parties in connection with a Qualifying Refinancing.

**“Requirements of Environmental Law”** means all requirements of the common law or of statutes, regulations, by-laws, ordinances, treaties, judgments and decrees, and (to the extent that they have the force of law) rules, policies, guidelines, orders, approvals, notices, permits, directives, and the like, of any Governmental Authority relating to environmental or occupational health and safety matters (as they relate to exposure to a Hazardous Substance) and the assets and undertaking of such Person and the intended uses thereof in connection with such matters, including all such requirements relating to: (a) the protection, preservation or remediation of the natural environment (the air, land, surface water or groundwater); (b) solid, gaseous or liquid waste generation, handling, treatment, storage, disposal or transportation; (c) consumer, occupational or public safety and health (as they relate to exposure to a Hazardous Substance); and (d) Hazardous Substances or conditions (matters that are prohibited, controlled or otherwise regulated, such as contaminants, pollutants, toxic substances, dangerous goods, wastes, hazardous wastes, liquid industrial wastes, hazardous materials, petroleum and other materials such as urea formaldehyde and polyurethane foam insulation, asbestos or asbestos-containing materials, polychlorinated biphenyls (PCBs) or PCB contaminated fluids or equipment, lead based paint, explosives, radioactive substances, petroleum and associated products, above ground and underground storage tanks or surface impoundments).

**“Requirements of Law”** means, with respect to any Person, the Organizational Documents of such Person and any Applicable Law or any determination of a Governmental Authority, in each case applicable to or binding upon such Person or any of its business or Property or to which such Person or any of its business or Property is subject.

**“Responsible Officer”** means (a) in respect of any corporation any one of: the Chairman of the Board, the Vice Chairman of the Board, the President, an Executive Vice President, a Senior Vice President, a Vice President, a Director, the Chief Executive Officer, the Chief Financial Officer, the Treasurer, the Secretary, a Corporate Secretary or any other duly authorized signatory of such

corporation; and (b) with respect to the Borrower means such a Person with respect to the [REDACTED].

“**Section 118 Restriction**” has the meaning set out in Section 9.02(1).

“**Security**” means the documents creating an Encumbrance in favour of, or any collateral held from time to time by, the Lender, in each case securing or intended to secure repayment of the Obligations, including all security described in Article 9.

“**Single Purpose Entity**” means a Person that:

- (i) is prohibited from engaging in any business activity other than acquiring, developing, constructing, owning, holding, selling, leasing, transferring, exchanging, managing and operating the Project, entering into this Agreement and the other Loan Documents to which it is a party and transacting lawful business that is incidental, necessary and appropriate to accomplish the foregoing;
- (ii) is prohibited from incurring any Debt other than (a) Inter-Company Debt, (b) AFP Financing (including any full refinancing of same in accordance with Section 8.01(34)), (c) the Loan, (d) the Purchaser Deposits and (e) amounts payable to DBC pursuant to the DBC Agreements, liabilities associated with routine Project operating expenses and required capital improvements, repairs and replacements or as otherwise permitted hereunder; and
- (iii) maintains a relationship with Affiliates and any directors or officers thereof on Arm’s Length terms (i.e. any agreement or transaction entered into with such Persons is not materially more or less favourable to such Persons than the terms and conditions that would be expected to have been obtained at the time of such agreement or transaction and under similar circumstances from Persons that are not such Persons).

“**Sponsor(s)**” means [REDACTED], and each, a “Sponsor”.

“**Standard Form Condominium Sales Agreement**” means the standard form agreement of purchase and sale to be utilized in respect of the sale of the Units, approved as to form by the Lender.

“**Tarion**” means Tarion Warranty Corporation, its successors and assigns.

“**Tarion Home Warranty Program**” means the applicable warranty program operated by Tarion relating to purchasers of the Units.

“**Taxes**” means all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“**Technical Reports**” has the meaning set out in the Project Agreement.

“**Unit**” means a “unit” (as defined in the Condominium Act) comprising part of the Project, together with the common and exclusive use interests appurtenant thereto.

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“**Works**” has the meaning set out in the Project Agreement.



**Schedule A-2**

**Rules of Interpretation**

1. Any defined terms set forth in any Loan Document shall apply equally to both the singular and the plural of the terms so defined, and words importing any gender include all genders.
2. The term “including” means “including without limiting the generality of the foregoing” and the term “third party” means any Person other than a Person who is a party to this Agreement or any other Loan Document.
3. The computation of periods of time from a specified date to a later specified date, the word “from” means “from *and including*” and the words “to” and “until” each mean “to *but excluding*”.
4. The term “or” is not exclusive unless the context otherwise requires.
5. References to any Loan Document, Material Project Agreements, other contractual obligation, document or instrument shall mean and be a reference to such Loan Document, Material Project Agreement, other contractual obligation, document or instrument (a) shall include all exhibits, schedules and other attachments thereto, (b) shall include all documents, instruments or contractual obligations issues or executed in replacement thereof in accordance with the terms of this Agreement, and (c) shall mean such Loan Document, Material Project Agreement, other contractual obligation, document or instrument, or replacement or predecessor thereto, as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with its terms and to the extent permitted under this Agreement and in effect at any given time.
6. All references herein to Articles, Sections, Clauses, Exhibits and Schedules shall be deemed to be references to Articles, Sections and Clauses of, and Exhibits and Schedules to, this Agreement, unless the context shall otherwise require.
7. Any reference to any Person shall include its successors and permitted assigns in the capacity indicated, and in the case of any Governmental Authority, any Person succeeding to its functions and capacities.
8. Any reference to Applicable Laws shall include all references to such Applicable Law as amended.
9. The Loan Documents are the result of negotiations between, and have been reviewed by each Loan Party, each Sponsor, and the Lender and their respective counsel. Accordingly, the Loan Documents shall be deemed to be the product of all parties thereto, and no ambiguity shall be construed in favour of or against any Loan Party, each Sponsor, or the Lender.
10. The inclusion of reference to Permitted Encumbrances in any Loan Document is not intended to subordinate and will not subordinate, any Encumbrance created by any of the Security to any Permitted Encumbrance.

11. Reference to “days” shall mean calendar days, unless the term “Business Days” shall be used. References to a time of day shall mean such time in Toronto, Ontario, unless otherwise specified.
12. Unless otherwise specified in this Agreement, all references to currency (without further description) are to lawful money of Canada.
13. This Agreement and the other Loan Documents constitute the whole and entire agreement between the Loan Parties and the Lender and cancels and supersedes any prior agreements, undertakings, declarations, commitments, representations, written or oral, in respect thereof. In the event of a conflict between the provisions of this Agreement and the provisions of any other Loan Document, then, unless such Loan Document or an acknowledgement from the Borrower and the Lender relative to such Loan Document expressly states that this Section 13 of this Schedule A-2 is not applicable to such Loan Document, notwithstanding anything else contained in such other Loan Document, the provisions of this Agreement will prevail and the provisions of such other Loan Document will be deemed to be amended to the extent necessary to eliminate such conflict.

**Schedule 1.01(A)**

**Legal Description of Project Lands**

The full legal description of the Project Lands, including references to the applicable Blocks on the Plan of Subdivision, is as follows:

<b><u>No</u></b>	<b><u>PIN</u></b>	<b><u>BLOCKS</u></b>	<b><u>LEGAL DESCRIPTION</u></b>
2.	<u>21077-0291</u>	<u>West 7</u>	<u>PCL 7-2 SEC A108; PT LT 12 N/S MILL ST PL 108 TORONTO PT 41 66R16601 S OF 66R17254; SAVE &amp; EXCEPT 66M2488 CITY OF TORONTO</u>
3.	<u>21077-0293 (Part)</u>	<u>West Block 7 Laneway</u>	PART OF LOTS 11& 12, NORTH SIDE OF MILL STREET, PLAN 108, DESIGNATED AS PARTS 3, 6 & 7, PLAN 66R-25445, SAVE AND EXCEPT PLAN 66M-2488 CITY OF TORONTO
4.	<u>21077-0295</u>	<u>West 3, West 4</u>	PCL 7-2 SEC A108; LT 1 PL 611 TORONTO; LT 2 PL 611 TORONTO; LT 3 PL 611 TORONTO; PRIVATE LANE PL 611 TORONTO; 2 FT RESERVE PL 611 TORONTO; LT 7 S/S FRONT ST E PL 108 TORONTO; LT 8 S/S FRONT ST E PL 108 TORONTO; LT 9 S/S FRONT ST E PL 108 TORONTO; LT 11 S/S FRONT ST E PL 108 TORONTO; LT 12 S/S FRONT ST E PL 108 TORONTO; PT LT 10 S/S FRONT ST E PL 108 TORONTO; PT LT 12 N/S MILL ST PL 108 TORONTO; PT LT 7 N/S MILL ST PL 108 TORONTO; PT LT 8 N/S MILL ST PL 108 TORONTO; PT LT 9 N/S MILL ST PL 108 TORONTO; PT LT 10 N/S MILL ST PL 108 TORONTO; PT LT 11 N/S MILL ST PL 108 TORONTO PT 41 66R16601 N OF 66R17254; SAVE & EXCEPT 66M2488 CITY OF TORONTO
5.	<u>21077-0297</u>	<u>1</u>	<u>Block 1, Plan 66M2488 City of Toronto</u>
6.	<u>21077-0298</u>	<u>2</u>	<u>Block 2, Plan 66M2488 City of Toronto</u>
7.	<u>21077-0299</u>	<u>3</u>	<u>Block 3, Plan 66M2488 City of Toronto</u>
8.	<u>21077-0300</u>	<u>4</u>	<u>Block 4, Plan 66M2488 SUBJECT TO AN EASEMENT AS IN AT2824753 City of Toronto</u>
9.	<u>21077-0301</u>	<u>5</u>	<u>Block 5, Plan 66M2488 City of Toronto</u>
10.	<u>21077-0302</u>	<u>6</u>	<u>Block 6, Plan 66M2488 City of Toronto</u>
11.	<u>21077-0303</u>	<u>7</u>	<u>Block 7, Plan 66M2488 SUBJECT TO AN EASEMENT AS IN AT998141; SUBJECT TO AN EASEMENT AS IN</u>

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<b>No</b>	<b><u>PIN</u></b>	<b><u>BLOCKS</u></b>	<b><u>LEGAL DESCRIPTION</u></b>
			<u>AT998210; SUBJECT TO AN EASEMENT AS IN AT998268 City of Toronto</u>
12.	<u>21077-0304</u>	<u>8</u>	<u>Block 8, Plan 66M2488 SUBJECT TO AN EASEMENT AS IN AT2824753 City of Toronto</u>
13.	<u>21077-0305</u>	<u>9</u>	<u>Block 9, Plan 66M2488 SUBJECT TO AN EASEMENT AS IN CA121112; SUBJECT TO AN EASEMENT AS IN CA121111E; SUBJECT TO AN EASEMENT AS IN AT2824753; SUBJECT TO AN EASEMENT OVER PARTS 1, 2 &amp; 3, PLAN 66R-25770 IN FAVOUR OF PART LOT 28 N/S FRONT ST. (NOW MILL ST.) PLAN 108 &amp; PART LOT 28 S/S OF FRONT ST. PLAN 108 DESIGNATED AS PARTS 1-7 PLAN 66R-22377 AS IN AT2825067 City of Toronto</u>
14.	<u>21077-0306</u>	<u>10</u>	<u>Block 10, Plan 66M2488 SUBJECT TO AN EASEMENT AS IN AT2824753 City of Toronto</u>
15.	<u>21077-0307</u>	<u>11</u>	<u>Block 11, Plan 66M2488 SUBJECT TO AN EASEMENT AS IN AT2824753 City of Toronto</u>
16.	<u>21077-0308</u>	<u>12</u>	<u>Block 12, Plan 66M2488 SUBJECT TO AN EASEMENT AS IN AT2824753 City of Toronto</u>
17.	<u>21077-0309</u>	<u>13</u>	<u>Block 13, Plan 66M2488 SUBJECT TO AN EASEMENT AS IN AT2824753 City of Toronto</u>
18.	<u>21077-0310</u>	<u>14</u>	<u>Block 14, Plan 66M2488 SUBJECT TO AN EASEMENT AS IN AT2824753 City of Toronto</u>
19.	<u>21077-0311</u>	<u>15</u>	<u>Block 15, Plan 66M2488 SUBJECT TO AN EASEMENT AS IN AT2824753 City of Toronto</u>
20.	<u>21077-0312</u>	<u>16</u>	<u>Block 16, Plan 66M2488 SUBJECT TO AN EASEMENT AS IN AT2824753 City of Toronto</u>
21.	<u>21077-0314</u>	<u>18</u>	<u>Block 18, Plan 66M2488 City of Toronto</u>
22.	<u>21077-0315</u>	<u>19</u>	<u>Block 19, Plan 66M2488 City of Toronto</u>
23.	<u>21077-0316</u>	<u>20</u>	<u>Block 20, Plan 66M2488 SUBJECT TO AN EASEMENT AS IN CA121112; SUBJECT TO AN EASEMENT AS IN CA121111E; SUBJECT TO AN EASEMENT AS IN AT2824753 City of Toronto</u>
24.	<u>21077-0317</u>	<u>21</u>	<u>Block 21, Plan 66M2488 City of Toronto</u>
25.	<u>21077-0318</u>	<u>22</u>	<u>Block 22, Plan 66M2488 City of Toronto</u>
26.	<u>21077-0319</u>	<u>23</u>	<u>Block 23, Plan 66M2488 City of Toronto</u>

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<b>No</b>	<b>PIN</b>	<b>BLOCKS</b>	<b>LEGAL DESCRIPTION</b>
27.	<u>21077-0320</u>	<u>24</u>	<u>Block 24, Plan 66M2488 City of Toronto</u>
28.	<u>21077-0321</u>	<u>25</u>	<u>Block 25, Plan 66M2488 City of Toronto</u>
29.	<u>21077-0323</u>	<u>27</u>	<u>Block 27, Plan 66M2488 City of Toronto</u>
30.	<u>21077-0324</u>	<u>28</u>	<u>Block 28, Plan 66M2488 City of Toronto</u>
31.	<u>21077-0325</u>	<u>29</u>	<u>Block 29, Plan 66M2488 City of Toronto</u>
32.	<u>21077-0326</u>	<u>30</u>	<u>Block 30, Plan 66M2488 City of Toronto</u>
33.	<u>21077-0327</u>	<u>31</u>	<u>Block 31, Plan 66M2488 City of Toronto</u>
34.	<u>21077-0328</u>	<u>32</u>	<u>Block 32, Plan 66M2488 SUBJECT TO AN EASEMENT AS IN CA121112; SUBJECT TO AN EASEMENT AS IN CA121111E City of Toronto</u>
35.	<u>21077-0329</u>	<u>33</u>	<u>Block 33, Plan 66M2488 City of Toronto</u>
36.	<u>21077-0330</u>	<u>34</u>	<u>Block 34, Plan 66M2488 City of Toronto</u>
37.	<u>21077-0331</u>	<u>35</u>	<u>Block 35, Plan 66M2488 City of Toronto</u>
38.	<u>21077-0223 (Part)</u>	<u>Front St. E.</u>	<u>PCL 1-1 SEC A34E; PT FRONT ST E PL 108 TORONTO (PALACE ST) AS CLOSED BY BYLAW ES14695 PT 56 66R16601 EXCEPT 66M2473;TORONTO , CITY OF TORONTO</u>
39.	<u>21077-0267 (Part)</u>	<u>Block 19, Phase 1</u>	<u>BLOCK 19, PLAN 66M2473 SUBJECT TO AN EASEMENT AS IN CT16241 CITY OF TORONTO</u>
40.	<u>21077-0266</u>	<u>Block 18, Phase 1</u>	<u>BLOCK 18, PLAN 66M2473 CITY OF TORONTO</u>
41.	<u>21077-0225</u>	<u>Mill St.</u>	<u>PCL 1-1 SEC A34E; PT MILL ST PL 108 TORONTO (FRONT ST)EAST OF CHERRY ST BEING PT 58 66R16601 EXCEPT 66M2473; TORONTO , CITY OF TORONTO</u>
42.	<u>21077-0265</u>	<u>Block 17, Phase 1</u>	<u>BLOCK 17, PLAN 66M2473 CITY OF TORONTO</u>
43.	<u>21077-0264</u>	<u>Block 16, Phase 1</u>	<u>BLOCK 16, PLAN 66M2473; CITY OF TORONTO</u>
44.	<u>21077-0077</u>	<u>Cherry St. (S of Mill)</u>	<u>FIRSTLY; LT 18 RCP 12161 TORONTO EXCEPT PT 4 &amp; 8 63R624; PT LT 13 S/S FRONT ST PL 108 TORONTO; PT MARSH LANDS GRANTED TO CITY OF TORONTO BY ONTARIO GOVT ON MAY 18, 1880 &amp; DOMINION GOVT ON OCT 10, 1903 TWP OF YORK AS ESTABLISHED BY</u>

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<b><u>No</u></b>	<b><u>PIN</u></b>	<b><u>BLOCKS</u></b>	<b><u>LEGAL DESCRIPTION</u></b>
			UNREGISTERED BYLAW 2747; PT OLD DON CHANNEL TWP OF YORK AS IN ES12138 (FIRSTLY) N OF PT 3 63R624; SECONDLY; PT CHERRY ST PL 159E TORONTO (CLOSED BY UNREGISTERED BYLAW 4932); BEING CHERRY ST BTN MILL ST & LAKE SHORE BLVD E; CITY OF TORONTO
45.	<u>21077-0076 (Part)</u>	<u>Mill St. W of Cherry</u>	PT FRONT ST PL 108 TORONTO (AKA MILL ST) BTN PARLIAMENT ST & CHERRY ST; CITY OF TORONTO
46.	<u>21077-0029</u>	<u>Cherry St. (Front to Mill)</u>	PCL 1-1 SEC A34E; PT CHERRY ST PL 108 TORONTO (UNNAMED ST) PT 53 66R16601; TORONTO , CITY OF TORONTO
47.	<u>21077-0028</u>	<u>Cherry St. (Eastern to Front)</u>	PCL 1-1 SEC A34E; PT CHERRY ST PL 108 TORONTO (UNNAMED ST); PT MARKET PLACE PL 108 TORONTO; PT LT 12 S/S EASTERN AV PL 108 TORONTO PT 52 66R16601; TORONTO , CITY OF TORONTO
48.	<u>21078-0184</u>	<u>Old Eastern Ave.</u>	PCL 1-1 SEC A34E; PT EASTERN AV PL 108 TORONTO PT 50 66R16601 EXCEPT 66M2473; TORONTO, CITY OF TORONTO
49.	<u>21078-0016 (Part)</u>	<u>St. Lawrence St., N of Old Eastern</u>	PCL 1-1 SEC A34E; PT ST. LAWRENCE ST PL 108 TORONTO PT 49 66R16601; TORONTO, CITY OF TORONTO
50.	<u>21078-0154 (Part)</u>	<u>Eastern Ave (At and E of Cherry)</u>	SOUTH PARK ST PL 108 TORONTO (AKA EASTERN AV) BTN W LIMIT OF CHERRY ST & S LIMIT OF PT 3 63R2772; CITY OF TORONTO
51.	<u>21079-0042</u>	<u>Eastern Ave (W of Cherry)</u>	SOUTH PARK ST PL 108 TORONTO; PT LT 14-21 PL 122 TORONTO; PT LT 5-6 PL 154E TORONTO; PT LT E PL 263E TORONTO AS IN ES57250 & ES22776; BEING SOUTH PARK ST (AKA EASTERN AV) N OF FRONT ST & W OF CHERRY ST; CITY OF TORONTO
52.	<u>21078-0152</u>	<u>Cherry St. (N of Eastern)</u>	PT LT 17 N/S SOUTH PARK ST W/S SUMACH ST PL 108 TORONTO; PT LT 18 N/S SOUTH PARK ST W/S SUMACH ST PL 108 TORONTO; PT LT 19 N/S SOUTH PARK ST W/S SUMACH ST PL 108 TORONTO; PT LT 20 N/S SOUTH PARK ST W/S SUMACH ST PL 108 TORONTO; PT LT 21 N/S SOUTH PARK ST W/S SUMACH ST PL 108 TORONTO; PT LT 20 S/S KING ST, 21 S/S KING ST PL 108 TORONTO PT 1 & 4 RD162; BEING CHERRY STREET BTN EASTERN AV & ADELAIDE ST E; CITY OF TORONTO
53.	<u>21079-0341</u>	<u>WT 1</u>	PART OF LOTS 17, 18, 19 AND 20, NORTH SIDE OF EASTERN AVENUE (FORMERLY SOUTH PARK STREET)

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			AND WEST SIDE OF SUMACH STREET, PLAN 108, DESIGNATED AS PART 1 ON PLN 66R-24546. CITY OF TORONTO
54.	<u>21079-0269 (Part)</u>	<u>Virgin Place</u>	LANE PL D226 TORONTO (AKA VIRGIN PLACE); PT LT 20 S/S KING ST PL 108 TORONTO PT 1, 63R438; CITY OF TORONTO
55.	<u>21079-0337</u>	<u>WT 2</u>	PART LOT 20 PLAN 108, DES AS PT 1 ON PL 66R24361 CITY OF TORONTO
56.	<u>21078-0148 (Part)</u>	<u>Adelaide St. E.</u>	FIRSTLY: PRIVATE LANE PL 34E TORONTO; PT LT 1-2, 4, 6 PL 34E TORONTO; PT LT Y OR 1 PL 108 TORONTO; PT SUMACH ST, CROSS ST PL 108 TORONTO; PT LT 5 W/S CROSS ST, 6 E/S CROSS ST, 7 E/S CROSS ST, 8 E/S CROSS ST, 9 E/S CROSS ST PL 108 TORONTO; PT LT 15 N/S SOUTH PARK ST E/S SUMACH ST PL 108 TORONTO; PT LT 16 N/S SOUTH PARK ST E/S SUMACH ST PL 108 TORONTO; PT LT 17 N/S SOUTH PARK ST E/S SUMACH ST PL 108 TORONTO; PT LT 18 N/S SOUTH PARK ST E/S SUMACH ST PL 108 TORONTO; PT LT 20 N/S SOUTH PARK ST E/S SUMACH ST PL 108 TORONTO; PT LT 21 N/S SOUTH PARK ST E/S SUMACH ST PL 108 TORONTO; PT LT 21 N/S SOUTH PARK ST W/S SUMACH ST PL 108 TORONTO; PT LT 20 S/S KING ST, 21 S/S KING ST PL 108 TORONTO; PT BLK H PL DON IMPROVEMENT TORONTO PT 5, 7-8, 10-12, 17-19 RD162, PT 6 63R2357, PT 1-2 63R2358 & PT 3-5, 7-12 & 14 63R2772; SECONDLY: PT LT Y OR 1 PL 108 TORONTO PT 13-16 RD162; CITY OF TORONTO
57.	<u>21079-0339</u>	<u>WT 3</u>	PART OF LOT 21, SOUTH SIDE OF KING STREET, PLAN 108, DESIGNATED AS PART 1, PLAN 66R-24360 CITY OF TORONTO
58.	<u>21078-0153 (Part)</u>	<u>Sumach St.</u>	SUMACH ST PL 108 TORONTO; PT LT 21 S/S KING ST PL 108 TORONTO PT 6 RD162; BEING SUMACH ST BTN QUEEN ST E & ADELAIDE ST E; CITY OF TORONTO
59.	<u>21079-0340</u>	<u>525 King St. E.</u>	PART LOT 20 S/S KING ST, 21 S/S KING ST PLAN 108 TORONTO PT 21, RD161 SAVE AND EXCEPT PART 1 PLAN 66R24360 AS IN AT2184202. CITY OF TORONTO
60.	<u>21079-0338</u>	<u>507 King St. E.</u>	LT 3-4 PL D226 TORONTO; PT LT 1-2 PL D226 TORONTO; PT LT 20 S/S KING ST PL 108 TORONTO AS IN CT795013 (FIRSTLY & THIRDLY DESCRIBED) SAVE AND EXCEPT PT LT 20 PL 108 DES AS PT 1 ON PL 66R24361; T/W CT795013; CITY OF TORONTO

**Amended and Restated Project Agreement – Schedule 8**  
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<b><u>No</u></b>	<b><u>PIN</u></b>	<b><u>BLOCKS</u></b>	<b><u>LEGAL DESCRIPTION</u></b>
61.	<u>21078-0178 (Part)</u>	<u>King St., E of Sumach</u>	KING ST PL 108 TORONTO; PT LT 29 S/S KING ST PL 108 TORONTO PT 6 RD208; BEING KING ST (AKA KING ST E) BTN SUMACH ST & BAYVIEW AVE EXCEPT PT 1 PL 66R23181; CITY OF TORONTO
62.	<u>21079-0279 (Part)</u>	<u>King St., W of Sumach</u>	KING ST PL 108 TORONTO BEING KING ST E BTN THE E LIMIT OF PT 1, 63R2356 & SUMACH ST; CITY OF TORONTO
63.	<u>21079-0342</u>	<u>19 Sackville</u>	LOTS 15, 16 AND PART OF LOTS 17, 18, 19 AND 20 NORTH SIDE OF SOUTHPARK STREET AND WEST SIDE OF SUMACH STREET, PLAN 108, DESIGNATED AS PART 2 ON PLN 66R-24546. CITY OF TORONTO
64.	<u>21078-0138</u>	<u>10 Sumach</u>	PT LT 20 N/S SOUTH PARK ST W/S SUMACH ST PL 108 TORONTO; PT LT 21 N/S SOUTH PARK ST W/S SUMACH ST PL 108 TORONTO AS IN CA146477; CITY OF TORONTO
65.	<u>21078-0137</u>	<u>12 Sumach</u>	PT LT 21 N/S SOUTH PARK ST W/S SUMACH ST PL 108 TORONTO AS IN CA670134; DESCRIPTION MAY NOT BE ACCEPTABLE IN FUTURE AS IN CA670134; CITY OF TORONTO
66.	<u>21078-0136</u>	<u>14 Sumach</u>	PT LT 21 N/S SOUTH PARK ST W/S SUMACH ST PL 108 TORONTO PT 1 64R3355; CITY OF TORONTO
67.	<u>21078-0135</u>	<u>16 Sumach</u>	PT LT 21 N/S SOUTH PARK ST W/S SUMACH ST PL 108 TORONTO PT 2 63R3355; CITY OF TORONTO
68.	<u>21078-0109</u>	<u>29 Sumach</u>	PT LT 24 S/S KING ST PL 108 TORONTO AS IN ES69572; CITY OF TORONTO

•



**Schedule 1.01(B)**

**Form of Assignment of Condominium Sales Agreements and Deposits**

THIS ASSIGNMENT (“**Assignment**”) is made as of \_\_\_\_\_, 20\_\_

BY:

●  
(the “**Assignor**”)

IN FAVOUR OF:

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, as represented by the  
MINISTER OF INFRASTRUCTURE, as represented by ONTARIO  
INFRASTRUCTURE AND LANDS CORPORATION**  
(the “**Assignee**”)

WHEREAS pursuant to a project agreement of even date herewith (as amended, restated, modified or replaced from time to time, the “**Project Agreement**”) among Dundee Kilmer Developments L.P. (“**Project Co**”), by [REDACTED], and the Assignee, Project Co agreed to provide the design, construction and financing of certain facilities;

AND WHEREAS pursuant to a loan agreement of even date herewith (as amended, restated, modified or replaced from time to time, the “**Loan Agreement**”) among Project Co, the various guarantors party thereto and the Assignee, the Assignee agreed to advance the Advance Amount (as such term is defined in the Loan Agreement), if requested, and subject to the terms and conditions therein, in order to repay in whole or in part the AFP Financing (as such term is defined in the Loan Agreement);

AND WHEREAS pursuant to certain condominium sales agreements (each a “**Condominium Sales Agreement**” and, collectively, the “**Condominium Sales Agreements**”) made or to be made between the Assignor and purchasers of condominium units (each a “**Purchaser**” and, collectively, the “**Purchasers**”), the Assignor has agreed or will agree to sell and the Purchaser(s) thereunder have agreed or will agree to purchase condominium units on the terms and conditions set out therein;

AND WHEREAS it is a condition to the Project Agreement that the Assignor enter into this Assignment in favour of the Assignee to secure all indebtedness, obligations, liabilities, covenants, agreements and undertakings, direct or indirect, absolute or contingent, matured or unmatured, as principal or surety, which are now or may become at any time and from time to time hereafter due, owing, payable or required to be performed by Project Co to the Assignee under the Project Agreement, including to achieve Project Substantial Completion (as such term is defined in the Project Agreement) by the Longstop Date (as such term is defined in the Project Agreement) (the “**HMQ Project Obligations**”);

AND WHEREAS it is a condition to the loan by the Assignee pursuant to the Loan Agreement that the Assignor enter into this Assignment in favour of the Assignee to secure all indebtedness, liabilities, covenants, obligations, agreements and undertakings, direct or indirect, absolute or contingent, matured or unmatured, as principal or surety, which are now or may become at any time and from time to time hereafter due, owing, payable or required to be performed by the Assignor to the Assignee, or which remain owing and unpaid to the Assignee, at any time and from time to time existing or arising under, or by virtue of or otherwise in connection with the Loan Agreement and the other Loan Documents, whether

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incurred by such Assignor alone or jointly with any other Person or Persons, or otherwise howsoever and including any and all out-of-pocket expenses (including counsel fees and disbursements) incurred by the Assignee or any other Person acting on its behalf enforcing any of its rights (collectively the “**Loan Obligations**”, and together with the HMQ Project Obligations, the “**Obligations**”).

NOW THEREFORE WITNESSES that in consideration of the mutual covenants hereinafter contained and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties hereto agree with each other as follows:

**1. ASSIGNMENT**

The Assignor hereby assigns and sets over to the Assignee and grants to the Assignee a security interest in all of its respective right, title, benefits and interest in and to each of the Condominium Sales Agreements, including, to the extent the Assignor has rights thereto under Applicable Law (as defined in the Project Agreement), deposits paid by purchasers of the condominium units under each Condominium Sales Agreement (“**Purchaser Deposits**”) as continuing and collateral security for the due payment of all sums and liabilities and the performance of the Obligations. This Assignment constitutes a continuing grant of security and shall secure the Obligations and any ultimate balance thereof, notwithstanding that the Obligations may be satisfied in whole or in part and thereafter additional Obligations may be incurred.

**2. RIGHTS OF THE ASSIGNEE UPON DEFAULT UNDER CREDIT AGREEMENT**

Upon the occurrence and during the continuance of a Project Co Event of Default (as defined under the Project Agreement), an Event of Default (as defined under the Loan Agreement), or a termination of the Project Agreement under Section 44 of the Project Agreement (any one of which, a “**Trigger Event**”), the Assignee shall be entitled to exercise any and all of the rights of the Assignor under the Condominium Sales Agreements and to enjoy the benefits of the Assignor under the Condominium Sales Agreements.

**3. NO ASSUMPTION OF OBLIGATIONS**

The execution of this Assignment on the part of the Assignee shall not constitute an assumption of any obligations by the Assignee under the Condominium Sales Agreements nor render the Assignee liable to any of the Purchasers for the fulfilment or non-fulfilment of any of the Assignor’s obligations thereunder. Unless and until the Assignee exercises its remedies hereunder, the Assignor shall continue to be responsible for the performance of all of its obligations under the Condominium Sales Agreements. The Assignor hereby covenants and agrees to perform each and every of its obligations thereunder and agrees to indemnify and hold the Assignee free and harmless from and against any loss, cost, liability or expense resulting from any failure of the Assignor to perform its obligations under the Condominium Sales Agreements.

**4. CURING DEFAULTS**

During the continuance of a Trigger Event, the Assignee shall have the right, but shall not be obligated, at any time to take, in its name or in the name of the Assignor, such actions as the Assignee may at any time or from time to time determine to be necessary or desirable to cure any default of the Assignor under any Condominium Sales Agreement, and, in so doing, the Assignor shall not incur any liability to the Assignor if any action taken by it or on its behalf shall prove to be in whole or in part inadequate or invalid, and the Assignor shall hold the Assignee free and harmless from and

against any loss, cost, liability or expense incurred by the Assignee in connection with such action or actions.

**5. POWER OF ATTORNEY**

The Assignor hereby irrevocably constitutes and appoints the Assignee its true and lawful attorney in its name or in the Assignee's name to enforce all of its rights under the Condominium Sales Agreements which the Assignee is entitled to enforce upon a Trigger Event.

**6. ELECTION OF ASSIGNEE**

During the continuance of a Trigger Event, upon default being made under the terms of any Condominium Sales Agreement or this assignment by the Assignor, the Assignee may elect to exercise the rights otherwise exercisable by the Assignor and assume all the obligations of the Assignor under the Condominium Sales Agreement by giving notice in writing to such Purchaser(s), and from the date of receipt of such notice, such Purchaser shall act only upon the instructions of the Assignee and no instructions relating to the Condominium Sales Agreement shall be given by the Assignor or acted upon by such Purchaser(s) unless and until such Purchaser(s) is otherwise directed by further notice in writing from the Assignee; thereupon, the Assignor hereby irrevocably directs such Purchaser(s) to:

- (1) cease to deal with the Assignor; and
- (2) deal with the Assignee, its nominee or any receiver/manager appointed by the Assignee, or a court having jurisdiction, as if it was the vendor under such Condominium Sales Agreement.

**7. RE-ASSIGNMENT**

The provisions of this Agreement shall remain in full force and effect as general and continuing collateral security until payment in full of all monies, the performance of all Obligations, and until the Lenders have no further obligation to provide Loans under the Loan Agreement.

**8. HEADINGS**

The headings and captions in this assignment have been inserted for convenience only and are not a part hereof.

**9. GOVERNING LAW**

This Assignment shall in all respects be governed by and construed in accordance with the laws of Ontario and the Laws of Canada applicable therein.

**10. FURTHER ASSIGNMENTS**

The Condominium Sales Agreements shall not be further assigned by the parties hereto except as provided for under the Project Agreement and under the Loan Agreement.

**11. NOTICES**

Any notice, demand, consent, approval or other communication (a “Notice”) to be made or given under or in connection with this Assignment shall be in writing and may be made or given by personal delivery, by facsimile, registered mail or by e-mail to the address, facsimile number or e-mail address of the intended recipient set out in its signature page of this Assignment or, in each case, to such other address as such party may from time to time notify any other in accordance with this Section 11. Any Notice made or given by personal delivery shall be conclusively deemed to have been given at the time of actual delivery or, if made or given by facsimile or e-mail, at the time of sending if sent before 4:00 p.m. (in the place of intended receipt) on a Business Day or if sent otherwise at the opening of business on the first Business Day following the transmittal thereof; provided that, the party sending such Notice receives confirmation of receipt from the intended recipient's facsimile machine or e-mail server.

**12. ENUREMENT**

This Assignment shall be binding upon the parties hereto and enure to the benefit of the Assignee and its successors and assigns and shall be binding upon and enure to the benefit of the Assignor and its successors and permitted assigns. The rights of the Assignee under this Assignment may be assigned by the Assignee to the same extent, and on and subject to the same terms and conditions, as the Assignee may assign its rights under the Project Agreement and the Loan Agreement. The Assignor may not assign its obligations under this Assignment.

**13. AFTER ACQUIRED PROPERTY**

The Assignor covenants and agrees that if and to the extent that its right, title and interest in any Condominium Sales Agreement or Purchaser Deposit is not acquired until after delivery of this Assignment, this Assignment shall nonetheless apply thereto and the security interest of the Assignee hereby created shall attach to any such Condominium Sales Agreement at the same time as the Assignor acquires rights therein, without the necessity of any further assignment or other assurance, and thereafter the security interests created hereby in respect of such Condominium Sales Agreement shall be absolute, fixed and specific, subject only to Permitted Encumbrances (as such term is defined in the Loan Agreement).

**14. ATTACHMENT**

The Assignor acknowledges and agrees that there is no agreement between the parties hereto, express or implied, to postpone the attachment of the security interests created hereby.

**15. CONFLICT**

This Assignment has been entered into pursuant to the provisions of the Project Agreement and the Loan Agreement and is subject to all the terms and conditions thereof and, if there is any conflict or inconsistency between the provisions of this Assignment and the provisions of the Project Agreement or the Loan Agreement, the terms and conditions of the Project Agreement shall govern and apply to the extent of such inconsistency prior to the date of the first Drawdown (as such term is defined in the Loan Agreement); after such date, the terms and conditions of the Loan Agreement shall govern and apply to the extent of the inconsistency. Notwithstanding the foregoing, in the event that this Assignment contains remedies which are in addition to the remedies set forth in the Project Agreement or the Loan Agreement, the existence of such remedies shall not constitute a conflict with the terms of this Assignment.

**16. COUNTERPARTS AND FACSIMILE EXECUTION**

This Assignment may be executed in any number of counterparts, each of which so executed will be deemed to be an original and all of which taken together will be deemed to constitute one and the same instrument, and it will not be necessary in making proof of this Assignment to produce or account for more than one such counterpart. Transmission of a copy of an executed signature page of this Assignment (including any change to this Assignment) by one party to this Assignment to the other by facsimile transmission or e-mail in pdf format in accordance with this section shall be as effective as delivery of a manually executed counterparty hereof.

**[Remainder of this page intentionally left blank; signature lines on the next page]**

**Amended and Restated Project Agreement – Schedule 8**  
**2015 Pan/Parapan American Games Athletes’ Village Project** **Execution Version**

IN WITNESS WHEREOF the Assignor has executed this Assignment as of the date first written above.

**ASSIGNOR:**

•

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

***Notices to Assignor:***

•

Attention: •

Telephone: •

Fax: •

Email: •

**SECURED PARTY:**

**HER MAJESTY THE QUEEN IN RIGHT OF  
ONTARIO, as represented by the MINISTER OF  
INFRASTRUCTURE, as represented by ONTARIO  
INFRASTRUCTURE AND LANDS CORPORATION**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

***Notices to Secured Party:***

c/o Ontario Infrastructure and Lands Corporation  
**[REDACTED]**

Attention: **[REDACTED]**

Fax: **[REDACTED]**

with a copy to:

**[REDACTED]**

Attention: **[REDACTED]**

Fax: **[REDACTED]**

**Schedule 1.01(C)**

**Form of Assignment of Material Project Agreements**

THIS AGREEMENT is made as of December \_\_\_, 2011

BY:

**DUNDEE KILMER DEVELOPMENTS L.P., [REDACTED]**  
(the “Assignor”)

IN FAVOUR OF:

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, as represented by the  
MINISTER OF INFRASTRUCTURE, as represented by ONTARIO  
INFRASTRUCTURE AND LANDS CORPORATION**  
(the “Assignee”)

WHEREAS pursuant to a project agreement of even date herewith (as amended, restated, modified or replaced from time to time, the “**Project Agreement**”) among Dundee Kilmer Developments L.P. (“**Project Co**”), [REDACTED], and the Assignee, Project Co agreed to provide the design, construction and financing of certain facilities;

AND WHEREAS pursuant to a loan agreement of even date herewith (as amended, restated, modified or replaced from time to time, the “**Loan Agreement**”) among Project Co, the various guarantors party thereto and the Assignee, the Assignee agreed to advance the Advance Amount (as such term is defined in the Loan Agreement), if requested, and subject to the terms and conditions therein, in order to repay in whole or in part the AFP Financing (as such term is defined in the Loan Agreement);

AND WHEREAS it is a condition to the Project Agreement that the Assignor enter into this assignment in favour of the Assignee to secure all indebtedness, obligations, liabilities, covenants, agreements and undertakings, direct or indirect, absolute or contingent, matured or unmatured, as principal or surety, which are now or may become at any time and from time to time hereafter due, owing, payable or required to be performed by Project Co to the Assignee under the Project Agreement, including to achieve Project Substantial Completion (as such term is defined in the Project Agreement) by the Longstop Date (as such term is defined in the Project Agreement) (the “**HMQ Project Obligations**”);

AND WHEREAS it is a condition to the loan by the Assignee pursuant to the Loan Agreement that the Assignor enter into this assignment in favour of the Assignee to secure all indebtedness, liabilities, covenants, obligations, agreements and undertakings, direct or indirect, absolute or contingent, matured or unmatured, as principal or surety, which are now or may become at any time and from time to time hereafter due, owing, payable or required to be performed by the Assignor to the Assignee, or which remain owing and unpaid to the Assignee, at any time and from time to time existing or arising under, or by virtue of or otherwise in connection with the Loan Agreement and the other Loan Documents, whether incurred by such Assignor alone or jointly with any other Person or Persons, or otherwise howsoever and including any and all out-of-pocket expenses (including counsel fees and disbursements) incurred by the Assignee or any other Person acting on its behalf enforcing any of its rights (collectively the “**Loan Obligations**”, and together with the HMQ Project Obligations, the “**Obligations**”);



NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and the covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties, the parties hereto agree as follows:

**ARTICLE 1**  
**INTERPRETATION**

**1.01**            **Definitions**

In this Agreement (including the recitals hereto), unless something in the subject matter or context is inconsistent therewith, capitalized terms not defined herein shall have the meanings ascribed to them in the Loan Agreement, and the following terms shall have the following meanings:

- (a)        “**Agreement**” means this agreement and all amendments made hereto by written agreement between the parties.
- (b)        “**Drawdown**” is used with the defined meaning assigned in the Loan Agreement.
- (c)        “**Event of Default**” is used with the defined meaning assigned in the Loan Agreement.
- (d)        “**Loan Agreement**” means the loan agreement dated as of December \_\_, 2011 among, *inter alia*, the Assignor, as borrower, the Assignee, as lender, and [REDACTED], thereto, as the same may be amended, supplemented, extended, renewed, restated, replaced or superseded from time to time.
- (e)        “**Material Project Agreements**” is used with the defined meaning assigned in the Loan Agreement.
- (f)        “**Project Co Event of Default**” is used with the defined meaning assigned in the Project Agreement.
- (g)        “**Trigger Event**” means any of (i) a Project Co Event of Default, (ii) an Event of Default or (iii) termination of the Project Agreement under Section 44 of the Project Agreement.

**1.02**            **Interpretation Not Affected By Headings Etc.**

Grammatical variations of any terms defined herein have similar meanings; words importing the singular number shall include the plural and vice versa; words importing the masculine gender shall include the feminine and neuter genders. The division of this Agreement into separate Articles, Sections, Subsections, Paragraphs and Subparagraphs and the insertion of headings and marginal notes and references are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

**1.03**            **Extended Meaning**

A reference to the Assignor or the Assignee shall be deemed to be a reference to the respective successors and assigns of such party.

**ARTICLE 2**  
**ASSIGNMENT, ETC.**

**2.01**            **Assignment**

Upon and subject to the terms, conditions and provisions herein contained, the Assignor hereby assigns, transfers and sets over to and in favour of the Assignee, to the extent that such is capable of assignment, as and by way of a fixed and specific assignment, all of its right, title, estate and interest in, to, under and in respect of:

- (a) any and all Material Project Agreements;
- (b) all benefit, power and advantage of the Assignor to be derived from the Material Project Agreements and all covenants, obligations, agreements, and undertakings of the other parties thereunder and otherwise to enforce the rights of the Assignor thereunder in the name of the Assignor;
- (c) all revenues and other moneys now due and payable or hereafter to become due and payable to the Assignor under the Material Project Agreements or in connection therewith, with full power and authority to demand, sue for, recover, receive and give receipts for all such revenues and other moneys; and
- (d) all books, accounts, invoices, letters, papers, contracts and documents in any way evidencing or relating to the Material Project Agreements;

and in, to and under all amendments, modifications, extensions, renewals and replacements of any of the foregoing and all rights, remedies, powers, privileges and claims of the Assignor thereunder (whether arising pursuant thereto or available to the Assignor at law or in equity) and each and every one of them, to hold and receive the same unto the Assignee with full power and authority to demand, collect, sue for, recover, receive and give receipts for payments and to enforce payment of the same in accordance with and subject to the terms of this Agreement, the Project Agreement and the Loan Agreement.

This Agreement shall be held by the Assignee as additional security for the due payment of all principal moneys, interest and other moneys payable by the Assignor pursuant to the Loan Agreement and for the performance by the Assignor of the Obligations. This Agreement constitutes a continuing grant of security, and shall secure all Obligations and any ultimate balance thereof, notwithstanding that the Obligations may be satisfied from time to time in whole or in part and thereafter further Obligations may be incurred.

**2.02**            **Performance of Obligations**

The Assignor covenants to observe and perform or cause to be observed and performed, as and when required, all of its covenants, obligations, agreements and undertakings under all and each of the Material Project Agreements and will use all reasonable commercial efforts to cause the other parties to each Material Project Agreement to observe and perform all of their covenants, obligations, agreements and undertakings thereunder.

**2.03** **No Liability**

Nothing herein contained shall render the Assignee, its agents, employees or any other Person for whom the Assignee is in law responsible liable to any Person for the fulfilment or non-fulfilment of the obligations, covenants and agreements, including but not limited to the payment of any moneys thereunder or in respect thereto, of the Assignor under any Material Project Agreement and the Assignor hereby indemnifies and agrees to save and hold harmless the Assignee from and against any and all claims, demands, actions, causes of action, losses, suits, damages and costs whatsoever of any Person arising directly or indirectly in connection therewith except to the extent caused or contributed to by the wilful misconduct or gross negligence of the Assignee.

**2.04** **Service and Registration**

The Assignee shall have the right at any time to serve the present Agreement or notice thereof on any one or more of the other parties to the Material Project Agreements. The Assignee shall also have the right at any time and without notice to the Assignor to cause the present Agreement or notice thereof to be registered or filed in any place or office where the Assignee or its counsel deems advisable or necessary.

**2.05** **Attorney of the Assignor**

The Assignee, as attorney or agent of the Assignor and in its name (and the Assignor hereby so irrevocably appoints and authorizes the Assignee), may, at any time and from time to time after the occurrence and during the continuance of a Trigger Event exercise any of the rights, powers, authority and discretion which under the terms of any Material Project Agreement could be exercised by the Assignor with respect to such Material Project Agreement.

**2.06** **Performance Until Default**

Until the Assignee enforces any of its rights herein contained, the Assignor shall, subject to the express terms of the Project Agreement, the Loan Agreement and this Agreement, be entitled to deal with the Material Project Agreements and enforce all of its benefits, advantages and powers thereunder, provided that nothing herein shall release, discharge, postpone, amend or otherwise affect the present assignment and security interest in and to the Material Project Agreements and the immediate attachment thereof. If a Trigger Event occurs and is continuing, the Assignee may, but shall not be obligated to, exercise all rights, powers, authority and discretion of the Assignor in respect of the Material Project Agreements in its place and stead all of which is hereby consented to by the Assignor.

**2.07** **Bona Fides**

The Assignor shall not execute or enter into a Material Project Agreement unless same is executed or entered into by it in the ordinary course of business, at arm's length or upon arm's length terms and in good faith, and on such terms as are consistent with the practice of a reasonable and prudent owner of property similar in nature, condition and location to the Project Lands and unless the same does not adversely affect the interest of the Assignee under this Agreement, the Project Agreement or the Loan Agreement.

**ARTICLE 3**  
**COVENANTS**

**3.01** **Covenants**

The Assignor hereby covenants and agrees with the Assignee that it shall ensure that any Material Project Agreement it enters into after the date hereof shall be capable of assignment and capable of further assignment by the Assignee, its successors and assigns or by any receiver or receiver and manager after and during the continuance of a Trigger Event. To the extent that any such Material Project Agreement is incapable of assignment, the Assignor agrees that it shall hold any such agreement in trust for the Assignee and that, in the event of occurrence and during the continuance of a Trigger Event, it shall act as agent for the Assignee and will perform all of the liabilities and obligations under such agreements as the Assignee may so direct and hold all benefit of any such agreement in trust for the Assignee.

**ARTICLE 4**  
**DEFAULT**

**4.01** **Rights of Assignee Upon Default**

Whenever a Trigger Event has occurred and is continuing, without limiting the rights of the Assignee under or pursuant to this Agreement, the Project Agreement, the Loan Agreement or otherwise provided by law, the Assignee shall have the authority:

- (a) to the extent permitted by the Material Project Agreements, to renew, amend or otherwise deal with the Material Project Agreements on such terms and conditions as the Assignee may determine, acting reasonably, all in the name of the Assignor;
- (b) to perform, at the expense of the Assignor, any and all obligations or covenants of the Assignor under the Material Project Agreements and to enforce performance by any party to the Material Project Agreements of its obligations, covenants and agreements thereunder, all in the name of the Assignor and at the Assignor's sole cost and expense, including reasonable legal fees and disbursements on a substantial indemnity basis, all of which amounts shall be immediately due and payable, shall form part of the Obligations secured by the Project Agreement and the Loan Agreement, and shall be a charge on the Project until paid; and
- (c) to exercise, acting reasonably, any of the rights, powers and discretions which under the terms of the Material Project Agreements or any of them could be exercised by the Assignor.

the whole without any liability or responsibility of any kind on the part of the Assignee, its agents, employees or any other Person for whom the Assignee is in law responsible.

**4.02** **Exercise of Powers**

Where any discretionary powers hereunder are vested in the Assignee or its agents, the same may be exercised with respect to the Assignee by an officer, investment manager, manager or employee of the Assignee or its appointed agents, as the case may be.

**ARTICLE 5**  
**GENERAL**

**5.01            No Release**

This Agreement shall remain in full force and effect without regard to, and the obligations of the Assignor and the other parties to the Material Project Agreements thereunder shall not be affected or impaired by:

- (a) any amendment, modification, replacement of or addition or supplement to the Project Agreement, the Loan Agreement or any other security (including, without limitation, any guarantee or indemnity) provided to the Assignee; or
- (b) any exercise or non-exercise of any right, remedy, power or privilege in respect of this Agreement, the Project Agreement, the Loan Agreement or any other security (including, without limitation, any guarantee or indemnity) provided to the Assignee; or
- (c) any waiver, consent, extension, indulgence or other action, inaction or omission under or in respect of this Agreement, the Project Agreement, the Loan Agreement or any other security (including, without limitation, any guarantee or indemnity) provided to the Assignee; or
- (d) any merger, consolidation or amalgamation of the Assignor into or with any other Person; or
- (e) any insolvency, bankruptcy, liquidation, reorganization, arrangement, composition, winding-up, dissolution or similar proceeding involving or affecting the Assignor.

**5.02            No Partnership**

Nothing herein contained shall be deemed or construed by the parties hereto or by any third party as creating the relationship of principal and agent or of partnership or of joint venture between the Assignor and the Assignee; it being understood and agreed that none of the provisions herein contained or any acts of the Assignee or of the Assignor, shall be deemed to create any relationship between the Assignee and the Assignor other than the relationship of assignee and assignor.

**5.03            Rights and Remedies Cumulative**

The rights or remedies given to the Assignee hereunder shall be cumulative of and not substituted for any rights or remedies to which the Assignee may be entitled under the Project Agreement, the Loan Agreement or any other security (including, without limitation, any guarantee or indemnity) provided to the Assignee or at law and may be exercised whether or not the Assignee has pursued or is then pursuing any other such rights and remedies. Furthermore, nothing in this Agreement shall curtail or limit the remedies of the Assignee as permitted by law or any statute to a creditor, all such remedies being in addition to and not in substitution for any other rights of the Assignee under this Agreement, the Project Agreement, the Loan Agreement or any other security (including, without limitation, any guarantee or indemnity) provided to the Assignee.

**5.04** **Time of Essence**

Time shall be of the essence of this Agreement.

**5.05** **Notices**

Any demand, notice or communication to be made or given hereunder to the Assignee or to the Assignor, as the case may be, shall be in the manner provided for in the Project Agreement and in the Loan Agreement, as applicable.

**5.06** **Waiver**

No consent or waiver, express or implied, by the Assignee to or of any breach or default by the Assignor in the performance of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by the Assignor hereunder. Failure on the part of the Assignee to complain of any act or failure to act of the Assignor or to declare the Assignor in default, irrespective of how long such failure continues, shall not constitute a waiver by the Assignee of its rights hereunder.

**5.07** **Amendments**

This Agreement may not be modified or amended except with the written consent of the parties hereto.

**5.08** **Joint and Several**

The obligations of the Assignor hereunder shall be joint and several.

**5.09** **Continuing Obligations**

The provisions of this Agreement shall remain in full force and effect as general and continuing collateral security until payment in full of all monies, the performance of all Obligations, and until the Lenders have no further obligation to provide Loans under the Loan Agreement.

**5.10** **After-Acquired Property**

The Assignor covenants and agrees that if and to the extent that its right, title and interest in any Material Project Agreement is not acquired until after delivery of this Agreement, this Agreement shall nonetheless apply thereto and the security interest of the Assignee hereby created shall attach to any such Material Project Agreement at the same time as the Assignor acquires rights therein, without the necessity of any further assignment or other assurance, and thereafter the security interests created hereby in respect of such Material Project Agreement shall be absolute, fixed and specific, subject only to Permitted Encumbrances.

**5.11** **Attachment**

The Assignor warrants and acknowledges that the security interest created herein shall attach upon the execution hereof and that value has been given and that the Assignor has rights in the Material

Project Agreements. The Assignor acknowledges and agrees that there is no agreement between the parties hereto, express or implied, to postpone the attachment of the security interests created hereby.

**5.12            Conflict**

This Assignment has been entered into pursuant to the provisions of the Project Agreement and the Loan Agreement and is subject to all the terms and conditions thereof and, if there is any conflict or inconsistency between the provisions of this Assignment and the provisions of the Project Agreement or the Loan Agreement, the terms and conditions of the Project Agreement shall govern and apply to the extent of such inconsistency prior to the date of the first Drawdown (as such term is defined in the Loan Agreement); after such date, the terms and conditions of the Loan Agreement shall govern and apply to the extent of the inconsistency. Notwithstanding the foregoing, in the event that this Assignment contains remedies which are in addition to the remedies set forth in the Project Agreement or the Loan Agreement, the existence of such remedies shall not constitute a conflict with the terms of this Assignment.

**5.13            Assignment**

This Agreement shall be binding upon the parties hereto and enure to the benefit of the Assignee and its successors and assigns and shall be binding upon and enure to the benefit of the Assignor and its successors and permitted assigns. The rights of the Assignee under this Agreement may be assigned by the Assignee to the same extent, and on and subject to the same terms and conditions, as the Assignee may assign its rights under the Project Agreement and under the Loan Agreement. The Assignor may not assign its obligations under this Agreement.

**5.14            Severability**

If any covenant, obligation or provision of this Agreement, or the application thereof to any Person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such covenant, obligation or agreement to Persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each covenant, obligation and agreement of this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.

**5.15            Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

**[SIGNATURE LINES FOLLOW ON THE NEXT PAGE]**

**Amended and Restated Project Agreement – Schedule 8**  
**2015 Pan/Parapan American Games Athletes’ Village Project** **Execution Version**

IN WITNESS WHEREOF the Assignor has executed this Agreement as of the date first written above.

**DUNDEE KILMER DEVELOPMENTS L.P.**

**[REDACTED]**



**Schedule 1.01(E)**

**Dispute Resolution Procedures**

**1. GENERAL**

- 1.1** In accordance with Section 2.03 of the Loan Agreement, all disputes, controversies, or claims arising out of or relating to the calculation of any Disputed Advance Amount or Revised Disputed Advance Amount under Section 2.03 of the Loan Agreement (collectively and individually for the purpose of this Schedule 1.01(E) only, a “**Dispute**”) shall be resolved in accordance with the provisions of this Schedule 1.01(E).

**2. REFERRAL OF DISPUTES TO ARBITRATION**

- 2.1** The Lender or the Borrower (each, for the purpose of this Schedule 1.01(E) only, a “**Party**”) may, by written notice, require that the Dispute be resolved by arbitration pursuant to Section 3 of this Schedule 1.01(E). Such notice will not be effective unless it indicates it is a notice to arbitrate and is delivered to the other Party and provided further that such notice expressly identifies the specific Dispute that is to be the subject of the arbitration.

**3. RESOLUTION BY ARBITRATION**

- 3.1** If a Dispute is referred to arbitration pursuant to Section 2.1 of this Schedule 1.01(E), the Dispute shall be resolved by arbitration in accordance with the *Arbitration Act*, 1991 (Ontario).
- 3.2** Disputes referred to arbitration shall be resolved by a single arbitrator unless one of the Parties, by notice in writing delivered to the other Party within 5 Business Days after a notice to arbitrate pursuant to Section 2.1 of this Schedule 1.01(E) has been delivered, expressly requires that the Dispute that is the subject of that notice to arbitrate be resolved by a 3 person arbitration tribunal, in which case that particular Dispute shall be resolved by a 3 person arbitration tribunal.
- 3.3** If the arbitration tribunal is comprised of a single arbitrator, the arbitrator shall be appointed as follows:
- (a) if the Parties agree on the arbitrator, the Parties shall jointly appoint the arbitrator as soon as possible and in any event within 10 days after delivery of the notice to arbitrate pursuant to Section 2.1 of this Schedule 1.01(E); and
  - (b) if the Parties fail to agree or jointly appoint the arbitrator within such 10 day period, either Party may apply to the Ontario Superior Court of Justice for appointment of the arbitrator, in which case the court shall appoint the arbitrator at the earliest opportunity from the lists of potential arbitrators submitted to the court by the Parties, or if no list is submitted by either Party, or if the list or lists

submitted do not include potential arbitrators with the necessary qualifications and experience, the court shall be entitled, at its sole and absolute discretion, to appoint anyone who meets the requirements set out in this Schedule 1.01(E) for the qualifications and experience of the arbitrator.

**3.4** If the arbitration tribunal is comprised of 3 arbitrators:

- (a) the arbitrators shall be appointed as follows:
  - (i) each Party shall appoint one arbitrator no later than 5 Business Days after delivery of the notice requiring a 3 person arbitration panel pursuant to Section 2.1 of this Schedule 1.01(E);
  - (ii) if a Party fails to appoint an arbitrator within 5 Business Days after delivery of the notice requiring a 3 person arbitration panel, the other Party is entitled to apply to the Ontario Superior Court of Justice to appoint that arbitrator, in which case the court shall appoint that arbitrator at the earliest opportunity using a comparable process to that described in Section 3.3(b) of this Schedule 1.01(E);
  - (iii) the arbitrators appointed in accordance with the foregoing shall, within 5 Business Days after their appointment, jointly appoint a third arbitrator who shall also act as the chair of the arbitration tribunal and who, in addition to all other required qualifications, shall have experience in arbitration or judicial processes and procedures; and
  - (iv) if the 2 arbitrators appointed by the Parties fail to appoint a third arbitrator within the required time, either of the other 2 arbitrators may apply to the Ontario Superior Court of Justice for appointment of the third arbitrator, in which case the court shall appoint the third arbitrator at the earliest opportunity using a comparable process to that described in Section 3.3(b) of this Schedule 1.01(E); and
- (b) the arbitrators appointed by the Parties shall at all times be neutral and act impartially and shall not act as advocates for the interests of the Party who appointed them.

**3.5** All arbitrators must have qualifications and experience relevant to the issues in the Dispute and also have qualifications and experience as arbitrators.

**3.6** No one shall be nominated or appointed to act as an arbitrator who is or was in any way financially interested in the Project or in the business affairs of the Lender, the Borrower, the Construction Contractor, the AFP Lenders’ Agent, any Lender under the AFP Lending Agreement or any consultant, subconsultant or subcontractor of any of them.

- 3.7** The arbitrator(s) shall have the jurisdiction and power to:
- (a) amend or vary any and all rules under the *Arbitration Act, 1991* (Ontario), including rules relating to time limits, either by express agreement of the Parties or, failing such agreement, as the arbitrator(s) consider appropriate and necessary in the circumstances to resolve the Dispute and render an award;
  - (b) require some or all of the evidence to be provided by affidavit;
  - (c) hold a hearing at which evidence and submissions are presented by the Parties;
  - (d) direct either or both Parties to prepare and provide the arbitrator(s) with such documents or other things as the arbitrator(s) may require to assist them in the resolution of the Dispute and rendering of an award; and
  - (e) require either Party to supply or prepare for examination by the arbitrator(s) and the other Party, any document or information the arbitrator(s) considers necessary.
- 3.8** The place of arbitration shall, at the option of the Lender, be the municipality in which the Lender is located or Toronto, Ontario. The language of the arbitration shall be English.
- 3.9** The costs of an arbitration are in the discretion of the arbitrator(s) who, in addition to any jurisdiction and authority under applicable law to award costs, has the jurisdiction and authority to make an order for costs on such basis as the arbitrator(s) considers appropriate in the circumstances, including to award actual legal fees and disbursements and expert witness fees, and to specify or order any or all of the following:
- (a) the Party entitled to costs;
  - (b) the Party who must pay the costs;
  - (c) the amount of the costs or how that amount is to be determined; and
  - (d) how all or part of the costs must be paid.
- 3.10** In exercising discretion to award costs, however, the arbitrator(s) will take into account the desire of the Parties that costs should generally be awarded to each Party in proportion to the relative success that each Party has in the arbitration.
- 3.11** The award of the arbitrator(s) shall be final and binding upon both Parties, and both Parties expressly waive all rights of appeal in connection with the award of the arbitrator(s). Judgment may be entered upon the award in accordance with Applicable Law in any court having jurisdiction.
- 3.12** The Parties agree to and shall co operate fully with the arbitrator(s) and proceed with the arbitration expeditiously, including in respect of any hearing, in order that an award may be rendered as soon as practicable by the arbitrator(s), given the nature of the Dispute.

The arbitrator(s) shall render a decision as soon as possible and, in any event, shall use all reasonable efforts to render a decision no later than 45 days after the date of the hearing, or such longer period of time as agreed to in writing by the Parties. If the arbitration tribunal is comprised of 3 arbitrators, the decision of a majority of the arbitration tribunal shall be deemed to be the decision of the arbitration tribunal, and where there is no majority decision, the decision of the chair of the arbitration tribunal shall be deemed to be the decision of the arbitration tribunal.

- 3.13** This Schedule 1.01(E) constitutes an agreement to arbitrate that shall be specifically enforceable.

**Schedule 1.01(F)**

**Form of Debenture**

**DEMAND DEBENTURE**

**PRINCIPAL SUM: \$● [Advance Amount plus [REDACTED]%)**

**DATE: ●, 2011**

**ARTICLE 1**

**PROMISE TO PAY**

1.1 **Promise to Pay:** ● (hereinafter referred to as the “**Chargor**”), for value received, hereby acknowledges itself indebted and covenants and promises: (i) to pay to ●, as administrative agent for and on behalf of the Lenders, its successors and assigns (hereinafter referred to as the “**Chargee**”), at [Address] or wheresover the Chargee may designate by notice in writing to the Chargor, ON DEMAND the principal amount of ● Dollars (\$●) in lawful money of Canada and interest thereon, from and including the date hereof (or from and including the last interest payment date to which interest shall have been paid), at such rate specified in the Loan Agreement, as well after as before maturity and both before and after demand, default and judgment, with interest on overdue interest at the same rate, and on all other amounts secured hereby; and (ii) to perform the Obligations Secured (as hereinafter defined).

For the purposes of this Debenture, the term “**Obligations Secured**” means, without limitation or duplication, the Chargor Obligations and the covenant of the Chargor herein contained, and the principal, interest and other amounts payable hereunder or secured hereby.

The Chargor hereby acknowledges that this Debenture secures the advance of the Loan pursuant to the Loan Agreement.

Notwithstanding any other provision of this Debenture, if the security constituted by this Debenture becomes enforceable, the Chargor will not be liable to pay under this Debenture any greater amount than the aggregate of the Obligations Secured.

1.2 **Interpretation:** In this Debenture, unless there is something in the subject matter or text that is inconsistent therewith, all capitalized terms used herein which are not otherwise defined herein shall have the meanings ascribed thereto in the Loan Agreement. In addition, the following terms shall have the following meanings,

- (a) “**Account**” has the meaning set out in Section 3.9 hereof.
- (b) “**Act**” has the meaning set out in Section 2.1(b) hereof.
- (c) “**Charged Premises**” has the meaning set out in Section 2.1 hereof.

- (d) “**Chargee**” has the meaning set out in Section 1.1 hereof.
- (e) “**Chargor**” has the meaning set out in Section 1.1 hereof.
- (f) “**Chargor Obligations**” means all of the obligations, liabilities and indebtedness (present and future, absolute or contingent, matured or otherwise) of any kind whatsoever of the Chargor to the Chargee under, pursuant to, in connection with or relating to the Loan Documents.
- (g) “**Contract**” has the meaning set out in Section 3.9 hereof.
- (h) “**Excluded Collateral**” has the meaning set out in Section 2.2 hereof.
- (i) “**Leases**” means all present and future leases, offers to lease, subleases, concessions, licenses and other contracts and agreements by which the use, enjoyment or occupancy of the Charged Premises or any portion thereof is granted, together with all related credits, options, claims, causes of action, guarantees, indemnities, security deposits and other security.
- (j) “**Loan Agreement**” means the Loan Agreement dated • among, *inter alia*, •, as borrower, the Chargee, [the **Chargor**] and the Guarantor (as defined therein), as lender.
- (k) “**Loan Documents**” means the Loan Agreement, the Security, and all certificates and other documents delivered or to be delivered to the Chargee or the Lenders pursuant hereto or thereto and, when used in relation to any person, the term “Loan Documents” shall mean the Loan Documents executed and delivered by such person.
- (l) “**Obligations Secured**” has the meaning set out in Section 1.1 hereof.
- (m) “**Real Property**” has the meaning set out in Section 2.1(a) hereof.
- (n) “**Revenues**” has the meaning set out in Section 2.1(b)(vi) hereof.
- (o) “**Secured Property**” means the lands and premises municipally known as • and legally described in Schedule “A” attached hereto, together with rights and privileges appertaining thereto.
- (p) “**Security Interests**” has the meaning set out in Section 2.1 hereof.
- (q) “**Tenant**” means any lessee, sublessee, licensee or grantee of a right of use or occupation under a Lease and its successors and permitted assigns.

## **ARTICLE 2**

### **SECURITY**

2.1 Security: As security for the due and timely payment and performance of the Obligations Secured, the Chargor:

- (a) grants, conveys, mortgages, charges, pledges, assigns and creates a security interest in (and provided that where the interest of the Chargor is by way of leasehold, such mortgage and charge is by way of sublease) as and by way of a fixed and specific mortgage, charge, pledge, assignment and security interest to and in favour of the Lender, all of its right, title, estate and interest (whether freehold or leasehold), present and future, now owned or hereafter acquired, in and to all of its undertaking, property, assets, rights, benefits and privileges, both real and personal, moveable and immovable of whatsoever nature and kind, including without limitation, the following:
  - (i) all lands, premises and portions of the Secured Property in which the Chargor has any legal or beneficial right, title, interest, claim, privilege, benefit or entitlement, including, without limitation (x) all land rights agreements, rights, leases, subleases, licences, easements, rights-of-way, profits a prendre and interests in real property with respect to the Secured Property and all other facilities relating to or required for use in connection with the Secured Property to the extent of any interest therein, and (y) such of the Secured Property as may be specifically described in any one or more supplements to this Debenture;
  - (ii) all buildings, erections, structures and improvements, underground facilities, power, fuel and water supply, storage, waste disposal, roads and other transportation facilities presently situated on or under the Secured Property or which may at any time hereafter be constructed or brought or placed on or under the Secured Property or used in connection with the Secured Property;
  - (iii) all fixed machinery, plant, equipment, apparatus and fittings and other fixtures; and
  - (iv) all interests in any of the foregoing and all benefits and rights to be derived by the Chargor in respect thereof,

(all of the property and rights therein set out in paragraph 2.1(a) being collectively, the “**Real Property**”);

- (b) grants, conveys, mortgages, charges, pledges, assigns and creates a security interest in, as and by way of a fixed and specific mortgage, charge, pledge, assignment and security interest to and in favour of the Chargee of all of its right, title, estate and interest, present and future, in and to any and all personal property in which a security interest can be taken, reserved, created or granted whether under the *Personal Property Security Act* (Ontario) (the “Act”), any similar personal property security legislation in any jurisdiction in which any of the Charged Premises is located or otherwise under any statute or law or in equity and which is now or at any

time hereafter owned by the Chargor or in which the Chargor now has or at any time hereafter acquires any interest of any nature whatsoever, including, without in any way limiting the generality of the foregoing:

- (i) all materials, supplies, machinery, equipment, fixtures, inventory, vehicles, furniture, tools, accessories and appliances now or hereafter owned or acquired by or on behalf of the Chargor and every interest therein which the Chargor now has or hereafter acquires, wheresoever situate;
- (ii) all present and future accounts (including, without limitation, cash collateral accounts), accounts receivable, money (including, without limitation, all money in any bank accounts), intangibles, claims, contract rights, demands, chattel papers, instruments, documents, notes and choses in action, together with any and all security therefor, including, without limiting the generality of the foregoing, all present and future mortgages receivable, debentures, bonds, promissory notes, bills of exchange, judgments and book debts, now due or hereafter to become due to or owned by the Chargor, together with all securities, documents, computer disks, tapes, software or records now or hereafter owned by the Chargor and representing or evidencing the said debts, accounts, accounts receivable, claims, contract rights, demands and choses in action and all other rights and benefits in respect thereof, including, without limitation, all Material Project Agreements and Material Licenses;
- (iii) all rights, agreements, licenses, permits, consents, policies, approvals, development agreements, building contracts, performance bonds, purchase orders, plans, patents, trade names, copyrights and other industrial and intellectual property, goodwill, know-how, rights to carry on business and specifications presently owned and hereafter acquired by the Chargor;
- (iv) all present and future computer hardware, software and programs, and all rights, agreements, licences, permits and consents in respect of or in any way relating to such computer hardware, software and programs including, without limitation, all paper cards, magnetic tapes, discs, diskettes, drums or magnetic bubbles and whether permanently installed in hardware or crystallized in firmware, and all codes, passwords, and security devices in respect thereof;
- (v) all shares, stocks, warrants, bonds, debentures, debenture stock, partnership interests, joint venture interests or other securities investments now or hereafter owned by the Chargor;
- (vi) all rents, revenues, income, insurance proceeds, expropriation proceeds, other proceeds and other monies to which the Chargor may from time to time be entitled from all sources which pertain to or are derived from the Real Property or any part thereof including, without limitation, all income and proceeds (whether in cash or on credit) received or receivable by or on behalf



of the Chargor in respect of the use, occupancy or enjoyment of any Real Property or any part thereof or for the sale of goods or the provision of services on, at or from any Real Property or from judgments, settlements or other resolutions of disputes relating to the ownership, use, construction, development, operation, maintenance or management of any Real Property (collectively, “Revenues”);

(vii) the benefit of any guarantees or indemnities relating to all or part of the property referred to in paragraph 2.1(b)(vi); and

(viii) all investment property (as defined in the Act);

and with respect to paragraphs 2.1(b)(i) to (viii) inclusive, in, to and under all amendments, extensions, renewals, replacements and substitutions of any of the foregoing, all increases, additions and accessions thereto and all rights, remedies, powers, easements, privileges and claims of the Chargor thereunder (whether arising pursuant thereto or available to the Chargor at law or in equity) including without limitation, the right of the Chargor to enforce the foregoing and the obligations of the other parties thereto and to give or withhold any and all consents, requests, directions, approvals, extensions and/or waivers thereunder;

(c) assigns, transfers and sets over unto and in favour of the Chargee, its successors and assigns, as and by way of a fixed and specific assignment, all of its right, title, estate and interest, present and future, in and to:

(i) all Material Project Agreements, Material Licenses, Permitted Encumbrances and any other agreements relating to the Real Property (including, without limitation, those relating to construction or development on, or operation of, the Real Property) or the business, undertaking and operations of the Chargor; and

(ii) all amendments, extensions, renewals, replacements and substitutions of any of the property referred to in paragraph 2.1(c)(i) and all benefits, rights, remedies, privileges, claims, powers and advantages of the Chargor to be derived therefrom or thereunder (whether arising pursuant thereto or available to the Chargor at law or in equity) and all covenants, obligations and agreements of the other parties thereto including, without limitation, the right of the Chargor to enforce any of the foregoing and the obligations of the other parties thereto and to give or withhold any and all consents, requests, directions, approvals, extensions and/or waivers thereunder;

(d) assigns, transfers and sets over unto and in favour of the Chargee, its successors and assigns, as and by way of a general assignment, all of its right, title, estate and interest present and future, in and to:

- (i) the Leases and all benefits, powers and advantages of the Chargor to be derived therefrom and all covenants, obligations and agreements of the tenants thereunder or in any agreement collateral thereto including, without limitation, the benefit of any right, option or obligation of any tenant or other person to acquire any of the Real Property or an interest therein, to renew or extend any Lease, to lease other space and any other collateral advantage or benefit to be derived from the Leases or any of them;
  - (ii) all rents and other moneys now due and payable or hereafter to become due and payable under the Leases and each guarantee of or indemnity in respect of the obligations of the tenants thereunder with full power to demand, sue for recovery, receive and give receipts for all such rents and other moneys and otherwise to enforce the rights of the Chargor thereto in the name of the Chargor;
  - (iii) all present and future intangibles including, without limiting the generality of the foregoing, all of its rights, title and interest in all present and future book debts, accounts and other accounts receivable, contract rights and choses in action;
  - (iv) any and all existing or future agreements, contracts, licences, permits, plans and specifications, bonds, letters of credit, letters of guarantee or other documents or instruments and all extensions, amendments, renewals or substitutions thereof or therefor which may hereafter be effected or entered into and all benefit, power and advantage of the Chargor to be derived therefrom, including, without limitation, all Material Project Agreements and Material Licenses;
  - (v) any and all existing or future agreements of purchase and sale, options to purchase and mortgage, loan or other financing commitments and all proceeds and other moneys now due and payable or hereafter to become due and payable thereunder and all benefit, power and advantage of the Chargor to be derived therefrom; and
  - (vi) the proceeds of any and all existing or future insurance policies (but excluding worker's compensation insurance and third party liability insurance) and all proceeds of expropriation or similar taking of the Real Property or any part or parts thereof and all benefit, power and advantage of the Chargor to be derived therefrom provided that all such proceeds shall be held and applied in accordance with the Loan Agreement;
- (e) grants, conveys, mortgages, charges, pledges, assigns and creates a security interest in, as and by way of a fixed and specific mortgage, charge, pledge, assignment and security interest to and in favour of the Chargee, its successors and assigns, all of its right, title, estate and interest, present and future, in and to all personal property in any form (including money) derived, directly or indirectly, from any dealing with the

property referred to in subsections 2.1(a) to (d), inclusive, or proceeds therefrom or that indemnifies or compensates for all or part of such property or proceeds therefrom that is destroyed and damaged; and

- (f) grants, conveys, mortgages, charges, pledges and assigns as and by way of a floating charge to and in favour of the Chargee all of the undertaking, property, assets, rights, entitlements, benefits and privileges, both real and personal, moveable and immovable, of every nature and kind, now or at any time and from time to time hereafter existing and owned by the Chargor (except such property and assets as are validly and effectively subject to any fixed and specific mortgage and charge or assignment, transfer or security interest created hereby);

provided that the said grants, conveyances, mortgages, charges, pledges, transfers, assignments and security interests created pursuant to this Section 2.1 (the "Security Interests") shall not: (i) extend or apply to any personal property which is "consumer goods", as such term is defined in the Act; or (ii) extend to the last day of the term of any lease or any agreement therefor now held or hereafter acquired by the Chargor, as lessee, but should such Security Interests become enforceable the Chargor shall thereafter stand possessed of such last day and shall hold it in trust for the Chargee for the purpose of this Debenture and assign and dispose thereof as the Chargee shall, for such purpose, direct. Upon any sale of such leasehold interest or any part thereof, the Chargee, for the purpose of vesting the aforesaid one day residue of such term or renewal thereof in any purchaser or purchasers thereof, shall be entitled by deed or writing to appoint such purchaser or purchasers or any other person or persons as new trustee or trustees of the aforesaid residue of any such term or renewal thereof in the place of the Chargor and to vest the same accordingly in the new trustee or trustees so appointed free and discharged from any obligation respecting the same.

All the undertaking, property and assets mortgaged and charged pursuant to Subsection 2.1(a) and all of the undertaking, property and assets granted, conveyed, pledged, assigned, transferred, mortgaged and charged pursuant to Subsections 2.1(b), (e) and (f) hereof being hereinafter collectively referred to as the "mortgaged property"; all the undertaking, property and assets assigned, transferred and set over pursuant to Subsections 2.1(c) and (d) being hereinafter collectively referred to as the "assigned property"; and the mortgaged property and assigned property being hereinafter collectively referred to as the "Charged Premises". Wherever used herein in relation to the rights and remedies of the Chargee the terms "Real Property", "mortgaged property", "assigned property" and "Charged Premises" shall, where the context permits, mean the whole or any part or parts thereof.

TO HAVE AND TO HOLD the Charged Premises and all rights hereby conferred unto the Chargee, its successors and assigns, for the uses and purposes and with the powers and authorities and subject to the terms and conditions set forth herein and in the Loan Agreement.

**2.2 Excluded Collateral:** Notwithstanding anything contained in this Debenture, the Security Interests contained herein in respect of the Charged Premises, other than the Charged Premises referred to in Section 2.1(a), shall not extend or attach to the right, title, interest or benefit of the Chargor in any of the Charged Premises which by law cannot be assigned or charged or which requires the consent of any third party or Governmental Authority to such assignment or charge or

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which, if assigned or charged, would give rise to a default, penalty or right of termination (collectively the “Excluded Collateral”). The Chargor agrees that, at the reasonable request of the Chargee from time to time, it will use commercially reasonable efforts to obtain such consents in respect of the Excluded Collateral and to the transfer or assignment of the Excluded Collateral to any third party who may acquire an interest in the Charged Premises as a result of the exercise by the Chargee of its remedies hereunder. Upon such consent being obtained, the Security Interests contained herein shall apply to such Excluded Collateral without regard to this Section 2.2 and without the necessity of any further assurance to effect the Security Interests contained herein in respect thereto. Until such consent is obtained, the Chargor shall, to the extent that it may do so by law or under the terms of the Excluded Collateral and without giving rise to any default, penalty or right of termination, hold all right, title, benefit and interest to be derived therefrom in trust for the Chargee as additional security, as if the Security Interests contained herein applied, and shall deliver up such right, title, benefit and interest to the Chargee forthwith upon the occurrence and during the continuance of an Event of Default.

**2.3 Delivery of Instruments, Securities, Etc.:** The Chargor shall, upon reasonable request from the Chargee, following the occurrence and during the continuance of an Event of Default, forthwith deliver to the Chargee to be held by the Chargee hereunder all instruments, securities, letters of credit, advices of credit and negotiable documents of title in its possession or control which pertain to or form part of the Charged Premises, and shall, where appropriate, duly endorse the same for transfer in blank or as the Chargee may direct and shall make all commercially reasonable efforts to deliver forthwith to the Chargee any and all consents or other instruments or documents necessary to comply with any restrictions on the transfer thereof in order to transfer the same to the Chargee.

**2.4 Representations and Warranties of the Chargor:** The Chargor represents and warrants to the Chargee as follows:

- (a) **French Name:** The Chargor does not have or use a French form of name or a combined English and French form of name;
- (b) **Address:** The address of the Chargor’s chief executive office is ●; and
- (c) **Location of Charged Premises:** With the exception of inventory in transit, all tangible assets comprising the Charged Premises are situate at the Real Property or the chief executive office.

The foregoing representations and warranties shall survive for so long as any of the Obligations Secured remain unpaid and, notwithstanding any investigation made by or on behalf of the Chargee, shall continue in full force and effect for the benefit of the Chargee during such period.

**2.5 Covenants of the Chargor:** So long as any of the Obligations Secured shall remain unpaid or any of the Lenders have the obligation to provide credit facilities pursuant to the Loan Agreement, the Chargor covenants and agrees with the Chargee as follows:

- (a) No Accessions: The Chargor shall prevent any Charged Premises from being or becoming an accession to any property not subject to the Security Interests created by this Debenture;
- (b) Change of Name/Chief Executive Office: The Chargor shall not change its name or the location of its chief executive office without giving prior written notice to the Chargee of the new name or chief executive office location and the date upon which such change of name or chief executive office location is to take effect;
- (c) Location of Charged Premises: Except as may be permitted by the Loan Agreement, the Chargor shall not keep, store, locate or install any Charged Premises at, or move, transport or transfer any Charged Premises to, any location other than those locations set out in Section 2.4(c) without the prior written consent of the Chargee; and
- (d) Registrations: The Chargor will, from time to time at the request of the Chargee, promptly effect all registrations, filings, recordings and all renewals thereof and all re-registrations, re-filings and re-recordings of or in respect of this Debenture and the Security Interests created hereby in such offices of public record and at such times as may be necessary or of advantage in perfecting, maintaining and protecting the validity, effectiveness and priority hereof and of the Security Interests created hereby; provided that the Chargee may effect all such registrations, filings, recordings, renewals, re-registrations, re-filings and re-recordings from time to time in its sole discretion at the expense of the Chargor.

2.6 Enlargement Each of the Security Interests created by this Article 2 is intended to be a mortgage, pledge and charge of, and a security interest in, the entire estate, right, title and interest of the Chargor of its interests, whether such interests are leasehold or freehold interests, in and to each and every part of the Real Property and, if the estate, right, title and interests of the Chargor, whether leasehold or freehold, in and to the Real Property or any part thereof enlarges, the charges created by this Article 2 will be enlarged and extended to be a mortgage, pledge and charge of, and security interest in, such enlarged estate, right, title and interest promptly upon the acquisition thereof by the Chargor, and without any further act on the part of the Chargor, and will become and be subject to the charges created by this Article 2 as fully and completely as though now owned by the Chargor.

### **ARTICLE 3**

#### **RIGHTS AND REMEDIES**

3.1 Remedies Upon Default Upon the occurrence of and during the continuance of any Event of Default, the Chargee may do any one or more of the following:

- (a) by written notice to **[the Borrower]** declare the Obligations Secured to be immediately due and payable without the necessity of presentment for payment, or notice of non-payment and of protest (all of which are hereby expressly waived by the Chargor);

- (b) proceed to exercise any and all rights under this Debenture, the other Loan Documents and any other document or instrument executed pursuant to this Debenture or any other rights otherwise available to it whether under this Debenture, the other Loan Documents or otherwise, including enforcement of this Debenture;
- (c) take any action or proceeding authorized or permitted by this Debenture, the other Loan Documents or by law or equity, and file or cause to be filed on its behalf such proofs of claim and other documents as may be necessary or desirable to have its claims lodged in any bankruptcy, winding-up or other judicial proceeding relative to Chargor;
- (d) take proceedings in any court of competent jurisdiction for sale or foreclosure of all or any part of the Charged Premises;
- (e) immediately enter upon and take possession of, disable or remove all of the Charged Premises or any part or parts thereof with power, among other things, to exclude the Chargor, to preserve and maintain the Charged Premises and make additions and replacements thereto, to receive rents, income and profits of all kinds and pay therefrom all reasonable expenses of maintaining, completing, repairing, preserving and protecting and operating the Charged Premises and all charges, payment of which may be necessary to preserve or protect the Charged Premises, and 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 at the rate provided for under the Loan Agreement and enter into contracts and undertake obligations for the foregoing purposes upon the security hereof;
- (f) whether or not the Chargee has taken possession of the Charged Premises or any of it, sell, lease or otherwise dispose thereof, either as a whole or in separate parcels, at public auction, by public tender or by private sale, with only such notice as may be required by law, either for cash or upon credit, at such time and upon such terms and conditions as the Chargee may determine (including a term that a reasonable commission shall be payable to the Chargee or any related corporation in respect thereof) and enter into, rescind or vary any contract for the sale, lease or other disposition of any of the Charged Premises and sell, lease or dispose thereof again without being answerable for any loss occasioned thereby and the Chargee may execute and deliver to any purchaser of the Charged Premises or any part thereof good and sufficient deeds and documents for the same;
- (g) require the Chargor, at the Chargor's expense, to assemble the Charged Premises at a place or places designated by notice in writing given by the Chargee to the Chargor, and the Chargor agrees to so assemble the Charged Premises;
- (h) require the Chargor, by notice in writing given by the Chargee to the Chargor, to disclose to the Chargee the location or locations of the Charged Premises and the Chargor agrees to make such disclosure when so required by the Chargee;

- (i) without legal process, enter any premises where the Charged Premises may be situated and take possession of the Charged Premises by any method permitted by law;
- (j) carry on all or any part of the business or businesses of the Chargor relating to the Charged Premises and, to the exclusion of all others including the Chargor, enter upon, occupy and, subject to any requirements of law and subject to any leases or agreements then in place, use all or any of the Real Property, premises, buildings, plant, undertaking, assets and other property comprising the Charged Premises for such time and in such manner as the Chargee sees fit, free of charge and, except to the extent required by law, the Chargee shall not be liable to the Chargor for any act, omission or negligence in so doing or for any rent, charges, depreciation or damages or other amounts incurred in connection therewith or resulting therefrom;
- (k) borrow money for the purpose of carrying on the business of the Chargor relating to the Charged Premises or for the maintenance, preservation or protection of the Charged Premises and mortgage, charge, pledge or grant a security interest in the Charged Premises, whether or not in priority to the security interests created by this Debenture to secure repayment of any money so borrowed;
- (l) where the Chargee has taken possession of the Charged Premises, retain the Charged Premises irrevocably, to the extent not prohibited by law, by giving notice thereof to the Chargor and to any other persons required by law in the manner provided by law;
- (m) send or employ inspectors or agents to inspect, audit and report upon the value, state and condition of the Charged Premises;
- (n) subject to applicable law, seize, collect, retain and administer the Charged Premises or any part or parts thereof in the Chargee's discretion;
- (o) pay any encumbrance, lien, claim or charge that validly exists or has been threatened against any of the Charged Premises and any amounts determined to be validly existing shall, when so paid, together with any costs, charges and expenses incurred by the Chargee (including, without limitation, legal fees and disbursements on a solicitor-client basis), be added to the Obligations Secured hereby and shall bear interest at the rate provided for in the Loan Agreement;
- (p) take proceedings in any court of competent jurisdiction to enforce payment by the Chargor of the Obligations Secured or any deficiency remaining upon application of proceeds of realization which are actually received by the Chargee;
- (q) exercise or pursue any other remedy or proceeding authorized or permitted hereby or by the Act or any similar personal property security legislation or by any other legislation in any jurisdiction in which any of the Charged Premises is located or otherwise permitted by law or equity; and

- (r) with or without entry into possession of the Charged Premises, or any part thereof, appoint a receiver (which term shall include a receiver and manager) of the Charged Premises or any part thereof and of the rents and profits thereof pursuant to and in accordance with the provisions of the Security and this Debenture and with or without security for the performance of the receiver’s obligations and from time to time remove any receiver and appoint another in its stead. Upon the appointment of any such receiver or receivers from time to time, subject to Applicable Laws, the following provisions shall apply:
- (i) every such receiver shall be the irrevocable agent of the Chargor for all purposes with respect to the Charged Premises including, without limitation, for the collection of all Revenues owing or earned in respect of the Real Property or any part thereof;
  - (ii) every such receiver may, in the discretion of the Chargee, be vested with all or any of the powers and discretion of the Chargee under this Debenture and the Security, including, without limitation, the power to carry on all or any part of the business of the Chargor relating to the Charged Premises and to sell, lease or otherwise dispose of the Charged Premises, either as a whole or in separate parcels, at public auction, by public tender or by private sale, with only such notice as may be required by Applicable Laws, either for cash or on credit, at such time and upon such terms and conditions as the receiver may determine (including a term that a reasonable commission shall be payable to the receiver, the Chargee or any related corporation in respect thereof) and enter into, rescind or vary any contract for the sale, lease or other disposition of any of the Charged Premises and sell, lease or dispose thereof again without being answerable for any loss occasioned thereby and the receiver may execute and deliver to any purchaser of the Charged Premises or any part thereof good and sufficient deeds and documents for the same and such receiver shall also have the power to take proceedings in any court of competent jurisdiction for sale or foreclosure of all or any part of the Charged Premises;
  - (iii) the Chargee may from time to time fix the remuneration of every such receiver and every such receiver shall be entitled to deduct the same out of the income from the Charged Premises or the proceeds of disposition of the Charged Premises;
  - (iv) the appointment of every such receiver by the Chargee shall not, to the extent permitted by law, incur or create any liability on the part of the Chargee to the receiver in any respect and such appointment or anything which may be done by any such receiver or the removal of any such receiver or the termination of any such receivership shall not have the effect of constituting the Chargee a mortgagee in possession in respect of the Real Property or any part thereof;



- (v) every such receiver shall, from time to time, have the power to lease or otherwise deal with any portion of the Charged Premises which may become vacant or available for lease on such terms and conditions as such receiver may deem advisable and shall have full power to complete any unfinished construction upon the Real Property (such power of the receiver to include, without limitation, the power to borrow funds in the name of and on the credit of the Chargor for such purposes, which borrowings may be secured by the Charged Premises, or any part thereof, and which security shall have such priority as the receiver deems appropriate);
- (vi) every such receiver shall have full power to fully manage, develop, operate, lease, deal with agreements (including, without limitation, the Material Project Agreements, the Material Licenses, and Permitted Encumbrances) and Leases, construct, complete, repair, renovate or alter the Real Property or any part thereof on behalf of the Chargor and to take all such actions as are required in the exercise of such powers including, without limitation, entering into, amending and terminating such contracts and other agreements relating to the Charged Premises as are necessary or advisable, in the opinion of the receiver, and the entering into, renewal, amendment, supplement or termination of any agreements and Leases as the receiver may deem appropriate in its sole and absolute discretion; the aforementioned power shall include the power to borrow money in the name of and on the credit of the Chargor for all such purposes (which borrowings may be secured by the Charged Premises, or any part thereof, and which security shall have such priority as the receiver deems appropriate);
- (vii) no such receiver shall be liable to the Chargor to account for monies other than monies actually received by or in respect of Charged Premises or any part thereof and out of such monies so received, every such receiver shall, subject to the further direction of the Chargee, in the following order pay:
  - (A) his remuneration aforesaid;
  - (B) all payments made or incurred by him in connection with the management, operation, construction, completion, repair or alteration of the Charged Premises or any part thereof in accordance with the provisions thereof;
  - (C) 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 Debenture or the Security and all taxes, insurance premiums and every other proper expenditure made or incurred by him in respect of the Charged Premises or any part thereof and in payment of all interest, fees and other similar amounts due or falling due hereunder and the balance to be applied upon the Obligations Secured; and

- (D) at the discretion of the receiver, interest, principal and other monies which may from time to time constitute an encumbrance on the Charged Premises subsequent or subordinate to this Debenture or the Security;

and every receiver may in its discretion retain reasonable reserves to pay accruing amounts and anticipated payments in connection with any of the foregoing; and any surplus remaining in the hands of every such receiver after payments made as aforesaid shall be accountable to the Chargor and upon termination of the receivership such receiver shall pay such surplus to the Chargor or pay it into court, as the receiver may elect;

- (viii) the Chargee may at any time and from time to time terminate any such receivership by notice in writing to the Chargor and to any such receiver; and
- (ix) the receiver may carry out all actions and do all things that the Chargee may do under this Debenture and the Security as if it were the Chargee (it being agreed that such powers are not in any way limited by the foregoing provisions of this Subsection 3.1(r)).

3.2 Sale of Charged Premises: The Chargor agrees that any sale referred to in Section 3.1 may be either a sale of all or any portion of the Charged Premises and may be by way of public auction, public tender, private contract or otherwise without notice, advertisement or any other formality, except as required by law, all of which the Chargor waives to the extent permitted by law. To the extent not prohibited by law, any such sale may be made with or without any special condition as to the upset price, reserve bid, title or evidence of title or other matter and from time to time as the Chargee in its sole discretion thinks fit with power to vary or rescind any such sale or buy in at any public sale and resell. The Chargee may sell the Charged Premises for a consideration payable by instalments either with or without taking security for the payment of such instalments and may make and deliver to any purchaser thereof good and sufficient deeds, assurances and conveyances of the Charged Premises and give receipts for the purchase money, and any such sale shall be a perpetual bar, both at law and in equity, against the Chargor and all those claiming an interest in the Charged Premises by, from, through or under the Chargor.

3.3 References to the Chargee Include Receiver For the purposes of Sections 3.1, 3.2, 3.4, 3.7, 3.8, 3.10, 3.11 and 3.14 a reference to the Chargee shall, where the context permits include any receiver or receiver and manager or other agent on behalf of the Chargee.

3.4 Chargor’s Rights Subject to the terms of the Loan Agreement, until the security hereby constituted shall become and remains enforceable, the Chargor shall be entitled to deal with the Charged Premises and enforce, use and enjoy all of the benefits, advantages and powers thereunder as if this Debenture had not been made, including, in accordance with the terms and provisions of the Loan Agreement, the right to enter into any agreements of purchase and sale involving the units in the condominium project intended to be developed on the Real Property, as well as the right to amend or terminate any existing or future agreements of purchase and sale involving any of the units or proposed units in said condominium project (as well as any leases or occupancy agreements in

connection therewith). Upon the security hereby constituted becoming and remaining enforceable, the Chargee may, but shall not be obligated to, exercise all rights, powers, authority and discretions of the Chargor in respect of the Charged Premises in its place and stead.

3.5 Judgment Neither the taking of any judgment nor the exercise of any power of seizure or sale shall operate to extinguish the liabilities of the Chargor to make payment of the principal hereby secured or interest thereon or other moneys owing hereunder nor shall such operate as a merger of any covenant or affect the right of the Chargee to interest at the rate hereinbefore specified and any judgment shall bear interest at such rate.

3.6 Interest If any amount payable to the Chargee under this Debenture is not paid when due, the Chargor will pay to the Chargee, immediately on demand, interest on such amount from the date due until paid, at an annual rate equal to the interest rate stipulated therefor in the Loan Agreement. Except as otherwise provided in the Loan Agreement, all amounts payable by the Chargor to the Chargee under this Debenture, and all interest on all such amounts, compounded monthly on the last Business Day of each month, will form part of the Obligations Secured and will be secured by the security interests created by this Debenture.

3.7 Charge as Security:

- (a) It is expressly acknowledged and agreed that nothing herein contained shall obligate the Chargee to assume or perform any obligation of the Chargor to any third party in respect of or arising out of any of the Charged Premises. The Chargee may, however, only after an Event of Default and while any Event of Default continues, at its option, assume or perform any such obligations as the Chargee considers necessary or desirable to obtain the benefit of the Charged Premises free of any set-off, deduction or abatement and any money expended by the Chargee in this regard shall form part of and shall be deemed to form part of the Obligations Secured and bear interest at the rate stipulated in Section 3.6.
- (b) The exercise by the Chargee of its rights under this Debenture or the assumption after any Event of Default of certain obligations of the Chargor as referred to in Subsection 3.7(a) above shall not constitute or have the effect of making the Chargee a mortgagee in possession. Care, control and management of the Charged Premises shall remain and shall be deemed to be with the Chargor in the absence of clear and unequivocal action by the Chargee depriving the Chargor of such care, control and management and the assumption thereof by the Chargee.

3.8 Limitations on Chargee's Liability: The Chargee will not be liable to the Chargor or any other Person for any failure or delay in exercising any of the rights of the Chargee under this Debenture (including any failure to take possession of, collect, sell, lease or otherwise dispose of any Charged Premises, or to preserve rights against prior parties). Neither the Chargee, nor any receiver or agent of the Chargee is required to take, or will have any liability for any failure to take or delay in taking, any steps necessary or advisable to preserve rights against other Persons under any Charged Premises in its possession. Neither the Chargee nor any receiver or agent will be liable for any, and the Chargor will bear the full risk of all, loss or damage to any and all of the Charged

Premises (including any Charged Premises in the possession of the Chargee or any receiver or agent) caused for any reason other than the gross negligence or wilful misconduct of the Chargee or such receiver or agent.

3.9 Debtor Remains Liable under Accounts and Contracts Notwithstanding any provision of this Debenture, the Chargor will remain liable under each of the agreements, contracts, Leases, Material Project Agreements and other documents comprising the Charged Premises (each a “Contract”) to pay and satisfy all indebtedness, liabilities and other monetary obligations and to observe and perform all the conditions and obligations which are to be paid, satisfied, observed and performed by the Chargor thereunder, all in accordance with the terms of each such Contract. The Chargee will have no obligation or liability under any account or monetary obligation (an “Account”) (or any Contract giving rise thereto) or Contract by reason of or arising out of this Debenture or the receipt by the Chargee of any payment relating to such Account or Contract pursuant hereto, and in particular (but without limitation), the Chargee will not be obligated in any manner to perform any of the obligations of the Chargor under or pursuant to any Account (or any Contract giving rise thereto) or under or pursuant to any Contract, to make any payment, to make any inquiry as to the nature or the sufficiency of any payment received by it or as to the sufficiency of any performance by any party under any Account (or any Contract giving rise thereto) or under any Contract, to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to it or to which it may be entitled at any time.

3.10 Dealings by Chargee The Chargee will not be obliged to exhaust its recourse against the Chargor or any other Person or against any other security it may hold in respect of the Obligations Secured before realizing upon or otherwise dealing with the Charged Premises in such manner as the Chargee may consider desirable. The Chargee may grant extensions of time and other indulgences, take and give up security, accept compositions, grant releases and discharges and otherwise deal with the Chargor and any other Person, and with any or all of the Charged Premises, and with other security and sureties, as the Chargee may see fit, all without prejudice to the Obligations Secured or to the rights and remedies of the Chargee under this Debenture or the other Loan Documents. The powers conferred on the Chargee under this Debenture are solely to protect the interests of the Chargee in the Charged Premises and will not impose any duty upon the Chargee to exercise any such powers.

3.11 Possession of Charged Premises:

- (a) Where any Charged Premises is in the possession of the Chargee or any receiver or agent:
  - (i) the Chargee shall only have the duty of care with respect to such Charged Premises as would a reasonable and prudent owner, including the duty to use reasonable care in the custody and preservation thereof, provided that the Chargee need not take any steps of any nature to defend or preserve the rights of the Chargor therein against the claims or demands of others or to preserve rights therein against prior parties;

- (ii) the Chargee may, at any time following the occurrence of an Event of Default which is continuing, grant or otherwise create a security interest in such Charged Premises upon any terms provided that such terms do not impair the Chargor's right to redeem such Charged Premises; and
- (iii) the Chargee may, at any time following the occurrence of an Event of Default which is continuing, use such Charged Premises in any manner and to such extent as it deems necessary or desirable.

3.12 After Acquired Property: The Chargor covenants and agrees that, if and to the extent that any of its respective rights, titles, estates and interests in any of the Charged Premises is not acquired until after delivery of this Debenture, this Debenture shall nonetheless apply thereto and the security interest of the Chargee hereby created shall attach to such Charged Premises at the same time as the Chargor acquires rights therein, without the necessity of any further mortgage, charge, pledge, assignment or assurance and thereafter such Charged Premises shall be subject to the security interests created hereby in accordance with the provisions of Section 2.1 hereof.

3.13 Attachment The Chargor hereby acknowledges and agrees that value has been given for the granting of the security interests created hereby and that there is no agreement between the Chargor and the Chargee, express or implied, to postpone the attachment of the security interests created hereby except in respect of after-acquired property forming part of the Charged Premises with respect to which the security interests created hereby shall attach at the same time as the Chargor acquires rights therein or thereto.

3.14 Indemnity The Chargor agrees to indemnify the Chargee from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever which may be imposed on, incurred by, or asserted against the Chargee and arising by reason of any action (including any action referred to in this Debenture) or inaction or omission to do any act legally required by the Chargor. This indemnification will survive the satisfaction, release or extinguishment of the Obligations Secured and the security interests created by this Debenture.

## **ARTICLE 4**

### **GENERAL PROVISIONS**

4.1 Remedies Cumulative and Waivers For greater certainty, it is expressly understood and agreed that the rights and remedies of the Chargee hereunder or under any other document or instrument executed pursuant to this Debenture are cumulative and are in addition to and not in substitution for any rights or remedies provided by law or by equity; and any single or partial exercise by the Chargee of any right or remedy for a default or breach of any term, covenant, condition or agreement contained in this Debenture or other document or instrument executed pursuant to this Debenture or the Security 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 Chargee may be lawfully entitled for such default or breach. Any waiver by the Chargee of the strict observance, performance or compliance with any term, covenant, condition or agreement herein contained and

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any indulgence granted either expressly or by course of conduct by the Chargee shall be effective only in the specific instance and for the purpose for which it was given and shall be deemed not to be a waiver of any rights and remedies of the Chargee under this Debenture or other document or instrument executed pursuant to this Debenture as a result of any other default or breach hereunder or thereunder.

4.2 Termination The Chargee covenants and agrees with the Chargor that, if **[the Borrower]** pays the Obligations Secured and the Chargor performs, satisfies and extinguishes all other Obligations Secured and if the Lender have no further obligations to provide or continue to provide credit facilities to **[the Borrower]** pursuant to the Loan Agreement, this Debenture shall be and become fully ended and terminated and all right, title, interest and benefit of the Chargor in, to, under or in respect of the Charged Premises, assigned by it to, or held by it in trust for, the Chargee hereunder shall automatically revert to the Chargor or its successors or assigns, and all covenants and agreements of the Chargor hereunder shall be at an end and the Chargee, upon the request and at the expense of the Chargor, shall execute such instruments, discharges or re-assignments and give such notification or assurances as the Chargor may properly require to fully release, discharge and cancel this Debenture in the circumstances.

4.3 Notice Any demand, notice, consent or other communication to be made or given hereunder shall be in writing and shall be deemed to have been sufficiently given for all purposes when given in accordance with the provisions of the Loan Agreement.

4.4 Further Assurances Each party shall, at its own expense, promptly execute and deliver to the other upon request all such other and further documents, agreements, opinions, certificates and other instruments in compliance with or accomplishment of their covenants and agreements hereunder or under any document to be delivered pursuant hereto or otherwise necessary to make any recording, file any notice or obtain any consent, all as may be reasonably necessary and appropriate in connection herewith.

4.5 Continuing Security This Debenture and the rights and remedies it creates are a continuing agreement and security and shall bind the parties until discharge of this Debenture as provided in Section 4.2 hereof. No payment by the Chargor of the whole or any part of any Obligations Secured by this Debenture shall reduce the amount secured hereby unless specifically appropriated to and noted on this Debenture by the Chargee.

4.6 No Marshalling This Debenture shall be in addition to and not in substitution for any other security which the Chargee may now or hereafter hold in respect of the Obligations Secured or any other Loan Documents and the Chargee shall be under no obligation to marshal in favour of the Chargor, any other Loan Party or other lender or holder of security, any monies or other assets which the Chargee may be entitled to receive or upon which the Chargee may have a claim.

4.7 Agreement Paramount This Debenture is issued subject to the terms of the Loan Agreement. In the event of any inconsistency or conflict between the terms of this Debenture and the Loan Agreement, the terms of the Loan Agreement shall govern. Notwithstanding the foregoing, in the event that this Debenture contains remedies which are in addition to the remedies set forth in the

Loan Agreement, the existence of such additional remedies in this Debenture shall not constitute a conflict or inconsistency with the provisions of the Loan Agreement.

4.8 Amendment of Agreement No supplement, modification, amendment, waiver or termination of this Debenture shall be binding unless executed in writing by all parties hereto. No waiver of any provision of this Debenture shall be deemed or shall constitute a waiver of any other provision of this Debenture (whether or not similar) nor shall any waiver constitute a continuing waiver unless otherwise so expressed or provided.

4.9 Invalidity of Provisions If any of the provisions in this Debenture should be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

4.10 Time Time shall be of the essence in this Debenture.

4.11 Successors and Assigns This Debenture and all its provisions shall enure to the benefit of and shall be binding upon the Chargee and the Chargor and their respective permitted successors and permitted assigns.

4.12 Assignment by Chargee The rights of the Chargee under this Debenture may be assigned by the Chargee to a person to whom the Chargee is also assigning its rights under the Loan Agreement to the same extent, and on and subject to the same terms and conditions, as the Chargee may assign its rights under the Loan Agreement. The Chargor may not assign its obligations under this Debenture except in accordance with the provisions of the Loan Agreement.

4.13 Attorney The Chargor hereby irrevocably nominates, constitutes and appoints the Chargee and each of its officers holding office from time to time as the true and lawful attorney of the Chargor with power of substitution in the name of the Chargor to do any and all such acts and things or execute and deliver all such agreements, documents and instruments as the Chargee reasonably considers necessary or desirable to carry out the provisions and purposes of this Debenture or to exercise any of its rights and remedies hereunder and the Chargor hereby ratifies and agrees to ratify all reasonable acts of any such attorney taken or done in accordance with this Section 4.13. Without in any way limiting the generality of the foregoing, the Chargee shall have the right to execute for and in the name of the Chargor all financing statements, financing change statements, conveyances, transfers, assignments, consents and other instruments as may be required for such purposes. This power of attorney is coupled with an interest and shall not be revoked or terminated by any act or thing other than the discharge of this Debenture in accordance with Section 4.2.

4.14 Acknowledgement by Chargor The Chargor acknowledges receipt of a copy of this Debenture and hereby expressly waives the right to receive a copy of any financing statement or a copy of the statement confirming the registration of any financing statement that may be registered in connection with any security interest created under this Debenture.

4.15 Applicable Laws This Debenture shall be governed in all respects by the law of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract save in respect of the security created pursuant hereto upon real property and personal

property situate in any province of Canada other than Ontario, and upon income therefrom, which shall be governed by the laws of the province in which such property is situate.

4.16 Attornment The Chargor submits to the non-exclusive jurisdiction of any court in the Province of Ontario in any action or proceeding arising out of or relating to this Debenture, and the Chargor irrevocably agrees that all claims in respect of any such action or proceeding may be heard and determined in any such court or in any other court of competent jurisdiction selected by the Chargee.

4.17 Land Registration Reform Act The implied covenants deemed to be included in a charge under Subsection 7(1) of the *Land Registration Reform Act* (Ontario) are hereby expressly excluded and replaced by the terms of this Debenture, to the extent that same are inconsistent with the terms hereof.

4.18 Condominium Provisions:

- (a) This section applies to those parts of the Real Property that are or become a condominium unit created under the *Condominium Act* (Ontario).
- (b) The Chargor give to the Chargee the right, after and during the continuance of an Event of Default, to vote for the Chargor under the by-laws of the condominium corporation, but the Chargee is not required to do so or to attend or vote at any meeting or to protect the Chargor's interest.
- (c) At the request of the Chargee, the Chargor will give the Chargee copies of all notices, financial statements and other documents given by the condominium corporation to the Chargor.
- (d) The Chargor appoints the Chargee to be the Chargor's agent to inspect or obtain copies of any records or other documents of the condominium corporation that the Chargor is entitled to inspect or obtain.
- (e) Nothing done by the Chargee under this Section 4.18 will make the Chargee a "mortgagee in possession".

***[REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK – SIGNATURE  
LINES FOLLOW ON THE NEXT PAGE]***



IN WITNESS WHEREOF the Chargor has duly executed this Debenture as of the date first written above.

•

By: \_\_\_\_\_

Name:

Title:

I have authority to bind the above.

**SCHEDULE A**

**Legal Description of the Property**

•

**Schedule 1.01(G)**

**Form of Drawdown Notice**

\_\_\_\_\_, 20\_\_\_\_

Her Majesty the Queen in Right of Ontario,  
as represented by the Ministry of Infrastructure,  
as represented by Ontario Infrastructure and Lands Corporation  
777 Bay Street, 6<sup>th</sup> Floor  
Toronto, Ontario M5G 2C8

Attention: Senior Vice President, Project Delivery

Ladies and Gentlemen:

The undersigned, \_\_\_\_\_ (the “**Drawer**”), refers to the Loan Agreement dated as of December \_\_\_, 2011, as amended, restated and/or modified from time to time, (the “**Loan Agreement**”), the terms defined therein being used herein as therein defined, by and among the Dundee Kilmer Developments L.P., [REDACTED], and Her Majesty the Queen in Right of Ontario, as represented by the Minister of Infrastructure, as represented by Ontario Infrastructure and Lands Corporation and that certain Notice of Intent to Borrow dated as of \_\_\_\_\_, 20\_\_\_\_.

The Drawer hereby gives you notice pursuant to Section 2.03(3) of the Loan Agreement, that the undersigned intends to make a Drawdown thereunder and in that connection sets forth below the information relating to such Drawdown required under Section 2.03(3) of the Loan Agreement:

1. The amount of the Advance Amount is \$\_\_\_\_\_, and the amount of the Drawdown requested hereunder is \$\_\_\_\_\_.
2. The date of the requested Drawdown is \_\_\_\_\_, 20\_\_\_\_\_.
3. The requested Drawdown is to be sent to:

**[Name of Bank]**  
**[Address of Bank]**  
**[Beneficiary]**  
**[Account Number and Wire Instructions]**

4. Attached hereto as Schedule A is a calculation of the Advance Amount as calculated and determined in accordance with Section 2.03(3) of the Loan Agreement and adjusted to reflect any additional drawdowns or payments pursuant to the AFP Lending Agreements that are

relevant to the calculation of the Advance amount (including, where applicable, a clear distinction between the Disputed Advance Amount and the Agreed Advance Amount) together with supporting evidence of all advances, repayments and prepayments under the AFP Lending Agreements, deposits and withdrawals from the project accounts pursuant to the AFP Lending Agreements, the Net Sales Proceeds of each Unit, other Project Revenues and the Construction Certificate.

5. Attached hereto as Schedule B is a certificate of the AFP Lenders' Agent confirming the amount outstanding under the AFP Financing (including all amounts outstanding in each project account pursuant to the AFP Lending Agreements).

\_\_\_\_\_

By: \_\_\_\_\_

Name:

Title:

**SCHEDULE A**  
**NOTIONAL ADVANCE AMOUNT CALCULATION**

**SCHEDULE B**  
**CERTIFICATE OF AFP LENDERS’ AGENT**

\_\_\_\_\_, 20\_\_\_\_

Her Majesty the Queen in Right of Ontario,  
as represented by the Ministry of Infrastructure,  
as represented by Ontario Infrastructure and Lands Corporation  
777 Bay Street, 6<sup>th</sup> Floor  
Toronto, Ontario  
M5G 2C8

Attention: Senior Vice President, Project Delivery

Ladies and Gentlemen:

The undersigned, **[REDACTED]**, (the “**AFP Lenders’ Agent**”), refers to that certain the Loan Agreement dated as of December \_\_\_\_, 2011, as amended, restated and/or modified from time to time, (the “**Loan Agreement**”), the terms defined therein being used herein as therein defined, by and among the Dundee Kilmer Developments L.P., **[REDACTED]**, and Her Majesty the Queen in Right of Ontario, as represented by the Minister of Infrastructure, as represented by Ontario Infrastructure and Lands Corporation.

The AFP Lenders’ Agent hereby confirms that the amounts outstanding under the AFP Financing (including all amounts outstanding in each project account pursuant to the AFP Lending Agreements) are as follow:

[INSERT OUTSTANDING AMOUNTS]

**[REDACTED]**

\_\_\_\_\_  
Name:

Title:

**Schedule 1.01(H)**

**Form of General Security Agreement**

**GENERAL SECURITY AGREEMENT**

**THIS AGREEMENT** is made as of the \_\_\_\_ day of December, 2011 by **DUNDEE KILMER DEVELOPMENTS L.P. (“Project Co”)**, **[REDACTED]** and by **[REDACTED]** (**[REDACTED]**) and, together with Project Co, the “**Obligors**”) in favour of **HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO**, as represented by the **MINISTER OF INFRASTRUCTURE**, as represented by **ONTARIO INFRASTRUCTURE AND LANDS CORPORATION**, (the “**Secured Party**”).

**WHEREAS:**

Pursuant to a project agreement of even date herewith (as amended, restated, modified or replaced from time to time, the “**Project Agreement**”) among Project Co, **[REDACTED]**, and the Secured Party, Project Co agreed to provide the design, construction and financing of certain facilities.

**[REDACTED]**

Pursuant to a loan agreement of even date herewith (as amended, restated, modified or replaced from time to time, the “**Loan Agreement**”) among Project Co, the various guarantors party thereto and the Secured Party, the Secured Party agreed to advance the Advance Amount (as such term is defined in the Loan Agreement), if requested, and subject to the terms and conditions therein, in order to repay in whole or in part the AFP Financing (as such term is defined in the Loan Agreement).

It is a condition to the Project Agreement that each Obligor enter into a general security agreement in favour of the Secured Party to secure all indebtedness, obligations, liabilities, covenants, agreements and undertakings, direct or indirect, absolute or contingent, matured or unmatured, as principal or surety, which are now or may become at any time and from time to time hereafter due, owing, payable or required to be performed by Project Co to the Secured Party under the Project Agreement and by **[REDACTED]**, including to achieve Project Substantial Completion (as such term is defined in the Project Agreement) by the Longstop Date (as such term is defined in the Project Agreement) (the “**HMQ Project Obligations**”).

It is a condition to the making of the loan by the Secured Party pursuant to the Loan Agreement that each Obligor enter into a security agreement in favour of the Secured Party to secure all indebtedness, liabilities, covenants, obligations, agreements and undertakings, direct or indirect, absolute or contingent, matured or unmatured, as principal or surety, which are now or may become at any time and from time to time hereafter due, owing, payable or required to be performed by each Obligor to the Secured Party, or which remain owing and unpaid to the Secured Party, at any time and from time to time existing or arising under, or by virtue of or otherwise in connection with the Loan Agreement and the other Loan Documents, whether incurred by such Obligor alone or jointly with any other Person or Persons, or otherwise howsoever and including any and all out-of-pocket expenses (including counsel fees and disbursements) incurred by the Secured Party or any other Person acting on its

behalf enforcing any of its rights (collectively the “**Loan Obligations**”, and together with the HMQ Project Obligations, the “**Obligations**”).

**FOR VALUABLE CONSIDERATION** (the receipt and sufficiency of which are hereby acknowledged), each Obligor covenants, acknowledges, represents and warrants in favour of the Secured Party, as follows:

## **ARTICLE 1** **INTERPRETATION**

### **1.1 Definitions**

Each word and expression (capitalized or not) defined or given an extended meaning in Schedule 1.1 is used in this Agreement with the respective defined or extended meaning assigned to it in Schedule 1.1. Words and expressions defined in the PPSA and/or the STA and used without initial capital letters in this Agreement (including in Schedule 1.1) have the respective defined meanings assigned to them in the PPSA and/or STA, unless the context otherwise requires.

### **1.2 Statutes**

Each reference in this Agreement to any code, statute, regulation, official interpretation, directive or other legislative enactment of any Canadian or foreign jurisdiction (including any political subdivision of any thereof) at any time shall be construed so as to include such code, statute, regulation, official interpretation, directive or enactment and each change thereto made at or before the time in question.

### **1.3 References to Agreements and Documents**

Each reference in this Agreement to any agreement or document (including this Agreement and any other term defined in Schedule 1.1 that is an agreement or document) shall be construed so as to include such agreement or document (including any attached schedules, appendices and exhibits), and each change made to it at or before the time in question.

### **1.4 Headings**

The Article and Section headings in this Agreement are included solely for convenience, are not intended to be full or accurate descriptions of the text to which they refer and shall not be considered part of this Agreement.

### **1.5 Grammatical Variations**

In this Agreement, unless the context otherwise requires, (a) words and expressions (including words and expressions (capitalized or not) defined or given extended meanings) in the singular include the plural and vice versa (the necessary changes being made to fit the context), and (b) grammatical variations of words and expressions (capitalized or not) defined, given extended meanings or incorporated by reference herein shall be construed in like manner.

## **ARTICLE 2** **GRANT OF SECURITY**

### **2.1 Security**

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Each Obligor, as general and continuing collateral security, without impairment or novation, for the due payment and performance of the Obligations of such Obligor, and subject to Sections 2.9, 2.11 and 2.12, hereby grants a security interest in all of such Obligor's present and after-acquired real and personal property to and in favour of the Secured Party and without limitation:

- (a) charges, mortgages, hypothecs, pledges and assigns and grants a security interest in the following assets as and by way of a fixed and specific security to and in favour of the Secured Party:
  - (i) Accounts (including the Project Accounts);
  - (ii) Chattel Paper;
  - (iii) Documents of Title;
  - (iv) Equipment;
  - (v) Instruments;
  - (vi) Intangibles, other than Intellectual Property;
  - (vii) Inventory;
  - (viii) Investment Property;
  - (ix) Money (including all Money on deposit in the Project Accounts);
  - (x) Records;
  - (xi) all insurance policies in which such Obligor now or hereafter has rights;
  - (xii) the business, undertakings and goodwill of such Obligor;
  - (xiii) all rights of such Obligor to the property referred to in clauses (i) to (xii) inclusive above; and
  - (xiv) all Proceeds and Replacements (other than Proceeds or Replacements comprised of Intellectual Property which shall only be subject to the security interest granted under paragraph (c) below) of or to property referred to in clauses (i) to (xiii) inclusive above, including all rights thereto;
- (b) charges, mortgages, hypothecs, pledges and assigns and grants a security interest in the following assets as and by way of a fixed and specific security to and in favour of the Secured Party:
  - (i) each of the Project Documents; and
  - (ii) any other agreements entered into in connection with or related to the Project not referred to in clause (i) above;
  - (iii) all rights of such Obligor to the assets referred to in clauses (i), and (ii) above; and

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- (iv) all Proceeds and Replacements (other than Proceeds or Replacements comprised of Intellectual Property which shall only be subject to the security interest granted under paragraph (c) below) of or to referred to in clauses (i) to (iii), including all rights thereto.
- (c) grants a security interest in the following property as and by way of a fixed and specific security in favour of the Secured Party:
  - (i) Intellectual Property;
  - (ii) all rights of such Obligor to the property referred to in clause (i) above; and
  - (iii) all Proceeds and Replacements of or to property referred to in clauses (i) and (ii) above, including all rights thereto; and
- (d) grants a security interest in the following property, and grants, assigns, conveys, mortgages and charges the following property as and by way of a floating charge to and in favour of the Secured Party:
  - (i) the business, undertakings and goodwill of such Obligor and all personal property, tangible and intangible, of whatever nature and kind in which such Obligor now or hereafter has rights, its uncalled capital (if any) and all its present and future revenues, save and except such assets as are validly and effectively subject to the fixed and specific security created by paragraphs (a), (a), and (c) above;
  - (ii) all rights of such Obligor to the property referred to in clause (i) above; and
  - (iii) all Proceeds and Replacements (other than Proceeds or Replacements comprised of Intellectual Property which shall be subject to the security interest only granted under this paragraph (c) above) of or to property referred to in clauses (i) and (ii) above, including all rights thereto.

Notwithstanding the foregoing in this Section 2.1, there shall be no Security in the Cash Allowance Account or the Construction Contractor Performance Support or any Proceeds thereof and the parties hereto agree that there is no grant of any security interest hereby in the Cash Allowance Account or the Construction Contractor Performance Support or any Proceeds thereof by any Obligor.

This grant of security shall be a continuing grant of security and shall secure the Obligations and any ultimate balance thereof, notwithstanding that each Obligor may from time to time satisfy the Obligations in whole or in part and thereafter incur further Obligations.

## **2.2 Attachment**

Each Obligor confirms and agrees that value has been given, that such Obligor and the Secured Party have not agreed to postpone the time for attachment of the Security and that the Security is intended to attach, as to all of the Collateral in which such Obligor now has rights, when such Obligor executes this Agreement, and, as to all Collateral in which such Obligor only has rights after the execution of this Agreement, when such Obligor first has such rights. For certainty, such Obligor confirms and agrees that the Security is intended to attach to all present and future Collateral of such Obligor and each successor of such Obligor.

**2.3 Duty of Care**

The Secured Party shall not have any duty of care to each Obligor with respect to Collateral in physical form which is delivered to the Secured Party to be held by it pursuant to this Agreement, other than to use the same care in the physical custody and physical preservation of such Collateral as it would with its own physical property of like nature. The Secured Party shall have no obligation to (a) take any action with respect to calls, conversions, exchanges, maturities, tenders or other matters relative to the Collateral or (b) take any necessary actions required to preserve rights against any Persons with respect to Collateral.

**2.4 Disposals of Collateral**

So long as no Trigger Event has occurred that is continuing, each Obligor may, provided to do so is not contrary to any provision hereof or the Project Agreement or the Loan Agreement, dispose of and otherwise deal with the Collateral in the ordinary course of its business and for the purpose of carrying on such business. All Proceeds, including all rights of such Obligor as vendor, consignor or lessor and all resulting Accounts, shall be subject to the Security.

**2.5 Proceeds Held in Trust**

If a Trigger Event has occurred and is continuing, each Obligor shall receive and hold all Proceeds in trust for the Secured Party separate and apart from other monies, instruments or property, and shall forthwith endorse as necessary and pay over or deliver them to the Secured Party to be dealt with in the manner provided for (a) in this Agreement and/or (b) (i) in the case of a Project Co Event of Default or termination of the Project Agreement under Section 44 thereof, in the Project Agreement or (ii) in the case of an Event of Default, in the Loan Agreement.

**2.6 Account Debtors**

If a Trigger Event has occurred and is continuing, the Secured Party may require any account debtor of each Obligor to make payment directly to the Secured Party and the Secured Party may hold all amounts acquired from any such account debtors and any Proceeds as part of the Collateral to be dealt with in the manner provided for (a) in this Agreement and/or (b) in the case of a Project Co Event of Default or termination of the Project Agreement under Section 44 thereof, in the Project Agreement or (ii) in the case of an Event of Default, in the Loan Agreement.

**2.7 Collection of Accounts**

Each Obligor shall take all commercially reasonable steps to collect all Accounts owing to it.

**2.8 Securities**

- (a) With respect to Securities and Securities Entitlements in which each Obligor now has rights, contemporaneously with the execution and delivery of this Agreement, such Obligor will Transfer such Securities and Securities Entitlements, together with, for each of the Securities and Securities Entitlements that is certificated security not registered in the name of a Clearing Agency, a Power of Attorney, a Stock Transfer, an Authorizing Resolution and an Issuer Acknowledgment to the Secured Party, together with, for each of the Securities and Securities Entitlements that is certificated security not registered in the name of a Clearing Agency, a Power of Attorney, a Stock Transfer, an Authorizing Resolution and an Issuer Acknowledgment to be held by the Secured Party pursuant hereto.

- (b) From time to time, as soon as any Obligor acquires rights in any Future Securities Collateral and in any event, no later than five (5) Business Days of any Obligor first having acquired rights in any Future Securities Collateral, such Obligor shall Transfer each item of Future Securities Collateral to the Secured Party in accordance with this Agreement, together with, for each item of Future Securities Collateral that is a certificated security not registered in the name of a Clearing Agency, a Power of Attorney, a Stock Transfer, an Authorizing Resolution and an Issuer Acknowledgement.
- (c) Any Security, including any Security Entitlement, held or controlled by the Secured Party pursuant to the foregoing provisions of this Section 2.8 shall be held as Collateral under this Agreement to be dealt with in the manner provided for in this Agreement, the Project Agreement and/or the Loan Agreement and/or any other Loan Documents or Project Documents.
- (d) In the event that any of the Securities is not represented by a certificate, the applicable Obligor will ensure that either (i) a Clearing Agency is the registered holder of such uncertificated Securities and the Security Entitlement to such Securities is credited to the securities account of the Secured Party or (ii) the Secured Party is the registered holder of such Securities.
- (e) Subject to Subsection 2.8(f), unless a Trigger Event has occurred and is continuing, all rights conferred by statute or otherwise upon a registered holder of Securities shall:
  - (i) with respect to any Securities or Security Entitlement held directly by the Secured Party or its representative, be exercised as the applicable Obligor may direct and for this purpose, the Secured Party shall, promptly upon the request of such Obligor, execute and deliver to such Obligor all such proxies and powers of attorney as such Obligor may reasonably request for the purpose of enabling such Obligor to exercise the rights and powers that it is entitled to exercise pursuant to this 2.8(e)(i) ; and
  - (ii) with respect to any Securities or Security Entitlement held directly by any Obligor or its representatives, be exercised by such Obligor
- (f) With respect to any Obligor's rights relating to any Securities:
  - (i) such rights shall not be exercised in any manner which is reasonably likely to be inconsistent with the rights intended to be conferred on the Secured Party by or pursuant to this Agreement;
  - (ii) no vote by such Obligor shall be cast or consent, waiver or ratification given or action taken by such Obligor which may materially adversely affect the interests of the Secured Party or the value of the Securities or which would impose any restriction on the transferability of any of the Securities or impose any obligations or liabilities on the Secured Party;
  - (iii) such Obligor shall not, without the prior written consent of the Secured Party or unless expressly permitted under the Loan Agreement, by the exercise of any of such rights or otherwise, permit or agree to:
    - (A) any variation of the rights attached to or conferred by any of the Securities;

- (B) the issuance of rights or shares of any class in the capital stock of an Issuer, or any subdivision or consolidation of any such rights or shares, or the issuance of any new interest in an Issuer or any subdivision or consolidation of the existing interests in an Issuer;
  - (C) the issuance or guarantee of Debt to be undertaken by an Issuer;
  - (D) any investment to be made by an Issuer outside the ordinary course of its business (other than as permitted in the Loan Agreement);
  - (E) any disposition by any Issuer of assets outside of the ordinary course of its business or of any securities of its Affiliates or subsidiaries;
  - (F) elect to receive or vote in favour of receiving any Dividends other than in the form of cash;
  - (G) any plan of reorganization, merger, amalgamation, dissolution, liquidation or winding-up or similar plan affecting the corporate structure or existence of an Issuer; or
  - (H) any amendment or other change to the constating documents of an Issuer, including any material change to the Partnership Agreement; and
- (iv) after the occurrence of a Trigger Event and while it is continuing (and without any consent or authority on the part of any Obligor), the Secured Party and its representatives may at the Secured Party's discretion (in the name of such Obligor or otherwise), exercise or cause to be exercised in respect of any of the Securities any voting rights or rights to receive any Distributions on the Securities and all other rights conferred on or exercisable by the bearer or holder thereof.
- (g) The Secured Party shall be entitled to receive and retain any Distributions on the Securities in the Collateral and if an Obligor receives any Distribution on the Securities, such Obligor agrees to hold such Distribution in trust for the benefit of the Secured Party, to segregate them from its other funds or property and to Transfer them forthwith upon receipt to the Secured Party. Notwithstanding any other provision of this Agreement, any Distributions received by an Obligor which each Obligor is entitled to receive and retain in compliance with this Section 2.8(g), and any Proceeds thereof, shall be automatically released from the Security and cease to constitute "Collateral" hereunder. Notwithstanding the foregoing in this Section 2.8(g), unless and until a Trigger Event has occurred and is continuing, no Obligor shall be entitled to receive any Dividends or other Distributions and if any Obligor receives any such Dividends or other Distributions upon or following the occurrence of, and during the continuance of a Trigger Event, such Obligor agrees to hold such Dividends or other Distributions received in trust for the Secured Party, to segregate any such Dividends or other Distributions from such Obligor's other funds or property and to Transfer them forthwith upon receipt to the Secured Party.

## **2.9 General Partnership Interests**

Notwithstanding any provision to the contrary contained in this Agreement or any other agreement or document among all or some of the parties hereto, [REDACTED]. To the extent any provision

hereof would have the effect of constituting the Secured Party as a general partner of any limited or general partnership, such provision shall be severed therefrom and ineffective without otherwise invalidating or rendering unenforceable this Agreement or such provision insofar as it relates to property which is not such a general partner interest in a partnership.

**2.10            Commingled Goods**

If Collateral subsequently becomes part of a product or mass to which the security interest of another secured party attaches, then the Security shall continue in such product or mass and extend to all Accounts, Replacements or Proceeds arising from any dealing with such product or mass, ranking in priority to those Encumbrance of any other person holding an Encumbrance upon such product or mass. No Obligor shall grant or permit to subsist any Encumbrance in favour of any other creditor in goods that become part of any such product or mass, unless that creditor first agrees to the subordination of its interest to that of the Secured Party in all Accounts, Replacements and Proceeds arising from dealings with such product or mass, and each Obligor shall use commercially reasonable efforts to obtain the consent of each existing such creditor to the rights granted to the Secured Party in this Section 2.10.

**2.11            Leases**

- (a) The last day of the term of any lease, oral or written, or any agreement therefor, now held or hereafter acquired by any Obligor shall be excepted from the Security and shall not form part of the Collateral but such Obligor shall stand possessed of such one day remaining upon trust to assign and dispose of the same as the Secured Party directs. If any such lease or agreement therefor contains a provision which provides in effect that such lease or agreement may not be assigned, sub-leased, charged or made the subject of any Encumbrance without the consent of the lessor, the application of the Security to any such lease or agreement shall be conditional upon such consent being obtained.
- (b) For each premises identified by the Secured Party as material (a “**Material Premises**”), each applicable Obligor shall obtain, within 30 days of the date hereof (in the case of each such lease or agreement existing on the execution hereof by such Obligor) or contemporaneously with the entry into of such lease or agreement (in the case of each such future lease or agreement), to the extent obtainable using commercially reasonable efforts, an agreement from the landlord of such Material Premises (in form and substance satisfactory to the Secured Party) intended to: (i) consent to the Security in such lease or agreement, and (ii) preserve and facilitate the realization of the Security with respect to Collateral located at such premises.

**2.12 Operating Rights**

- (a) Notwithstanding anything to the contrary contained in any other provision of this Agreement, if any Obligor cannot lawfully grant the Security in respect of any agreement, right, franchise, equipment lease or sublease, Intellectual Property right or Licence in which it now or hereafter has rights (each, an “**Operating Right**”) because the terms of such Operating Right prohibit or restrict such Security, the Operating Right requires the consent of any Person which has not been obtained or the grant of such Security in the Operating Right would contravene or is void under any applicable statute or regulation, result in a material loss and expense to such Obligor or (in the judgment of the Secured Party) materially adversely affect the Security in any material way in any other Collateral, that Operating Right shall not, to the extent it would be illegal, void, result in a material loss and expense to such Obligor or materially adversely affect the Security in any material way in other Collateral (each, a “**Prescribed Operating Right**”), be subject to the Security (save to the extent provided below) unless and until such agreements, consents, waivers and approvals as may be required to avoid such illegality, voidness, material loss and expense or material adverse effect have been obtained. The Security shall nonetheless immediately attach to any rights of such Obligor arising under, by reason of, or otherwise in respect of such Prescribed Operating Right, such as the right to receive payments thereunder and all Proceeds and Replacements of the Prescribed Operating Right (“**Related Rights**”), (i) if and to the extent and as at the time such attachment to the Related Rights is not illegal, void, would not result in a material loss and expense to such Obligor or materially adversely affect the Security in any material way in any other Collateral, (ii) if such prohibition or restriction is not enforceable against third parties such as the Secured Party or (iii) if a Trigger Event occurs.
- (b) To the extent permitted by applicable statute or regulation, each Obligor will hold in trust for the Secured Party, and provide the Secured Party with the benefits of, each Prescribed Operating Right and following the occurrence of a Trigger Event and while it is continuing, will enforce all Prescribed Operating Rights at the direction of the Secured Party or at the direction of such other Person (including any purchaser of Collateral from the Secured Party or any Receiver) as the Secured Party may designate, provided that until the security interest created hereby becomes enforceable, such Obligor shall, to the extent permitted by the Loan Agreement, be entitled to receive all proceeds relating to the Prescribed Operating Rights, subject to the Security.
- (c) Each Obligor shall, at the time it enters into any material IP Licence, obtain from the licensor or licensee (as applicable) under such material IP Licence (i) a consent to the Security in such material IP Licence and related Intellectual Property, including all of such Obligor's rights thereto, and, to the extent obtainable using commercially reasonable efforts, to any disposition thereof, pursuant to Article 6 and (ii) an agreement that the Secured Party shall not have any obligations to such licensor or licensee (as applicable) by reason only of such Security or disposition.

**2.13 Instruments and Chattel Paper**

Unless the Secured Party shall otherwise consent in writing (which consent may be revoked), each Obligor shall deliver all Collateral consisting of Instruments and Chattel Paper (in each case accompanied by such instruments of transfer as the Secured Party shall require) promptly after such Obligor receives the same, save for Instruments deposited to accounts subject to the Blocked Accounts Agreement.

**2.14 Consumer Goods**

Each Obligor shall ensure that Collateral does not and shall at no time include consumer goods.

**2.15 Revisions to Schedules**

Each Obligor shall forthwith revise and provide the Secured Party with updated Schedules hereto to ensure that the representations and warranties relative thereto made by such Obligor is true, accurate and complete at such times so far as is reasonably practicable.

**ARTICLE 3**  
**REPRESENTATIONS AND WARRANTIES**

Each Obligor represents and warrants jointly and severally to and in favour of the Secured Party as follows:

**3.1 Locations of Collateral**

The registered office, places of business, chief executive office and location of each Obligor (within the meaning assigned in Section 7(3) of the PPSA) and the locations of the Collateral including its Records relating thereto, are listed in Schedule 3.1.

**3.2 Securities**

Schedule 3.2 includes a complete list of all Securities and Securities Accounts in which each Obligor has rights.

**3.3 Collateral Representations**

- (a) **[REDACTED]** has the power and capacity to own, Transfer, dispose and grant an Encumbrance in Securities listed in Schedule 3.2 as contemplated hereby;
- (b) the Securities listed in Schedule 3.2 constitutes **[REDACTED]**% of the duly authorized and issued general partnership units in the Capital Stock of Project Co, fully paid and non-assessable;
- (c) upon Transfer of the Securities listed in Schedule 3.2 to the Secured Party pursuant to Section 2.8 of the Intercreditor Agreement, the Secured Party will have control over and a valid and perfected security interest in such Securities;
- (d) except for Permitted Encumbrances, **[REDACTED]** is the sole legal and beneficial owner of the Securities listed in Schedule 3.2 with good and marketable rights to, such Securities, free and clear of any Encumbrances. No security agreement, financing statement or other document with respect to any or all of the Securities listed in Schedule 3.2 is on file or on record in any public office, except for filings in respect of Permitted Encumbrances. The execution and delivery of this Agreement by **[REDACTED]** any document delivered by **[REDACTED]** pursuant to this Agreement and the performance of its obligations hereunder will not:



- (i) oblige [REDACTED] to grant any Encumbrance on the Securities listed in Schedule 3.2 to any Person other than the Agent; or
- (ii) result in or permit the acceleration or maturity of any indebtedness or other obligations of [REDACTED] under any agreement to which [REDACTED] is party or by which [REDACTED] or any of such Securities may be bound; or
- (iii) result in a breach of or default under any agreement to which [REDACTED] is party.

### **3.4 Repetition of Representations and Warranties**

The representations and warranties made pursuant to this Article 3 shall be deemed to be repeated each time the representations and warranties of Project Co are made or deemed to be repeated under or pursuant to the Loan Agreement or the Project Agreement.

### **3.5 Reliance and Survival**

All representations and warranties of such Obligor made herein or in any certificate or other document delivered by or on behalf of each Obligor to the Secured Party are material, shall survive the execution and delivery of this Agreement and shall continue in full force and effect until the Obligations are paid in full. The Secured Party shall be deemed to have relied upon each such representation and warranty notwithstanding any investigation made by or on behalf of the Secured Party at any time.

## **ARTICLE 4 COVENANTS OF THE LOAN PARTIES**

### **4.1 Payment of Obligations**

Each Obligor shall punctually pay and perform its Obligations.

### **4.2 Encumbrances**

Each Obligor shall keep the Collateral free and clear at all times from Encumbrances, except Permitted Encumbrances, and shall defend the title to the Collateral against all Persons as any prudent owner of Collateral would do. The foregoing shall not in any way prevent the Secured Party from, at any time, contesting the validity, enforceability or priority of any Encumbrance, other than a Permitted Encumbrance. No Encumbrance shall be entitled to priority over the Security, except for (i) Permitted Encumbrances (other than those described in subsection (x) of the definition thereof), and (ii) to the extent that it is entitled to such priority as a purchase-money security interest under the PPSA. Nothing in this Agreement is intended to create any rights (including subordination rights or any release of Security) in favour of any Person other than the Secured Party, any Receiver and the other Indemnified Parties.

### **4.3 Further Assurances**

Each Obligor shall at all times do, execute, acknowledge and deliver or cause to be done, executed, acknowledged or delivered all such further acts, deeds, transfers, mortgages, pledges and charges, assignments, documents and assurances as the Secured Party may reasonably require in order to give effect to the provisions of this Agreement and for the better securing or perfecting the Security and the priority accorded to the Security intended under the Security Documents and/or this Agreement. Subject to

Sections 2.10 and 2.11, upon the request of the Secured Party, each Obligor shall specifically mortgage, pledge, charge, grant a security interest in, or assign in favour of the Secured Party any Collateral in which such Obligor now or hereafter has rights and shall execute all documents reasonably required by the Secured Party in connection therewith. Each Obligor constitutes and appoints the Secured Party to be its attorney with full power of substitution to do on such Obligor's behalf anything that such Obligor can lawfully do by an attorney, including to do, make and execute all such assignments, documents, acts, matters or things, with the right to use the name of such Obligor, whenever and wherever it deems necessary or expedient and to carry out such Obligor's obligations under this Agreement. Such power of attorney, being granted by way of security and coupled with an interest, is irrevocable until the Obligations of Project Co are paid in full. Such power of attorney shall not be exercisable by the Secured Party (a) unless a Trigger Event has occurred and while it is continuing or (b) unless the Secured Party has requested such Obligor to take any action required pursuant to this Section 4.3 and such Obligor has failed to do so.

#### **4.4 Notice of Change**

Each Obligor shall notify the Secured Party in writing at least 10 Business Days prior to (i) any change of name, or the adoption of a French or combined English/French or French/English form of the name, of such Obligor, (ii) any transfer of such Obligor's interest in any Collateral not expressly permitted hereunder, (iii) any change in or addition to the location of any Collateral from those locations referred to in Section 3.1, or (iv) any change in the jurisdiction where (A) such Obligor is incorporated, formed or continuing or is located (within the meaning of Section 7(3) of the PPSA) or (B) where the registered office or chief executive office of such Obligor is located.

#### **4.5 Costs**

Subject to the terms of the Loan Agreement, each Obligor shall forthwith reimburse the Secured Party, on demand and on a full indemnity basis, for all interest, commissions, costs of realization and other costs and expenses (including legal fees and expenses on a full indemnity basis) reasonably incurred by the Secured Party or any Receiver in connection with the preparation, issuance, or protection of and advice with respect to this Agreement and the perfection or protection of and advice with respect to the Security, including those arising in connection with the realization, disposition of, retention, or protection of any Collateral and the protection of the rights of the Secured Party or any Receiver and those incurred for registration costs and finite or perpetual registration of any financing statement registered in connection with the Security. Subject to the terms of the Loan Agreement, each Obligor shall forthwith reimburse the Secured Party, on demand and on a full indemnity basis, for all interest, commissions, costs of realization and other costs and expenses (including all legal fees and expenses on a full indemnity basis) incurred by the Secured Party or any Receiver in connection with the enforcement (and related advice) with respect to the Security, including those arising in connection with the collection of any Collateral or the enforcement of the rights of the Agent or any Receiver.

#### **4.6 Reimbursements as Obligations**

All amounts for which any Obligor is required hereunder to reimburse the Secured Party or any Receiver shall, from the date of disbursement until the date the Secured Party or such Receiver receives reimbursement, be deemed advanced to such Obligor by the Secured Party or such Receiver, as the case may be, on the faith and security of this Agreement shall be deemed to be Obligations secured by the Security and shall bear interest from the date of disbursement, (i) with respect to Loan Obligations, in accordance with the terms of the Loan Agreement and (ii) with respect to HMQ Project Obligations, in accordance with the terms of the Project Agreement.

**4.7 General Indemnity**

Each Obligor will indemnify each of the Secured Party, any Receiver and their respective representatives, (each, an “**Indemnified Party**”) in respect of, and save each Indemnified Party fully harmless from and against, all claims and losses and expenses which such Indemnified Party may suffer or incur in connection with (a) the exercise by the Secured Party or any Receiver of any of its rights hereunder, (b) any breach by such Obligor of the representations or warranties of such Obligor contained herein, or (c) any breach by such Obligor of, or any failure by such Obligor to observe or perform, any of the Obligations, save that such Obligor shall not be obliged to so indemnify any Indemnified Party to the extent such claims and losses and expenses are determined by a final, non-appealable judgment to have directly resulted from the wilful misconduct or gross negligence of the Indemnified Party. The Secured Party shall be constituted as the trustee of each Indemnified Party, other than itself, and shall hold and enforce each such other Indemnified Party’s rights under this Section 4.7 for their respective benefits.

**4.8 Registration**

Each Obligor shall, promptly from time to time file or cause to be filed financing statements and make or cause to be made any other necessary registrations in respect of the Security as are required by the Secured Party, acting reasonably, or in the opinion of the Secured Party’s counsel, to perfect and preserve the Security and the rights of the Secured Party under the Security. Each Obligor shall renew or cause to be renewed such filings or registrations from time to time as and when required to keep them in full force and effect. Each Obligor shall from time to time, if and when requested to do so by the Secured Party, furnish or cause to be furnished to the Secured Party evidence that all such filings and registrations have been completed. For greater certainty, the Secured Party shall have no obligation to register, file, enter or record any instrument in connection herewith.

**ARTICLE 5**  
**DEFAULT**

**5.1 Default**

Whenever any Trigger Event has occurred and is continuing, unless the Secured Party notifies each Obligors to the contrary and subject to such terms and conditions as may be contained in such notice, the Security shall become immediately crystallized and enforceable without the necessity for any further action or notice by the Secured Party.

**5.2 Security Enforceable**

The fact that this Agreement provides for Trigger Events and rights of acceleration shall not derogate from the demand nature of any Obligation payable on demand.

**5.3 Waiver**

The Secured Party may waive any Trigger Event or any breach by any Obligor of any of the provisions of this Agreement. No waiver, however, shall be deemed to extend to a subsequent breach, Trigger Event, whether or not the same as or similar to the breach, Trigger Event waived, and no act or omission by the Secured Party shall extend to, or be taken in any manner whatsoever to affect, any subsequent breach, Trigger Event or the rights of the Secured Party arising therefrom. Any such waiver must be in writing and signed by the Secured Party to be effective. No failure on the part of the Secured Party to exercise, and no delay by the Secured Party in exercising, any right under this Agreement shall operate as a

waiver of such right. No single or partial exercise of any such right shall preclude any other or further exercise of such right or the exercise of any other right.

**ARTICLE 6**  
**REMEDIES ON DEFAULT**

**6.1 Remedies of Secured Party**

If the Security becomes enforceable in accordance with Article 5, the Secured Party shall have the rights set out in this Article 6.

**6.2 Right to Appoint a Receiver**

The Secured Party may appoint by instrument in writing one or more Receivers of any Collateral. Any such Receiver shall have the rights set out in this Article 6. In exercising such rights, any Receiver shall act as and for all purposes shall be deemed to be the agent of each Obligor and the Secured Party shall not be responsible for any act or default of any Receiver. The Secured Party may remove any Receiver and appoint another from time to time. An officer or employee of the Secured Party may be appointed as a Receiver. No Receiver appointed by the Secured Party need be appointed by, nor need its appointment be ratified by, or its actions in any way supervised by, a court. If two or more Receivers are appointed to act concurrently, they shall, unless otherwise expressly provided in the instrument appointing them, so act severally and not jointly and severally. The appointment of any Receiver or anything done by a Receiver or the removal or termination of any Receiver shall not have the effect of constituting the Secured Party a mortgagee in possession in respect of the Collateral.

**6.3 Rights of a Receiver**

Any Receiver appointed by the Secured Party shall have the following rights:

- (a) *Power of Entry.* Any Receiver may at any time enter upon any premises owned, leased or otherwise occupied by any Obligor or where any Collateral is located to take possession of, disable or remove any Collateral, and may use whatever means the Receiver considers advisable to do so.
- (b) *Right to Possession.* Any Receiver shall be entitled to immediate possession of Collateral and any Obligor shall forthwith upon demand by any Receiver deliver up possession to a Receiver of any Collateral.
- (c) *Power of Sale.*
  - (i) Any Receiver may sell, lease, consign, license, assign or otherwise dispose of any Collateral on any stock exchange where Collateral is listed, in any over-the-counter market, by public auction, private tender or private contract with or without notice, advertising or any other formality, all of which are hereby waived by each Obligor to the extent permitted by Applicable Law. Any Receiver may, at its discretion, establish the terms of such disposition, including terms and conditions as to credit, upset, reserve bid or price. All payments made pursuant to such dispositions shall be credited against the Obligations only as they are actually received. Any Receiver may buy in, rescind or vary any contract for the disposition of any Collateral and may dispose of any Collateral again without being answerable for any loss

occasioned thereby. Any such disposition may take place whether or not the Receiver has taken possession of the Collateral. The exercise by the Receiver of any power of sale does not preclude the Receiver from further exercise of its power of sale in accordance with this clause.

- (ii) Each Obligor acknowledges and agrees that any Receiver may, in its discretion, approach a restricted number of potential purchasers to effect any disposal of any Securities comprised in the Collateral pursuant to Subsection 6.3(c)(i) and that a disposal under such circumstances may yield a lower price for Collateral than would otherwise be obtainable if the same were registered and disposed of in the open market. Each Obligor agrees that:
  - (A) in the event any Receiver shall so dispose Collateral at such private a disposal, the Receiver shall have the right to rely upon the advice and opinion of any Person who regularly deals in or evaluates Securities of the type constituting the Collateral as to the best price obtainable in a commercially reasonable manner; and
  - (B) such reliance shall be conclusive evidence that the Receiver handled such matter in a commercially reasonable manner.
- (d) *Carrying on Business.* Any Receiver may carry on, or concur in the carrying on of, any of the business or undertaking of each Obligor and may, to the exclusion of all others, including each Obligor, enter upon, occupy and use any of the premises, buildings, plant and undertaking of or occupied or used by such Obligor and may use any of the Equipment and Intangibles of such Obligor for such time and such purposes as the Receiver sees fit. No Receiver shall be liable to such Obligor for any negligence in so doing or in respect of any rent, charges, costs, depreciation or damages in connection with any such action.
- (e) *Pay Encumbrances.* Any Receiver may pay any liability secured by any actual or threatened Encumbrance against any Collateral. A Receiver may borrow money for the maintenance, preservation or protection of any Collateral or for carrying on any of the business or undertaking of each Obligor and may grant Encumbrances in any Collateral in priority to the Security as security for the money so borrowed. Such Obligor will forthwith on demand reimburse the Receiver for all such payments and borrowings.
- (f) *Dealing with Collateral.* Any Receiver may seize, collect, realize, dispose of, enforce, release to third parties or otherwise deal with any Collateral in such manner, upon such terms and conditions and at such time as it deems advisable without notice to any Obligor (except as otherwise required by Applicable Law), and may charge on its own behalf and pay to others its costs and expenses (including legal, Receiver’s and accounting fees and expenses on a full indemnity basis) incurred in connection with such actions. Such Obligor will forthwith upon demand reimburse the Receiver for all such costs or expenses.
- (g) *Dealing with Leases.* Any Receiver, for the purpose of vesting the one day residue of the term of any leasehold interest or renewal thereof in any purchaser, shall be entitled by deed or writing to appoint such purchaser or any other Person as a new trustee of the aforesaid residue of any such term or renewal thereof in the place and stead of any Obligor and to vest the same accordingly in such new trustee so appointed free from any obligation respecting the same.

- (h) *Powers re Collateral.* Any Receiver may have, enjoy and exercise all of the rights of and enjoyed by any Obligor with respect to the Collateral or incidental, ancillary, attaching or deriving from the ownership by such Obligor of the Collateral, including the right to enter into agreements pertaining to Collateral, the right to commence or continue proceedings to preserve or protect Collateral and the right to grant or agree to Encumbrances and grant or reserve *profits à prendre*, easements, rights of ways, rights in the nature of easements and licenses over or pertaining to the whole or any part of the Collateral.
- (i) *Retain Services.* Any Receiver may retain the services of such real estate brokers and agents, lawyers, accountants, appraisers, investment advisors and other consultants as the Receiver may deem necessary or desirable in connection with anything done or to be done by the Receiver or with any of the rights of the Receiver set out herein and pay their commissions, fees and disbursements (which payment shall constitute part of the Receiver's disbursements reimbursable by the applicable Obligor hereunder). Each Obligor shall forthwith on demand reimburse the Receiver for all such payments.

#### **6.4 Right to have Court Appoint a Receiver**

The Secured Party may, at any time, apply to a court of competent jurisdiction for the appointment of a Receiver, or other official, who may have powers the same as, greater or lesser than, or otherwise different from, those capable of being granted to a Receiver appointed by the Secured Party pursuant to this Agreement.

#### **6.5 Secured Party may Exercise Rights of a Receiver**

In lieu of, or in addition to, exercising its rights under Sections 6.3 and 6.4, the Secured Party has, and may exercise, any of the rights which are capable of being granted to a Receiver appointed by the Secured Party pursuant to this Agreement.

#### **6.6 Retention of Collateral**

The Secured Party may elect to retain any Collateral in satisfaction of the Obligations of an Obligor. The Secured Party may designate any part of the Obligations to be satisfied by the retention of particular Collateral which the Secured Party considers to have a net realizable value approximating the amount of the designated part of the Obligations, in which case only the designated part of the Obligations shall be deemed to be satisfied by the retention of the particular Collateral.

#### **6.7 Limitation of Liability**

Neither the Secured Party nor any Receiver shall be liable or accountable for any failure of the Secured Party or any Receiver to seize, collect, realize, dispose of, enforce or otherwise deal with any Collateral nor shall any of them be bound to institute proceedings for any such purposes or for the purpose of preserving any rights of the Secured Party, any Obligor or any other Person in respect of any Collateral. Neither the Secured Party nor any Receiver shall be liable or responsible for any loss and expense whatever which may accrue in consequence of any such failure, except to the extent of any losses and expenses that are determined by a final judgment to have directly resulted from the gross negligence or wilful misconduct of the Secured Party, any Receiver or any of their respective representatives. If any Receiver or the Secured Party takes possession of any Collateral, neither the Secured Party nor any Receiver shall have any liability as a mortgagee in possession or be accountable for anything except actual receipts.

**6.8 Extensions of Time**

The Secured Party and any Receiver may grant renewals, extensions of time and other indulgences, take and give up Encumbrances, accept compositions, grant releases and discharges, perfect or fail to perfect any Encumbrances, release any Collateral to third parties and otherwise deal or fail to deal with any Obligor, debtors of any Obligor, guarantors, sureties and others and with any Collateral and other Encumbrances as the Secured Party may see fit, all without prejudice to the liability of any Obligor to the Secured Party or the rights of each of the Secured Party and any Receiver under this Agreement.

**6.9 Set-Off, Combination of Accounts and Crossclaims**

The Obligations will be paid by any Obligor without regard to any equities between such Obligor and the Secured Party or any right of set-off or cross-claim. Any indebtedness owing by the Secured Party to such Obligor, direct or indirect, extended or renewed, actual or contingent, mutual or not, may be set off or applied against, or combined with, the Obligations by the Secured Party at any time either before or after maturity, without demand upon or notice to anyone and the terms of such indebtedness shall be changed hereby to the extent necessary to permit such set-off, application and combination.

**6.10 Deficiency**

If the proceeds of the realization of any Collateral are insufficient to repay all liquidated Obligations, each Obligor shall forthwith pay or cause to be paid to the Secured Party such deficiency.

**6.11 Validity of Sale**

No Person dealing with the Secured Party or any Receiver or with any representative of the Secured Party or any Receiver shall be concerned to inquire whether the Security has become enforceable, whether any right of the Secured Party or any Receiver has become exercisable, whether any Obligations remain outstanding or otherwise as to the propriety or regularity of any dealing by the Secured Party or any Receiver with any Collateral or to see to the application of any money paid to the Secured Party or any Receiver, and in the absence of fraud on the part of such Person such dealings shall be deemed, as regards such Person, to be within the rights hereby conferred and to be valid and effective accordingly.

**6.12 Secured Party and Receiver Not Obligated to Preserve Third Party Interests**

To the extent that any Collateral constitutes an Instrument or Chattel Paper, neither the Secured Party nor any Receiver shall be obliged to take any steps to preserve rights against prior parties in respect of any such Instrument or Chattel Paper.

**6.13 No Marshalling**

Each Obligor hereby waives any rights it may have under Applicable Law to assert the doctrine of marshalling or to otherwise require the Secured Party to marshal any Collateral or any other collateral of such Obligor or any other Person for the benefit of such Obligor.

**6.14 Secured Party or Receiver may Perform**

If any Obligor fails to perform any Obligations, without limiting any other provision hereof, the Secured Party or any Receiver may perform those Obligations as attorney for such Obligor in accordance with Section 4.3. Each Obligor shall remain liable under each Operating Right and each agreement and

Licence to which it is party or by which it or any of its property is bound and shall perform all of its obligations thereunder, and shall not be released from any of its obligations under any such Operating Right, agreement or Licence by the exercise of any rights by the Secured Party or any Receiver. Neither the Secured Party nor any Receiver shall have any obligation under any such Operating Right, agreement or Licence, by reason of this Agreement, nor shall the Secured Party or any Receiver be obliged to perform any of the obligations of such Obligor thereunder or to take any action to collect or enforce any claim made subject to the security of this Agreement. The rights conferred on the Secured Party and any Receiver under this Agreement are for the purpose of protecting the Security in the Collateral and shall not impose any obligation upon the Secured Party or any Receiver to exercise any such rights.

**6.15 Effect of Appointment of Receiver**

As soon as the Secured Party takes possession of any Collateral or appoints a Receiver over any Collateral, all rights of each of the representatives of each Obligor with respect to that Collateral shall cease, unless specifically continued by the written consent of the Secured Party or the Receiver.

**6.16 Rights in Addition**

The rights conferred by this Article 6 are in addition to, and not in substitution for, any other rights the Secured Party may have under this Agreement, at law, in equity or by or under Applicable Law or any other Security Document or agreement. The Secured Party may proceed by way of any proceeding at law or in equity, including (a) the right to take proceedings in any court of competent jurisdiction for the sale or foreclosure of the Collateral and (b) filing proofs of claim and other documentation to establish the claims of the Secured Party in any proceeding relating to any Obligor. No right of the Secured Party or any Receiver shall be exclusive of or dependent on any other. Any such right may be exercised separately or in combination, and at any time. The exercise by the Secured Party or any Receiver of any right hereunder does not preclude the Secured Party or any Receiver from further exercise of such right in accordance with this Agreement.

**6.17 Application of Payments Against Obligations**

Each Recovery received by the Secured Party shall, notwithstanding any appropriation by any Obligor, be appropriated by the Secured Party against such Obligations as the Secured Party shall direct or, in the case of a Recovery with respect to a HMQ Project Obligation, as the Project Agreement shall otherwise require or, in the case of a Recovery with respect to a Loan Obligation, as the Loan Agreement shall otherwise require, and the Secured Party shall have the right to change any appropriation at any time. If any Recovery is received or appropriated by the Secured Party in respect of Obligations not yet due, they shall be credited to a cash collateral account opened by the Secured Party for such purpose in its own records of account, as the Secured Party may in its discretion decide, and appropriated to the Obligations when due or be otherwise dealt with, in the case of a Recovery with respect to a HMQ Project Obligation, in accordance with the Project Agreement or, in the case of a Recovery with respect to a Loan Obligation, in accordance with the Loan Agreement.

**ARTICLE 7**  
**GENERAL**

**7.1 Security in Addition**

The Security does not replace or otherwise affect any existing or future Encumbrance held by the Secured Party. Neither the taking of any proceeding, judicial or extra-judicial, nor the refraining from so



doing, nor any dealing with any other security for any Obligations shall release or affect the Security. Neither the taking of any proceeding, judicial or extra-judicial, pursuant to this Agreement, nor the refraining from so doing, nor any dealing with any Collateral shall release or affect any of the other Encumbrances held by the Secured Party for the payment or performance of the Obligations.

## **7.2 Security Effective Immediately**

Neither the issuance nor registration of, or any filings with respect to, this Agreement, nor any partial advance or extension of credit by the Secured Party, shall bind the Secured Party to advance any amounts, grant any credit or supply any financial services to any Obligor, but the Security shall take effect forthwith upon the issuance of this Agreement by such Obligor.

## **7.3 Provisions Reasonable**

Each Obligor acknowledges that the provisions of this Agreement and, in particular, those respecting rights of the Secured Party or any Receiver against such Obligor, its property and any Collateral upon a Default, are commercially reasonable and not manifestly unreasonable.

## **7.4 Statutory Waivers**

To the fullest extent permitted by Applicable Law, each Obligor waives all of the rights, benefits and protections given by the provisions of any existing or future statute which imposes limitations upon the rights of a secured party or upon the methods of realization of security, including any seize or sue or anti-deficiency statute or any similar provisions of any other statute. In particular, each Obligor agrees that *The Limitation of Civil Rights Act* of the Province of Saskatchewan shall not apply to this Agreement or any of the rights of the Secured Party or any Receiver hereunder.

## **7.5 Currency**

All references in this Agreement to monetary amounts, unless specifically provided, are to lawful currency of Canada. All sums of money payable under the Security Documents shall be paid in the currency in which such sums are incurred or expressed as due thereunder.

## **7.6 Currency Conversions**

If the Secured Party receives any Recovery in a currency (the “**Recovered Amount**”) which is different than the currency in which the Obligations are expressed (the “**Contract Currency**”), the Secured Party may convert the Recovered Amount to the Contract Currency at the rate of exchange which the Secured Party is able, acting in a reasonable manner and in good faith, to purchase the relevant amount of the Contract Currency. The amount of the Contract Currency resulting from any such conversion shall then be applied in accordance with the provisions of Section 6.8.

## **7.7 Judgment Currency**

If, for the purposes of obtaining or enforcing judgment in any court in any jurisdiction, it becomes necessary to convert into the currency of the country giving such judgment (the “**Judgment Currency**”) any Obligation denominated in a different currency (the “**Agreed Currency**”), then the date on which the rate of exchange for conversion is selected by the court is referred to herein as the “**Conversion Date**”. If there is a change in the rate of exchange between the Judgment Currency and the Agreed Currency between the Conversion Date and the actual receipt by the Secured Party or any Receiver of the amount of

such Obligation or under any such judgment, such Obligor will, notwithstanding any such judgment, pay all such additional amounts as may be necessary to ensure that the amount received by the Secured Party or Receiver in the Judgment Currency, when converted at the rate of exchange prevailing on the date of receipt, will produce the amount due in the Agreed Currency. Each Obligor's liability hereunder constitutes a separate and independent liability which shall not merge with any judgment or any partial payment or enforcement of payment of sums due under this Agreement.

#### **7.8 Receipt of Copy**

Each Obligor acknowledges receipt of a copy of this Agreement and copies of the verification statements pertaining to the financing statements filed under the PPSA and under the personal property security statutes of other provinces by the Secured Party in respect of this Agreement. To the extent permitted by Applicable Law, each Obligor irrevocably waives the right to receive a copy of each financing statement or financing change statement (or any verification statement pertaining thereto) filed under the PPSA or under such other personal property security statutes by the Secured Party in respect of this Agreement or any other security agreement, and releases any and all claims or causes of action it may have against the Secured Party for failure to provide any such copy.

#### **7.9 Limitation Period**

The parties hereto agree to extend the limitation period under the *Limitations Act, 2002* (Ontario), other than one established by Section 15 of that Act, applicable to this Agreement, and each provision hereof and any claim thereunder, to six (6) years, save and except to the extent the *Real Property Limitations Act* (Ontario) applies to any particular provision hereof or claim arising thereunder requiring a shorter limitation period which cannot be waived by an agreement made on this date.

#### **7.10 No Merger**

This Agreement shall not operate by way of a merger of the Obligations or of any guarantee, agreement or other document by which the Obligations now or at any time hereafter may be represented or evidenced. Neither the taking of any judgment nor the exercise of any power of seizure or disposition shall extinguish the liability of any Obligor to pay and perform the Obligations nor shall the acceptance of any payment or alternate security constitute or create any novation. No covenant, obligation, representation or warranty of such Obligor herein shall merge in any judgment.

#### **7.11 Change**

No agreement purporting to change (other than an agreement purporting to waive performance or compliance with) any provision of this Agreement shall be binding upon any Obligor or the Secured Party unless that agreement is in writing and signed by such Obligor and the Secured Party. No waiver of performance or compliance with any provision hereof shall be binding upon any party hereto unless such waiver is in writing signed by the parties sought to be bound thereby.

#### **7.12 Notices**

Any notice, demand, consent, approval or other communication to be made or given under or in connection with this Agreement shall be given or made and take effect in the manner provided for notices in the Loan Agreement.

**7.13 Time of the Essence**

Time is and shall remain of the essence of this Agreement and each of its provisions.

**7.14 Governing Law**

This Agreement shall be construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein and shall be treated in all respects as an Ontario contract. Any legal action or proceeding with respect to this Agreement shall be brought in the courts of the Province of Ontario and such courts shall have jurisdiction to deal with all matters relating to the interpretation of, or enforcement of rights under this Agreement and each of the parties hereto hereby irrevocably attorns to the non-exclusive jurisdiction of such courts.

**7.15 Entire Agreement**

There are no representations, warranties, covenants, agreements or acknowledgments whether direct or collateral, express or implied, that form part of or affect this Agreement or any Collateral, other than as expressed herein or in any other Loan Document or Project Document. The execution of this Agreement has not been induced by, nor does any Obligor rely upon or regard as material, any representations, warranties, conditions, other agreements or acknowledgments not expressly made in this Agreement and the other written agreements and other documents to be delivered pursuant hereto or contemporaneously herewith.

**7.16 Invalidity**

If any provision of this Agreement is found to be invalid or unenforceable, by a final judgment of a court of competent jurisdiction, to the fullest extent permitted by Applicable Law, (a) in such jurisdiction that provision shall be deemed to be severed herefrom and the remaining provisions of this Agreement shall not be affected thereby but shall remain valid and enforceable and (b) such invalidity or unenforceability shall not affect the validity or enforceability of such provision in any other jurisdiction. Each Obligor shall, at the request of the Secured Party, negotiate in good faith with the Secured Party to replace any invalid or unenforceable provision contained in this Agreement with a valid and enforceable provision that has the commercial effect as close as possible to that of the invalid or unenforceable provisions, to the extent permitted by Applicable Law.

**7.17 Successors and Assigns**

This Agreement and the rights and obligations of the Secured Party hereunder may be assigned and transferred by the Secured Party to any successor or replacement Secured Party appointed by the any ministry or successor ministry of the Province of Ontario pursuant to the Loan Agreement and any such assignee and transferee shall be entitled to all of the rights and bound by all of the obligations of the Secured Party hereunder. No Obligor may assign this Agreement or any right or obligation hereunder. This Agreement shall enure to the benefit of each of the Indemnified Parties and their respective successors and assigns and shall be binding upon each Obligor, its legal representatives (including receivers) and its successors and permitted assigns. Each reference in this Agreement to any Person (including any Obligor and any Indemnified Party) shall (to the extent the context so admits) be construed so as to include the successors of that Person and (in the case of each Indemnified Party) the assigns of that Person as permitted by the Security Documents.

**7.18 Further Assurances**

Each Obligor agrees to take such actions and execute and deliver such documents as may be reasonably requested by the Secured Party from time to time in order to give effect to the terms, conditions, provisions, purpose and intent of this Agreement.

**7.19 Information**

At any time the Secured Party may provide to any Person that claims an interest in Collateral copies of this Agreement or information about it or about the Collateral or the Obligations.

**7.20 Conflict**

If there is any conflict or inconsistency between the provisions of this Agreement and the provisions of the Project Agreement or the Loan Agreement, the provisions of the Project Agreement shall govern and apply to the extent of the inconsistency prior to the date of the first Drawdown under the Loan Agreement; after such date, the provisions of the Loan Agreement shall govern and apply to the extent of the inconsistency. Notwithstanding the foregoing, this Section 7.20 shall not apply to limit, restrict, prejudice or otherwise affect or impair in any way the rights of the Secured Party under this Agreement after the Security has become enforceable.

**7.21 Execution**

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart. Transmission of a copy of an executed signature page of this Agreement (including any change to this Agreement) by one party to this Agreement to the other by facsimile transmission or e-mail in pdf format in accordance with Section 8.3 shall be as effective as delivery of a manually executed counterpart hereof.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

**Amended and Restated Project Agreement – Schedule 8**  
**2015 Pan/Parapan American Games Athletes’ Village Project** **Execution Version**

**TO WITNESS**, this Agreement, the parties hereto have caused this Agreement to be duly executed as of the date set out at the commencement of this Agreement.

**DUNDEE KILMER DEVELOPMENTS L.P.**  
**[REDACTED]**

**[REDACTED].**

**SECURED PARTY:**

**HER MAJESTY THE QUEEN IN RIGHT OF  
ONTARIO, as represented by the MINISTER OF  
INFRASTRUCTURE, as represented by ONTARIO  
INFRASTRUCTURE AND LANDS CORPORATION**

By:

\_\_\_\_\_  
Name: Vas Georgiou  
Title: Chief Administrative Officer

By:

\_\_\_\_\_  
Name:  
Title:

***Notices to Secured Party:***

c/o Ontario Infrastructure and Lands Corporation  
**[REDACTED]**

Attention: **[REDACTED]**

Fax: **[REDACTED]**

with a copy to:

**[REDACTED]**

Attention: **[REDACTED]**

Fax: **[REDACTED]**

**SCHEDULE 1.1**

**DEFINITIONS**

1. **General Definitions.** Unless the context otherwise requires, in this Agreement the following terms are used with their corresponding defined meanings:

“**Accounts**” in relation to any Obligor means all accounts including rights to receive royalties or license fees, which are now owned by or are due, owing or accruing due to such Obligor or which may hereafter be owned by or become due, owing or accruing due to such Obligor or in which such Obligor now or hereafter has any other rights, including all debts, claims and demands of any kind whatever, claims against the Secured Party or any Governmental Authority and claims under insurance policies, and (as the context so admits) any item or part thereof.

“**Affiliate**” is used, prior to the date of the first Drawdown under the Loan Agreement, with the defined meaning assigned under the Project Agreement and, after such date, with the defined meaning assigned in the Loan Agreement.

“**AFP Credit Documents**” is used with the defined meaning assigned in the Intercreditor Agreement.

“**Applicable Law**” is used with the defined meaning assigned in the Project Agreement and the Loan Agreement.

“**Authorizing Resolution**” in relation an Issuer means a true copy of a resolution of the directors, unanimous shareholder agreement or approval of the partners or trustees of an Issuer (as the Secured Party shall require) substantially in the form of Schedule 8, changed in such manner as the Secured Party may require.

“**Business Day**” is used with the defined meaning assigned in the Project Agreement and the Loan Agreement.

“**Cash Allowance Account**” is used with the defined meaning assigned in the Project Agreement.

“**Chattel Paper**” in relation to any Obligor means all chattel paper in which such Obligor now or hereafter has rights, and (as the context so admits) any item or part thereof.

“**Clearing Agency**” means The Canadian Depository for Securities Limited, The Depository Trust Company, or any other depository in Canada, the United States of America or elsewhere or any book-based transfer register acceptable to the Secured Party in its sole discretion.

“**Collateral**” means all of the property and other items made subject to the Encumbrances created under Section 2.1, wherever located, now or hereafter owned by any Obligor or in or to which such Obligor now or hereafter has rights, including all such rights, and (as the context so admits) any item or part thereof.

“**Construction Contractor Performance Support**” is used with the defined meaning assigned in, and in the form delivered pursuant to, the AFP Credit Documents as of the date hereof.

“**Debt**” is used with the defined meaning assigned in the Loan Agreement.



**“Distribution”** means (i) any and all securities hereafter issued by an Issuer to any holder of Collateral, including the security entitlements thereto, (ii) any payment or distribution made, or amount or property received, in respect of Collateral, whether in cash, in kind or in Securities, notes, debentures, instruments, securities or any other form of property, including any property received in exchange therefor, (iii) any money, funds, cash equivalents or other property arising from the renewal or reinvestment of Collateral, (iv) any Redemption Payment, (v) any Dividend, and (vi) any Proceeds of any item or part of any Collateral.

**“Dividend”** means any cash dividend declared out of profits, distributable cash or other like measure of an Issuer in the ordinary course on securities or other property comprised in the Collateral.

**“Documents of Title”** in relation to any Obligor means all documents of title, whether negotiable or non-negotiable, including all warehouse receipts and bills of lading, in which such Obligor now or hereafter has rights, and (as the context so admits) any item or part thereof.

**“Drawdown”** is used with the defined meaning assigned in the Loan Agreement.

**“Equipment”** in relation to any Obligor means all machinery, fixtures, plant, tools, furniture, chattels, vehicles of any kind or description including, without limitation, motor vehicles, parts, accessories installed in or affixed or attached to any of the foregoing, all drawings, specifications, plans and manuals relating thereto, and any other tangible personal property in which such Obligor now or hereafter has rights, other than Inventory or consumer goods, and (as the context so admits) any item or part thereof.

**“Encumbrance”** is used, prior to the date of the first Drawdown under the Loan Agreement, with the defined meaning assigned under the Project Agreement and, after such date, with the defined meaning assigned in the Loan Agreement.

**“Event of Default”** is used with the defined meaning assigned in the Loan Agreement.

**“Governmental Authority”** is used, prior to the date of the first Drawdown under the Loan Agreement, with the defined meaning assigned under the Project Agreement and, after such date, with the defined meaning assigned in the Loan Agreement.

**“Future Securities Collateral”** means Securities and Securities Entitlements in which any Obligor only has rights after the time this Agreement is executed and delivered by such Obligor.

**“Indemnified Party”** is used with the defined meaning assigned in Section 4.7.

**“Instruments”** in relation to any Obligor means all bills, notes and cheques (as such are defined pursuant to the *Bills of Exchange Act* (Canada)) of such Obligor, and all other writings of such Obligor that evidence a right to the payment of money and are of a type that in the ordinary course of business are transferred by delivery without any necessary endorsement or assignment, and letters of credit, advices of credit, construction, completion and performance bonds, sureties or other financial instruments and all similar contracts, instruments and agreements in which such Obligor now or hereafter has rights, and (as the context so admits) any item or part thereof.

**“Intangibles”** in relation to any Obligor means all intangibles, all IP Licences and all authorizations of whatever kind in which such Obligor now or hereafter has rights, including all of such Obligor’s choses in action, contractual rights, goodwill, Intellectual Property, and warranties, guarantees and indemnities in respect of products, construction services or otherwise in favour or for the benefit of or

otherwise available to such Obligor pursuant to any agreement or arrangement with any Person (including, without limitation, pursuant to the Project Documents), and (as the context so admits) any item or part thereof.

“**Intellectual Property**” is used with the defined meaning assigned in the Project Agreement.

“**Intercreditor Agreement**” means that intercreditor agreement made as of the date hereof among, *inter alia*, the AFP Agent, the Secured Party and the Obligors, as such agreement may be amended, restated and/or otherwise modified from time to time.

“**Inventory**” in relation to any Obligor means all inventory of whatever kind in which such Obligor now or hereafter has rights, including all goods, wares, merchandise, materials, supplies, raw materials, goods in process, finished goods and other tangible personal property, including all goods, wares, materials and merchandise used or procured for packing or storing thereof, now or hereafter held for sale, lease, resale or exchange or that are to be furnished or have been furnished under a contract of service or that are used or consumed in the business of such Obligor, and (as the context so admits) any item or part thereof.

“**Investment Property**” in relation to any Obligor means all investment property in which such Obligor now or hereafter has rights, and (as the context so admits) any item or part thereof.

“**Issuer Acknowledgment**” means an originally executed copy of an acknowledgment from an Issuer in substantially the form of Schedule 9, changed in such manner as the Secured Party may require.

“**Issuers**” means (i) Project Co and (ii) any other Person hereafter issuing Securities that form part of the Collateral.

“**IP Licence**” in relation to any Obligor means any license agreement pursuant to which such Obligor is granted a right to use Intellectual Property or Project Co grants a right to use Intellectual Property.

“**Licence**” in relation to any Obligor means (i) any authorization from any governmental authority having jurisdiction with respect to such Obligor or its property, (ii) any authorization from any Person granting any easement or license with respect to any real or immovable property and (iii) any IP Licence.

“**Loan Agreement**” is used with the defined meaning assigned in the recitals to this Agreement.

“**Loan Documents**” is used with the defined meaning assigned in the Loan Agreement.

“**Money**” means all money in which any Obligor now or hereafter has rights, and (as the context so admits) any item or part thereof.

“**Obligations**” is used with the defined meaning assigned in the recitals to this Agreement.

“**Operating Right**” is used with the defined meaning assigned in Subsection 2.12(a).

“**Partnership Agreement**” means [REDACTED].

“**Permitted Encumbrances**” is used with the defined meaning assigned in the Loan Agreement.

“**Person**” is used with the defined meaning assigned in the Project Agreement and the Loan Agreement.

“**PPSA**” means the *Personal Property Security Act* (Ontario) and the regulations issued thereunder.

“**Project**” is used with the defined meaning assigned in the recitals to the Project Agreement.

“**Project Accounts**” is used with the defined meaning assigned in the Loan Agreement.

“**Project Agreement**” is used with the defined meaning assigned in the recitals to this Agreement.

“**Project Co Event of Default**” is used with the defined meaning assigned in the Project Agreement.

“**Project Documents**” is used with the defined meaning assigned in the Project Agreement.

“**Power of Attorney**” in relation to any Issuer means an originally executed copy of a power of attorney issued in relation to the Securities substantially in the form of Schedule 10, changed in such manner as the Secured Party may require, undated and signed in blank by any Obligor.

“**Proceeds**” means all proceeds and personal property in any form derived directly or indirectly from any disposal of or other dealing with any Collateral, or that indemnifies or compensates for such Collateral stolen, lost, destroyed or damaged, and proceeds of Proceeds whether or not of the same type, class or kind as the original Proceeds, and (as the context so admits) any item or part thereof.

“**Receiver**” means any receiver for the Collateral or any of the business, undertakings, property and assets of any Obligor appointed by the Secured Party pursuant to this Agreement or by a court on application by the Secured Party.

“**Records**” means all books, accounts, invoices, letters, papers, security certificates, documents and other records in any form evidencing or relating in any way to any item or part of the Collateral and all agreements, Licences and other rights and benefits in respect thereof, and (as the context so admits) any item or part thereof.

“**Recovery**” means any monies received or recovered by the Secured Party pursuant to this Agreement on account of the Obligations, whether pursuant to any enforcement of the Security, any proceeding, any settlement thereof or otherwise.

“**Redemption Payment**” means any payment or distribution made, or amount received, in connection with (i) a maturity, redemption, retraction or acquisition of Collateral, (ii) any statutory arrangement involving an Issuer, (iii) a partial or total liquidation, winding up, bankruptcy, proposal or dissolution of an Issuer, (iv) a reduction of capital, capital surplus or paid-in-surplus by an Issuer or (v) the purchase of Collateral.

“**Replacements**” means all increases, additions and accessions to, and all substitutions for and replacements of, any item or part of the Collateral, and (as the context so admits) any item or part thereof.

“**Securities**” in relation to any Obligor means all shares, stock, options, rights, warrants, joint venture interests, interests in limited partnerships, interests in limited liability partnerships, interests in general partnerships, trust units, bonds, debentures, debenture stock, bills, notes and all other documents which constitute evidence of a share, participation or other interest of such Obligor now

or hereafter has in property or in an enterprise or which constitute evidence of an obligation of the issuer.

**“Security”** means the Encumbrances created by this Agreement.

**“Security Entitlement”** in relation to any Obligor means all security entitlements in which such Obligor now or hereafter has rights, and (as the context so admits) any item or part thereof.

**“Software”** means computer programs, operating systems, applications, interfaces, applets, software scripts, macros, firmware, middleware, development tools, and other codes, instructions or sets of instructions for computer hardware or software, including without limitation SQL and other query languages, hypertext markup language (“html”), wireless markup language, xml and other computer markup languages, in object, source code or other code format.

**“STA”** means the *Securities Transfer Act* (Ontario).

**“Stock Transfer”** in relation to an Issuer means an originally executed copy of a transfer of Securities in the Issuer, substantially in the form of Schedule 11, changed in such manner as the Secured Party may require, undated and signed in blank by any Obligor.

**“this Agreement”** means this security agreement and all schedules attached hereto. All uses of the words **“hereto”**, **“herein”**, **“hereof”**, **“hereby”** and **“hereunder”** and similar expressions refer to this Agreement and not to any particular section or portion of it. References to an **“Article”**, **“Section”**, **“Subsection”** or **“Schedule”** refer to the applicable article, section, subsection or schedule of this Agreement.

**“Transfer”** means, with respect to the following items comprised in Collateral and in accordance with the instructions of the intended recipient:

- (i) in the case of cash or any bill of exchange, payment or delivery by wire or funds transfer or physical deposit (enclosed in blank if a bill of exchange) into one or more bank accounts specified by the recipient;
- (ii) in the case of certificated securities not held by a Clearing Agency, delivery in appropriate physical form to the recipient (or its designated securities intermediary for credit to a securities account maintained by the recipient with such securities intermediary) accompanied by duly executed instruments of transfer, endorsement in blank for transfer, transfer tax stamps and any other documents necessary to constitute an effective endorsement to the recipient (or its designated securities intermediary);
- (iii) in the case of securities held in a Clearing Agency, the giving of an entitlement order to the relevant securities intermediary, together with a written copy thereof to the recipient, sufficient if complied with to result in an effective endorsement of the relevant security entitlement to the recipient; and
- (iv) in the case of uncertificated securities not held in a Clearing Agency, the giving of an entitlement order to the Issuer, together with a copy thereof to the recipient, sufficient if complied with to result in the relevant securities being registered in the name of the recipient.

**“Trigger Event”** means any of (i) a Project Co Event of Default, (ii) an Event of Default or (iii) termination of the Project Agreement under Section 44 of the Project Agreement.

**SCHEDULE 3.1**

**LOCATIONS OF REGISTERED OFFICE, CHIEF EXECUTIVE OFFICE,  
PLACES OF BUSINESS, RECORDS AND COLLATERAL**

**DUNDEE KILMER DEVELOPMENTS L.P.**

<i><b>Jurisdiction of Formation:</b></i>	[REDACTED]
<i><b>Registered Office:</b></i>	[REDACTED]
<i><b>Chief Executive Office:</b></i>	[REDACTED]
<i><b>Places of Business:</b></i>	[REDACTED]
<i><b>Locations of Records:</b></i>	[REDACTED]
<i><b>Locations of Tangible Collateral:</b></i>	[REDACTED]

**Amended and Restated Project Agreement – Schedule 8**  
**2015 Pan/Parapan American Games Athletes' Village Project** **Execution Version**

[REDACTED]

<i><b>Jurisdiction of Incorporation:</b></i>	[REDACTED]
<i><b>Registered Office:</b></i>	[REDACTED]
<i><b>Chief Executive Office:</b></i>	[REDACTED]
<i><b>Places of Business:</b></i>	[REDACTED]
<i><b>Locations of Records:</b></i>	[REDACTED]
<i><b>Locations of Tangible Collateral:</b></i>	[REDACTED]

**SCHEDULE 3.2**

**LIST OF SECURITIES AND SECURITIES ACCOUNTS**

**DUNDEE KILMER DEVELOPMENTS L.P.**

*Securities:*

<b>Registered Owner</b>	<b>Issuer</b>	<b>Certificate Number</b>	<b>Description of Interest</b>	<b>% of Outstanding Interests</b>
Nil				

*Security Entitlements:*

<b>Brokerage Firm</b>	<b>Securities Account No(s)</b>
Nil	

[REDACTED]

*Securities:*

<b>Registered Owner</b>	<b>Issuer</b>	<b>Certificate Number</b>	<b>Description of Interest</b>	<b>% of Outstanding Interests</b>
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED] %

*Security Entitlements:*

<b>Brokerage Firm</b>	<b>Securities Account No(s)</b>
Nil	



**SCHEDULE 8**

**AUTHORIZING RESOLUTION**

1. The transfer by \_\_\_\_\_ (the “**Pledgor**”) of [describe Securities] in the [describe Issuer], plus whatever additional [describe Securities] in the [describe Issuer] may hereafter be issued or transferred by the Pledgor, (collectively, the “**Securities**”) to Her Majesty the Queen in Right of Ontario, as represented by the Minister of Infrastructure, as represented by Ontario Infrastructure and Lands Corporation (the “**Secured Party**”) or its nominee from time to time as security is approved.
2. The transfer of the Securities by the Secured Party to one or more transferees consequent upon realization of the Secured Party’s security over the Securities is approved.
3. The proper officers of the [Corporation] are authorized and directed to issue new certificates representing the Securities to the Secured Party or to the Secured Party’s nominees or transferees on the written request of the Secured Party or its duly authorized representative, agent or attorney (including any receiver appointed by the Secured Party) without further consent, approval or other action being required by the Pledgor or any of the directors of the [Corporation].
4. This resolution shall be irrevocable.

**SCHEDULE 9**

**ISSUER ACKNOWLEDGMENT**

**TO:** **HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, as represented by the  
MINISTER OF INFRASTRUCTURE, as represented by ONTARIO  
INFRASTRUCTURE AND LANDS CORPORATION, as Secured Party**

**RE:** **[ISSUER]**

---

**FOR VALUABLE CONSIDERATION**, the receipt and sufficiency of which are hereby acknowledged, the undersigned hereby agrees as follows:

5. The undersigned shall Transfer each item of Future Securities Collateral directly to the Secured Party as soon as any Obligor acquires rights in that item of Future Securities Collateral and in any event, no later than five (5) Business Days after acquiring right in that item of Future Securities Collateral.

6. The undersigned shall Transfer each Distribution on Collateral made by the undersigned directly to the Secured Party if, as and when such Distribution is made.

7. This document and the obligations and agreement of the undersigned contained herein shall be irrevocable until the Secured Party notifies the undersigned otherwise.

8. Each word and expression (capitalized or not) defined or given an extended meaning in the general security agreement made as of the \_\_\_\_ day of \_\_\_\_\_, 2011 between Dundee Kilmer Developments L.P., [REDACTED], as Obligors, in favour of Her Majesty the Queen in Right of Ontario, as represented by the Minister of Infrastructure, as represented by Ontario Infrastructure and Lands Corporation, as Secured Party (as changed from time to time and for the time being in effect) is used herein with the defined or extended meaning assigned to it therein.

9. This document shall be governed by, and construed and interpreted in accordance with the laws of the Province of Ontario, including the federal laws of Canada applicable therein, but excluding choice of law rules.

**TO WITNESS**, the undersigned has caused this document to be duly executed as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**[ISSUER]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## POWER OF ATTORNEY

\_\_\_\_\_ has sold and transferred to  
\_\_\_\_\_ the following securities:

## Class

**AND** the undersigned constitutes and appoints \_\_\_\_\_ of \_\_\_\_\_ the true and lawful attorney of the undersigned, irrevocably, forever and in the name of the undersigned to transfer these securities, to make and execute all necessary acts of assignment and transfer of these securities and to substitute one or more Persons with like full power. The undersigned ratifies and confirms all that this attorney or substitutes shall lawfully do by virtue of this document.

**DATED** at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**(Signature of Transferor)**

*Note: The name of the transferor must correspond exactly with the name as registered on the securities.*

**SCHEDULE 11**

**STOCK/UNIT TRANSFER**

**TO:** [ISSUER]

For value received, [insert name of transferor] hereby sells, assigns and transfers unto \_\_\_\_\_ [insert certificate numbers] when completing transfer] [shares/units] of \_\_\_\_\_.

**DATED** at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

	)	
	)	
	)	
	)	
_____ Witness	)	_____ (Signature of Transferor)
	)	

*Note: The name of the transferor on this assignment must correspond with the name as written upon the face of each certificate drawn to represent the securities, in every particular, without*

**Schedule 1.01(J)**

**Form of Assignment of Sponsor Subordinated Debt**

**THIS AGREEMENT** is made as of the \_\_\_\_ day of \_\_\_\_\_, 2011 by <\*> and <\*> (the “Assignors”) in favour of **HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO**, as represented by **MINISTER OF INFRASTRUCTURE**, as represented by as Agent **ONTARIO INFRASTRUCTURE AND LANDS CORPORATION** (the “Assignee”).

**WHEREAS:**

- A. Pursuant to a project agreement of even date herewith (the “**Project Agreement**”) among Dundee Kilmer Developments L.P. (“**Project Co**”), [REDACTED], and the Assignee, Project Co agreed to provide the design, construction and financing of certain facilities.
- B. Pursuant to a credit agreement of even date herewith (the “**Loan Agreement**”) among, *inter alios*, Project Co, [REDACTED] and the Assignee, the Assignee agreed to advance the Advance Amount, if requested, and subject to the terms and conditions therein, in order to pay the AFP Financing (as defined in the Loan Agreement”).
- C. In order to secure the performance and payment of the obligations of the Borrower to the Assignee under the Loan Documents (as defined in the Loan Agreement) to which Project Co is party and all indebtedness, obligations, liabilities, covenants, agreements and undertakings, direct or indirect, absolute or contingent, matured or unmatured, as principal or surety, which are now or may become at any time and from time to time hereafter due, owing, payable or required to be performed by Project Co to the Secured Party under the Project Agreement, including to achieve Project Substantial Completion (as defined in the Project Agreement) by the Longstop Date (as defined in the Project Agreement)(collectively, the “**Obligations**”) the Assignor has agreed to assign its interest in the Collateral (as defined herein) to the Assignee.

**NOW THEREFORE THIS AGREEMENT WITNESSES** that in consideration of the premises and the covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties, the parties hereto agree as follows:

**ARTICLE 1**  
**INTERPRETATION**

**1.1 References to Agreements and Documents**

Each reference in this Agreement to any agreement or document shall be construed so as to include such agreement or document (including any attached schedules, appendices and exhibits), and each change made to it at or before the time in question.

## **1.2 Headings**

The Article and Section headings in this Agreement are included solely for convenience, are not intended to be full or accurate descriptions of the text to which they refer and shall not be considered part of this Agreement.

## **1.3 Grammatical Variations**

In this Agreement, unless the context otherwise requires, (a) words and expressions (including words and expressions (capitalized or not) defined or given extended meanings) in the singular include the plural and vice versa (the necessary changes being made to fit the context), and (b) grammatical variations of words and expressions (capitalized or not) defined, given extended meanings or incorporated by reference herein shall be construed in like manner.

# **ARTICLE 2 ASSIGNMENT**

## **2.1 Security**

Each of the Assignors hereby assigns, conveys, transfers and makes over to and in favour of the Assignee and each of the Assignors grants a security interest in favour of the Assignee, as and by way of a fixed and specific assignment and charge in all of its right, title, estate and interest (as its interests may appear) in, to, under and in respect of:

- (a) the Intercompany Notes which each of the Assignors have the benefit of, including, without limitation, all the Intercompany Notes attached to Schedule A (collectively, the “**Notes**”);
- (b) all present and future right, title and interest in and its benefit, power and advantage to be derived from the Notes and all of its covenants, obligations, agreements and undertakings and right to enforce its rights thereunder in its name; and
- (c) all present and future right, title and interest to all monies and other claims in relation to the monies advanced under the Notes, including without limitation any and all claims for damages or other remedies in respect of any breach of or default under the terms and conditions of the Notes, with the assignor’s full power and authority to demand, sue for, recover, receive and give receipts for all such monies,

and in, to and under all amendments, modifications, extensions, renewals and replacements of any of the foregoing and all its rights, remedies, powers, privileges and claims thereunder (whether arising pursuant thereto or available to it at law or in equity) (collectively, the “**Collateral**”), to hold and receive the same unto the Assignee with full power and authority to demand, collect, sue for, recover, receive and give receipts for payments and to enforce payment of the same.

## **2.2 Security Interests**

- (a) The security interests granted hereby (the “**Security Interest**”) secure the payment and performance of all indebtedness, liabilities, covenants, obligations, agreements and undertakings, direct or indirect, absolute or contingent, matured or unmatured, as principal or surety, which are now or may become at any time and from time to time

hereafter due, owing or payable by Project Co to the Assignee, or which remain owing and unpaid to the Assignee, at any time and from time to time existing or arising under, or by virtue of or otherwise in connection with the Project Agreement, the Loan Agreement and the other Loan Documents, whether incurred by Borrower alone or jointly with any other Person or Persons, or otherwise howsoever and including any and all reasonable out-of-pocket expenses (including counsel fees and disbursements) incurred by the Assignee or any other Person acting on its behalf enforcing any of its rights hereunder (collectively, the “**Obligations**”).

- (b) Each of the Assignors will pay all out-of-pocket costs and expenses of the Assignee in connection with the enforcement of, and the preservation of the Assignee's rights under and with respect to this Agreement against each of the Assignors and the Obligations (including the legal fees and out-of-pocket expenses of the Assignee for services required in connection with the foregoing matters).

## **2.3 Attachment**

Each of the Assignors acknowledges that (i) value has been given, (ii) it has rights in the Collateral, and (iii) it has not agreed to postpone the time of attachment of the Security Interest.

## **2.4 Representations and Warranties**

Each of the Assignors represents and warrants that:

- (a) it is the legal and beneficial owner of the Collateral being assigned by it hereunder and that such Collateral is free and clear of any lien or security interest;
- (b) it has good and sufficient power, authority and right to assign the Collateral to the Assignee; and
- (c) that it is entitled to enter into this Agreement.

## **2.5 Enforcement and Remedies**

The Assignee agrees that it shall not enforce its rights in respect of the Collateral as collateral security until the occurrence of, and other than during the continuance of, a Project Co Event of Default (as defined in the Project Agreement), a termination of the Project Agreement under Section 44 of the Project Agreement, or an Event of Default (as defined in the Loan Agreement).

## **2.6 Indemnity**

Notwithstanding any enquiries or due diligence made or to be made by the Assignee, as a separate and severable obligation of each of the Assignors hereunder, each of the Assignors shall indemnify and save harmless the Assignee of and from all costs, proceedings, actions, fees, damages, expenses, losses and claims whatsoever, resulting from any breach by any Assignor of any of the terms hereof, including, without limitation, costs of re-documenting, replacing or re-perfecting any of the Collateral.

## **2.7 Acceptance**

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The Assignee hereby accepts the assignment of the Notes.

## **2.8 Appointment of Attorney**

Each of the Assignors irrevocably appoints the Assignee (and any of its officers) as its attorney (with full power of substitution) to do, make and execute in its name and on its behalf all such further acts, documents, matters and things which the Assignee may deem necessary or advisable to give effect to the assignments herein. The Assignee or its nominees and transferees are empowered to exercise all rights and powers and to perform all acts of ownership with respect to the Notes to the same extent as the Assignors might do. All acts of any such attorney are ratified and approved, and the attorney shall not be liable for any act, failure to act or any other matter or thing in connection therewith, except for its own gross negligence or wilful misconduct.

## **ARTICLE 3 GENERAL**

### **3.1 No Merger**

This Agreement shall not operate by way of a merger of the Obligations or of any guarantee, agreement or other document by which the Obligations now or at any time hereafter may be represented or evidenced. Neither the taking of any judgment nor the exercise of any power of seizure or disposition shall extinguish the liability of Project Co to pay and perform the Obligations nor shall the acceptance of any payment or alternate security constitute or create any novation. No covenant, obligation, representation or warranty of any Assignor herein shall merge in any judgment.

### **3.2 Receipt of Copy**

Each of the Assignors acknowledges receipt of a copy of this Agreement and copies of the verification statements pertaining to the financing statements filed under any personal property security statutes of any jurisdiction selected by the Assignee in respect of this Agreement. To the extent permitted by Applicable Laws, each of the Assignors irrevocably waives the right to receive a copy of each financing statement or financing change statement (or any verification statement pertaining thereto) filed under any personal property security statutes by the Assignee in respect of this Agreement and releases any and all claims or causes of action it may have against the Assignee for failure to provide any such copy.

### **3.3 Change**

No agreement purporting to change (other than an agreement purporting to waive performance or compliance with) any provision of this Agreement shall be binding upon the parties hereto unless that agreement is in writing and signed by all of the parties hereto. No waiver of performance or compliance with any provision hereof shall be binding upon any party hereto unless such waiver is in writing signed by the parties sought to be bound thereby.

### **3.4 Notices**

Any notice, demand, consent, approval or other communication (a “**Notice**”) to be made or given under or in connection with this Agreement shall be in writing and may be made or given by personal delivery, by facsimile, registered mail or by e-mail to the address, facsimile number or e-mail address of the intended recipient set out in its signature page of this Agreement or, in each case, to such other address as such party may from time to time notify any other in accordance with this Section 3.4. Any Notice made or



given by personal delivery shall be conclusively deemed to have been given at the time of actual delivery or, if made or given by facsimile or e-mail, at the time of sending if sent before 4:00 p.m. (in the place of intended receipt) on a Business Day or if sent otherwise at the opening of business on the first Business Day following the transmittal thereof; provided that, the party sending such Notice receives confirmation of receipt from the intended recipient's facsimile machine or e-mail server.

**3.5 Time of the Essence**

Time is and shall remain of the essence of this Agreement and each of its provisions.

**3.6 Governing Law**

This Agreement shall be construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein and shall be treated in all respects as an Ontario contract. Any legal action or proceeding with respect to this Agreement shall be brought in the courts of the Province of Ontario and such courts shall have jurisdiction to deal with all matters relating to the interpretation of, or enforcement of rights under this Agreement and each of the parties hereto hereby irrevocably attorns to the non-exclusive jurisdiction of such courts.

**3.7 Entire Agreement**

There are no representations, warranties, covenants, agreements or acknowledgments whether direct or collateral, express or implied, that form part of or affect this Agreement, other than as expressed herein or in any other Security Document. The execution of this Agreement has not been induced by, nor does each of the Assignors rely upon or regard as material, any representations, warranties, conditions, other agreements or acknowledgments not expressly made in this Agreement and the other written agreements and other documents to be delivered pursuant hereto or contemporaneously herewith.

**3.8 Invalidity**

If any provision of this Agreement is found to be invalid or unenforceable, by a final judgment of a court of competent jurisdiction, to the fullest extent permitted by Applicable Law, (a) in such jurisdiction that provision shall be deemed to be severed herefrom and the remaining provisions of this Agreement shall not be affected thereby but shall remain valid and enforceable and (b) such invalidity or unenforceability shall not affect the validity or enforceability of such provision in any other jurisdiction. Each of the Assignors shall, at the request of the Assignee, negotiate in good faith with the Assignee to replace any invalid or unenforceable provision contained in this Agreement with a valid and enforceable provision that has the commercial effect as close as possible to that of the invalid or unenforceable provisions, to the extent permitted by Applicable Law.

**3.9 Successors and Assigns**

This Agreement and the rights and obligations of the Assignee hereunder may be assigned and transferred by the Assignee to any successor or replacement Agent appointed by the Lenders pursuant to the Credit Agreement and any such assignee and transferee shall be entitled to all of the rights and bound by all of the obligations of the Assignee hereunder. Each of the Assignors may not assign this Agreement or any right or obligation hereunder. This Agreement shall enure to the benefit of each of the Finance Parties and their respective successors and assigns and shall be binding upon the each of the Assignors, their respective legal representatives (including receivers) and their respective successors and permitted assigns. Each reference in this Agreement to any Person (including the each of the Assignors and any Finance Party) shall

(to the extent the context so admits) be construed so as to include the successors of that Person and (in the case of each Finance Party) the assigns of that Person as permitted by the Finance Documents.

**3.10 Further Assurances**

Each of the Assignors agrees to take such actions and execute and deliver such documents as may be reasonably requested by the Assignee from time to time in order to give effect to the terms, conditions, provisions, purpose and intent of this Agreement.

**3.11 Counterparts and Facsimile Execution**

i. This Assignment may be executed in any number of counterparts, each of which so executed will be deemed to be an original and all of which taken together will be deemed to constitute one and the same instrument, and it will not be necessary in making proof of this Assignment to produce or account for more than one such counterpart. Transmission of a copy of an executed signature page of this Assignment (including any change to this Assignment) by one party to this Assignment to the other by facsimile transmission or e-mail in pdf format in accordance with this section shall be as effective as delivery of a manually executed counterpart hereof.

**3.12 Conflict**

This Agreement has been entered into pursuant to the provisions of the Project Agreement and the Loan Agreement and is subject to all the terms and conditions thereof and, if there is any conflict or inconsistency between the provisions of this Agreement and the provisions of the Project Agreement or the Loan Agreement, the terms and conditions of the Project Agreement shall govern and apply to the extent of such inconsistency prior to the date of the first Drawdown (as such term is defined in the Loan Agreement); after such date, the terms and conditions of the Loan Agreement shall govern and apply to the extent of the inconsistency. Notwithstanding the foregoing, in the event that this Assignment contains remedies which are in addition to the remedies set forth in the Project Agreement or the Loan Agreement, the existence of such remedies shall not constitute a conflict with the terms of this Assignment.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

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TO WITNESS this Agreement, the parties hereto have caused this Agreement to be duly executed as of the date set out at the commencement of this Agreement.

**ASSIGNOR:**

<\*>

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

***Notices to Assignor:***

<\*>

Attention: \_\_\_\_\_

<\*>

Telephone: \_\_\_\_\_

<\*>

Fax: \_\_\_\_\_

<\*>

Email: \_\_\_\_\_

<\*>

**ASSIGNEE:**

**HER MAJESTY THE QUEEN IN RIGHT OF  
ONTARIO, as represented by the MINISTER OF  
INFRASTRUCTURE, as represented by ONTARIO  
INFRASTRUCTURE AND LANDS CORPORATION**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

***Notices to Secured Party:***

c/o Ontario Infrastructure and Lands Corporation  
**[REDACTED]**

Attention: **[REDACTED]**

Fax: **[REDACTED]**

with a copy to:

**[REDACTED]**

Attention: **[REDACTED]**

Fax: **[REDACTED]**

**SCHEDULE A**  
**COLLATERAL**

**Schedule 1.01(K)**

**Material Licences**

None.

**Schedule 1.01(L)**

**Material Project Agreements**

As of the date of Financial Close, Material Project Agreements are as set out in the definition of “Material Project Agreements” in the Loan Agreement.

**Schedule 1.01(M)**

**Form of Notice of Intent to Borrow**

\_\_\_\_\_, 20\_\_\_\_

Her Majesty the Queen in Right of Ontario,  
as represented by the Ministry of Infrastructure,  
as represented by Ontario Infrastructure and Lands Corporation  
777 Bay Street, 6<sup>th</sup> Floor  
Toronto, Ontario M5G 2C8

Attention: Senior Vice President, Project Delivery

Ladies and Gentlemen:

The undersigned, \_\_\_\_\_ (the “**Drawer**”), refers to the Loan Agreement dated as of December \_\_\_, 2011, as amended, restated and/or modified from time to time, (the “**Loan Agreement**”), the terms defined therein being used herein as therein defined, by and among the Dundee Kilmer Developments L.P., [REDACTED], and Her Majesty the Queen in Right of Ontario, as represented by the Minister of Infrastructure, as represented by Ontario Infrastructure and Lands Corporation and hereby gives you notice pursuant to Section 2.03(3) of the Loan Agreement, that the undersigned intends to make a Drawdown thereunder and in that connection sets forth below the information relating to such Drawdown required under Section 2.03(3) of the Loan Agreement:

1. Attached hereto as Schedule A is a notional calculation of the Advance Amount prepared by or on behalf of the Drawer based on the most current information available to the Drawer together with supporting evidence of all advances, repayments and prepayments under the AFP Lending Agreements, deposits and withdrawals from the project accounts pursuant to the AFP Lending Agreements, the Net Sales Proceeds of each Unit, other Project Revenues and the Construction Certificate.
2. Attached hereto as Schedule B is a certificate of the AFP Lenders' Agent confirming the amount outstanding under the AFP Financing (including all amounts outstanding in each project account pursuant to the AFP Lending Agreements).
3. The amount of the notional Advance Amount is \$\_\_\_\_\_.
4. The amount of the requested Drawdown is \$\_\_\_\_\_.



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5. The date of the requested Drawdown is \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_

By: \_\_\_\_\_

Name:

Title:

**SCHEDULE A**  
**NOTIONAL ADVANCE AMOUNT CALCULATION**

**SCHEDULE B**  
**CERTIFICATE OF AFP LENDERS' AGENT**

\_\_\_\_\_, 20\_\_\_\_

Her Majesty the Queen in Right of Ontario,  
as represented by the Ministry of Infrastructure,  
as represented by Ontario Infrastructure and Lands Corporation  
777 Bay Street, 6<sup>th</sup> Floor  
Toronto, Ontario M5G 2C8

Attention: Senior Vice President, Project Delivery

Ladies and Gentlemen:

The undersigned, **[REDACTED]**, (the “**AFP Lenders' Agent**”), refers to that certain the Loan Agreement dated as of December \_\_\_\_, 2011, as amended, restated and/or modified from time to time, (the “**Loan Agreement**”), the terms defined therein being used herein as therein defined, by and among the Dundee Kilmer Developments L.P., **[REDACTED]**, and Her Majesty the Queen in Right of Ontario, as represented by the Minister of Infrastructure, as represented by Ontario Infrastructure and Lands Corporation.

The AFP Lenders' Agent hereby confirms that the amounts outstanding under the AFP Financing (including all amounts outstanding in each project account pursuant to the AFP Lending Agreements) are as follow:

[INSERT OUTSTANDING AMOUNTS]

**[REDACTED]**

\_\_\_\_\_  
Name:

Title:

**Schedule 1.01(N)**

**List of Encumbrances**

•

**1. Specific Title Encumbrances**

<b><u>No</u></b>	<b><u>Block</u></b>	<b><u>Instrument No.</u></b>	<b><u>Party to</u></b>	<b><u>Nature of Encumbrance</u></b>
1.	9, 20, 28 and 32	CA121111E	Canadian National Railway Company	Easement and Right-of-Way for the purposes of a telecommunications easement
2.	9, 20, 28 and 32	CA121112	Toronto Terminals Railway Company	Easement and Right-of-Way for the purposes of a parking easement, walkway easement and retaining wall easement
3.	Phase 1 Blocks 17 and 19	CA121419Z	Canadian National Railway Company and Toronto Terminals Railway Company	Restrictive Covenant Agreement prohibiting, among other things, construction of any building on the lands without the consent of Canadian National Railway Company
4.	All	66M2488	n/a	Plan of Subdivision
5.	All	AT2824469	City of Toronto	Subdivision Agreement
6.	4, 8, 9, 10, 11, 12, 13, [PT] 14, [PT] 15, 16, [PT] 17 and 20	AT2824752	Metrolinx	Metrolinx Agreement, including Restrictive Covenants and Environmental Easement
7.	4, 8, 9, 10, 11, 12, 13, [PT] 14, [PT] 15, 16, [PT] 17 and 20	AT2824753	Metrolinx	Metrolinx Easement

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<b>No</b>	<b><u>Block</u></b>	<b>Instrument No.</b>	<b>Party to</b>	<b>Nature of Encumbrance</b>
8.	Block 28 & 29	Not to be registered	Metrolinx	License of land
9.	9	AT2824846	TRCA	TRCA Conservation Easement and Restrictive Covenant Agreement (includes a No Basements Covenant)
10.	9	AT2825066	TRCA	TRCA Restrictive Covenant from Conservation Agreement
11.	9	AT2825067	TRCA	TRCA Easement from Conservation Agreement
12.	1, 2, 3, 4, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 26	AT2825068	TRCA	TRCA Restrictive Covenant Agreement
13.	9 [Part]	Not to be registered	TRCA	Temporary Easement Conveyance Agreement
14.	1, 2, 3, 4, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 26	AT2824749	City of Toronto	Restrictive Covenant Agreement re: Slope of Lands
15.	1, 2, 3	AT2824750		Restrictive Covenant re Blocks 1, 2 and 3
16.	1, 2, 3	Not yet registered		Notice of amendment to Restrictive Covenant AT2824750
17.	9	AT2824751	City of Toronto	Notice of Clause 43 from Schedule B-1 of Subdivision Agreement
18.	1 and/or 4	Not yet registered		Future Easement: Blocks 1 and/or 4 (to be registered through SPA process when publicly accessible open space is designed), per s. 36 of Schedule B-1 of Subdivision Agreement
19.	14	Not yet registered		Future Easement: Block 14 (to be registered through SPA process when publicly accessible open space is designed), per s. 36

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<b>No</b>	<b><u>Block</u></b>	<b>Instrument No.</b>	<b>Party to</b>	<b>Nature of Encumbrance</b>
				of Schedule B-1 of Subdivision Agreement
20.	17	Not yet registered		Future Easement: Block 17 (to be registered through SPA process when publicly accessible open space is designed), per s. 36 of Schedule B-1 of Subdivision Agreement
21.	8 and/or 20	Not yet registered		Future Easement: Block 8 and/or 20 (to be registered through SPA process when publicly accessible open space is designed), per s. 36 of Schedule B-1 of Subdivision Agreement
22.	Phase 1, Blocks 18-19	Not yet registered		Certificate of Requirement related to Certificate of Property Use – RA Group 1
23.	Phase 1, Block 16 6, 10, 11, 12, 13, 21, 22, 23, 34	Not yet registered		Certificate of Requirement related to Certificate of Property Use – RA Group 5 – Provincial lands
24.	Front St. E., Mill St.	Not yet registered		Certificate of Requirement related to Certificate of Property Use – RA Group 5 – City lands
25.	Phase 1, Block 17 8, 9, 20, 28, 29, 32	Not yet registered		Certificate of Requirement related to Certificate of Property Use – RA Group 6
26.	1, 2, 3, 4, 14, 15, 16, 24, 25, 27, 30, 31, 33	Not yet registered		Certificate of Requirement related to Certificate of Property Use – RA Group 7 – East of Cherry
27.	7, 19	Not yet registered		Certificate of Requirement related to Certificate of Property Use – RA Group 7 – West of Cherry
28.	5 (part) 3 West, 4 West (part)	Not yet registered		Certificate of Requirement related to Certificate of Property Use – RA Group 8 – Provincial lands
29.	Laneway below 3W and 4W	Not yet registered		Certificate of Requirement related to Certificate of Property Use – RA Group 8 –

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<b>No</b>	<b><u>Block</u></b>	<b>Instrument No.</b>	<b>Party to</b>	<b>Nature of Encumbrance</b>
				City lands
30.	Laneway above 7W	E194896	City of Toronto	Bylaw
31.	Phase 1, Block 19	CT16241		Easement in favour of The Hydro-Electric Power Commission of Ontario over Part 17 on Plan RD-207 (also described as Part 25, Plan 66R16601), for the purposes of erecting and maintaining an electrical transmission line  <b>[Note: Affects PIN, but does not affect the Part of the PIN that is Part of the Site]</b>
32.	Phase 1, Blocks 16-19,	AT2305244	City of Toronto	Phase 1 Plan of Subdivision
33.	7, 19	AT998141	Various	Easement over Parts 4, 6, 7 & 8, Plan 66R21806 in favour of Parts 2, 10 & 11, Plan 66R21806, as described in Instrument AT998141 registered on December 1, 2005 for the purposes of pedestrian and vehicular access
34.	7, 19	AT998210	Various	Easement over Parts 4, 6, 7 & 8, Plan 66R21806 in favour of Parts 1 & 9, Plan 66R21806, as described in instrument AT998210 registered December 1, 2005 for the purposes of pedestrian and vehicular access
35.	7, 19	AT998268	Various	Easement over Parts 4, 6, 7 & 8, Plan 66R21806 in favour of Part 3, Plan 66R21806, as described in Instrument AT998268 registered December 1, 2005 for the purposes of pedestrian and vehicular access
36.	7, 19	AT998421	Various	Restrictive Covenant Agreement dated November 14, 2005 between Ontario Realty Corporation acting as agent on behalf of Her Majesty the Queen in right of Ontario as represented by the Minister

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<b>No</b>	<b><u>Block</u></b>	<b>Instrument No.</b>	<b>Party to</b>	<b>Nature of Encumbrance</b>
				of Public Infrastructure Renewal, 1380543 Ontario Limited, 1654197 Ontario Limited, 1654199 Ontario Limited and 1385144 Ontario Limited, as described in instrument AT998421
37.	7, 19	AT1021164	City of Toronto	Escrow Agreement re: Front Street East road widening date December 28, 2005, whereby Ontario Realty Corporation, acting as agent on behalf of Her Majesty the Queen in right of Ontario as represented by the Minister of Public Infrastructure Renewal, agreed to transfer Parts 6, 7 and 8 on Plan 66R21806 to the City of Toronto for road widening purposes, as described in instrument AT1021164
38.	12, 13, 16	Not yet registered	Waterfront Toronto	Draft Project Co Stage 2 Lands Development Agreement (Schedule 38 to Project Agreement)
39.	Various	Not to be registered	City of Toronto	Lease to assist in construction of flood protection landform, dated June 30, 2006 as amended by agreement dated June 30, 2011
40.	Cherry St., S of Mill	CA684785	CN and CP	Viaduct Agreement
41.	Cherry St., S of Mill	CA684786	TTR	Assignment of Viaduct Agreement
42.	Cherry St., S of Mill	CA684787	TTR	Assignment of Viaduct Agreement
43.	Cherry St., S of Mill	CA684856	GTТА	Assignment of Viaduct Agreement
44.	Eastern Ave. (W of Cherry)	CA410044	General Wool Stock Limited	Encroachment agreement
45.	Cherry St. (N of Eastern) and 16 Sumach	CA497585	Antonio and Artenosi	Encroachment agreement
46.	WT lands on Cherry and 525 King St. E.	CA87274	West End Development Corporation	Agreement re: Development of Lands



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<b>No</b>	<b><u>Block</u></b>	<b>Instrument No.</b>	<b>Party to</b>	<b>Nature of Encumbrance</b>
47.	Virgin Place	ES73171Z	City	Restriction on property – use only as lane
48.	Sumach St.	CT449418	Tindal	Encroachment agreement
49.	Sumach St.	CT495587	Hall	Encroachment license
50.	Sumach St.	CT670974	Hall	Encroachment agreement
51.	Sumach St.	CT746591	Project Forty-Six Ltd.	Encroachment agreement
52.	Sumach St.	CA105724	489 Queen Street East Limited and Project Forty-Six Ltd.	Encroachment agreement
53.	10 Sumach	Not to be registered	Schneider	Licence Agreement re: Fence Improvements
54.	12 Sumach	Not to be registered	Pattyn	License Agreement re: Fence Improvements
55.	King St. (E of Sumach)	ES58217	Vincenzo Lacquaniti	Encroachment agreement
56.	King St. (E of Sumach)	CT441231	Braejon Development Ltd.	Encroachment agreement
57.	525 King St. E.	Not to be registered	1208930 Ontario Inc.	License Agreement re: Regarding and Reconfiguring
58.	207 King St. E.	Not to be registered	Martin	License Agreement re: Installation of Retaining Wall
59.	19 Sackville St.	Not to be registered	TDSB	License Agreement re: Relocation of Retaining Wall

**2. General Title Encumbrances**

- (1) Liens, charges or prior claims for taxes (which term includes charges, rates and assessments) or utilities (including levies or imposts for sewers and other municipal utility services) not yet due or if due, the validity of which is being contested in good faith, and liens or charges for the excess of the amount of any past due taxes or utilities charges for which a final assessment or account has not

been received over the amount of such taxes or utilities charges as estimated and paid by HMQ.

- (2) Inchoate liens incidental to construction, renovations or current operations, a claim for which shall not at the time have been registered against the Site or of which notice in writing shall not at the time have been given to HMQ pursuant to the *Construction Lien Act* (Ontario) or otherwise or any lien or charge, a claim for which, although registered, or notice of which, although given, relates to obligations not overdue or delinquent and in respect of any of the foregoing cases, HMQ has, where applicable, complied with the holdback or other similar provisions or requirements of the relevant construction contracts so as to protect the Site therefrom.
- (3) The rights reserved to or vested in any municipality or governmental or other public authority by any statutory provision.
- (4) Any subsisting reservations, limitations, provisions and conditions contained in any original grants from the Crown of any land or interests therein, reservations of undersurface rights to mines and minerals of any kind.
- (5) Zoning (including, without limitation, airport zoning regulations), use and building by-laws and ordinances, federal, provincial or municipal by-laws and regulations as to the use of the Site, which do not materially impair the value of the Site or materially interfere with the use of the Site for the purpose of the Project.

Any encroachments, easements, rights of way or similar interests which would be revealed by an up-to-date survey of the Site, which do not materially interfere with the value of the Site or materially interfere with the use of the Site for the purpose of the Project

**Schedule 1.01(O)**

**Project Budget**

See attached

**Schedule 1.01(P)**

**Relevant Jurisdictions**

<b>Loan Party</b>	<b>Province of Incorporation/ Continuation/ Formation</b>	<b>Province of Chief Executive Office</b>	<b>Province of Secured Property</b>
Dundee Kilmer Developments L.P.	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

**Schedule 1.01(Q)**

**Form of Repayment Notice**

\_\_\_\_\_, 20\_\_\_\_

Her Majesty the Queen in Right of Ontario,  
as represented by the Ministry of Infrastructure,  
as represented by Ontario Infrastructure and Lands Corporation  
777 Bay Street, 6<sup>th</sup> Floor  
Toronto, Ontario M5G 2C8

Attention: Senior Vice President, Project Delivery

Ladies and Gentlemen:

The undersigned, [REDACTED] (the “**Borrower**”), [REDACTED], refers to the Loan Agreement dated as of December\_\_\_\_, 2011, as amended, restated and/or modified from time to time, (the “**Loan Agreement**”), the terms defined therein being used herein as therein defined, by and among the Borrower, [REDACTED] and Her Majesty the Queen in Right of Ontario, as represented by the Minister of Infrastructure, as represented by Ontario Infrastructure and Lands Corporation and hereby gives you notice pursuant to Section [5.01][5.02] of the Loan Agreement, that the undersigned intends to make a [Mandatory Repayment][Voluntary Prepayment] of the Loan. make a Drawdown thereunder and in that connection sets forth below the information relating to such Drawdown required under Section 2.03(3) of the Loan Agreement:

6. The amount of the [Mandatory Repayment][Voluntary Prepayment] is  
\$\_\_\_\_\_.
7. ***[If a Mandatory Repayment under section 5.01] [Attached hereto as Schedule A is a calculation of the Mandatory Prepayment amount as calculated and determined in accordance with Section 5.01 of the Loan Agreement.]***
8. The date of the [Mandatory Repayment][Voluntary Prepayment] is \_\_\_\_\_,  
20\_\_\_\_\_.

**[Signature page follows]**

**DUNDEE KILMER DEVELOPMENTS L.P.,**  
**[REDACTED]**

**[SCHEDULE A  
MANDATORY REPAYMENT AMOUNT CALCULATION]**

**Schedule 1.01(R)**

**Form of Limited Recourse Guarantee and Pledge**

**THIS AGREEMENT** is made as of the \_\_\_\_ day of \_\_\_\_\_, 2011

BETWEEN:





as **Pledgor**

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO,**  
as represented by the **MINISTER OF INFRASTRUCTURE,**  
as represented by **ONTARIO INFRASTRUCTURE AND LANDS CORPORATION**  
(the “Secured Party”),  
as **Secured Party**

**WHEREAS:**

- A. Pursuant to a project agreement of even date herewith (as amended, restated, modified or replaced from time to time, the “**Project Agreement**”) among Dundee Kilmer Developments L.P.(“**Project Co**”), [REDACTED], and the Secured Party, Project Co agreed to provide the design, construction and financing of certain facilities.
- B. Pursuant to a loan agreement of even date herewith (as amended, restated, modified or replaced from time to time, the “**Loan Agreement**”) among Project Co, the various guarantors party thereto and the Secured Party, the Secured Party agreed to advance the Advance Amount, if requested, and subject to the terms and conditions therein, in order to repay in whole or in part the AFP Financing (as such term is defined in the Loan Agreement).
- C. It is a condition to the Project Agreement and it is a condition to the loan by the Secured Party pursuant to the Loan Agreement that the Pledgor enter into this Agreement in order to secure all indebtedness, obligations, liabilities, covenants, agreements and undertakings, direct or indirect, absolute or contingent, matured or unmatured, as principal or surety, which are now or may become at any time and from time to time hereafter due, owing, payable or required to be performed by Project Co to the Secured Party under the Project Agreement, including to achieve Project Substantial Completion (as such term is defined in the Project Agreement) by the Longstop Date (as such term is defined in the Project Agreement) and to secure the obligations of Project Co to the Secured Party under the Loan Agreement, and the Pledgor has agreed to grant a pledge over the shares it owns in  to the Secured Party.
- D. It is a condition to the effectiveness of the security interest created over the Pledgor's shares in  and the other Collateral pursuant to this Agreement that the Pledgor guarantee the obligations of Project Co to the Secured Party under the Loan Agreement and the Pledgor has agreed to provide such a guarantee strictly on the basis that the recourse of the Pledgor in respect of such guarantee is limited, absolutely, and without exception, to the Collateral in



accordance herewith and the Secured Party has agreed to the strictly limited recourse nature of that guarantee on the terms hereof.

**NOW THEREFORE**, in consideration of the mutual obligations contained herein and for other consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

**ARTICLE 1**  
**INTERPRETATION**

**1.1 Definitions**

Each word and expression (capitalized or not) defined or given an extended meaning in Schedule 1 is used in this Agreement with the defined or extended meaning assigned to it in Schedule 1. Words and expressions defined in the PPSA and/or the STA and used without initial capital letters in this Agreement (including in Schedule 1) have the respective defined meanings assigned to them in the PPSA and/or STA, unless the context otherwise requires.

**1.2 Statutes**

Each reference in this Agreement to any code, statute, regulation, official interpretation, directive or other legislative enactment of any Canadian or foreign jurisdiction (including any political subdivision of any thereof) at any time shall be construed so as to include such code, statute, regulation, official interpretation, directive or enactment and each change thereto made at or before the time in question.

**1.3 References to Agreements and Documents**

Each reference in this Agreement to any agreement or document (including this Agreement and any other term defined in Schedule 1 that is an agreement or document) shall be construed so as to include such agreement or document (including any attached schedules, appendices and exhibits), and each change made to it at or before the time in question.

**1.4 Headings**

The Article and Section headings in this Agreement are included solely for convenience, are not intended to be full or accurate descriptions of the text to which they refer and shall not be considered part of this Agreement.

**1.5 Grammatical Variations**

In this Agreement, unless the context otherwise requires, (a) words and expressions (including words and expressions (capitalized or not) defined or given extended meanings) in the singular include the plural and vice versa (the necessary changes being made to fit the context), and (b) grammatical variations of words and expressions (capitalized or not) defined, given extended meanings or incorporated by reference herein shall be construed in like manner.

**ARTICLE 2**  
**GRANT OF SECURITY FOR OBLIGATIONS**

**2.1**            **Obligations**

- (a)    Limited Recourse Guarantee. Subject at all times to Subsection 2.1(c), the Pledgor hereby irrevocably and unconditionally guarantees payment and performance to the Secured Party, forthwith on demand by the Secured Party following the occurrence and during the continuance of a Trigger Event, of all Obligations. This guarantee shall, subject at all times to Subsection 2.1(c), be a continuing guarantee and shall guarantee the Obligations and any ultimate balance thereof, notwithstanding that the Project Parties may from time to time satisfy the Obligations in whole or in part and thereafter incur further Obligations.
  
- (b)    Limited Recourse Indemnity. In addition, subject at all times to Subsection 2.1(c), the Pledgor hereby agrees to indemnify and save harmless the Secured Party, forthwith on demand by the Secured Party following the occurrence and during the continuance of a Trigger Event, from and against any and all direct and indirect claims, demands, losses, damages, liabilities, charges, obligations, payments and expenses of any nature or kind, howsoever or whenever arising, which the Secured Party may suffer or incur in any way relating to or arising from (i) the failure of the Project Parties to pay and satisfy the Obligations; or (ii) the Obligations or any agreement creating or relating to any or all Obligations in any way being or becoming for any reason whatsoever, in whole or in part, void, voidable, *ultra vires*, illegal, invalid, ineffective or otherwise unenforceable or released or discharged by operation of law or otherwise; provided that any payment actually made by the Pledgor to the Secured Party under Subsection 2.1(a) shall reduce the liability of the Pledgor under this Subsection 2.1(b) by the same amount.
  
- (c)    LIMITED RECOURSE NATURE OF GUARANTEE AND INDEMNITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, THE PROJECT AGREEMENT, THE LOAN AGREEMENT OR ANY OTHER LOAN DOCUMENT, THE LIABILITY OF THE PLEDGOR UNDER THIS AGREEMENT AND THE RECOURSE OF THE SECURED PARTY FOR PAYMENT AND PERFORMANCE OF THE OBLIGATIONS OR ANY OTHER OBLIGATION UNDER THIS AGREEMENT SHALL BE STRICTLY LIMITED TO THE COLLATERAL AND THE PROCEEDS OF REALIZATION OF THE COLLATERAL IN ACCORDANCE WITH THIS AGREEMENT AND NO OTHER RIGHT, RECOURSE OR RESORT SHALL BE HAD UNDER ANY CIRCUMSTANCES TO ANY OTHER ASSETS OF THE PLEDGOR NOR JUDGMENT ISSUED OR OTHER PROCESS LEVIED FOR ENFORCEMENT OR COLLECTION OF ANY SUCH CLAIM OR RIGHT AGAINST THE PLEDGOR, EXCEPT TO THE EXTENT REQUIRED TO REALIZE UPON THE COLLATERAL. FOR GREATER CERTAINTY, UNDER NO CIRCUMSTANCES SHALL THE SECURED PARTY HAVE ACCESS TO PROCEEDS OF THE COLLATERAL THAT WERE DISTRIBUTED TO THE PLEDGOR IN ACCORDANCE WITH THIS AGREEMENT, THE PROJECT AGREEMENT AND THE LOAN AGREEMENT PRIOR TO THE OCCURRENCE OF A TRIGGER EVENT.

**2.2**            **Security**

As general and continuing collateral security, without impairment or novation, for the due payment and performance of the Pledgor Obligations, the Pledgor hereby assigns, conveys, hypothecates, mortgages, charges, pledges and grants a security interest in the Collateral and the Records, as and by way of fixed and specific security, to and in favour of the Secured Party. This grant of security shall be a continuing

grant of security and shall secure the Obligations and any ultimate balance thereof, notwithstanding that the Project Parties may from time to time satisfy the Obligations in whole or in part and thereafter incur further Obligations.

### **2.3 Delivery of Initial Collateral**

The Pledgor shall Transfer the Initial Collateral to the Secured Party, contemporaneously with the execution and delivery hereof, together with, for each item of Initial Collateral, a Power of Attorney, Stock Transfer and an Issuer Acknowledgment, to the Secured Party to be held pursuant hereto.

### **2.4 Delivery of Future Collateral**

The Pledgor shall Transfer each item of Future Collateral to the Secured Party as soon as the Pledgor acquires rights in that item of Future Collateral and in any event, no later than five (5) Business Days after acquiring rights in that item of Future Collateral, together with, for each item of Future Collateral that is a certificated security not registered in the name of a Clearing Agency, a Power of Attorney, Stock Transfer and, to the extent required, Authorizing Resolution, to the Secured Party to be held by the Secured Party pursuant hereto.

### **2.5 Attachment**

The Pledgor agrees that value has been given, that the Pledgor and the Secured Party have not agreed to postpone the time for attachment of the Security and that the Security is intended to attach, as to all of the Collateral in which the Pledgor now has rights, when the Pledgor executes this Agreement and, as to all Collateral in which the Pledgor only has rights after the execution of this Agreement, when the Pledgor first has such rights. For certainty, the Pledgor confirms and agrees that the Security is intended to attach to all present and future Collateral of the Pledgor and each successor of the Pledgor.

### **2.6 Uncertificated Securities**

In the event that any Collateral that is a security is not represented by a certificate, the Pledgor will ensure that at all times either (a) a Clearing Agency is the registered holder of such uncertificated security and the security entitlement to that security is credited to the securities account of the Secured Party.

### **2.7 Perfection by Registration**

The Pledgor shall promptly notify the Secured Party if and each time it (a) changes the location of its chief executive office, principal place of business or principal place of residence to a different jurisdiction (as these terms are used in subsection 7(3) of the PPSA) and of full particulars of such new location, (b) changes its name or adopts a new or different English or French form of name and of such new or different name and (c) changes the location where it maintains the Records and of full particulars of such new location.

### **2.8 Duty of Care**

The Secured Party shall not have any duty of care to the Pledgor with respect to Collateral in physical form which is delivered to the Secured Party to be held by it pursuant to this Agreement, other than to use the same care in the physical custody and physical preservation of such Collateral as it would with its own physical property of like nature. The Secured Party shall have no obligation to (a) take any action with respect to calls, conversions, exchanges, maturities, tenders or other matters relative to the Collateral or (b) take any necessary actions required to preserve rights against any Persons with respect to Collateral.

**ARTICLE 3**  
**DISTRIBUTIONS AND COLLATERAL RIGHTS**

**3.1 Direction to Pay Distributions to the Secured Party**

The Secured Party shall be entitled to receive directly from <\*> all Distributions on Collateral. If the Pledgor receives any Distribution, it agrees to hold such Distribution in trust for the benefit of the Secured Party, to segregate them from its other funds or property and to Transfer them forthwith upon receipt to the Secured Party. Notwithstanding any other provision of this Agreement, any Distributions received by the Pledgor which the Pledgor is entitled to receive and retain in compliance with this Section 3.1, and any Proceeds thereof, shall be automatically released from the Security and cease to constitute "Collateral" hereunder.

**3.2 Distributions on Trigger Event**

Notwithstanding the provisions of Section 3.1, for so long as a Trigger Event has occurred and is continuing, the Pledgor shall not be entitled to receive any Dividends or other Distributions and if the Pledgor receives any such Distribution upon or following the occurrence of, and during the continuance of a Trigger Event, the Pledgor agrees to hold such Distribution received, subject to the Subordination and Postponement Provisions, in trust for the Secured Party, to segregate any such Distribution from the Pledgor's other funds or property and to Transfer them forthwith upon receipt to the Secured Party.

**3.3 Election of the Pledgor Regarding Collateral Rights**

Unless a Trigger Event has occurred and is continuing, the Pledgor may exercise any Collateral Right for any purpose which is not inconsistent with the provisions or intent of the Security or this Agreement and which does not impair the realizable value or restrict the transferability of any Collateral or adversely affect the rights of the Secured Party. For greater certainty, no exercise of a Collateral Right by the Pledgor shall be cast or consent, waiver or ratification given or action taken by the Pledgor which may materially adversely affect the interests of the Secured Party or the value of the Collateral or which would impose any restriction on the transferability of any of the Collateral or impose any obligations or liabilities on the Secured Party.

**3.4 Facilitation of Collateral Rights**

As long as no Trigger Event has occurred, the Secured Party will (a) permit the Pledgor to exercise any Collateral Rights which the Pledgor is permitted to exercise pursuant to and in accordance with the provisions of this Agreement and (b) will forward as soon as reasonably practicable after receipt, all communications it receives from <\*> or any Clearing Agency (if relevant) in relation to the Collateral. Notwithstanding the foregoing, the Pledgor shall not, without the prior written consent of the Secured Party or unless expressly permitted under the Loan Agreement, by the exercise of any of Collateral Rights or otherwise, permit or agree to:

- (i) any variation of the rights attached to or conferred by any of the Collateral;
- (ii) the issuance of rights or shares of any class in the capital stock of <\*>, or any subdivision or consolidation of any such shares, or the issuance of any new interest in the or any subdivision or consolidation of the existing interests in <\*>;
- (iii) the issuance or guarantee of Debt to be undertaken by <\*>;

- (iv) any investment to be made by <\*> outside the ordinary course of its business (other than as permitted in the Loan Agreement);
- (v) any disposition by <\*> of assets outside of the ordinary course of its business or of any securities of its Affiliates or subsidiaries;
- (vi) elect to receive or vote in favour of receiving any Dividends other than in the form of cash;
- (vii) any plan of reorganization, merger, amalgamation, dissolution, liquidation or winding-up or similar plan affecting the corporate structure or existence of <\*>; or
- (viii) any amendment or other change to the constating documents of <\*> or an amendment or material change to the Partnership Agreement.

## **ARTICLE 4**

### **REPRESENTATIONS AND WARRANTIES**

#### **4.1 Representations**

The Pledgor represents and warrants to and in favour of the Secured Party as follows:

- (a) the Pledgor is duly organized and validly existing under the law of the jurisdiction of its formation or incorporation and, if relevant under such laws, is in good standing;
- (b) the Pledgor has the power to execute this Agreement and any other document related to this Agreement to which it is a party, to deliver this Agreement and any other document related to this Agreement that it is required by this Agreement to deliver and to perform the Pledgor's obligations under this Agreement and has taken all necessary action to authorize such execution, delivery and performance;
- (c) such execution, delivery and performance of this Agreement do not violate or conflict with any law applicable to the Pledgor, any provision of the documents governing its legal formation and existence, any order or judgment of any court or other agency of government applicable to the Pledgor or any of the Pledgor's assets or any contractual restriction binding on or affecting the Pledgor or any of the Pledgor's assets;
- (d) all governmental and other consents that are required to have been obtained by the Pledgor with respect to this Agreement have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and
- (e) its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and, subject as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding, in equity or at law)).

#### **4.2 Collateral Representations**

The Pledgor represents and warrants to the Secured Party as follows:

- (a) it has the power and capacity to own, Transfer, dispose and grant a Encumbrance in the Collateral as contemplated hereby;
- (b) the Initial Collateral constitutes <\*>% of the duly authorized and issued <\*> in the Capital Stock of <\*>, fully paid and non-assessable;
- (c) upon Transfer of Collateral to the Secured Party pursuant to the Intercreditor Agreement in the manner contemplated by Section 2.3 or 2.4 herein, as applicable, the Secured Party will have control over a valid and perfected security interest in such Securities;
- (d) except for Permitted Encumbrances, the Pledgor is the sole legal and beneficial owner of the Collateral with good and marketable rights to, the Collateral, free and clear of any Encumbrances. No security agreement, financing statement or other document with respect to any or all of the Collateral is on file or on record in any public office, except for filings in respect of Permitted Encumbrances. The execution and delivery of this Agreement by the Pledgor and any document delivered by the Pledgor pursuant to this Agreement and the performance of its obligations hereunder will not:
  - (i) oblige the Pledgor to grant any Encumbrance on the Collateral to any Person other than the Secured Party; or
  - (ii) result in or permit the acceleration or maturity of any indebtedness or other obligations of the Pledgor under any agreement to which the Pledgor is a party or by which the Pledgor or any of the Collateral may be bound; or
  - (iii) result in a breach of or default under any agreement to which the Pledgor is party; and
- (e) the full legal name of the Pledgor at the date hereof is “<\*>”, the Pledgor has not adopted a French form of its legal name or a combined English/French or French/English form of name, the location of its principal place of residence and chief executive office is in the Province of Ontario, its location (within the meaning assigned in Section 7(3) of the PPSA) is in the Province of Ontario and the Records are either located at its address for Notices prescribed by Section 9.7 or at a location which has been notified to the Secured Party pursuant to Section 2.7.

#### **4.3 Additional Collateral**

The Transfer to the Secured Party or its nominees of a Distribution or other collateral substituted for, additional to or otherwise constituting part of the Collateral (“**Additional Collateral**”) shall also constitute a representation and warranty by the Pledgor that the above representations and warranties set forth in Section 4.2(a) and (c) to (e) inclusive, and if the Additional Collateral is a security or security entitlement, (b), are true, accurate and complete in respect of that Additional Collateral as if they were the Initial Collateral.

#### **4.4 Repetition of Representations and Warranties**

The representations and warranties made pursuant to this Article 4 shall be deemed to be repeated each time the representations and warranties of Project Co are made or deemed to be repeated under or pursuant to the Project Agreement or the Loan Agreement.

**4.5 Survival of Representations and Warranties**

All agreements, representations, warranties and covenants made by the Pledgor in this Agreement are material, will be considered to have been relied on by the Secured Party and will survive the execution and delivery of this Agreement or any investigation made at any time by or on behalf of the Secured Party and any satisfaction of the Obligations until the Obligations are paid in full.

**ARTICLE 5**  
**DEALING WITH COLLATERAL**

**5.1 Restrictions on Dealing with Collateral**

The Pledgor shall not, without the prior consent in writing of the Secured Party, dispose of Collateral or create, assume or suffer to permit to exist any Encumbrance upon Collateral, other than Permitted Encumbrances. Any purported disposal of or grant of any Encumbrance on Collateral by the Pledgor that is not in compliance with this Section 5.1 shall be void.

**5.2 Receipt and Delivery of Collateral**

On or after the repayment in full of the Senior Indebtedness, the Secured Party or its nominee may receive and deliver Future Collateral through the clearing service of a Clearing Agency. Neither the Secured Party nor its nominee shall be responsible for any delay, interruption or cessation of communication or operation of data processing facilities used by a Clearing Agency or for any delay, error or omission of a Clearing Agency. The Secured Party and its nominee may rely upon any communications received from a Clearing Agency respecting any Collateral.

**5.3 Transfer Secured Party Direction**

The Pledgor shall, if requested to do so by the Secured Party, sign, execute and deliver to the Secured Party an irrevocable direction in such form as the Secured Party may require with respect to payment or delivery of Dividends, Distributions, share certificates, other documents and other communications in respect of the Collateral.

**ARTICLE 6**  
**DEFAULT AND REMEDIES**

**6.1 Effect of Default**

Upon the occurrence of and during the continuation of a Trigger Event, the Security shall become enforceable and the Secured Party shall have the rights set out in this Article 6.

**6.2 Right to Appoint a Receiver**

The Secured Party may appoint by instrument in writing one or more Receivers of any Collateral. Any such Receiver shall have the rights set out in this Article 6. In exercising such rights, any Receiver shall act as and for all purposes shall be deemed to be the agent of the Pledgor and the Secured Party shall not be responsible for any act or default of any Receiver. The Secured Party may remove any Receiver and appoint another from time to time. An officer or employee of the Secured Party may be appointed as a Receiver. No Receiver appointed by the Secured Party need be appointed by, nor need its appointment be ratified by, or its actions in any way supervised by, a court. If two or more Receivers are appointed to act concurrently, they shall, unless otherwise expressly provided in the instrument appointing them, so act

severally and not jointly and severally. The appointment of any Receiver or anything done by a Receiver or the removal or termination of any Receiver shall not have the effect of constituting any Finance Party a mortgagee in possession in respect of the Collateral.

### **6.3 Rights of a Receiver**

Any Receiver appointed by the Secured Party shall have the following rights:

- (a) *Power of Possession.* Any Receiver may at any time enter upon any premises owned, leased or otherwise occupied or controlled by the Pledgor or where any Collateral is or Records are located to take possession of, or remove any Collateral or Records, and may use whatever means the Receiver considers advisable to do so.
- (b) *Power of Sale.*
  - (i) Any Receiver may sell, lease, consign, license, assign or otherwise dispose of any Collateral on any stock exchange where Collateral is listed, in any over-the-counter market, by public auction, private tender or private contract with or without notice, advertising or any other formality, all of which are hereby waived by the Pledgor to the extent permitted by Applicable Law. Any Receiver may, at its discretion, establish the terms of such disposal, including terms and conditions as to credit, upset, reserve bid or price. All payments made pursuant to such disposals shall be credited against the Obligations only as they are actually received. Any Receiver may buy in, rescind or vary any contract for the disposal of any Collateral and may dispose of any Collateral again without being answerable for any loss occasioned thereby. Any such disposal may take place whether or not the Receiver has taken possession of the Collateral. The exercise by the Receiver of any power of sale does not preclude the Receiver from further exercise of its power of sale in accordance with this clause.
  - (ii) Any Receiver is hereby authorized to comply with any limitation or restriction in connection with any disposal of any Collateral pursuant to Subsection 6.3(b)(i) as it may be advised by legal counsel is necessary in order to avoid any violation of Applicable Law (including compliance with such procedures as may restrict the number of prospective bidders and purchasers, require that such prospective bidders and purchasers have certain qualifications, and restrict such prospective bidders and purchasers to Persons who will represent and agree that they are purchasing for their own account for investment and not with a view to the distribution or resale of such Collateral), or in order to obtain any required approval of the sale or of the purchaser by any governmental body or official, and the Pledgor agrees that such compliance shall not result in such sale being considered or deemed not to have been made in a commercially reasonable manner, nor shall any Receiver be liable nor accountable to the Pledgor for any discount allowed by reason of the fact that such Collateral is disposed of in compliance with any such limitation or restriction.
  - (iii) Any Receiver may, in its discretion, approach a restricted number of potential purchasers to effect any disposal of any Collateral pursuant to Subsection 6.3(b)(i) and the Pledgor acknowledges that a disposal under such circumstances may yield a lower price for Collateral than would otherwise be obtainable if the same were registered and disposed of in the open market. The Pledgor agrees that:



- (A) in the event any Receiver shall so dispose of Collateral at such a private disposal, the Receiver shall have the right to rely upon the advice and opinion of any Person who regularly deals in or evaluates securities of the type constituting the Collateral as to the best price obtainable in a commercially reasonable manner; and
- (B) such reliance shall be conclusive evidence that the Receiver handled such matter in a commercially reasonable manner.
- (c) *Pay Encumbrances.* Any Receiver may pay any liability secured by any actual or threatened Encumbrance against any Collateral. A Receiver may borrow money for the maintenance, preservation or protection of any Collateral and may grant Encumbrances in any Collateral in priority to the Security as security for the money so borrowed.
- (d) *Dealing with Collateral.* Any Receiver may seize, collect, realize, dispose of, enforce, release to third parties or otherwise deal with any Collateral in such manner, upon such terms and conditions and at such time as it deems advisable without notice to the Pledgor (except as otherwise required by Applicable Law), and may charge on its own behalf and pay to others its costs and expenses (including legal, Receiver’s and accounting fees and expenses on a full indemnity basis) incurred in connection with such actions.
- (e) *Powers re Collateral.* Any Receiver may have, enjoy and exercise all of the rights of and enjoyed by the Pledgor with respect to the Collateral or incidental, ancillary, attaching or deriving from the ownership by the Pledgor of the Collateral, including the right to commence or continue litigation to preserve or protect Collateral and the right to grant or agree to Encumbrances over or pertaining to the whole or any part of the Collateral.
- (f) *Retain Services.* Any Receiver may retain the services of such lawyers, accountants, appraisers, investment advisors and other consultants as the Receiver may deem necessary or desirable in connection with anything done or to be done by the Receiver or with any of the rights of the Receiver set out herein and pay their commissions, fees and disbursements (which payment shall constitute part of the Receiver’s disbursements reimbursable by the Pledgor hereunder). The Pledgor shall forthwith on demand reimburse the Receiver for all such payments.

#### **6.4 Right to have Court Appoint a Receiver**

The Secured Party may at any time, apply to a court of competent jurisdiction for the appointment of a Receiver, or other official, who may have powers the same as, greater or lesser than, or otherwise different from, those capable of being granted to a Receiver appointed by the Secured Party pursuant to this Agreement.

#### **6.5 Secured Party may Exercise Rights of a Receiver**

In lieu of, or in addition to, exercising its rights under Sections 6.3 and 6.4, the Secured Party has, and may exercise, any of the rights which are capable of being granted to a Receiver appointed by the Secured Party pursuant to this Agreement.

**6.6 General Rights of the Secured Party on Default**

The Secured Party shall be entitled, but not bound to exercise all Collateral Rights and any rights (a) which are available to a secured party at law, including under the PPSA, (b) which are set out in this Agreement or any other agreement relating to the Obligations, or (c) which an owner of Collateral may have at any time, including, to the extent applicable, the right to attend and to vote at all meetings of holders of Collateral.

**6.7 Retention of Collateral**

The Secured Party may elect to retain any Collateral in satisfaction of the Obligations.

**6.8 Application of Payments Against Obligations**

Any payments received in respect of the Obligations from time to time, and any monies realized on any Collateral shall, notwithstanding any appropriation by the Pledgor, be appropriated by the Secured Party against such Obligations as the Loan Agreement shall require or permit, and the Secured Party shall have the right to change any appropriation at any time. If monies are received or appropriated by the Secured Party in respect of Obligations not yet due, they shall be credited to a cash collateral account opened by the Secured Party for such purpose in its own records of account, as the Secured Party may in its discretion decide, and appropriated to the Obligations when due or Transferred to the Secured Party to be dealt with in accordance with the Loan Agreement.

**6.9 Validity of Sale**

No Person dealing with the Secured Party or any Receiver or with any representative of the Secured Party or any Receiver shall be concerned to inquire whether the Security has become enforceable, whether any right of the Secured Party or any Receiver has become exercisable, whether any Obligations remain outstanding or otherwise as to the propriety or regularity of any dealing by the Secured Party or any Receiver with any Collateral or to see to the application of any money paid to the Secured Party or any Receiver, and in the absence of fraud on the part of such Person such dealings shall be deemed, as regards such Person, to be within the rights hereby conferred and to be valid and effective accordingly.

**6.10 Deficiency**

If the proceeds of the realization of the Collateral are insufficient to repay the Obligations in full, the Pledgor shall not be liable to pay the deficiency to the Secured Party.

**ARTICLE 7**  
**EXERCISE OF RIGHTS**

**7.1 Rights Cumulative**

All of the Secured Party's rights arising under, by reason of, or otherwise in respect of this Agreement are cumulative, may be exercised separately or in combination and shall be in addition to and not in substitution for any other right which the Secured Parties may have pursuant to this Agreement or any other agreement, or at law or in equity, by statute or otherwise; provided that, the Secured Party shall not be bound to exercise any such rights. The Security does not replace or otherwise affect any existing or future security held by the Secured Party. Neither the commencement of any proceeding, nor the refraining from so doing, nor any dealing with the Collateral or any other security for any Obligations shall release or affect the Security.

**7.2 Waivers**

The Secured Party may waive any default or breach of the provisions of this Agreement, and may grant renewals, extensions of time and other indulgences, take and give up Collateral, accept compositions, grant releases and discharges, perfect or fail to perfect any security and otherwise deal with or fail to deal with the Pledgor and with <\*>, guarantors, sureties and others and with the Collateral or other collateral as the Secured Party may see fit, all without prejudice to the Obligations, the Security, the Collateral or the rights of the Secured Party hereunder. The Secured Party shall not be obliged to exhaust its recourse against the Pledgor or any other security which it may hold before realizing on or otherwise dealing with Collateral. None of the Secured Party’s rights hereunder with respect to Collateral shall be impaired, affected, released or discharged in any way by any circumstance, act, omission, matter or thing which, but for this provision, might operate to so affect such or any other rights of the Secured Party hereunder.

**7.3 Limitation of the Secured Party’s Liability**

Neither the Secured Party nor any Receiver shall be liable or accountable for any failure by the Secured Party or any Receiver to preserve the value of any Collateral, to seize, collect, realize upon, dispose of, exercise, enforce or preserve rights under or otherwise deal with any Collateral or exercise, enforce or preserve rights against <\*> or any other Person in respect of any Collateral, nor shall any of them be bound to institute proceedings to enforce any rights of the Secured Party, the Pledgor or any other Person in respect of Collateral. Neither the Secured Party nor any Receiver shall be liable or responsible for any claim or loss and expense whatever which may accrue in consequence of any such failure, except to the extent determined by a final judgment to have directly resulted from such party’s own gross negligence or wilful misconduct. The Secured Party and any Receiver shall not, in any circumstance, have any obligation to the Pledgor for special, indirect, punitive or consequential damages suffered by the Pledgor arising from any action or omission of either of them.

**7.4 No Marshalling**

The Pledgor hereby waives any rights it may have under Applicable Law to assert the doctrine of marshalling or to otherwise require the Secured Party to marshal any Collateral or any other collateral of the Pledgor or any other Person for the benefit of the Pledgor.

**7.5 Currency Conversions**

If the Secured Party receives or recovers under this Agreement payment of any Obligation in a currency (the “**Recovered Amount**”) which is different than the currency in which the Obligation is due or owing (the “**Contract Currency**”), the Secured Party may convert the Recovered Amount to the Contract Currency at the rate of exchange which the Secured Party is able, acting in a reasonable manner and in good faith, to purchase the Contract Currency and apply the converted amount in accordance with the provisions of Section 6.8.

**ARTICLE 8**  
**DISCHARGE**

**8.1 Discharge**

Upon payment in full to the Secured Party of the full amount of all Obligations and performance by the Pledgor of all other Obligations, the Secured Party will, within a reasonable time following confirmation of such fact and receipt of a written request from the Pledgor and at the sole cost and expense of the Pledgor, Transfer any remaining Collateral to the Pledgor and execute and deliver to the

Pledgor such documents (without recourse to or any representation or warranty of any kind by the Secured Party) as shall be requisite to discharge the Security and Transfer any remaining Collateral to the Pledgor.

## **8.2 Partial Discharges**

Within a reasonable time following its receipt of a written request from the Pledgor to transfer any particular item of Collateral to the Pledgor and release and discharge the Security over that particular item of Collateral and confirmation by the Secured Party of such fact, and at the sole cost of the Pledgor, the Secured Party will Transfer such particular item of Collateral to the Pledgor and execute and deliver to the Pledgor such documents (without recourse to or any representation or warranty of any kind by the Secured Party) as shall be requisite to discharge the Security over that particular item of Collateral and Transfer it to the Pledgor.

## **8.3 Avoidance of Payments**

Any settlement, discharge or release between any Secured Party and the Pledgor shall be conditional upon no security or payment granted or made to any Secured Party by the Pledgor or any other Person being avoided or reduced by virtue of any provisions or enactments relating to fraudulent conveyance, assignment and preferences, bankruptcy, insolvency, liquidation or similar matters for the time being in force and, in the event of such security or payment being so avoided or reduced, the Secured Party shall be entitled to recover the value or amount of such security or payment from the Pledgor and from the Security subsequently as if such settlement, discharge or release had not occurred.

# **ARTICLE 9 GENERAL PROVISIONS**

## **9.1 Power of Attorney**

The Pledgor hereby appoints the Secured Party to be the attorney of the Pledgor with full power of substitution to do on the Pledgor’s behalf anything in relation to the Collateral that the Pledgor can lawfully do by an attorney, including to do, make and execute and deliver all such documents, entitlement orders, acts, matters or things, with the right to use the name of the Pledgor, whenever and wherever it deems necessary or expedient, to carry out the Pledgor’s Obligations or complete any missing information in any document delivered to the Secured Party pursuant to this Agreement or to ensure that any Collateral is in the control of the Secured Party subject to the perfected security interest contemplated hereby. Such power of attorney, being granted by way of security and coupled with an interest, is irrevocable and shall survive any legal incapacity of the Pledgor until the Obligations are paid in full.

## **9.2 Reimbursement**

The Pledgor shall forthwith reimburse each of the Secured Party and the Receiver on demand and on a full indemnity basis for all payments, borrowings, fees, costs and expenses (including legal fees, costs and expenses on a solicitor and client basis) incurred by each of the Secured Party and the Receiver in connection with the exercise of any of the rights granted to it hereunder or the creation, perfection, protection or enforcement of the Security in the Collateral.

## **9.3 General Indemnity**

The Pledgor will indemnify the Secured Party and its representatives, (each, an “**Indemnified Party**”) in respect of, and save each Indemnified Party fully harmless from and against, all claims and losses and expenses which an Indemnified Party may suffer or incur in connection with (a) the exercise by the

Secured Party of any of its rights hereunder or (b) any breach by the Pledgor of, or any failure by the Pledgor to observe or perform, any of the Obligations, save that (i) the Pledgor shall not be obliged to so indemnify any Indemnified Party to the extent such claims and losses and expenses are determined by a final judgment to have directly resulted from the wilful misconduct or gross negligence of the Indemnified Party and (ii) recourse to recover payment of the Obligations shall be limited as provided in Section 2.1(c). The Secured Party shall be constituted as the trustee of each Indemnified Party, other than itself, and shall hold and enforce each such other Indemnified Party’s rights under this Section 9.3 for their respective benefits.

#### **9.4 Set-Off, Combination of Accounts and Crossclaims**

The Obligations shall be paid by the Pledgor without regard to any equities between the Pledgor and any of the Secured Parties or any right of set-off, combination of accounts or cross-claim. Any indebtedness owing by the Secured Parties to the Pledgor, direct or indirect, extended or renewed, actual or contingent, mutual or not, may be set off or applied against, or combined with, the Obligations at any time either before or after maturity, without demand upon or notice to anyone and the terms of such indebtedness shall be changed hereby to the extent necessary to permit such set-off, application and combination.

#### **9.5 No Merger**

This Agreement shall not operate by way of a merger of the Obligations or of any guarantee, agreement or other document by which the Obligations now or at any time hereafter may be represented or evidenced. Neither the taking of any judgment nor the exercise of any power of seizure or disposition shall extinguish the liability of the Pledgor to pay and perform the Obligations nor shall the acceptance of any payment or alternate security constitute or create any novation. No covenant, obligation, representation or warranty of the Pledgor herein shall merge in any judgment.

#### **9.6 Change**

No agreement purporting to change (other than an agreement purporting to waive performance or compliance with) any provision of this Agreement shall be binding upon the Pledgor or the Secured Party unless that agreement is in writing and signed by the Pledgor and the Secured Party. No waiver of performance or compliance with any provision hereof shall be binding upon any party hereto unless such waiver is in writing signed by the parties sought to be bound thereby.

#### **9.7 Notices**

Any notice, demand, consent, approval or other communication (a “**Notice**”) to be made or given under or in connection with this Agreement shall be in writing and may be made or given by personal delivery, by facsimile, registered mail or by e-mail to the address, facsimile number or e-mail address of the intended recipient set out in its signature page of this Agreement or, in each case, to such other address as such party may from time to time notify any other in accordance with this Section 9.7. Any Notice made or given by personal delivery shall be conclusively deemed to have been given at the time of actual delivery or, if made or given by facsimile or e-mail, at the time of sending if sent before 4:00 p.m. (in the place of intended receipt) on a Business Day or if sent otherwise at the opening of business on the first Business Day following the transmittal thereof; provided that, the party sending such Notice receives confirmation of receipt from the intended recipient’s facsimile machine or e-mail server.

#### **9.8 Time of the Essence**

Time is and shall remain of the essence of this Agreement and each of its provisions.

**9.9 Governing Law**

This Agreement shall be construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein and shall be treated in all respects as an Ontario contract. Any legal action or proceeding with respect to this Agreement shall be brought in the courts of the Province of Ontario and such courts shall have jurisdiction to deal with all matters relating to the interpretation of, or enforcement of rights under this Agreement and each of the parties hereto hereby irrevocably attorns to the non-exclusive jurisdiction of such courts.

**9.10 Entire Agreement**

There are no representations, warranties, covenants, agreements or acknowledgments whether direct or collateral, express or implied, that form part of or affect this Agreement or any Collateral, other than as expressed herein. The execution of this Agreement has not been induced by, nor does the Pledgor rely upon or regard as material, any representations, warranties, conditions, other agreements or acknowledgments not expressly made in this Agreement and the other written agreements and other documents to be delivered pursuant hereto or contemporaneously herewith.

**9.11 Invalidity**

If any provision of this Agreement is found to be invalid or unenforceable, by a final judgment of a court of competent jurisdiction, to the fullest extent permitted by Applicable Law, (a) in such jurisdiction that provision shall be deemed to be severed herefrom and the remaining provisions of this Agreement shall not be affected thereby but shall remain valid and enforceable and (b) such invalidity or unenforceability shall not affect the validity or enforceability of such provision in any other jurisdiction. The Pledgor shall, at the request of the Secured Party, negotiate in good faith with the Secured Party to replace any invalid or unenforceable provision contained in this Agreement with a valid and enforceable provision that has the commercial effect as close as possible to that of the invalid or unenforceable provisions, to the extent permitted by Applicable Law.

**9.12 Successors and Assigns**

This Agreement and the rights and obligations of the Secured Party hereunder may be assigned and transferred by the Secured Party to any successor or replacement Secured Party appointed by any ministry or successor ministry of the Province of Ontario pursuant to the Loan Agreement and any such assignee and transferee shall be entitled to all of the rights and bound by all of the obligations of the Secured Party hereunder. The Pledgor may not assign this Agreement or any right or obligation hereunder. This Agreement shall enure to the benefit of each of the Secured Parties and any Receiver and their respective successors and assigns and shall bind the Pledgor and its legal representatives (including receivers) and its successors and permitted assigns. Each reference in this Agreement to any Person (including the Pledgor and any Indemnified Party) shall (to the extent the context so admits) be construed so as to include the successors of that Person and the assigns of that Person (in the case of the Borrower, the Pledgor and each Finance Party, only as permitted by this Agreement).

**9.13 Further Assurances**

The Pledgor agrees to take such actions and execute and deliver such documents as may be reasonably requested by the Secured Party from time to time in order to give effect to the terms, conditions, provisions, purpose and intent of this Agreement.

**9.14                    Receipt of Copy**

The Pledgor acknowledges receipt of a copy of this Agreement and the Loan Agreement and copies of the verification statements pertaining to the financing statements filed under any personal property security statutes of any jurisdiction selected by the Secured Party in respect of this Agreement. To the extent permitted by Applicable Law, the Pledgor irrevocably waives the right to receive a copy of each financing statement or financing change statement (or any verification statement pertaining thereto) filed under any personal property security statutes by the Secured Party in respect of this Agreement and releases any and all claims or causes of action it may have against the Secured Party for failure to provide any such copy.

**9.15                    Information**

At any time the Secured Party may provide to any Person that claims an interest in Collateral copies of this Agreement or information about it or about the Collateral or the Obligations.

**9.16                    Execution**

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart. Transmission of a copy of an executed signature page of this Agreement (including any change to this Agreement) by one party to this Agreement to the other by facsimile transmission or e-mail in pdf format in accordance with Section 9.7 shall be as effective as delivery of a manually executed counterpart hereof.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

**Amended and Restated Project Agreement – Schedule 8**  
**2015 Pan/Parapan American Games Athletes' Village Project** **Execution Version**

TO WITNESS this Agreement, the parties hereto have caused this Agreement to be duly executed as of the date set out at the commencement of this Agreement.

**PLEDGOR:**

<\*>

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

***Notices to Pledgor:***

<\*>

Attention: \_\_\_\_\_

<\*>

Telephone: \_\_\_\_\_

<\*>

Fax: \_\_\_\_\_

<\*>

Email: \_\_\_\_\_

<\*>



**SECURED PARTY:**

**HER MAJESTY THE QUEEN IN RIGHT OF  
ONTARIO, as represented by the MINISTER OF  
INFRASTRUCTURE, as represented by ONTARIO  
INFRASTRUCTURE AND LANDS CORPORATION**

By: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

***Notices to Secured Party:***

•

Attention: •

Telephone: •

Fax: •

Email: •

**SCHEDULE 1**

**DEFINITIONS**

**1. Defined Terms**

Unless the context otherwise requires, in this Agreement:

**“Additional Collateral”** is used with the defined meaning assigned to it in Section 4.3.

**“Agreement”** means this Agreement and all schedules attached hereto.

**“Applicable Law”** is used with the defined meaning assigned in the Project Agreement and the Loan Agreement.

**“Authorizing Resolution”** in relation to <\*> means a true copy of a resolution of the directors, unanimous shareholder agreement or approval of the partners or trustees of <\*> (as the Secured Party shall require) substantially in the form of Schedule 2, changed in such manner as the Secured Party may require.

**“Business Day”** means is used with the defined meaning assigned in the Project Agreement and the Loan Agreement.

**“Capital Stock”** means common shares, preferred shares, partnership interests or trust units or other equivalent equity interests (howsoever designated) in a body corporate, partnership, trust or other artificial body.

**“Clearing Agency”** means The Canadian Depository for Securities Limited, The Depository Trust Company, or any other depository in Canada, the United States of America or elsewhere or any book-based transfer register acceptable to the Secured Party in its sole discretion.

**“Collateral”** means (i) the Initial Collateral, (ii) any other securities or security entitlements to securities issued by <\*> in which the Pledgor now or hereafter has rights, (iii) any other personal property which the Secured Party agrees to hold as collateral hereunder in substitution for or in addition to the Collateral described elsewhere in this definition, (iv) all Collateral Rights, (v) all Distributions, whether held in a collateral account or otherwise, (vi) all Dividends, (vii) all Proceeds of any property referred to in this definition and (viii) all rights of the Pledgor in and to any of the property referred to in this definition, and (as the context so admits) any item or part of any of the foregoing.

**“Collateral Right”** means any right that a holder of Collateral may exercise now or in the future in relation to such Collateral, whether pursuant to the constitutional documents of <\*>, any shareholder, partnership or voting trust agreement or any other agreement affecting rights in any Capital Stock of <\*>, or otherwise, including the right to receive all Distributions and Dividends declared or payable on or in respect of Collateral and the income or Proceeds of Collateral, the right to vote Collateral, any right to acquire more Collateral of <\*>, any right to convert or exchange Collateral for any other securities or other property and any dissent and appraisal rights associated with Collateral.

**“Debt”** is used with the defined meaning assigned in the Loan Agreement.

**“Distribution”** means (i) any and all securities hereafter issued by <\*> to any holder of Collateral, including the security entitlements thereto, (ii) any payment or distribution made, or amount or property received, in respect of Collateral, whether in cash, in kind or in Capital Stock, notes, debentures, instruments, securities or any other form of property, including any property received in exchange therefor, (iii) any money, funds, cash equivalents or other property arising from the renewal or reinvestment of Collateral, (iv) any Redemption Payment, (v) any Dividend, and (vi) any Proceeds of any item or part of any Collateral.

**“Dividend”** means any cash dividend declared out of profits, distributable cash or other like measure of <\*> in the ordinary course on securities or other property comprised in the Collateral.

**“Drawdown”** is used with the defined meaning assigned in the Loan Agreement.

**“Encumbrance”** is used, prior to the date of the first Drawdown under the Loan Agreement, with the defined meaning assigned under the Project Agreement and, after such date, with the defined meaning assigned in the Loan Agreement.

**“Future Collateral”** means Collateral in which the Pledgor only has rights after the time this Agreement is executed and delivered by the Pledgor.

**“HMQ Project Obligations”** is used with the defined meaning assigned in the Project Agreement.

**“Indemnified Party”** is used with the defined meaning assigned in Section 9.3.

“**Initial Collateral**” means <\*> in the capital of the <\*> (as constituted as at the date hereof) represented by certificate number <\*> dated \_\_\_\_\_, 20\_\_.

“**Intellectual Property**” is used with the defined meaning assigned in the Project Agreement.

“**Intercreditor Agreement**” means that intercreditor agreement dated as of ●, 2011 among the AFP Agent, the Secured Party, Project Co and [REDACTED], as amended, restated and/or modified from time to time.

“**Issuer Acknowledgment**” means an originally executed copy of an acknowledgment from <\*> in substantially the form of Schedule 3, changed in such manner as the Secured Party may require.

“**Loan Agreement**” is used with the defined meaning assigned in the Recitals to this Agreement.

“**Loan Documents**” is used with the defined meaning assigned in the Loan Agreement.

“**Loan Obligations**” means all indebtedness, liabilities, covenants, obligations, agreements and undertakings, direct or indirect, absolute or contingent, matured or unmatured, as principal or surety, which are now or may become at any time and from time to time hereafter due, owing and payable by Project Co to the Secured Party, or which remain owing and unpaid to the Secured Party, at any time and from time to time existing or arising under, or by virtue of or otherwise in connection with the Loan Agreement and the other Loan Documents, whether incurred by Project Co alone or jointly with any other Person or Persons, or otherwise howsoever and including all out-of-pocket expenses (including counsel fees and disbursements) incurred by the Secured Party or any other Person acting on its behalf enforcing any of its rights.

“**Obligations**” means the HMQ Project Obligations and the Loan Obligations.

“**Partnership Agreement**” means ● [Description of applicable Partnership Agreement to be inserted]

“**Person**” is used with the defined meaning assigned in the Project Agreement and the Loan Agreement.

“**Permitted Encumbrances**” is used with the defined meaning assigned in the Loan Agreement.

“**Pledgor**” means <\*>, existing as a <\*> formed under the laws of <\*> as at the date hereof.

“**Pledgor Obligations**” means those obligations of the Pledgor under this Agreement including, without limitation, those set out in Sections 2.1(a) and 2.1(b).

“**Power of Attorney**” in relation to <\*> means an originally executed copy of a power of attorney issued in relation to the Pledgor’s Capital Stock in <\*> substantially in the form of Schedule 4, changed in such manner as the Secured Party may require, undated and signed in blank by the Pledgor.

“**PPSA**” means the *Personal Property Security Act* (Ontario) and the regulations issued thereunder.

“**Proceeds**” means proceeds derived from any dealing with Collateral or proceeds of proceeds in which the Pledgor now or hereafter has rights, and (as the context so admits) any item or part thereof.

“**Project Co Event of Default**” is used with the defined meaning assigned in the Project Agreement.

“**Project Documents**” is used with the defined meaning assigned in the Project Agreement.

“**Project Parties**” means Dundee Kilmer Developments L.P., [REDACTED].

“**Receiver**” means any receiver or receiver and manager for Collateral appointed by the Secured Party pursuant to this Agreement or by a court on application by the Secured Party.

“**Records**” means all books, correspondence, credit files, records, invoices, tapes, cards, computer files and documents in which transactions and other information related to Collateral are recorded.

“**Redemption Payment**” means any payment or distribution made, or amount received, in connection with (i) a maturity, redemption, retraction or acquisition of Collateral, (ii) any statutory arrangement involving <\*>, (iii) a partial or total liquidation, winding up, bankruptcy, proposal or dissolution of <\*>, (iv) a reduction of capital, capital surplus or paid-in-surplus by <\*> or (v) the purchase of Collateral.

“**Secured Parties**” means the Secured Party, any Receiver, and the other Finance Parties, and (as the context so admits) each and any of them.

“**Security**” means any and all Encumbrances granted by the Pledgor to the Secured Party in this Agreement.

“**STA**” means the *Securities Transfer Act* (Ontario).

“**Stock Transfer**” in relation to <\*> means an originally executed copy of a transfer of Capital Stock in <\*>, substantially in the form of Schedule 5, changed in such manner as the Secured Party may require, undated and signed in blank by the Pledgor.

“**Transfer**” means, with respect to the following items comprised in Collateral and in accordance with the instructions of the intended recipient:

- (i) in the case of cash or any bill of exchange, payment or delivery by wire or funds transfer or physical deposit (enclosed in blank if a bill of exchange) into one or more bank accounts specified by the recipient;
- (ii) in the case of certificated securities not held by a Clearing Agency, delivery in appropriate physical form to the recipient (or its designated securities intermediary for credit to a securities account maintained by the recipient with such securities intermediary) accompanied by duly executed instruments of transfer, endorsement in blank for transfer, transfer tax stamps and any other documents necessary to constitute an effective endorsement to the recipient (or its designated securities intermediary);
- (iii) in the case of securities held in a Clearing Agency, the giving of an entitlement order to the relevant securities intermediary, together with a written copy thereof to the recipient, sufficient if complied with to result in an effective endorsement of the relevant security entitlement to the recipient; and

- (iv) in the case of uncertificated securities not held in a Clearing Agency, the giving of an entitlement order to <\*>, together with a copy thereof to the recipient, sufficient if complied with to result in the relevant securities being registered in the name of the recipient.

**“Trigger Event”** means any of (i) a Project Co Event of Default, (ii) an Event of Default or (iii) termination of the Project Agreement under Section 44 of the Project Agreement.

## 2. **Extended Meanings**

To the extent the context so admits, in this Agreement the following words and expressions shall be given the extended meanings set out opposite them:

an **“agreement”** - any agreement, oral or written, simple contract or specialty, bond, bill of exchange, indenture, instrument or undertaking.

an **“authorization”** – any authorization, approval, consent, exemption, licence, permit, franchise, quota, privilege or no-action letter from any governmental authority or from any Person in connection with any easements or contractual rights.

**“change”** - change, modify, alter, amend, supplement, extend, renew, compromise, novate, replace, terminate, release, discharge, cancel, suspend or waive.

**“claim”** - claim, claim over, cross-claim, counter-claim, defence, demand, liability, suit, action or proceeding, judgment, order or award of any court, other governmental authority, arbitrator or other alternative dispute resolution authority.

**“dispose”** - sell, transfer, assign or otherwise dispose of any property, or the commercial benefits of use or ownership of any property, including the right to profit or gain therefrom, whether in a single transaction or in a series of related transactions.

a **“document”** - an agreement in writing or a certificate, notice, other document or instrument.

**“final judgment”** - a judgment, order, declaration or award of a court, other governmental authority, arbitrator or other alternative dispute resolution authority of competent jurisdiction from which no appeal may be made or from which all rights of appeal have expired or been exhausted.

a **“government”** - (i) the Crown in right of Canada or in the right of any Province of Canada, (ii) the government of a Territory in Canada, (iii) a municipality in Canada or (iv) the government of a foreign country or any political subdivision of it.

**“governmental authority”** – any court, administrative tribunal, regulatory authority, government, union of nations or any agency or other authority of a government or union of nations.

a **“guarantee”** - any guarantee, indemnity, letter of comfort or other assurance made in respect of any indebtedness, other obligation or financial condition of another.

**“include”** - include without limitation, and such term shall be not construed to limit any word or statement which it follows to the specific items or matters immediately following it or similar terms or matters.

**“losses and expenses”** - losses, costs, expenses, damages, penalties and judgments and awards of any court or other governmental authority or arbitrator, including any applicable court or arbitration costs and legal fees and disbursements on a solicitor and client basis.

**“obligations”** - indebtedness, obligations, promises, covenants, responsibilities, duties and liabilities (actual or contingent, direct or indirect, matured or unmatured, now existing or arising hereafter), whether arising by agreement or statute, at law, in equity or otherwise.

**“paid in full”** and **“repaid in full”** in relation to any payment obligation owing to any Person (the “obligee”) - permanent, indefeasible and irrevocable payment in cash (or other freely available funds transfer as may be expressly provided for in the applicable document creating or evidencing such payment obligation) to the applicable obligee in full of such payment obligation in accordance with the express provisions of the applicable document creating or evidencing such payment obligation, without regard to any compromise, reduction or disallowance of all or any item or part thereof by virtue of the application of any bankruptcy, insolvency, fraudulent conveyance, assignment, preference or other similar such laws, any law affecting creditors’ rights generally or general principles of equity, and, if applicable, the cancellation or expiry of any commitment of the obligee to lend, otherwise extend credit or provide other financial services.

**“proceeding”** - any proceeding, legal action, lawsuit, arbitration, mediation, alternative dispute resolution proceeding or other proceeding.

**“receiver”** - except in the definition of “Receiver”, a privately appointed or court appointed receiver or receiver and manager, interim receiver, liquidator, trustee in bankruptcy, administrator, administrative receiver and any other like or similar official.

a **“representative”** - any Person empowered to act for another, including an agent, an officer of a body corporate or association and a trustee, executor or administrator of an estate.

**“rights”** - rights, titles, benefits, interests, powers, authorities, discretions, privileges, immunities and remedies (actual or contingent, direct or indirect, matured or unmatured, now existing or arising hereafter), whether arising by agreement or statute, at law, in equity or otherwise.

**“set-off”** - any right or obligation of set-off, compensation, offset, combination of accounts, netting, retention, withholding, reduction, abatement, deduction, counter-claim, cross-claim or any similar right or obligation, or (as the context requires) any exercise of any such right or performance of such obligation.

a **“successor”** of a Person (the “relevant party”) - (i) any amalgamated or other body corporate of which the relevant party or any of its successors is one of the amalgamating or merging body corporates and (ii) any Person to whom all or substantially all of the businesses, undertakings, properties and assets of the relevant party are transferred.

**“written”** and **“in writing”** - an original writing, a pdf or facsimile copy of a writing or an e-mail.

**SCHEDULE 2**

**AUTHORIZING RESOLUTION**

1. The transfer by <\*> (the “**Pledgor**”) of [describe Capital Stock] in the [describe Issuer], plus whatever additional [describe Capital Stock] in [describe Issuer] may hereafter be issued or transferred to the Pledgor, (collectively, the “**Capital Stock**”) to Her Majesty the Queen in Right of Ontario, as represented by the Minister of Infrastructure, as represented by Ontario Infrastructure and Lands Corporation (the “**Secured Party**”) or its nominee from time to time as security is approved.
2. The transfer of the Capital Stock by the Secured Party to one or more transferees consequent upon realization of the Secured Party’s security over the Capital Stock is approved.
3. The proper officers of the [Corporation] are authorized and directed to issue new certificates representing the Capital Stock to the Secured Party or to the Secured Party’s nominees or transferees on the written request of the Secured Party or its duly authorized representative, agent or attorney (including any receiver appointed by the Secured Party) without further consent, approval or other action being required by the Pledgor or any of the directors of the [Corporation].
4. This resolution shall be irrevocable.

**SCHEDULE 3**

**ISSUER ACKNOWLEDGMENT**

**TO:** **HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, as represented by the  
MINISTER OF INFRASTRUCTURE, as represented by ONTARIO  
INFRASTRUCTURE AND LANDS CORPORATION**

**RE:** **[ISSUER]**

---

**FOR VALUABLE CONSIDERATION**, the receipt and sufficiency of which are hereby acknowledged, the undersigned hereby agrees as follows:

1. The undersigned shall Transfer each item of Future Collateral directly to the Secured Party as soon as the Obligor acquires rights in that item of Future Collateral and in any event, no later than five (5) Business Days after acquiring rights in that item of Future Collateral.
2. The undersigned shall Transfer each Distribution on Collateral made by the undersigned directly to the Secured Party if, as and when such Distribution is made.
3. This document and the obligations and agreement of the undersigned contained herein shall be irrevocable until the Secured Party notifies the undersigned otherwise.
4. Each word and expression (capitalized or not) defined or given an extended meaning in the limited recourse guarantee and pledge agreement made as of the \_\_\_\_ day of \_\_\_\_\_, 2011 between <\*> as Pledgor and Her Majesty the Queen in Right of Ontario, as represented by the Minister of Infrastructure, as represented by Ontario Infrastructure and Lands Corporation, as Secured Party (as changed from time to time and for the time being in effect) is used herein with the defined or extended meaning assigned to it therein.
5. This document shall be governed by, and construed and interpreted in accordance with the laws of the Province of Ontario, including the federal laws of Canada applicable therein, but excluding choice of law rules.

**TO WITNESS**, the undersigned has caused this document to be duly executed as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**[ISSUER]**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:



**SCHEDULE 4**

**POWER OF ATTORNEY**

**FOR VALUE RECEIVED** the undersigned, \_\_\_\_\_ of  
\_\_\_\_\_ has sold and transferred to  
\_\_\_\_\_ the following securities:

Certificate No.	Issuer	Number of Shares or Units	Class
-----------------	--------	------------------------------	-------

**AND** the undersigned constitutes and appoints \_\_\_\_\_ of  
\_\_\_\_\_ the true and lawful attorney of the undersigned, irrevocably,  
forever and in the name of the undersigned to transfer these securities, to make and execute all necessary acts  
of assignment and transfer of these securities and to substitute one or more Persons with like full power. The  
undersigned ratifies and confirms all that this attorney or substitutes shall lawfully do by virtue of this  
document.

**DATED** at \_\_\_\_\_ this \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_.

	)	
	)	
	)	
	)	
	)	
_____ Witness	)	_____ (Signature of Transferor)
	)	

*Note: The name of the transferor must correspond exactly with the name as registered on the securities.*

**SCHEDULE 5**  
**STOCK TRANSFER**

**TO:** [ISSUER]

For value received, [insert name of transferor] hereby sells, assigns and transfers unto \_\_\_\_\_ [insert certificate numbers] when completing transfer] [shares/units] of \_\_\_\_\_.

**DATED** at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

	)	
	)	
	)	
	)	
_____ Witness	)	_____ (Signature of Transferor)
	)	

*Note: The name of the transferor on this assignment must correspond with the name as written upon the face of each certificate drawn to represent the securities, in every particular, without alteration or enlargement or any change whatever.*

**Schedule 1.01(S)**

**Proforma Sale Price**

See attached.

**Schedule 7.01(12)**

**Ownership Structure**

**[REDACTED]**

**SCHEDULE 9**  
**KEY INDIVIDUALS**

**[REDACTED]**

**SCHEDULE 10**

**REVIEW PROCEDURE**

**1. WORKS SUBMITTALS**

- 1.1. The provisions of this Schedule 10 shall apply to the Design Development Submittals, the Construction Document Submittals, the Design Data and any and all items, documents and anything else required or specified by this Project Agreement, including all Works Submittals listed in Appendix A to this Schedule 10, in respect of the Works to be submitted to, reviewed or otherwise processed by HMQ in accordance with the Review Procedure prior to Interim Completion, Project Substantial Completion, Project Co Stage 1 Conversion Substantial Completion, any Third Party Facility Conversion Substantial Completion or Project Final Completion or after Project Substantial Completion, Project Co Stage 1 Conversion Substantial Completion or any Third Party Facility Conversion Substantial Completion in respect of the completion of Project Substantial Completion Minor Deficiencies, Project Co Stage 1 Conversion Substantial Completion Minor Deficiencies or Third Party Facility Conversion Substantial Completion Minor Deficiencies, respectively, including any and all subsequent revisions, amendments and changes thereto (collectively and individually, “**Works Submittal**” or “**Works Submittals**” as applicable in this Schedule 10).

**2. SCHEDULE FOR WORKS SUBMITTALS**

- 2.1. The Works Schedule shall provide for a progressive and orderly flow of Works Submittals from Project Co to the HMQ Representative to allow sufficient time for review of each Works Submittal by the HMQ Design Team taking into account both the resources necessary to be available to the HMQ Design Team to conduct such review and whether delay in the review of the subject matter of the Works Submittal shall have a material impact on Project Co’s ability to progress future anticipated Works Submittals and the Works in accordance with the Works Schedule.
- 2.2. The Works Schedule and any amendment to the Works Schedule shall allow a period of 15 Business Days (or such longer period as the Parties may agree) from the date of receipt for review of and response to each Works Submittal, provided that if Project Co has made major changes to the grouping and volume of Works Submittals, such period of time shall be adjusted by Project Co, acting reasonably, taking into account the factors set forth in Section 2.1 of this Schedule 10.
- 2.3. Project Co shall, in scheduling Works Submittals and in the performance of the Project Operations, allow adequate time prior to performing the Project Operations that are the subject of the Works Submittals, for review of the Works Submittals and for Project Co to make changes to Works Submittals that may be required if comments are received on the Works Submittals, such review and required changes to be in accordance with this Schedule 10.

- 2.4. If the Works Schedule indicates that a large number of Works Submittals will be made at one time, the HMQ Representative may, at the HMQ Representative's discretion, request a longer period for review or a staggering of the Works Submittals, and Project Co shall review and revise the Works Schedule accordingly, taking into account both the resources necessary to be available to the HMQ Design Team to conduct such review and whether delay in the review of the subject matter of the Works Submittal shall have a material impact on Project Co's ability to progress future anticipated Works Submittals and the Works in accordance with the Works Schedule.
- 2.5. Project Co shall submit all Works Submittals to HMQ in accordance with the current Works Schedule.

### **3. GENERAL REQUIREMENTS FOR WORKS SUBMITTALS**

- 3.1. Unless otherwise specified by the HMQ Representative, Project Co shall issue 4 printed copies of all Works Submittals to HMQ, together with an electronic copy (PDF documentation), in each case, such copies to be legible and clear and in a format set forth in Appendix "A" or as agreed by the Parties acting reasonably and one printed copy of each Works Submittal to the Independent Certifier.
- 3.2. Project Co shall compile and maintain a register of the date and contents of the submission of all Works Submittals and the date of receipt and content of all returned Works Submittals and comments thereon. Project Co shall establish a Web Based Project Management System at Commercial Close which shall be operational and managed by Project Co until Project Final Completion. The system is to be capable of archiving all Works Submittals (including for certainty, Project Co site instructions, deficiency reviews, etc.) in a format that can be viewed by HMQ, the other members of the HMQ Design Team and the Planning, Design & Compliance Consultant electronically either on the system or downloaded and viewed as a PDF file. The system must also be capable of archiving all Planning, Design & Compliance Consultant's correspondence related to the review of the Works Submittals and Site review reports. All Works Submittals shall be uploaded by Project Co to the Web Based Project Management System in PDF format at the same time that the Works Submittals are forwarded to HMQ. The system must be capable of automatically informing the Planning, Design & Compliance Consultant, HMQ and the other members of the HMQ Design Team (via electronic mail) that Works Submittals have been uploaded. The system is to have a dedicated 'request for information' (RFI) module to allow communication between Project Co and the Planning, Design & Compliance Consultant to resolve any questions and or comments with respect to the Output Specifications. A total of 35 users from HMQ and the other members of the HMQ Design Team, the users and the Planning, Design & Compliance Consultant will be required to access the system.
- 3.3. All Works Submittals shall be in English.
- 3.4. All Works Submittals required by this Project Agreement or by Applicable Law to be signed or sealed by persons with professional designations (including, where applicable,

by registered professional architects or engineers) shall, where applicable, be so signed and sealed.

- 3.5. All Works Submittals shall include copies of all documents to be reviewed and shall clearly identify the purpose of the Works Submittal and Project Co’s proposed course of action relating to the Works Submittal and the Project Operations that are the subject of the Works Submittal.
- 3.6. All Works Submittals shall, where applicable, refer to the relevant provisions of the Output Specifications, and to any Design Data that has previously been subject to review.
- 3.7. When Project Co submits a Design Functionality Report, Project Co shall specifically identify all elements of Design Functionality, including where applicable, references to the Output Specifications.
- 3.8. All Works Submittals shall be clearly identified as a Works Submittal and shall be delivered with appropriate covering documentation, which shall include a list of all attached Works Submittals and for each Works Submittal:
  - (a) the document number(s) or drawing number(s);
  - (b) revision numbers (if applicable);
  - (c) document or drawing title(s);
  - (d) name of entity that prepared the Works Submittal;
  - (e) the Works Submittal history showing date and delivery information and/or log number of all previous submissions of that Works Submittal; and
  - (f) identification of any previous Works Submittal superseded by the current Works Submittal.

#### **4. COMMENTS**

- 4.1. The HMQ Design Team shall review and respond to each Works Submittal in accordance with the time periods specified in Section 2.2 of this Schedule 10. The HMQ Design Team shall return Works Submittals to Project Co with a copy to the Independent Certifier and assign one of the following 3 comments:
  - (a) “REVIEWED”;
  - (b) “REVIEWED AS NOTED”; or
  - (c) “REJECTED”.



- 4.2. The comment “REVIEWED” will be assigned to those Works Submittals that, in the opinion of the HMQ Design Team, conform to the requirements of this Project Agreement. Project Co shall comply with and implement such Works Submittals.
- 4.3. The comment “REVIEWED AS NOTED” will be assigned to those Works Submittals that, in the opinion of the HMQ Design Team, generally conform to the requirements of this Project Agreement, but in which immaterial deficiencies have been found by the HMQ Design Team’s review. Project Co shall correct these Works Submittals and provide a copy of the corrected Works Submittals to the HMQ Representative. Project Co shall comply with and implement such Works Submittals after correction, including in accordance with the comments. If at any time it is discovered that Project Co has not corrected the deficiencies on Works Submittals stamped “REVIEWED AS NOTED”, then Project Co will be required to modify the Works Submittals and Project Operations, including the Facilities, if applicable, as required to ensure that the Works comply with the Output Specifications and subsequent Works Submittals and Project Co may be required, at the HMQ Design Team’s discretion, to resubmit relevant Works Submittals. In such circumstances the HMQ Design Team shall act promptly in considering whether such deficiencies have been corrected. No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal.
- 4.4. The comment “REJECTED” will be assigned to those Works Submittals that, in the opinion of the HMQ Design Team, contain significant deficiencies or do not generally conform with the requirements of this Project Agreement, including this Schedule 10. Project Co shall correct and re-submit these Works Submittals within 10 Business Days after the comment has been provided to Project Co, or such longer period as Project Co may reasonably require, and (unless the Works Submittal is re-submitted within 5 Business Days) shall give the HMQ Design Team not less than 5 Business Days’ notice of when the Works Submittals shall be resubmitted. The HMQ Design Team will then review such re-submitted Works Submittals and assign a comment to the corrected Works Submittal. The Works Submittals shall be corrected, revised and resubmitted as often as may be required to obtain a comment that permits Project Co to proceed. No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal.
- 4.5. Where the HMQ Design Team issues the comment “REVIEWED AS NOTED” or “REJECTED”, the HMQ Design Team shall provide reasons for the comment, referencing the particulars of the Section(s) of this Project Agreement that the Works Submittal fails to satisfy, and, if requested by the Project Co Representative, the HMQ Design Team shall meet with the Project Co Representative to discuss the reasons for the comment.
- 4.6. If, at any time after assigning any comment to a Works Submittal, the HMQ Design Team or Project Co discovers any significant deficiencies or any failure to conform to the requirements of this Project Agreement, the HMQ Design Team may revise the comment assigned to any Works Submittal. If the Parties agree or it is determined in accordance with Section 5 of this Schedule 10 below that the revised comment is correct, Project Co

shall make all such corrections to the Works Submittals and the Project Operations. No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal.

- 4.7. For the purpose of facilitating and expediting the review and correction of Works Submittals, the HMQ Design Team and the Project Co Representative shall meet as may be mutually agreed to discuss and review any outstanding Works Submittals and any comments thereon.
- 4.8. Where a Works Submittal is voluminous, the HMQ Representative at his or her discretion may elect to stamp only the cover page or first sheet of the Works Submittal with the appropriate comment, if any, and return to Project Co the cover page or first page together with individual pages or sheets on which comments are made, together with an explanation of the status of all pages not returned to Project Co. Any pages returned without such an explanation as to their status shall be deemed to be "REVIEWED" by HMQ.
- 4.9. In lieu of returning a Works Submittal, the HMQ Representative may by letter notify Project Co of the comment assigned to the Works Submittal and if such comment is "REVIEWED AS NOTED" or "REJECTED" the letter shall contain comments in sufficient detail for Project Co to identify the correction sought.

## **5. DISPUTES**

- 5.1. If Project Co disputes any act of HMQ or the HMQ Design Team in respect of a Works Submittal under this Schedule 10, Project Co shall promptly notify the HMQ Representative and the Independent Certifier of the details of such Dispute and shall submit the reasons why Project Co believes a different comment should be assigned, together with appropriate supporting documentation. The HMQ Design Team shall review the Works Submittal, the reasons and supporting documentation and within 5 Business Days after receipt thereof shall either confirm the original comment or notify Project Co of a revised comment. If the HMQ Design Team confirms the original comment, Project Co may request the Independent Certifier to resolve the Dispute and render a decision within 5 Business Days of such request.
- 5.2. If either Party is not satisfied, acting reasonably, with the resolution of the Independent Certifier, subject to Section 10.2 of this Schedule 10, either Party may refer the matter for determination in accordance with Schedule 27 - Dispute Resolution Procedure.
- 5.3. Notwithstanding the provisions of Sections 5.1 and 5.2, HMQ may direct that Project Co to revise the Works Submittal in accordance with the comments of HMQ and proceed to perform and complete the Works on the basis of such revised Works Submittal. For clarity, such direction shall be considered a Dispute and Project Co may proceed in accordance with Section 55 and Schedule 27 – Dispute Resolution Procedure of the Project Agreement.

**6. EFFECT OF REVIEW**

- 6.1. Subject to Section 18.6 of this Project Agreement, any review and comment by HMQ or the HMQ Design Team of any Works Submittals is for general conformity to the obligations and requirements of this Project Agreement, and any such review and comment shall not relieve Project Co of the risk and responsibility for the Project Operations and for meeting all of its obligations under and requirements of this Project Agreement, and shall not create any new or additional obligations or liabilities for HMQ. Without limiting the generality of the foregoing any and all errors or omissions in Works Submittals or of any review and comment shall not exclude or limit Project Co's obligations or liabilities in respect of the Works under this Project Agreement or exclude or limit HMQ's rights in respect of the Works under this Project Agreement.

**7. WORKS SUBMITTAL EXPLANATION**

- 7.1. At any time, the HMQ Design Team may, acting reasonably, require Project Co, including Project Co's consultants, the Project Co Parties, and any other relevant personnel, at no additional cost to HMQ, to explain to the HMQ Design Team and HMQ's advisors the intent of Project Co's Works Submittals, including in relation to any design and any associated documentation and as to its satisfaction of the Output Specifications.

**8. REVISIONS**

- 8.1. Project Co shall ensure that Works Submittals keep the same, unique reference number throughout the review process, and that subsequent revisions of the same Works Submittal are identified by a sequential revision number. Correspondence related to such Works Submittal shall reference the reference number and revision number.
- 8.2. Re-submittals shall clearly show all revisions from the previous Works Submittal. Bound documents, including reports and manuals, shall contain a preface that clearly states how revisions are marked and the previous revision number against which the revisions have been marked. A consistent format for mark-ups of documents shall be used (e.g. deletions struck out and additions underscored). Revised portions of drawings shall be clearly marked (with appropriate means to visually distinguish between the parts of the drawing that are revised and the parts that are not revised) and the revision number and description of the revision shall be included on the drawing.
- 8.3. All revisions on print media shall be initialled by hand by the individual designer, design checker and, where applicable, by the drafter and the drafting checker and shall identify the persons who initialled the Works Submittal. Electronic versions of the Works Submittal shall identify the persons who initialled the revisions to the printed version of the Works Submittal. All such revisions must be able to be integrated into the As Built Drawings.
- 8.4. Project Co shall keep all Design Data current. If any Design Data is revised as part of a Works Submittal, all other Design Data relying on or based on that Design Data shall also

be revised accordingly. All such revised Design Data shall also be submitted with the Works Submittal to which it relates.

**9. AUDIT BY THE HMQ REPRESENTATIVE**

- 9.1. Without limiting any other right under this Project Agreement, the HMQ Representative shall have the right to audit all Works Submittals, including comparing all Works Submittals to previous Works Submittals.
- 9.2. If during an audit or at any other time it is discovered by HMQ or Project Co (or resolved pursuant to Section 9.3 of this Schedule 10) that any Works Submittals were not correctly implemented, Project Co shall at its sole cost and expense immediately take all necessary steps to correct and modify the applicable Works Submittals and the Project Operations to which they relate and shall advise the HMQ Design Team of all such corrections and modifications.
- 9.3. Any Dispute concerning the implementation of a Works Submittal, subject to Section 5.1 of this Schedule 10, shall be referred in the first instance to the Independent Certifier for resolution.

**10. VARIATIONS**

- 10.1. No alteration or modification to the design, quality and quantity of the Project Operations arising from the development of detailed design or from the co-ordination of the design in connection with any Works Submittal shall be construed or regarded as a Variation.
- 10.2. If, having received comments from the HMQ Design Team on any Works Submittal, Project Co considers that compliance with those comments would amount to a Variation, Project Co shall, within 10 Business Days of receipt of and before complying with the comments, provide written notice to HMQ of the same and, if it is agreed by the Parties that a Variation would arise if the comments were complied with, HMQ may, at its election, (a) issue a Variation Enquiry and it shall be dealt with in accordance with Schedule 22 - Variation Procedure or (b) amend its comment on the Works Submittal. If the Parties do not agree that a Variation would arise if the comments were complied with, either party may proceed to resolve the matter in accordance with Section 5 of this Schedule 10 including for clarity, the exercise by HMQ of its rights under Section 5.3 of this Schedule 10. Subject to the foregoing sentence, any failure by Project Co to notify HMQ in accordance with this Section 10.2 of this Schedule 10 that Project Co considers compliance with any comments of the HMQ Design Team would amount to a Variation shall constitute an irrevocable acceptance by Project Co that any compliance with the HMQ Design Team's comments shall be without cost to HMQ and without any extension of time.

**APPENDIX A**

**MINIMUM DESIGN AND CONSTRUCTION**

**SUBMITTAL REQUIREMENTS**

**1. MINIMUM SUBMITTAL REQUIREMENTS FOR THE MUNICIPAL WORKS STAGE**

Project Co shall provide the following Submittals in respect of the Municipal Works to HMQ for review and comment, prior to issuance of the first building permit and / or commencement of construction activities within any public right-of-way in accordance with this Schedule 10:

**1.1. Traffic Management During Construction (TMDC) Plan in accordance with the following:**

- (a) Detailed description of the transportation needs of the area, during the construction of the Athletes' Village and related works within the surrounding public street rights-of-way;
- (b) Detailed response to the guiding principles identified in Schedule 15, Section 1.2.5 – Construction Traffic, Staging & Access, Article 4.1.1;
- (c) Detailed overview of the following for each stage of Project Co's construction activities:
  - (i) Construction related access locations;
  - (ii) Construction vehicle access routings;
  - (iii) Overall work plan and schedule of works including, but not limited to, the timing and duration of major construction activities to be undertaken by Project Co including work within public rights-of-ways;
  - (iv) Location and timing of temporary street closures and alternate routes / detours;
  - (v) Information relating to estimated construction truck activity volumes;
  - (vi) Temporary traffic and pedestrian management measures (regulatory, warning and construction signage, diversion routes, pavement marking plans etc.) relating to closure and occupancy of existing public roads and sidewalks required to undertake Project Co's construction activities;

- (vii) Location of hoarding, temporary fencing, covered walkways, and sidewalk diversions;
- (viii) Construction vehicle staging / marshalling areas / loading points;
- (ix) Emergency and Fire Department access routings and related provisions to be maintained for adjacent landholdings;
- (x) Measures by which construction access routings for other contractor work areas are maintained and provided;
- (xi) Measures by which the Hydro One Emergency Access Route will be maintained;
- (xii) Provisions to be made to maintain and / or provide private development vehicular and pedestrian access to adjacent properties and buildings; and
- (xiii) A parking management plan for employee / construction vehicle parking.

1.2. Stakeholder Communication Strategy Plan in accordance with the following:

- (a) Methodology for disseminating construction related information to the local community on a regular basis including, but not limited to, the following:
  - (i) Construction phases and timing of works;
  - (ii) Provision of advance notice, where possible, of the start and estimated completion dates of each construction phase and major works;
  - (iii) Contact names, telephone numbers and other contact information for residents to call Project Co regarding noise and other construction related questions, complaints or any other matters that may be appropriate including, but not limited to, the anticipated interruption to services and provision of alternative services;
  - (iv) Access impacts and alternate measures;
  - (v) Parking Management Plan; and
  - (vi) Traffic Management During Construction Plan.

**2. MINIMUM SUBMITTAL REQUIREMENTS FOR THE 50% DESIGN DEVELOPMENT STAGE**

Project Co shall provide the following Design Development Submittals to HMQ for review and comment in accordance with this Schedule 10:

2.1. Design development documents in accordance with the following:

- (a) Context Plan, scale - 1:1000
- (b) Site Plan, scale - 1:500, full ground floor plans for all Facilities, at Project Substantial Completion and Project Final Completion showing:
  - (i) Property line;
  - (ii) Lines of required setbacks;
  - (iii) Integration of landscaping features/areas with the public realm design and building plan elements and entrances;
  - (iv) Treatment of main approach to public entrance;
  - (v) Site furnishings and any additional site features;
  - (vi) Vehicle access/egress driveways to/from Site including;
  - (vii) Parking entrances/egress locations;
  - (viii) Service, garbage areas, and vehicular entrance/egress location(s) and service vehicle parking;
- (c) Any proposed changes to the Municipal Works documents, for the Site provide a site servicing plan (prepared at 1:250), at Project Substantial Completion and Project Final Completion showing:
  - (i) Storm water management/storm sewer;
  - (ii) Sanitary sewer system;
  - (iii) Watermains - domestic use;
  - (iv) Watermains - fire fighting;
  - (v) Gas utilities;
  - (vi) Hydro utilities;
  - (vii) Intelligent Communities pathways, vault locations, lateral connections and building entrance;

- (viii) Intelligent Communities lateral connections; and
- (ix) Intelligent Communities pathway connections to structures within the adjacent right-of-way.
- (d) Typical landscape details for the Site (prepared at 1:10 scale).
- (e) Architectural floor plans for all Facilities, at Project Substantial Completion (except Temporary Underlay Facilities) and Project Final Completion only (prepared at 1:100 or 1:50 scale) of every level, including parking level(s), penthouse(s) and roof(s), showing:
  - (i) All walls/partitions, windows/glazed areas and doors;
  - (ii) Floor plans indicating all program and non-program rooms/areas, colour-coded and identified using space names and space ID as appropriate at Project Substantial Completion, as per Schedule 15, Part 2 of the Output Specifications
  - (iii) Floor plans indicating all program and non-program rooms/areas, colour-coded and identified using space names and space ID as appropriate at Third Party Facility Conversion Substantial Completion
  - (iv) Any additional rooms not previously identified, employing sequential space Names and space ID, as required;
  - (v) For Third Party Facilities only, millwork and Equipment layouts
  - (vi) For Third Party Facilities only, integration of structural, mechanical and electrical systems in terms of columns, service shafts, risers, etc., in sufficient detail to demonstrate that functional and net area requirements are compliant;
- (f) Structural floor plans for the YMCA Facility only (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing:
  - (i) Foundation plan showing preliminary locations and elevations of footings;
  - (ii) Structural system and framing;
  - (iii) Provisions for adaptability, flexibility and expandability, removal and replacement of building systems and equipment;
  - (iv) Summary of preliminary structural loads.



- (g) Mechanical floor plans for Third Party Facilities prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing:
  - (i) Location and basic layout of major equipment;
  - (ii) Routing of main feeds and associated shafts and risers;
  - (iii) Single-line drawings for all services;
  - (iv) Preliminary sizing of equipment;
  - (v) Provisions for adaptability, flexibility and expandability, removal and replacement of building systems and equipment;
  - (vi) Preliminary load estimates for storm and sanitary sewers, potable water supply, heating and cooling plants;
  - (vii) Preliminary flow estimates for heating and cooling systems, air supply, return and exhaust systems;
- (h) Electrical floor plans for Third Party Facilities (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing:
  - (i) Location and basic layout of major equipment;
  - (ii) Routing of main feeds and associated shafts and risers;
  - (iii) Single-line drawings for all services;
  - (iv) Preliminary sizing of equipment;
  - (v) Provisions for adaptability, flexibility and expandability, removal and replacement of building systems and equipment;
  - (vi) Provisions for any equipment requirements in areas for which architectural plan details have been prepared, such as the polyclinic, the YMCA Facility spaces, etc;
  - (vii) Preliminary lighting loads for typical rooms and the areas for which architectural plan details have been prepared;
  - (viii) Preliminary load estimates for normal power distribution centres, vital power distribution centres, delayed vital power distribution centres, and heating and cooling plants;
  - (ix) Locations of all Intelligent Communities spaces and risers; and
  - (x) Proposed routing for all Intelligent Communities pathways.

- (i) Reflected ceiling plans for Third Party Facilities (prepared at 1:100 scale) for public entrances and all other major public spaces.
- (j) Typical building sections for all buildings (prepared at 1:100 scale) showing:
  - (i) Relative thickness of floors/walls, including differentiation between opaque and transparent walls;
  - (ii) Major floor elevations, including those below grade;
  - (iii) Finish grades, dotted lines through building section;
  - (iv) Relationship to Site contours and other important Site elements for the Site as shown in building elevation drawings; and
  - (v) Major room names.
- (k) Typical cladding details for all buildings (prepared at 1:10 scale), provided with a building science report reviewing envelope design and details. Note all wall components which provide the secure enclosure.
- (l) Exterior elevations (prepared at 1:100) showing:
  - (i) Indication of exterior materials for all areas;
  - (ii) Different vertical planes differentiated with line weights or shadows;
  - (iii) Finish grades;
  - (iv) Major floor elevations, including those below grade;
  - (v) Sections when elevation is shown by taking vertical cut-through another space; and
  - (vi) Significant plantings/Site elements for the Site when important in defining space and volume.
- (m) Interior elevations for Third Party Facilities (prepared at 1:50) for public entrances and all other major spaces.
- (n) Interior finishes colour and materials selection boards for all Third Party Facilities, which includes 3 complete options for interior finishes for each of the Facilities.
- (o) Preliminary door and hardware schedules and hardware cut sheets for all Third Party Facilities.

- (p) Preliminary interior lighting design submittals, including fixture cut sheets and illumination level analysis for all Third Party Facilities.
  - (q) Preliminary security systems floor plan layouts, locations of all security systems equipment, connection points and control points for all Third Party Facilities.
  - (r) Preliminary drawings of all millwork/fixed furniture elements identified in the Output Specifications for all Third Party Facilities, including all dimensions, key elevations, and all fixed and moving elements (1:50 scale) and details (1:10 or 1:20 scale, as appropriate).
  - (s) Single line audio/visual distribution diagrams showing cable management and equipment rooms for the YMCA Facility and the George Brown Facility, where applicable.
  - (t) Single line information technology distribution diagrams showing cable management and equipment rooms, coordinated with the Equipment List.
- 2.2. Preliminary construction specifications identifying all systems, materials, and construction execution methods proposed to be used in the project for all Third Party Facilities
- 2.3. Mock-up design packages with all finishes, in accordance with the HMQ design requirements, including the construction of fully resolved, for:
- (a) All Third Party Facilities: provide mock-ups for proposed materials as may apply- masonry wall facings, metal wall panels, curtainwall and skylights, exterior windows, various waterproofings, unit masonry partitions, high performance coatings, access floor, flooring finishes, painting, carpentry, washroom accessories, and specialty items.
  - (b) **For all Blocks:** Exterior paving mock-up. Specifically within the 3m setback areas where interface with public realm occurs.
  - (c) Provide a mock-up design package of a:
    - (i) PanAm Athletes’ typical residential unit with at least one washroom, and
    - (ii) ParaPan Athletes’ typical residential unit with at least one accessible washroom.
- 2.4. Updated construction quality control plan.
- 2.5. Comprehensive acoustical report reviewing all acoustical conditions as they relate to relevant and acoustical details for all Third Party Facilities.

- 2.6. Updated Vertical transportation analysis.
- 2.7. Building Code analysis and compliance strategy for all Third Party Facilities.  
Accessibility analysis and compliance strategy.
- 2.8. Updated Space Program including:
  - (a) Proposed build-out for the Project Substantial Completion state (Pan/Parapan Am Games state), including accommodation of athletes and associated resident support spaces (NOC / NPC Offices, chef d mission office, NOC medical / therapy rooms and team meeting rooms), if different from the full build-out of Project Co Lands;
  - (b) Full build-out of Third Party Facility Conversion Substantial Completion;
    - (i) For (a) and (b) above, identification of net area of each room, listed in terms of floor levels;
  - (c) Space variance table for Third Party Facilities only;
  - (d) Space name and space ID used in Schedule 15 - Output Specifications.
- 2.9. LEED registration with CaGBC and LEED credits tracking documentation.
- 2.10. LEED ND credits tracking documentation for GCTp1, GCTc18, SLLc5 and NPDc6.
- 2.11. Progress Report that includes verification, including any supporting documentation, of compliance with Section 1.3.2-Sustainability of the Output Specifications. This Progress Report shall include with it the following submittals:
  - (a) Green Roofs
    - (i) Provide specifications, drawings and cut sheets describing the extent and make-up of the vegetated roof system.
  - (b) Bicycle Parking and Storage
    - (i) Provide specifications, drawings, and cut sheets highlighting the location, quantity, and capacity of the bicycle parking and storage facilities to be installed.
- 2.12. Outline Commissioning Program.
- 2.13. Any other Submissions HMQ reasonably requires to understand the Works.

**3. MINIMUM SUBMITTAL REQUIREMENTS FOR THE 100% DESIGN DEVELOPMENT STAGE**

Project Co shall provide the following updated Design Development Submittals to HMQ for review and comment in accordance with this Schedule 10:

3.1. Updated design development documents in accordance with the following:

- (a) Updated Site plan for the Site (prepared at 1:500 scale) showing all previously listed requirements.
- (b) Updated Site servicing plan for the Site (prepared at 1:250 or as appropriate) showing all previously listed requirements.
- (c) Updated and augmented Site and landscape details for the Site (prepared at 1:10 scale).
- (d) Updated architectural floor plans at Project Substantial Completion state (Pan/Parapan Am Games state) and Third Party Facility Conversion Substantial Completion (prepared at 1:100 or 1:50 scale) of every level, including penthouse(s) and roof(s), showing all previously listed requirements and:
  - (i) Overall dimensions;
  - (ii) Plan and layout of typical repetitive spaces;
  - (iii) Indication of fire areas, fire walls, and smoke zones;
  - (iv) All millwork/systems furniture and workstation layouts;
  - (v) All equipment; and
  - (vi) Floor elevations.
- (e) Enlarged architectural plan details of all Third Party Facilities (prepared at 1:50 scale) for key areas including all previously listed areas, public entrances and all other major public spaces.
- (f) Updated structural floor plans for the YMCA Facility and the George Brown Facility (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing all previously listed requirements and:
  - (i) Foundation plan showing finalized locations and elevations of footings;
  - (ii) Column schedules;

- (iii) Foundation details;
  - (iv) Typical framing details;
  - (v) Provisions for any equipment requirements; and
  - (vi) Updated structural loads.
- (g) Updated mechanical floor plans for Third Party Facilities (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing all previously listed requirements and:
- (i) Detailed floor layouts showing locations of all major mechanical equipment items, pipe mains, risers and branch mains, duct mains including supply return and exhaust;
  - (ii) Interior building section details coordinating and confirming preliminary fit of structural/electrical/mechanical;
  - (iii) Provisions for any equipment requirements;
  - (iv) Finalized load estimates for storm and sanitary sewers, potable water supply, heating and cooling plants;
  - (v) Finalized flow estimates for heating and cooling systems, air supply, return and exhaust systems;
  - (vi) Updated plumbing fixture schedules; and
  - (vii) Updated estimate of annual energy use.
- (h) Updated electrical floor plans for Third Party Facilities (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing all previously listed requirements and:
- (i) Detailed floor layouts showing locations of electrical equipment items, normal and emergency, major feeders and branch feeders, and locations of major pathways for all systems;
  - (ii) Interior building section details coordinating and confirming preliminary fit of structural/electrical/mechanical;
  - (iii) Equipment connection data sheet;
  - (iv) Summary of lighting loads for all rooms;

- (v) Finalized load estimates for normal power distribution centres, vital power distribution centres, delayed vital power distribution centres, and heating and cooling plants;
- (vi) Pathways for Intelligent Communities including in-suite connections; and
- (vii) Detailed Intelligent Communities pathway riser, including all pathway sizes and slab to slab floor height.
- (i) Updated reflected ceiling plans for Third Party Facilities (prepared at 1:100 scale) showing all typical rooms and special interest areas with location of major components shown.
- (j) Updated building sections (prepared at 1:100 scale) showing all previously listed requirements and preliminary ceiling space coordination diagram(s).
- (k) Updated and augmented exterior wall sections (prepared at 1:50 scale) and cladding details (prepared at 1:10 scale), provided with a building science report reviewing envelope design and details.
- (l) Stair, elevator plans, sections and details (as appropriate) for Third Party Facilities.
- (m) Updated exterior elevations (prepared at 1:100) showing all previously listed requirements and significant mechanical and electrical equipment such as roof-top units, chimneys, louvers, transformers, pole lines, etc.
- (n) Updated interior elevations for the YMCA Facility and George Brown Facility (prepared at 1:50) for all previously listed areas and:
  - (i) Lobby/feature walls;
  - (ii) Washrooms/locker rooms;
  - (iii) Typical corridors; and
  - (iv) Secure function areas.
- (o) Finalized interior and exterior finishes colour and materials selection boards and preliminary room finishes schedule for Third Party Facilities.
- (p) Updated security systems floor plans and equipment details, locations of all security systems equipment, connection points and control points for Third Party Facilities.
- (q) Updated door and hardware schedules and hardware cut sheets for Third Party Facilities.

- (r) Updated interior lighting design submittals, including fixture cut sheets and illumination level analysis for Third Party Facilities.
  - (s) Updated exterior lighting design submittals, including fixture cut sheets and illumination level analysis.
  - (t) Updated drawings of all millwork/fixed furniture elements identified in the Output Specifications for Third Party Facilities, including all dimensions, key elevations, and all fixed and moving elements (1:50 scale) and details (1:10 or 1:20 scale, as appropriate).
  - (u) Updated and augmented audio/visual drawings and details for the YMCA Facility and the George Brown Facility, where applicable.
  - (v) Updated and augmented information technology drawings and details.
- 3.2. Construction specifications, including:
- (a) Updated construction specifications for all facilities, identifying only building exterior cladding assembly systems, materials, and construction execution methods, including all previously listed requirements.
  - (b) A report that identifies all material changes to the requirements of the technical specifications in Schedule 15 – Output Specifications of the Project Agreement, which shall be in the form of a spreadsheet list of items referencing the relevant portion of the technical specifications in Schedule 15 – Output Specifications of the Project Agreement.
- 3.3. Updated construction specifications identifying all systems, materials, and construction execution methods proposed to be used in the project for Third Party Facilities, including all previously listed requirements.
- 3.4. Report on review and adjustments of mock-up design packages.
- 3.5. Updated construction quality control plan, if there are any changes to previous version, including a statement of how the proposed matter has changed from the previous matter reviewed by HMQ.
- 3.6. Updated acoustical report for all Third Party Facilities, if there are any changes to previous version, including a statement of how the proposed matter has changed from the previous matter reviewed by HMQ.
- 3.7. Updated vertical transportation analysis, if there are any changes to previous version, including a statement of how the proposed matter has changed from the previous matter reviewed by HMQ.
- 3.8. Updated Building Code and analysis and report from an independent Building Code consultant providing detailed review of the drawings and documentation



and confirming compliance with the above regulatory documents including fire code.

- 3.9. Updated Accessibility analysis and report.
- 3.10. Updated space program, including all previously listed requirements.
- 3.11. Progress report on LEED credits tracking documentation.
- 3.12. LEED ND credits tracking documentation for GCTp1, GCTc18, SLLc5 and NPDc6.
- 3.13. Progress Report that includes verification, including any supporting documentation, of compliance to Waterfront Toronto’s green building requirements as described in Section 1.3.2-Sustainability of the Output Specifications. This Progress Report shall include with it the following submittals:
  - (a) Green Roofs
    - (i) Provide specifications, drawings and cut sheets describing the extent and make-up of the vegetated roof system.
  - (b) Bicycle Parking and Storage
    - (i) Provide specifications, drawings, and cut sheets highlighting the location, quantity, and capacity of the bicycle parking and storage facilities to be installed.
- 3.14. Updated Outline Commissioning Program.
- 3.15. Any other Submittals HMQ reasonably requires to understand the Works.

**4. MINIMUM SUBMITTAL REQUIREMENTS FOR THE 50% CONSTRUCTION DOCUMENTS STAGES**

Project Co shall provide the following Construction Document Submittals to HMQ for review and comment in accordance with this Schedule 10:

- 4.1. Updated construction documents in accordance with the requirements set forth in Section 18.3 of this Project Agreement including:
  - (a) Updated Site plan for the Site (prepared at 1:500 scale) showing all previously listed requirements and planting schedule.
  - (b) Updated Site servicing plan for the Site (prepared at 1:500) showing all previously listed requirements.

- (c) Updated and augmented Site and landscape details for the Site (prepared at 1:10 scale).
- (d) Architectural floor plans (prepared at 1:100 or 1:50 scale) of every level, including parking level(s), penthouse(s) and roof(s), showing all previously listed requirements and:
  - (i) Full dimensions;
  - (ii) Layout of all spaces;
  - (iii) Fire and life safety plans;
  - (iv) Material symbols;
  - (v) Door symbols;
  - (vi) Glazed light symbols;
  - (vii) Window types and numbers;
  - (viii) Floor material changes;
  - (ix) Furring notes;
  - (x) Hatch walls and partitions;
  - (xi) Gratings;
  - (xii) Recessed mats;
  - (xiii) Expansion joints;
  - (xiv) Convectors;
  - (xv) Low partitions; and
  - (xvi) Folding partitions.
- (e) Updated and augmented enlarged architectural plan details (prepared at 1:50 scale) for all areas required to explain the design intent for Third Party Facilities.
- (f) Updated structural floor plans for the YMCA Facility and the George Brown Facility (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing all previously listed requirements and:
  - (i) Sections/elevations showing all structural elements;

- (ii) All legends and schedules; and
- (iii) Finalized structural loads.
- (g) Updated mechanical floor plans for all Third Party Facilities (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing all previously listed requirements and:
  - (i) Interior building section details coordinating and confirming finalized fit of structural/electrical/mechanical;
  - (ii) All legends and schedules;
  - (iii) HVAC, plumbing and medical gas details;
  - (iv) Enlarged equipment room and toilet plans;
  - (v) Mechanical room plans;
  - (vi) Control schematics; and
  - (vii) Finalized estimate of annual energy use.
- (h) Updated electrical floor plans for all Third Party Facilities (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing all previously listed requirements and:
  - (i) Interior building section details coordinating and confirming finalized fit of structural/electrical/mechanical;
  - (ii) All legends and schedules;
  - (iii) Grounding details;
  - (iv) Fire alarm riser diagram;
  - (v) Telephone riser diagram;
  - (vi) Television riser diagram;
  - (vii) Control schematics; and
  - (viii) Electrical details.
- (i) Updated reflected ceiling plans for Third Party Facilities (prepared at 1:100 scale) for all areas, showing (identify security type where appropriate):
  - (i) Light fixtures;

- (ii) Grilles;
- (iii) Diffusers;
- (iv) Heat detectors;
- (v) Smoke detectors;
- (vi) Soffits (dotted);
- (vii) Folding partitions;
- (viii) Skylights;
- (ix) Access panels;
- (x) Hatches;
- (xi) Major structural members (if sight exposed);
- (xii) Exit signs; and
- (xiii) Room numbers.
- (j) Updated building sections (prepared at 1:100 scale) showing all previously listed requirements and:
  - (i) Vertical dimensions;
  - (ii) Floor elevations;
  - (iii) Column lines;
  - (iv) Room numbers/names;
  - (v) Rooftop equipment; and
  - (vi) Wall section designations.
- (k) Updated and augmented exterior wall sections (prepared at 1:50 scale) and cladding details (prepared at 1:10 scale), provided with a building science report reviewing envelope design and details.
- (l) Updated and augmented stair and elevator plans, sections and details for Third Party Facilities (scales as required).
- (m) Updated exterior elevations (prepared at 1:100) showing all previously listed requirements and:

- (i) Window types and numbers;
- (ii) Entrance types and numbers;
- (iii) Door types and numbers;
- (iv) Wall material indication;
- (v) Coping materials;
- (vi) Overhead fascia materials;
- (vii) Floor lines;
- (viii) Vertical dimensions;
- (ix) Signage;
- (x) Section lines;
- (xi) Column centerlines;
- (xii) Louvers;
- (xiii) Stairs and ramps;
- (xiv) Stacks or other visible mechanical elements;
- (xv) Light fixtures; and
- (xvi) Other mechanical or electrical equipment.
- (n) Updated interior elevations for Third Party Facilities (prepared at 1:50) for all previously listed areas and showing:
  - (i) Casework indications;
  - (ii) Millwork and detail designations;
  - (iii) Shelving;
  - (iv) Interior glazed panels (dimensions and details);
  - (v) Base indication;
  - (vi) Mechanical grilles, thermostats, gas outlets, etc.;
  - (vii) Wall handrails;

- (viii) Equipment;
- (ix) Interior finishes;
- (x) Electrical receptacles speakers, clocks, light fixtures, etc.;
- (xi) Locker designation.
- (o) Interior details for Third Party Facilities (scaled as appropriate) showing:
  - (i) Base types;
  - (ii) Soffits;
  - (iii) Door details;
  - (iv) Hollow metal glazed panels;
  - (v) Fireproofing at beams and columns;
  - (vi) Low walls;
  - (vii) Folding partitions
  - (viii) Rolling doors;
  - (ix) Washroom details;
  - (x) Locker Room details;
  - (xi) Automatic sliding/swing door details;
  - (xii) Typical partition construction;
  - (xiii) Exhaust hood details; and
  - (xiv) Corner guard details.
- (p) Updated room finish schedule for Third Party Facilities.
- (q) Updated and augmented security systems floor plans and equipment details, locations of all security systems equipment, connection points and control points for Third Party Facilities.
- (r) Updated door and hardware schedules and hardware cut sheets for Third Party Facilities.
- (s) Updated interior lighting design submittals, including fixture cut sheets and illumination level analysis for Third Party Facilities.

- (t) Updated exterior lighting design submittals, including fixture cut sheets and illumination level analysis.
  - (u) Drawings of all millwork/fixed furniture elements identified in the Output Specifications for Third Party Facilities, including all dimensions, key elevations, and all fixed and moving elements (1:50 scale) and details (1:10 or 1:20 scale, as appropriate).
  - (v) Updated and augmented audio/visual drawings and details for the YMCA Facility and the George Brown Facility, where applicable.
  - (w) Updated and augmented information technology drawings and details for all Third Party Facilities.
- 4.2. Blacklined construction specifications for all Third Party Facilities, identifying changes to previously submitted construction specifications.
- 4.3. **Intentionally Deleted.**
- 4.4. Updated construction quality plan, if there are any changes to previous version, including a statement of how the proposed matter has changed from the previous matter reviewed by HMQ.
- 4.5. Updated acoustical report for Third Party Facilities, if there are any changes to previous version, including a statement of how the proposed matter has changed from the previous matter reviewed by HMQ.
- 4.6. Updated vertical transportation analysis, if there are any changes to previous version, including a statement of how the proposed matter has changed from the previous matter reviewed by HMQ.
- 4.7. Updated Building Code analysis and compliance strategy details for Third Party Facilities.
- 4.8. Updated Accessibility analysis and compliance strategy.
- 4.9. Updated Space Program, including all previously listed requirements.
- 4.10. Progress report on LEED credits tracking documentation.
- 4.11. LEED ND credits tracking documentation for GCTp1, GCTc18, SLLc5 and NPDc6.
- 4.12. Progress Report that includes verification, including any supporting documentation, of compliance to Section 1.3.2-Sustainability of the Output Specifications. This Progress Report shall include with it the following submittals:

- (a) Green Roofs
  - (i) Provide specifications, drawings and cut sheets describing the extent and make-up of the vegetated roof system.
- (b) Bicycle Parking and Storage
  - (i) Provide specifications, drawings, and cut sheets highlighting the location, quantity, and capacity of the bicycle parking and storage facilities to be installed.

4.13. Updated Outline Commissioning Program.

4.14. Any other Submittals HMQ reasonably requires to understand the Works.

**5. MINIMUM SUBMITTAL REQUIREMENTS FOR THE CONSTRUCTION STAGE**

Project Co shall provide the following Construction Document Submittals to HMQ for review and comment in accordance with this Schedule 10:

- 5.1. Provision of 100% construction record documents
- 5.2. Works Schedule, updated monthly, showing complete sequence of construction by activity, identifying Works of separate stages including Enabling Works, Municipal Works and other Site works, demolition, construction, Project Substantial Completion, equipment installation, occupancy, conversion works, Project Final Completion and other logically grouped activities and indicating:
  - (a) all Works Milestones;
  - (b) dates for submission, review time, resubmission time and last date for meeting fabrication schedule of all required Shop Drawings and samples;
  - (c) the early and late start, early and late finish, float dates and duration of all activities;
  - (d) estimated percentage of completion for each item of the Works at each submission of schedule;
  - (e) changes occurring since previous submission of schedule; and
  - (f) a narrative report defining:
    - (i) problem areas, anticipated delays, and impact on schedule;
    - (ii) corrective action recommended and its effect; and



(iii) effect of changes on schedules of the Project Co Parties.

- 5.3. Shop Drawings list. Complete list of Shop Drawings to be provided to the HMQ Design Team within 1 month after Commercial Close. At any time during the course of the Project, submission of Shop Drawings from this list and any additional Shop Drawings may be requested by HMQ and shall be provided by Project Co for review by HMQ and shall be provided by Project Co for review by HMQ pursuant to this Schedule 10.

Shop Drawings are to be submitted by Project Co to the HMQ Design Team only after they have been reviewed by the Project Co Representative. Shop Drawings noted as Rejected by Project Co Representative are not to be submitted to the HMQ Design Team for review until they have been resubmitted and accepted by the Project Co Representative.

The following is a specific list of Shop Drawings that are required to be submitted by Project Co for review by the HMQ Design Team:

- (a) For all Third Party Facilities
    - (i) Security systems;
    - (ii) All major mechanical equipment and systems; and
    - (iii) All major electrical equipment and systems.
  - b) For all Blocks:
    - (i) Key building envelope systems as per HMQ Design Team request.
- 5.4. Completed LEED credit tracking documentation.
- 5.5. All review comments from submissions to building authorities, insurance authorities and inspection authorities.
- 5.6. Progress photographs, updated monthly, from four vantage points, locations to be determined by HMQ and/or the HMQ Representative.
- 5.7. All mock-ups.
- 5.8. Testing and inspection reports.
- 5.9. Deficiency reports, updated monthly.
- 5.10. Interim Completion Certificate.
- 5.11. Draft of Project Substantial Completion Commissioning Program.
- 5.12. Project Substantial Completion Certificate.

- 5.13. Draft of Third Party Facility Conversion Substantial Completion Commissioning Program.
- 5.14. Third Party Facility Conversion Substantial Completion Certificates in respect of each Third Party Facility.
- 5.15. Draft of Project Co Stage 1 Conversion Substantial Completion Commissioning Program.
- 5.16. Project Co Stage 1 Conversion Substantial Completion Certificate.
- 5.17. Project Final Completion Certificate.
- 5.18. Any other Submittals HMQ reasonably requires to understand the Works.

**6. MINIMUM SUBMITTAL REQUIREMENTS PRIOR TO ON-SITE ACTIVITIES**

Project Co shall provide the following Construction Document Submittals to HMQ for review and comment in accordance with this Schedule 10:

6.1. Environmental Management Plan (the “**Environmental Management Plan**”)

Further details pertaining to the specific requirements of the Environmental Management Plan are provided as Background Information in the document Guidelines for Preparation of the Environmental Management Plan. The Environmental Management Plan shall at a minimum contain the following elements:

- (i) Introduction;
- (ii) Policy Statement;
- (iii) Site Description;
- (iv) Staff and Site-Specific Training;
- (v) Description of Work;
- (vi) Environmental Protection Plan Procedures;
- (vii) Environmental Monitoring;
- (viii) Contingency and Emergency Plan;
- (ix) Accountability and Reporting Procedures;
- (x) Regulatory Approvals, Authorizations, and Permits; and
- (xi) Waste Management Plan.

6.2. RMM Implementation Plan (the “**RMM Implementation Plan**”)

Further details pertaining to the specific requirements of the RMM Implementation Plan are provided as Background Information in the document

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Guidelines for Preparation of the RMM Implementation Plan. The RMM Implementation Plan shall, at a minimum, contain the following elements for each RMM:

- (i) Introduction;
  - (ii) RMM Design Vision and Detailed Designs;
  - (iii) RMM Implementation Vision and Implementation Details;
    - a. Integration with the HMQ Representative’s (QP) RMM verification; and
    - b. Material Importation Plan;
  - (iv) Quality Assurance and Quality Control;
  - (v) Contingency Plans;
  - (vi) RMM Design and Implementation Schedule; and
  - (vii) Confirmation Process for RMMs.
- 6.3. Soil, Groundwater and Sediment Management Plan (the “**Soil, Groundwater, and Sediment Management Plan**”)

Further details pertaining to the specific requirements of the Soil, Groundwater and Sediment Management Plan are provided as Background Information in the document Guidelines for Preparation of Soil, Groundwater and Sediment Management Plan, and Supplemental Guidance for Preparation of the Soil, Groundwater and Sediment Management Plan. The Soil, Groundwater and Sediment Management Plan shall, at a minimum, contain the following elements:

- (i) Introduction;
- (ii) Policy Statement;
- (iii) Administrative Controls, including Traffic Controls;
- (iv) Engineering Controls, including Decontamination;
- (v) Erosion Control;
- (vi) Management of Excavated and Extracted Materials;
- (vii) Material Characterization;
- (viii) Record Keeping;
- (ix) Contingency Plan;
- (x) Unknown Condition Procedure; and
- (xi) Regulatory Approvals, Authorizations, and Permits.

6.4. Well Management Plan (the “**Well Management Plan**”)

Further details pertaining to the specific requirements of the Well Management Plan are provided as Background Information in the document Guidelines for Preparation of the Well Management Plan. The Well Management Plan shall, at a minimum, contain the following elements:

- (i) Plan for decommissioning wells in accordance with applicable Ontario Regulations;
- (ii) Plan for installation of wells necessary per the requirements of the CPU; and
- (iii) Examples of boring logs to be generated during decommissioning and/or installation of wells.

6.5. Construction Dewatering Plan (the “**Construction Dewatering Plan**”)

Further details pertaining to the specific requirements of the Construction Dewatering Plan are provided as Background Information in the document Guidelines for Preparation of the Construction Dewatering Plan. The Construction Dewatering Plan shall, at a minimum, contain the following elements:

- (i) Introduction;
- (ii) Policy Statement;
- (iii) Preparation of Permit To Take Water Application Plan and incorporate conditions of the PTTW;
- (iv) Dewatering Control Plan during Construction;
- (v) Dewatering Control Plan for Constructed Permanent Features (Basements and Underground Parking);
- (vi) Discharge Plan; and
- (vii) Regulatory Approvals, Authorizations, and Permits.

6.6. Environmental Reporting Plan (the “**Environmental Reporting Plan**”)

Further details pertaining to the specific requirements of the Environmental Reporting Plan are provided as Background Information in the document Guidelines for Preparation of the Environmental Reporting Plan. The Environmental Reporting Plan shall, at a minimum, contain the following elements:

- (i) Monthly Environmental Monitoring Reports;
- (ii) Six-Month Compliance Reports;

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- (iii) Environmental Compliance Reports for each Phase of work as divided by Project Co;
- (iv) Environmental Elements Summary for each stage of Design Development Submittals and Construction Document Submittals;
- (v) Well Management Report(s);
- (vi) Other Submittals. Any other additional required submittal specified in the CPUs; and
- (vii) Schedule of Other Required Environmental Plans and Reports.

**SCHEDULE 11**

**DESIGN QUALITY PLAN AND CONSTRUCTION QUALITY PLAN**

**[REDACTED]**

**SCHEDULE 12**

**REFINANCING**

**1. DEFINITIONS**

1.1 The following terms shall have the following meanings:

- (a) **“Debt Interest Amount”** means for any period, the interest payable by Project Co or any Project Co Party to the Lenders in the normal course under the Lending Agreements.
- (b) **“Exempt Refinancing”** means:
  - (i) after the Project Substantial Completion Date, any Provincial Loan Refinancing, provided that:
    - A. Project Co shall assume any and all risks and benefits associated with such Refinancing; and
    - B. such Refinancing occurs on or before [REDACTED] (or such later date caused by a Delay Event pursuant to the Project Agreement);
  - (ii) a change in taxation or change in accounting treatment pursuant to a Change in Law or change in Canadian GAAP;
  - (iii) any Qualifying Bank Transaction;
  - (iv) any advance to Project Co under the Lending Agreements;
  - (v) any amendment, waiver or exercise of a right under the Lending Agreements made during the Step-In Period that does not increase HMQ's liabilities under the Project Agreement whether actual or contingent, present or future, known or unknown;
  - (vi) any Rescue Refinancing;
  - (vii) the exercise of any right, the grant of any amendment, waiver or consent or any similar action under the Lending Agreements that does not provide for a financial benefit to Project Co under those agreements;
  - (viii) any Refinancing that was approved by HMQ prior to Financial Close and occurs during the first six months following Financial Close; or
  - (ix) any amendment, variation or supplement of any agreement approved by HMQ as part of any Variation under this Project Agreement;

- (c) **“Financing Costs”** means all reasonable out of pocket costs associated with the Refinancing, including, but not limited to, any underwriting, arranger, agency fees, rating agency fees or legal fees.
- (d) **“Original Cost of Debt”** means the interest rate payable by Project Co or any Project Co Party to the Lenders under the Lending Agreement as at Financial Close.
- (e) **“Provincial Loan Refinancing”** means a Refinancing that fully releases the Provincial Lender from its obligations under the Provincial Loan Agreement.
- (f) **“Qualifying Bank”** means a lending institution that is:
  - (i) a bank listed in Schedule I, II or III of the Bank Act (Canada); or
  - (ii) a bank, life insurance company, pension fund or fund managed by a professional fund manager that controls funds in excess of \$[REDACTED],

provided such institution is not a Restricted Person or a person whose standing or activities may compromise HMQ's reputation or integrity.

- (g) **“Qualifying Bank Transaction”** means:
  - (i) the disposition by a Lender of any of its rights or interests in the Lending Agreements to a Qualifying Bank;
  - (ii) the grant by a Lender to a Qualifying Bank of any rights of participation in respect of the Lending Agreements; or
  - (iii) the disposition or grant by a Lender to a Qualifying Bank of any other form of benefit or interest in either the Lending Agreements or the revenues or assets of Project Co, whether by way of security or otherwise.
- (h) **“Qualifying Refinancing”** means any Refinancing that will give rise to a Refinancing Gain that is not an Exempt Refinancing.
- (i) **“Refinancing”** means:
  - (i) any amendment, variation, novation, supplement, replacement or refinancing of any Lending Agreement;
  - (ii) the exercise of any right, or the grant of any waiver or consent, under any Lending Agreement;
  - (iii) the disposition of any rights or interests in, or the creation of any rights of participation in respect of the Lending Agreements or the extension of credit thereunder or the creation or granting of any other form of benefit or



interest in either the Lending Agreements or the contracts, revenues or assets of Project Co whether by way of security or otherwise; or

- (iv) any other arrangement put in place by Project Co or another person which has an effect which is similar to any of the foregoing provisions of this definition above or which has the effect of limiting Project Co's ability to carry out any of the foregoing provisions of this definition.
- (j) **"Refinancing Financial Model"** means a comprehensive and detailed financial model satisfactory to HMQ, acting reasonably, prepared for the purpose of Section 2, which financial model shall be similar in form and content to the Financial Model, suitable for the purposes for which it will be used in this Schedule 12, and shall take into account:
  - (i) cash flows for the entire remaining Project Term;
  - (ii) any changes in structure and funding since the date of this Project Agreement;
  - (iii) the performance of the Project Operations and the Project Co Services to the date of the Refinancing;
  - (iv) macroeconomic assumptions; and
  - (v) all other relevant factors.
- (k) **"Refinancing Gain"** means an amount equal to the greater of zero and  $(B - A)$ , where:
  - A** = the net present value, discounted at a discount rate equal to the Original Cost of Debt, of all Debt Interest Amounts as projected immediately prior to the Refinancing (using the Refinancing Financial Model and taking into account the effect of the Refinancing) to be made over the remaining term of the Lending Agreements following the Refinancing together with all Financing Costs associated with the Refinancing.
  - B** = the net present value, discounted at a discount rate equal to the Original Cost of Debt, of all Debt Interest Amounts as projected immediately prior to the Refinancing (using the Refinancing Financial Model but without taking into account the effect of the Refinancing) to be made over the remaining term of the Lending Agreements following the Refinancing.
- (l) **"Refinancing Notice"** has the meaning given in Section 2.9 .
- (m) **"Rescue Refinancing"** means any Refinancing which takes place due to the failure or prospective failure of Project Co to comply with any material financial

obligation under the Lending Agreements, or any of them, which does not increase any liability of HMQ, whether actual or potential.

## **2. REFINANCING**

2.1A. Subject to Section 2.1A.1, Section 2.1B and Section 2.1 and except for any Exempt Refinancing, Project Co shall not permit, suffer to exist or enter into any Refinancing.

2.1A.1 Subject to Section 2.1A.2 and Section 2.1B, Project Co shall not permit, suffer to exist or enter into any Provincial Loan Refinancing before the Project Substantial Completion Date unless Project Co has obtained the prior written consent of both HMQ and the Lenders' Agent, which consents may be withheld in either of their sole discretions. For clarity, but not limiting HMQ's discretion to withhold its consent in respect of a proposed Provincial Loan Refinancing before the Project Substantial Completion Date for any other reason whatsoever, HMQ may withhold its consent to any proposed Provincial Loan Refinancing before the Project Substantial Completion Date:

- (a) where any person with whom Project Co proposes to carry out such proposed Provincial Loan Refinancing is a Restricted Person;
- (b) if, at the time such proposed Provincial Loan Refinancing is contemplated, such proposed Provincial Loan Refinancing will materially adversely affect the ability of Project Co to perform its obligations under the Project Documents or this Project Agreement; or
- (c) if, at the time such proposed Provincial Loan Refinancing is contemplated, such proposed Provincial Loan Refinancing will have the effect of increasing any liability of HMQ, whether actual or contingent, present or future, known or unknown as determined by HMQ in its sole discretion.

2.1A.2 In respect of any proposed Provincial Loan Refinancing before the Project Substantial Completion Date and to assist HMQ in determining whether or not to provide its consent to such proposed Provincial Loan Refinancing, Project Co shall promptly provide HMQ with full details of such proposed Provincial Loan Refinancing, including a copy of the proposed Refinancing Financial Model and the basis for the assumptions used in the proposed Refinancing Financial Model. HMQ shall (before, during and at any time after any Provincial Loan Refinancing) have unrestricted rights of audit over the Refinancing Financial Model and any documentation (including any aspect of the calculation of any Refinancing Gain arising from such Provincial Loan Refinancing notwithstanding that HMQ shall not be entitled to all or any part of such Refinancing Gain) used in connection with such Provincial Loan Refinancing. Project Co shall promptly, and, in any event, within 5 Business Days of receiving a written request from HMQ, provide any information in relation to such proposed Provincial Loan Refinancing as HMQ may reasonably require. Project Co shall keep HMQ informed as to any changes to the material terms of such Provincial Loan Refinancing.

- 2.1B If HMQ provides its prior written consent to Project Co carrying out a Provincial Loan Refinancing before the Project Substantial Completion Date under Section 2.1A.1, such Provincial Loan Refinancing shall be deemed to be an Exempt Refinancing and for clarity, such Provincial Loan Refinancing shall not be a Qualifying Refinancing and HMQ shall not be entitled to any Refinancing Gain arising as a result of such Provincial Loan Refinancing. Project Co shall assume any and all risks and benefits associated with such Provincial Loan Refinancing. Fifteen Business Days of the effective date of any Provincial Loan Refinancing carried out before the Project Substantial Completion Date, Project Co shall reimburse HMQ for all Financing Costs incurred by HMQ in respect of such Provincial Loan Refinancing.
- 2.1 Project Co shall not carry out any Qualifying Refinancing unless Project Co has obtained the prior written consent of HMQ, which consent, subject to Section 2.2, shall not be unreasonably withheld or delayed.
- 2.2 HMQ may withhold its consent to any Qualifying Refinancing, in its sole discretion:
- (a) where any person with whom Project Co proposes to carry out a Qualifying Refinancing is a Restricted Person;
  - (b) if, at the time the Qualifying Refinancing is contemplated, the Qualifying Refinancing will materially adversely affect the ability of Project Co to perform its obligations under the Project Documents or this Project Agreement;
  - (c) if, at the time the Qualifying Refinancing is contemplated, the Qualifying Refinancing will have the effect of increasing any liability of HMQ, whether actual or contingent, present or future, known or unknown as determined by HMQ in its sole discretion; or
  - (d) if, the Qualifying Refinancing is a partial refinancing that takes out a part of the Provincial Loan or a part of the Debt Amount.
- 2.3 HMQ shall be entitled to receive a [REDACTED] per cent share of any Refinancing Gain arising from a Qualifying Refinancing when considered in aggregate with all previous Qualifying Refinancings.
- 2.4 Project Co must use the remaining [REDACTED] per cent share of any Refinancing Gain arising from a Qualifying Refinancing, when considered in aggregate with all previous Qualifying Refinancings, to reduce the Debt Amount and thereby reduce or release the requirement for the Provincial Loan.
- 2.5 Project Co shall promptly provide HMQ with full details of any proposed Qualifying Refinancing, including a copy of the proposed Refinancing Financial Model and the basis for the assumptions used in the proposed Refinancing Financial Model. HMQ shall (before, during and at any time after any Refinancing) have unrestricted rights of audit over the Refinancing Financial Model and any documentation (including any aspect of the calculation of the Refinancing Gain) used in connection with such Refinancing (whether or not such Refinancing is determined to be a Qualifying Refinancing). Project

Co shall promptly, and, in any event, within 5 Business Days of receiving a written request from HMQ, provide any information in relation to a proposed Refinancing as HMQ may reasonably require. Project Co shall keep HMQ informed as to any changes to the material terms of the Refinancing.

2.6 Subject to Section 2.7, HMQ shall have the right to elect to receive its share of any Refinancing Gain as:

- (a) a single payment made on or about the date of the Refinancing; or
- (b) a scheduled set of payments paid over the life of the Refinancing;

such that the total net present value, discounted at the Original Cost of Debt, of the foregoing, calculated at the time immediately prior to the Refinancing, shall equal HMQ's share of the Refinancing Gain.

2.7 HMQ and Project Co will negotiate in good faith to agree upon the basis and method of calculation of the Refinancing Gain and payment of HMQ's share of the Refinancing Gain (taking into account how HMQ has elected to receive its share of the Refinancing Gain under Section 2.6 and the profile of the Refinancing Gain). If the parties fail to agree upon the basis and method of calculation of the Refinancing Gain or the payment of HMQ's share, the Dispute shall be determined in accordance with Schedule 27 - Dispute Resolution Procedure.

2.8 The Refinancing Gain shall be calculated after taking into account the Financing Costs that each Party directly incurs in relation to the Qualifying Refinancing and on the basis that, within 15 Business Days of the effective date of any Qualifying Refinancing, Project Co will reimburse HMQ for all Financing Costs incurred by HMQ.

2.9 If HMQ considers the funding terms generally available in the market to be more favourable than those reflected in the Lending Agreements, HMQ may, by notice in writing to Project Co (a "**Refinancing Notice**"), require Project Co to request potential funders to provide terms for a potential Refinancing. The Refinancing Notice shall set out in reasonable detail the grounds upon which HMQ believes such funding terms to be available. Project Co and HMQ shall meet to discuss the Refinancing Notice within 20 Business Days. Such a meeting will consider the evidence available to both parties about the availability of funding terms for a potential Refinancing. HMQ shall be entitled to withdraw the Refinancing Notice at or before such a meeting, or within 7 Business Days following the meeting.

2.10 If HMQ serves a Refinancing Notice which is not withdrawn pursuant to Section 2.9, then Project Co shall:

- (a) act promptly, diligently and in good faith with respect to the potential Refinancing;
- (b) use all reasonable endeavours to obtain the most favourable available terms from existing and/or new lenders for any potential Refinancing (provided that Project Co

shall not be required to propose refinancing which a prudent board of directors of a company operating the same business in Canada to that operated by Project Co, in similar circumstances, would not approve), including terms which are likely to generate a positive Refinancing Gain after the deduction of Financing Costs in accordance with the provisions of Section 2.8; and

(c) either:

- (i) as soon as reasonably practicable after receipt of the Refinancing Notice, provide to HMQ (A) full details of the proposed Refinancing, including a Refinancing Financial Model and the basis for the assumptions used in the Refinancing Financial Model and evidence to the reasonable satisfaction of HMQ that these assumptions represent the most favourable available terms for the potential Refinancing on the basis set out in Section 2.10(b) and (B) initial drafts of any changes to the Project Agreement including in relation to potential compensation on termination which might be required to give effect to the proposed Refinancing; or
- (ii) if Project Co (acting reasonably) believes that it is not possible to obtain funding terms which are more favourable than those reflected in the Lending Agreements in accordance with the requirements of Section 2.10(b), provide evidence to the reasonable satisfaction of HMQ for such belief and evidence to the reasonable satisfaction of HMQ that Project Co has complied with its obligations in Sections 2.10(a) and (b) above.

2.11 Following receipt of the information referred to in Section 2.10(c)(i), HMQ shall, acting reasonably, either:

- (a) instruct Project Co to implement the proposed Refinancing; or
- (b) instruct Project Co to discontinue the proposed Refinancing,

provided that if HMQ reasonably considers that the requirements of Sections 2.10(c)(i) or (ii) have not been satisfied, HMQ may require Project Co to satisfy its obligations under Sections 2.10(c)(i) or (ii).

2.12 If HMQ instructs Project Co to implement the proposed Refinancing:

- (a) Project Co shall, as soon as reasonably practicable, use all reasonable endeavours to ensure that such proposed Refinancing is implemented;
- (b) such proposed Refinancing shall be deemed to be a Qualifying Refinancing; and
- (c) the provisions of Sections 2.1 to 2.8 shall apply.

2.13 If:

- (a) HMQ instructs Project Co to discontinue the potential Refinancing pursuant to Section 2.11(b); or
- (b) the requirements of Section 2.10(c)(ii) are satisfied,

then, HMQ shall reimburse Project Co for the reasonable and proper professional costs incurred by Project Co in relation to the potential Refinancing, such costs to be paid to Project Co by HMQ within 20 Business Days after receipt of a valid invoice in respect of such amount. Such costs shall not include any internal management costs incurred by Project Co except insofar as (i) it can be demonstrated to the reasonable satisfaction of HMQ that such costs have been incurred in place of professional costs which would in the normal course of such business have been paid to third parties and (ii) HMQ has, by prior written agreement, approved the use of such internal management resource.

2.14 HMQ shall be entitled to issue a Refinancing Notice under Section 2.9 at any time but not more than once in any two-year period. For the avoidance of doubt, a Refinancing Notice that has been withdrawn under Section 2.9 has been issued for the purpose of this Section 2.14.

**SCHEDULE 13**

**PROJECT CO PROPOSAL EXTRACTS**

**[REDACTED]**

**SCHEDULE 14**

**OUTLINE COMMISSIONING PROGRAM**

**[REDACTED]**



**SCHEDULE 15**

**OUTPUT SPECIFICATIONS**

**[REDACTED]**

**SCHEDULE 16**

**TITLE ENCUMBRANCES**

**1. Specific Title Encumbrances**

<b>No</b>	<b><u>Block</u></b>	<b>Instrument No.</b>	<b>Party to</b>	<b>Nature of Encumbrance</b>
1.	9, 20, 28 and 32	CA121111E	Canadian National Railway Company	Easement and Right-of-Way for the purposes of a telecommunications easement
2.	9, 20, 28 and 32	CA121112	Toronto Terminals Railway Company	Easement and Right-of-Way for the purposes of a parking easement, walkway easement and retaining wall easement
3.	Phase 1 Blocks 17 and 19	CA121419Z	Canadian National Railway Company and Toronto Terminals Railway Company	Restrictive Covenant Agreement prohibiting, among other things, construction of any building on the lands without the consent of Canadian National Railway Company
4.	All	66M2488	n/a	Plan of Subdivision
5.	All	AT2824469	City of Toronto	Subdivision Agreement
6.	4, 8, 9, 10, 11, 12, 13, [PT] 14, [PT] 15, 16, [PT] 17 and 20	AT2824752	Metrolinx	Metrolinx Agreement, including Restrictive Covenants and Environmental Easement
7.	4, 8, 9, 10, 11, 12, 13, [PT] 14, [PT] 15, 16, [PT] 17 and 20	AT2824753	Metrolinx	Metrolinx Easement
8.	Block 28 & 29	Not to be registered	Metrolinx	License of land

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<b>No</b>	<b><u>Block</u></b>	<b>Instrument No.</b>	<b>Party to</b>	<b>Nature of Encumbrance</b>
9.	9	AT2824846	TRCA	TRCA Conservation Easement and Restrictive Covenant Agreement (includes a No Basements Covenant)
10.	9	AT2825066	TRCA	TRCA Restrictive Covenant from Conservation Agreement
11.	9	AT2825067	TRCA	TRCA Easement from Conservation Agreement
12.	1, 2, 3, 4, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 26	AT2825068	TRCA	TRCA Restrictive Covenant Agreement
13.	9 [Part]	Not to be registered	TRCA	Temporary Easement Conveyance Agreement
14.	1, 2, 3, 4, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 26	AT2824749	City of Toronto	Restrictive Covenant Agreement re: Slope of Lands
15.	1, 2, 3	AT2824750		Restrictive Covenant re Blocks 1, 2 and 3
16.	1, 2, 3	Not yet registered		Notice of amendment to Restrictive Covenant AT2824750
17.	9	AT2824751	City of Toronto	Notice of Clause 43 from Schedule B-1 of Subdivision Agreement
18.	1 and/or 4	Not yet registered		Future Easement: Blocks 1 and/or 4 (to be registered through SPA process when publicly accessible open space is designed), per s. 36 of Schedule B-1 of Subdivision Agreement
19.	14	Not yet registered		Future Easement: Block 14 (to be registered through SPA process when publicly accessible open space is designed), per s. 36 of Schedule B-1 of Subdivision Agreement

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<b>No</b>	<b>Block</b>	<b>Instrument No.</b>	<b>Party to</b>	<b>Nature of Encumbrance</b>
20.	17	Not yet registered		Future Easement: Block 17 (to be registered through SPA process when publicly accessible open space is designed), per s. 36 of Schedule B-1 of Subdivision Agreement
21.	8 and/or 20	Not yet registered		Future Easement: Block 8 and/or 20 (to be registered through SPA process when publicly accessible open space is designed), per s. 36 of Schedule B-1 of Subdivision Agreement
22.	Phase 1, Blocks 18-19	Not yet registered		Certificate of Requirement related to Certificate of Property Use – RA Group 1
23.	Phase 1, Block 16 6, 10, 11, 12, 13, 21, 22, 23, 34	Not yet registered		Certificate of Requirement related to Certificate of Property Use – RA Group 5 – Provincial lands
24.	Front St. E., Mill St.	Not yet registered		Certificate of Requirement related to Certificate of Property Use – RA Group 5 – City lands
25.	Phase 1, Block 17 8, 9, 20, 28, 29, 32	Not yet registered		Certificate of Requirement related to Certificate of Property Use – RA Group 6
26.	1, 2, 3, 4, 14, 15, 16, 24, 25, 27, 30, 31, 33	Not yet registered		Certificate of Requirement related to Certificate of Property Use – RA Group 7 – East of Cherry
27.	7, 19	Not yet registered		Certificate of Requirement related to Certificate of Property Use – RA Group 7 – West of Cherry
28.	5 (part) 3 West, 4 West (part)	Not yet registered		Certificate of Requirement related to Certificate of Property Use – RA Group 8 – Provincial lands
29.	Laneway below 3W and 4W	Not yet registered		Certificate of Requirement related to Certificate of Property Use – RA Group 8 – City lands

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<b>No</b>	<b>Block</b>	<b>Instrument No.</b>	<b>Party to</b>	<b>Nature of Encumbrance</b>
30.	Laneway above 7W	E194896	City of Toronto	Bylaw
31.	Phase 1, Block 19	CT16241		Easement in favour of The Hydro-Electric Power Commission of Ontario over Part 17 on Plan RD-207 (also described as Part 25, Plan 66R16601), for the purposes of erecting and maintaining an electrical transmission line  <b>[Note: Affects PIN, but does not affect the Part of the PIN that is Part of the Site]</b>
32.	Phase 1, Blocks 16-19,	AT2305244	City of Toronto	Phase 1 Plan of Subdivision
33.	7, 19	AT998141	Various	Easement over Parts 4, 6, 7 & 8, Plan 66R21806 in favour of Parts 2, 10 & 11, Plan 66R21806, as described in Instrument AT998141 registered on December 1, 2005 for the purposes of pedestrian and vehicular access
34.	7, 19	AT998210	Various	Easement over Parts 4, 6, 7 & 8, Plan 66R21806 in favour of Parts 1 & 9, Plan 66R21806, as described in instrument AT998210 registered December 1, 2005 for the purposes of pedestrian and vehicular access
35.	7, 19	AT998268	Various	Easement over Parts 4, 6, 7 & 8, Plan 66R21806 in favour of Part 3, Plan 66R21806, as described in Instrument AT998268 registered December 1, 2005 for the purposes of pedestrian and vehicular access
36.	7, 19	AT998421	Various	Restrictive Covenant Agreement dated November 14, 2005 between Ontario Realty Corporation acting as agent on behalf of Her Majesty the Queen in right of Ontario as represented by the Minister of Public Infrastructure Renewal, 1380543 Ontario Limited, 1654197 Ontario Limited, 1654199 Ontario Limited and

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<b>No</b>	<b><u>Block</u></b>	<b>Instrument No.</b>	<b>Party to</b>	<b>Nature of Encumbrance</b>
				1385144 Ontario Limited, as described in instrument AT998421
37.	7, 19	AT1021164	City of Toronto	Escrow Agreement re: Front Street East road widening date December 28, 2005, whereby Ontario Realty Corporation, acting as agent on behalf of Her Majesty the Queen in right of Ontario as represented by the Minister of Public Infrastructure Renewal, agreed to transfer Parts 6, 7 and 8 on Plan 66R21806 to the City of Toronto for road widening purposes, as described in instrument AT1021164
38.	12, 13, 16	Not yet registered	Waterfront Toronto	Draft Project Co Stage 2 Lands Development Agreement (Schedule 38 to Project Agreement)
39.	Various	Not to be registered	City of Toronto	Lease to assist in construction of flood protection landform, dated June 30, 2006 as amended by agreement dated June 30, 2011
40.	Cherry St., S of Mill	CA684785	CN and CP	Viaduct Agreement
41.	Cherry St., S of Mill	CA684786	TTR	Assignment of Viaduct Agreement
42.	Cherry St., S of Mill	CA684787	TTR	Assignment of Viaduct Agreement
43.	Cherry St., S of Mill	CA684856	GTTA	Assignment of Viaduct Agreement
44.	Eastern Ave. (W of Cherry)	CA410044	General Wool Stock Limited	Encroachment agreement
45.	Cherry St. (N of Eastern) and 16 Sumach	CA497585	Antonio and Artenosi	Encroachment agreement
46.	WT lands on Cherry and 525 King St. E.	CA87274	West End Development Corporation	Agreement re: Development of Lands
47.	Virgin Place	ES73171Z	City	Restriction on property – use only as lane
48.	Sumach St.	CT449418	Tindal	Encroachment agreement

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<b>No</b>	<b>Block</b>	<b>Instrument No.</b>	<b>Party to</b>	<b>Nature of Encumbrance</b>
49.	Sumach St.	CT495587	Hall	Encroachment license
50.	Sumach St.	CT670974	Hall	Encroachment agreement
51.	Sumach St.	CT746591	Project Forty-Six Ltd.	Encroachment agreement
52.	Sumach St.	CA105724	489 Queen Street East Limited and Project Forty-Six Ltd.	Encroachment agreement
53.	10 Sumach	Not to be registered	Schneider	Licence Agreement re: Fence Improvements
54.	12 Sumach	Not to be registered	Pattyn	License Agreement re: Fence Improvements
55.	King St. (E of Sumach)	ES58217	Vincenzo Lacquaniti	Encroachment agreement
56.	King St. (E of Sumach)	CT441231	Braejon Development Ltd.	Encroachment agreement
57.	525 King St. E.	Not to be registered	1208930 Ontario Inc.	License Agreement re: Regarding and Reconfiguring
58.	207 King St. E.	Not to be registered	Martin	License Agreement re: Installation of Retaining Wall
59.	19 Sackville St.	Not to be registered	TDSB	License Agreement re: Relocation of Retaining Wall

## **2. General Title Encumbrances**

- (a) Liens, charges or prior claims for taxes (which term includes charges, rates and assessments) or utilities (including levies or imposts for sewers and other municipal utility services) not yet due or if due, the validity of which is being contested in good faith, and liens or charges for the excess of the amount of any past due taxes or utilities charges for which a final assessment or account has not been received over the amount of such taxes or utilities charges as estimated and paid by HMQ.
- (b) Inchoate liens incidental to construction, renovations or current operations, a claim for which shall not at the time have been registered against the Site or of

which notice in writing shall not at the time have been given to HMQ pursuant to the *Construction Lien Act* (Ontario) or otherwise or any lien or charge, a claim for which, although registered, or notice of which, although given, relates to obligations not overdue or delinquent and in respect of any of the foregoing cases, HMQ has, where applicable, complied with the holdback or other similar provisions or requirements of the relevant construction contracts so as to protect the Site therefrom.

- (c) The rights reserved to or vested in any municipality or governmental or other public authority by any statutory provision.
- (d) Any subsisting reservations, limitations, provisions and conditions contained in any original grants from the Crown of any land or interests therein, reservations of undersurface rights to mines and minerals of any kind.
- (e) Zoning (including, without limitation, airport zoning regulations), use and building by-laws and ordinances, federal, provincial or municipal by-laws and regulations as to the use of the Site, which do not materially impair the value of the Site or materially interfere with the use of the Site for the purpose of the Project.
- (f) Any encroachments, easements, rights of way or similar interests which would be revealed by an up-to-date survey of the Site, which do not materially interfere with the value of the Site or materially interfere with the use of the Site for the purpose of the Project.



**SCHEDULE 17**

**PROJECT CO STAGE 1 LANDS AGREEMENT OF PURCHASE AND SALE**

**PART A**

**AGREEMENT OF PURCHASE AND SALE  
FOR THE PROJECT CO STAGE 1 LANDS AND IN CONNECTION WITH THE  
PAN/PARAPAN AM GAMES**

**BETWEEN**

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO** as represented by the Minister of Infrastructure, as represented by Ontario Infrastructure and Lands Corporation, a non-share capital corporation continued and amalgamated under the *Ontario Infrastructure and Lands Corporation Act*, 2011, S.O. 2011, c. 9, Schedule 32, as amended

(hereinafter called the “Vendor”)

**AND**

**DUNDEE KILMER DEVELOPMENTS L.P.,  
[REDACTED]**

(hereinafter called the “Purchaser”)

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**Amended and Restated Project Agreement – Schedule 17**  
**2015 Pan/Parapan American Games Athletes’ Village Project** **Execution Version**

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**AGREEMENT OF PURCHASE AND SALE**

**BETWEEN:**

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO** as represented by the Minister of Infrastructure, as represented by Ontario Infrastructure and Lands Corporation, a non-share capital corporation continued and amalgamated under the *Ontario Infrastructure and Lands Corporation Act*, 2011, S.O. 2011, c. 9, Schedule 32, as amended

(hereinafter called the “**Vendor**”)

- and -

**DUNDEE KILMER DEVELOPMENTS L.P., [REDACTED]**

(hereinafter called the “**Purchaser**”)

**RECITALS:**

- A. Her Majesty the Queen in Right of Ontario as represented by the Minister of Infrastructure (the “**Owner**”) is the owner in fee simple of the lands described in Schedule “A” of this Agreement.
- B. The Vendor is the designated agent of the Owner and, for the purposes of this Agreement, has the authority to exercise all necessary responsibilities and authorities of the Minister of Infrastructure pursuant to subsections 7(2), 7(5), 9(1), 9(2) and 9(3) and section 5 of the *Ministry of Infrastructure Act, 2011*, and both the Owner and the Vendor are and shall be bound by all the Vendor’s covenants, representations and warranties as provided herein.
- C. In preparation for the Toronto 2015 Pan/Parapan American Games (the “**Pan/Parapan Am Games**”), Vendor has entered into a project agreement (the “**Project Agreement**”) with the Purchaser (in the capacity of Project Co under the Project Agreement) in furtherance of RFP No. OIPC-11-00-I024 (the “**RFP**”) issued by the Vendor for the construction of the Pan/Parapan Am Games Athletes Village Project.
- D. Under the Project Agreement, the Purchaser (in its capacity as Project Co under the Project Agreement) will design, construct and finance the Facilities on the Project Co Stage 1 Lands, subject to and in accordance with the provisions of the Project Agreement.
- E. The Facilities to be constructed by the Purchaser under the Project Agreement include the Project Co Stage 1 Condominium Facilities which will be constructed on the Project Co Stage 1 Lands and the Third Party Facilities which will be constructed on the Third Party Lands.

- F. Upon Project Substantial Completion of the Project Co Stage 1 Condominium Facilities, the Property will be used by Toronto 2015 during the Pan/Parapan Am Games Use Period to host the Pan/Parapan Am Games.
- G. The Project Co Stage 1 Lands and the Third Party Lands are each portions of the Site, the extent of each such portions being determined in accordance with Section 26.2 of the Project Agreement.
- H. The Purchaser has offered to purchase the Property from the Vendor and the Vendor has agreed to sell the Property to the Purchaser on the terms and conditions hereinafter set forth.

**NOW THEREFORE** in consideration of the mutual covenants hereinafter set forth and other good and valuable consideration, the parties hereto agree as follows:

## **1. DEFINITIONS AND SCHEDULES**

### **1.1 Definitions**

As used in this Agreement, the following terms shall have the following meanings:

- (a) **“Acknowledgement and Agreement re Reciprocal Agreement”** means an agreement to be entered into between the Purchaser and each other Reciprocal Owner Party substantially in the form of Schedule “H” to this Agreement.
- (b) **“Acknowledgement and Agreement re Reciprocal Agreement for Blocks 1, 2, 3 and 14”** has the meaning given in Section 5.2.
- (c) **“Acknowledgement and Agreement re Reciprocal Agreement for Block 15”** has the meaning given in Section 5.2.
- (d) **“Agreement”** means this agreement, and includes all Schedules to this agreement, and every properly executed instrument which by its terms amends, modifies or supplements this agreement.
- (e) **“Applicable Law”** means:
  - (i) any statute or proclamation or any delegated or subordinate legislation including regulations and by-laws;
  - (ii) any Authority Requirement;
  - (iii) any judgment of a relevant court of law, board, arbitrator or administrative agency which is a binding precedent in the Province of Ontario; and
  - (iv) includes any Environmental Law,

in each case, (1) in force in the Province of Ontario, or otherwise binding on the Purchaser or the Vendor and (2) as amended, re-enacted, consolidated or replaced from time to time and in the case of any such amendment, re-enactment, consolidation or replacement, reference herein to a particular provision shall be read as referring to such amended, re-enacted, consolidated or replaced provision.

- (f) **“As Is Where Is”** has the meaning given in Section 7.1 of this Agreement.
- (g) **“Authority Requirements”** means any order, direction, directive, request for information, policy, administrative interpretation, guideline or rule of or by any Governmental Authority.
- (h) **“Block”** means a Block as shown on the Plan of Subdivision.
- (i) **“Business Day”** means any day other than a Saturday, a Sunday, a statutory holiday in the Province or any day on which banks are not open for business in the City of Toronto, Ontario.
- (j) **“Certificate of Property Use”** means the Certificate of Property Use to be issued in furtherance of the Record of Site Conditions, in each case as applicable to the Lands.
- (k) **“Certification Services”** has the meaning given in the Project Agreement.
- (l) **“City”** means the City of Toronto, its successors and assigns.
- (m) **“Class EA”** means the Ministry of Energy and Infrastructure Class Environmental Assessment Process for Realty Activities as approved, amended, or renewed from time to time by the Minister of the Environment pursuant to Section 14 of the *Environmental Assessment Act*, R.S.O. 1990, c. E. 18.
- (n) **“Closing”** means the completion of the sale of the Lands to the Purchaser on the Date of Closing in accordance with the provisions of this Agreement.
- (o) **“Contamination”** has the meaning given in the Project Agreement.
- (p) **“Date of Closing”** means the Project Co Lands Transfer Date under the Project Agreement.
- (q) **“Date of Financial Close”** means the date on which Financial Close is achieved under the Project Agreement;
- (r) **“Debenture”** has the meaning given in the Loan Agreement.
- (s) **“Default Rate of Interest”** means interest at the rate equal to **[REDACTED]**% over the rate of interest per annum quoted by **[REDACTED]** from time to time as its reference rate for Canadian dollar demand loans made to its commercial

customers in Canada and which it refers to as its “prime rate”, as such rate may be changed by it from time to time.

- (t) “**Environmental Law**” includes, but is not limited to all applicable federal and provincial statutes, municipal and local laws, common law, and deed restrictions, all statutes, by-laws, regulations, codes, licences, permits, orders, directives, guidelines that have the force of law, decisions rendered by any Governmental Authority relating to the protection of the environment, natural resources, occupational health and safety or the manufacture, processing, distribution, use, treatment, storage, disposal, packaging, transport, handling, containment, clean-up or other remediation or corrective action of any Contamination or Hazardous Substance.
- (u) “**Environmental Reports and Designated Substance Reports**” has the meaning given in the Project Agreement.
- (v) “**Excise Tax Act**” has the meaning given in Section 3.1 of this Agreement.
- (w) “**Facilities**” has the meaning given in the Project Agreement.
- (x) “**Financial Close**” has the meaning given in the Project Agreement.
- (y) “**George Brown Facility Owner**” has the meaning given in the Project Agreement.
- (z) “**Geotechnical Reports**” has the meaning given in the Project Agreement.
- (aa) “**Governmental Authority**” means any federal, provincial, territorial, regional, municipal or local governmental authority, quasi-governmental authority, court, government or self-regulatory organization, commission, board, tribunal, organization, or any regulatory, administrative or other agency, or any political or other subdivision, department, or branch of any of the foregoing, having legal jurisdiction in any way over a party relating to the Property or any aspect of the performance of this Agreement, in each case to the extent it has or performs legislative, judicial, regulatory, administrative or other functions within its jurisdiction.
- (bb) “**Hazardous Substance**” has the meaning given in the Project Agreement.
- (cc) “**HST**” has the meaning given in Section 3.1 of this Agreement.
- (dd) “**Indemnified Parties**” has the meaning given in Section 4.2 of this Agreement.
- (ee) “**Independent Certifier**” has the meaning given in the Project Agreement.
- (ff) “**Land Use Regulations**” means any land use policies, regulations, by laws, or plans of any Governmental Authority that apply to the use or development of all



or any part of the Lands, including the existing Official Plans, zoning by laws and zoning orders and conditions of approval of the Plan of Subdivision, in each case, as at the date of submission of the Proposal under the Project Agreement except for changes following the date of submission that are contemplated by the Project Agreement.

- (gg) “**Lands**” where used on its own is an abbreviated reference to the Project Co Stage 1 Lands.
- (hh) “**Legal Descriptions**” has the meaning given in the Project Agreement.
- (ii) “**Lender**” has the meaning given in the Loan Agreement.
- (jj) “**Lenders’ Agent**” has the meaning given in the Project Agreement.
- (kk) “**Lenders’ Direct Agreement**” has the meaning given in the Project Agreement.
- (ll) “**Lending Agreements**” has the meaning given in the Project Agreement.
- (mm) “**Loan Agreement**” means the loan agreement between the Purchaser, as Borrower, and Her Majesty the Queen in Right of Ontario as represented by a Minister of the Crown, as Lender, as the same may be amended, supplemented or restated from time to time.
- (nn) “**Loan Party**” has the meaning given in the Loan Agreement.
- (oo) “**MOE**” means the Minister of the Environment of the Province of Ontario and any successor Governmental Authority with comparable jurisdiction.
- (pp) “**New Permitted Encumbrances**” has the meaning given in Section 13.4 of this Agreement.
- (qq) “**Non-Resident**” means a person that is, at the relevant time, a non-resident of Canada for the purposes of the *Income Tax Act* (Canada).
- (rr) “**Obligations**” has the meaning given in the Loan Agreement.
- (ss) “**Owner**” means Her Majesty the Queen in Right of Ontario as represented by the Minister of Infrastructure.
- (tt) “**Pan/Parapan Am Games**” has the meaning given in Recital C of this Agreement.
- (uu) “**Pan/Parapan Am Games Use Period**” has the same meaning as Operating Term under the Project Agreement.
- (vv) “**Party**” means any of the Vendor and the Purchaser, and “**Parties**” means all of them.

- (ww) **“Permits”** means all consents, licences, certificates, approvals, authorizations, registrations or any item with similar effect issued or granted to the Vendors by any Governmental Authority respecting environmental matters concerning the Property or otherwise relating to the operation or occupancy of the Property.
- (xx) **“Permitted Encumbrances”** means all encumbrances and instruments registered against the Property as of the date of this Agreement, including, but not limited to, the encumbrances listed in Schedule B to this Agreement and all future encumbrances described in Schedule B anticipated to be registered on or before the Date of Closing, provided, in each case, that the Vendor is not in material default thereunder.
- (yy) **“Person”** means an individual, a partnership, a corporation, a trust, an unincorporated organization, a government or any department or agency thereof and the heirs, executors, administrators or other legal representatives of an individual.
- (zz) **“Plan of Subdivision”** means the final plan of subdivision registered as instrument 66M-2488 on September 9, 2011.
- (aaa) **“Prohibited Encumbrances”** has the meaning given in Section 13.4 of this Agreement.
- (bbb) **“Project”** has the meaning given in the Project Agreement.
- (ccc) **“Project Agreement”** has the meaning given in Recital C of this Agreement.
- (ddd) **“Project Co Lands”** has the meaning given in the Project Agreement.
- (eee) **“Project Co Services Agreement”** has the meaning given in the Project Agreement.
- (fff) **“Project Co Stage 1 Condominium Facilities”** has the meaning given in the Project Agreement.
- (ggg) **“Project Co Stage 1 Facility Lands”** has the meaning given in the Project Agreement.
- (hhh) **“Project Co Stage 1 Lands”** means the lands described in Schedule “A” of this Agreement.
- (iii) **“Project Substantial Completion”** has the meaning given in the Project Agreement.
- (jjj) **“Property”** means collectively the Lands and the Project Co Stage 1 Condominium Facilities.
- (kkk) **“Province Persons”** has the meaning given in the Project Agreement.

- (lll) “**Purchase Price**” means the total amount as set out in Section 2.1 that shall be paid by the Purchaser to the Vendor for the Property, exclusive of HST and subject to the adjustments specified in Section 17 of this Agreement.
- (mmm) “**Purchaser’s Solicitors**” means such firm or firms of solicitors or agents as are retained by the Purchaser from time to time and notice of which is provided to the Vendor.
- (nnn) “**RA/RM Plan**” means the risk assessment and risk management plan prepared and submitted by CH2M HILL Canada Limited to, and accepted by, the MOE.
- (ooo) “**Reciprocal Agreement**” means each reciprocal agreement between the Purchaser and another Reciprocal Owner Party of the building and lands of which the relevant Project Co Stage 1 Condominium Facility forms a part and which provides for reciprocal rights and easements as required for the integrated use and occupation of the different portions of the Lands or the different strata portions of the building under ownership of the applicable Reciprocal Owner Party.
- (ppp) “**Reciprocal Owner Parties**” means the purchasers of different strata portions of any part of Blocks 1, 2, 3, 14 and 15 on the Plan of Subdivision, and includes in such circumstance the Purchaser, and who together are the parties to the Reciprocal Agreements.
- (qqq) “**Record of Site Conditions**” means a record of site conditions filed in the environmental site registry maintained by the MOE in respect of the Lands.
- (rrr) “**Reference Plans**” has the meaning given in the Project Agreement.
- (sss) “**RFP**” has the meaning given in Recital C of this Agreement.
- (ttt) “**Section 118 Restriction**” has the meaning given in the Loan Agreement.
- (uuu) “**Security**” has the meaning given in the Loan Agreement.
- (vvv) “**Site**” has the meaning given in the Project Agreement.
- (www) “**Site Conditions**” means the condition of the Lands, including the physical, geophysical, climatic, ecological, environmental, geotechnical and archaeological conditions.
- (xxx) “**sole discretion**” means a discretion that may be exercised solely, arbitrarily and unreasonably by the Party having the right to exercise same.
- (yyy) “**Subdivision Agreement**” means the subdivision agreement dated August 22, 2011 entered into between the City and the Vendor, a notice of which was registered as instrument AT2824469 on September 28, 2011.

(zzz) “**Surviving Obligations**” has the meaning given in Section 21.3.

- (aaaa) “**Technical Reports**” means the Environmental Reports and Designated Substance Reports and the Geotechnical Reports.
- (bbbb) “**Third Party Facilities**” has the meaning given in the Project Agreement.
- (cccc) “**Third Party Facility Lands**” has the meaning given in the Project Agreement.
- (dddd) “**Third Party Lands**” has the meaning given in the Project Agreement.
- (eeee) “**Third Party Owners**” has the meaning given in the Project Agreement.
- (ffff) “**Toronto 2015**” means Toronto 2015 Organizing Committee for the 2015 Pan American and Parapan American Games.
- (gggg) “**Updated Permitted Encumbrances Notice**” has the meaning given in Section 13.4.
- (hhhh) “**Variation**” has the meaning given in the Project Agreement.
- (iiii) “**Variation Directive**” has the meaning given in the Project Agreement.
- (jjjj) “**Vendor**” means Her Majesty the Queen in right of Ontario as represented by the Minister of Infrastructure, as represented by Ontario Infrastructure and Lands Corporation, a non-share capital corporation continued and amalgamated under the *Ontario Infrastructure and Lands Corporation Act*, 2011, S.O. 2011, c. 9, Schedule 32, as amended.
- (kkkk) “**Vendor’s Solicitors**” means McCarthy Tétrault LLP or such other firm or firms of solicitors or agents as are retained by the Vendor from time to time and notice of which is provided to the Purchaser.
- (llll) “**Waterfront Toronto**” means Toronto Waterfront Revitalization Corporation, its successors and assigns.
- (mmmm) “**Works**” has the meaning given in the Project Agreement.
- (nnnn) “**Works Schedule**” has the meaning given in the Project Agreement.
- (oooo) “**YMCA Facility Owner**” has the meaning given in the Project Agreement.

## **1.2 Schedules**

The following schedules attached hereto form part of this Agreement:

Schedule “A”	-	Legal Description of the Project Co Stage 1 Lands
Schedule “B”	-	Permitted Encumbrances
Schedule “C”	-	Statutory Declaration – Vendor Form
Schedule “D”	-	Intentionally Deleted

Schedule "E"	-	Document Registration Agreement
Schedule "F"	-	Intentionally Deleted
Schedule "G"	-	Intentionally Deleted
Schedule "H"	-	Form of Acknowledgement and Agreement re Reciprocal Agreement
Schedule "I"	-	Open Permits

### **1.3 Interpretation**

The provisions of Section 2 – Interpretation of Schedule I – Definitions and Interpretations of the Project Agreement are hereby incorporated by reference into this Agreement.

### **1.4 Sole Discretion**

Unless it is specifically provided that a consent, approval or satisfaction is in the sole discretion of a Party, no consent, approval or satisfaction shall be unreasonably withheld or delayed.

## **2. AGREEMENT TO SELL AND PURCHASE PRICE**

### **2.1 Agreement to Sell**

Under this Agreement, the Vendor agrees to sell to the Purchaser and the Purchaser agrees to purchase from the Vendor the Property on the Date of Closing subject to and in accordance with the terms of this Agreement.

### **2.2 Purchase Price**

- (a) The Vendor and the Purchaser agree that the Purchase Price to be paid by the Purchaser for the Property is the amount of [REDACTED] (\$[REDACTED]) Canadian dollars, payable by the Purchaser to the Vendor's Solicitors in trust, by certified cheque, bank draft or wire transfer on the Closing, subject to the adjustments as set out in Section 17.

### **2.3 Date of Closing**

This Agreement shall be completed on the Date of Closing at the offices of the Vendor's Solicitors in Toronto, subject to real property registrations being electronically effected at the applicable land titles office.

## **3. HARMONIZED SALES TAX**

### **3.1 Payment of HST**

The Purchase Price of the Lands does not include the Harmonized Sales Tax ("HST") payable by the Purchaser in respect of the purchase of the Lands pursuant to the *Excise*

*Tax Act*, R.S. 1985, c. E.15 (Canada) (the “**Excise Tax Act**”). Subject to Section 3.2 below, the Purchaser agrees to pay to the Vendor, on the Date of Closing, as a condition of completion of this transaction by certified cheque or bank draft, all HST payable as a result of this transaction in accordance with the *Excise Tax Act*.

### **3.2 Purchaser Registered Under Excise Tax Act**

Notwithstanding Section 3.1 above, the Vendor shall not collect HST from the Purchaser and the Purchaser shall not be required to pay HST to the Vendor in this transaction if the Purchaser is registered under the *Excise Tax Act* and in that event, the Purchaser shall file returns and remit such HST to the Receiver General for Canada when and to the extent required by the *Excise Tax Act*. The Purchaser shall provide to the Vendor, on the Date of Closing, a statutory declaration confirming that the Purchaser is registered under the *Excise Tax Act* for the purposes of collecting and remitting HST, and confirming its HST registration number under the *Excise Tax Act*, together with an indemnity in favour of the Vendor for any costs or expenses payable by the Vendor as a result of the Vendor's failure to collect HST from the Purchaser on the Date of Closing, such statutory declaration and indemnity to be in a form satisfactory to the Vendor's Solicitors, acting reasonably.

## **4. LAND TRANSFER TAX AND FEES**

### **4.1 Payment by Purchaser**

The Purchaser shall be responsible for the payment of land transfer taxes (and the amount of such land transfer taxes shall be adjusted in favour of the Purchaser as part of the Closing adjustments) and all registration fees payable in respect of registration by it of any documents on Closing including the transfer/deed of the Lands (other than discharges of encumbrances which are required to be made by the Vendor, which shall be the responsibility of the Vendor) and any other taxes and fees payable upon or in connection with the conveyance or transfer of the Property.

### **4.2 Indemnity by Purchaser for Failure to Pay Taxes**

Subject to Section 17, the Purchaser shall indemnify and save harmless the Vendor, the Province Persons and each of their respective shareholders, directors, officers, employees, agents and representatives (collectively the “**Indemnified Parties**”) from all claims, actions, causes of action, proceedings, losses, damages, costs, liabilities and expenses incurred, suffered or sustained by an Indemnified Party as a result of a failure by the Purchaser:

- (a) to pay any federal, provincial or other taxes payable by the Purchaser in connection with the conveyance or transfer of the Property whether arising from a reassessment or otherwise, including provincial retail sales tax and goods and services tax, if applicable; and/or

- (b) to file any returns, certificates, filings, elections, notices or other documents required to be filed by the Purchaser with any federal, provincial or other taxing authorities in connection with the conveyance or transfer of the Property.

## **5. THIRD PARTY PROJECTS**

### **5.1 Determination of Third Party Facilities and Lands**

The Purchaser acknowledges that the Purchaser is responsible in accordance with Section 26.2 of the Project Agreement to determine the location and extent of the Project Co Stage 1 Condominium Facilities, the Project Co Stage 1 Facility Lands, the Third Party Facilities, the Third Party Lands and the Third Party Facility Lands and further is responsible in accordance with Section 26.2(a) of the Project Agreement to prepare the Reference Plans and the Legal Descriptions for the Project Co Stage 1 Facility Lands, the Third Party Lands and the Third Party Lands.

### **5.2 Reciprocal Agreements**

If any of the Project Co Stage 1 Condominium Facilities will form a part of another building or buildings and lands on a basis which requires the provision of reciprocal rights and easements for the integrated use and occupation of the different strata portions of the building or buildings under ownership of a Reciprocal Owner Party, the Purchaser agrees to negotiate in good faith and on a commercially reasonable basis a Reciprocal Agreement with such other Reciprocal Owner Party in accordance with its obligations under the Acknowledgement and Agreement re Reciprocal Agreement and to confirm to the Vendor that such Reciprocal Agreement has been finalized at least nine months prior to the date scheduled under the Project Agreement for Project Substantial Completion. The Purchaser agrees that if for any reason the Purchaser and any other Reciprocal Owner Party to a Reciprocal Agreement have been unable to finalize such Reciprocal Agreement by no later than twelve months prior to the scheduled date under the Project Agreement for Project Substantial Completion, that the Purchaser and such other Reciprocal Owner Party shall proceed to settle all outstanding matters by binding arbitration in accordance with the *Arbitration Act* (Ontario) or as the Reciprocal Owner Parties may otherwise agree at no cost to the Vendor. The Vendor agrees to include a provision setting out requirements comparable to this Section 5.2 in the agreement of purchase and sale with the purchasers of the Third Party Facilities and agrees to enforce same as necessary to facilitate settlement of the applicable Reciprocal Agreement. On Financial Close, the Purchaser shall execute and deliver to the Vendor (i) an Acknowledgement and Agreement re Reciprocal Agreement in respect of Blocks 1, 2, 3 and 14 (the “**Acknowledgement and Agreement re Reciprocal Agreement for Blocks 1, 2, 3 and 14**”), and (ii) an Acknowledgement and Agreement re Reciprocal Agreement in respect of Block 15 (the “**Acknowledgement and Agreement re Reciprocal Agreement for Block 15**”). The Vendor shall deliver to the Purchaser a fully executed copy of each of the Acknowledgement and Agreement re Reciprocal Agreement for Blocks 1, 2, 3 and 14 and the Acknowledgement and Agreement re Reciprocal Agreement for Block 15 no more than 30 calendar days following the execution date of

the last agreement of purchase and sale in respect of the applicable portions of the Third Party Lands entered into between the Vendor and each of the Third Party Owners.

## **6. LOAN AGREEMENT CONDITION**

### **6.1 Loan Agreement Compliance**

Unless and until the Purchaser and the Lender's Agent have each irrevocably waived its right to draw the loan under the Loan Agreement, the Purchaser agrees to comply with all of the requirements of Section 9.02(1) of the Loan Agreement.

### **6.2 Registration of Debenture and Section 118 Restriction**

Unless and until the Purchaser and the Lender's Agent have each irrevocably waived its right to draw the loan under the Loan Agreement, the Purchaser acknowledges and agrees that the registration of the Section 118 Restriction against the title to the Project Co Stage 1 Lands will occur immediately prior to the registration of the Transfer/Deed of the Project Co Stage 1 Lands on the Date of Closing and the registration of the Debenture will occur as the first registration immediately following the registration of such Transfer/Deed and that execution and delivery of the Debenture and the Section 118 Restriction and their registration in accordance with the foregoing and the satisfaction by the Purchaser of all other requirements of Section 9.02(1) of the Loan Agreement shall be a condition of the registration of the Transfer/Deed of the Project Co Stage 1 Lands, but for the avoidance of doubt, shall not be a condition to the advance of the loan under the Loan Agreement.

## **7. "AS IS WHERE IS" CONDITION AND ENVIRONMENTAL INDEMNITY**

### **7.1 As is Where is Condition of Lands**

Subject to the provisions of the Project Agreement, the Project Co Services Agreement and this Agreement, the Purchaser shall accept, assume and take title to the Lands in an "As Is Where Is" condition. The term "**As Is Where Is**" means in its condition or state on the Date of Closing without any agreement, representation or warranty of any kind, either express or implied on the part of the Vendor or the Owner including without limitation, as to Site Conditions, including its environmental condition, deficiencies and encroachments from and onto the Lands, the condition of the soil, the subsoil, the ground and surface water or any other environmental matters, the condition of the Lands or the condition of the Facility, area, suitability for purpose, physical characteristics, profitability, the existence of latent defects, or any other matter respecting the Lands whatsoever, including without limitation, compliance with Environmental Law, the existence of any Hazardous Substance or Contaminant, or the use to which the Lands may be put and its zoning. Without limiting the foregoing, it is understood that the Purchaser accepts, assumes and takes title to the Lands subject to the land uses permitted on the Lands by the applicable Land Use Regulations and the Purchaser shall not make and is not authorized by the Vendor or the Owner to make, prior to completion of this transaction, any applications to the City or any Governmental Authority for changes or



variances to the uses currently permitted on the Lands including, without limitation, changes or variances to official plans and/or zoning by-laws applicable to the Lands. Neither the Vendor nor the Owner shall have any liability, obligation or responsibility to the Purchaser after Closing with respect to any matter relating to the Lands or any part thereof or the condition thereof, other than those liabilities, obligations and responsibilities expressly set out in the Project Agreement, the Project Co Services Agreement and this Agreement.

## **7.2 Provision of Technical Reports**

The Purchaser acknowledges that the Vendor has made available to the Purchaser the Technical Reports under the Project Agreement subject to the confidentiality obligations with respect to the delivery and use of those reports as set out in the Project Agreement. The Vendor makes no representations or warranties with respect to the completeness or accuracy of the Technical Reports and shall not be liable to the Purchaser, its agents, employees or lending institution in any way for any omission or inaccuracy contained therein. Nothing herein shall release, relieve or otherwise abrogate from the obligations of the Vendor under the Project Agreement respecting any liability of the Vendor relating to such Technical Reports, including the provisions of Sections 6 and 16 thereof.

## **7.3 Project Agreement Provisions for Condition of Lands**

The Purchaser acknowledges that upon Project Substantial Completion as a part of the performance of the Works by the Purchaser under the Project Agreement, the Purchaser will have satisfied the requirements of Environmental Law (except to the extent same are the responsibility of the Vendor under the Project Agreement in which event the processes and procedures set forth therein shall apply) in respect to any remediation required in respect of the Lands and for clarity, the Purchaser shall accept title to the Lands subject to the Certificate of Property Use and subject to the registration of the Record of Site Conditions in the environmental site registry maintained by the MOE. Nothing herein shall release, relieve or otherwise abrogate from the obligations of the Vendor under the Project Agreement in respect of the remediation or funding of the remediation of the Lands.

## **7.4 Purchaser CPU Indemnity**

The Purchaser shall be responsible for and hereby releases and indemnifies and saves harmless the Indemnified Persons from all costs, including legal and witness costs, claims, demands, civil actions, prosecutions or administrative hearings, fines, judgments, awards including awards of costs, that may arise as a result of any failure by the Purchaser to comply with the Certificate of Property Use or, subject to the obligations and liabilities of the Vendor under the Project Agreement with respect to environmental matters, any other breach of Environmental Law on or about the Lands by the Purchaser, its agents or contractors.

## **7.5 Release and Indemnity of Vendor**

Subject to the obligations and liabilities of the Vendor under the Project Agreement with respect to the condition of the Lands, including environmental matters, the Purchaser shall be responsible for and hereby releases the Vendor and indemnifies and saves harmless the Indemnified Parties from any costs, including legal and witness costs, claims, demands, civil actions, prosecutions, or administrative hearings, fines, judgments, awards, including awards of costs, that may arise as a result of the condition of the Lands, any order issued by any competent Governmental Authority in connection with the condition of the Lands, or any loss, damage, or injury caused either directly or indirectly as a result of the condition of the Lands including, without limitation, non-compliance with Environmental Law or the existence of any Hazardous Substance or Contaminant.

## **8. VENDORS' CONDITIONS**

### **8.1 Vendor's Conditions**

This Agreement is subject to the conditions set forth in Sections 8.3, 8.4, 8.5, 8.6 or 8.7 hereof which have been inserted for the sole benefit of the Vendor and may be waived in whole or in part by the Vendor in its sole discretion, or by the Vendor's Solicitors on its behalf. The conditions are conditions precedent to the obligation of the Vendor to complete this Agreement on the Date of Closing (subject to the Vendor's right to waive any of the conditions as set out above).

### **8.2 Non-Fulfillment of Conditions**

If a condition set forth in this Article 8 is not fulfilled within the applicable time period, if any, and the Vendor fails to notify the Purchaser or the Purchaser's Solicitors that such condition has been waived or the time period for compliance has been extended within the applicable time period allowed, if any, this Agreement shall be terminated, notwithstanding any intermediate act or negotiations.

### **8.3 Loan Agreement Compliance Condition**

Unless the Purchaser and the Lender's Agent have each irrevocably waived its right to draw the loan under the Loan Agreement, the Purchaser shall have complied with its obligations under Article 6 on or prior to the Date of Closing.

### **8.4 Environmental Assessment Act**

The Vendor has undertaken such actions and measures as it deems necessary to comply with the requirements of the *Environmental Assessment Act*, R.S.O. 1990, c. E. 18 and the Class EA in each such case as they apply to the Lands and the transaction contemplated by this Agreement, including the Class EA (collectively, the "Environmental Requirements"). Notwithstanding any other provision of this Agreement, the completion of the transaction is subject to continuing compliance to the Date of Closing with all such Environmental Requirements and in the event that prior to the Date of Closing:

- (a) any Governmental Authority makes or issues any order or directive pursuant to the Environmental Requirements that necessitates that the Vendor, in addition to the actions and measures taken aforesaid, to take other or different actions or measures to comply with the Environmental Requirements (including, without limitation, an order or directive requiring the Vendor to comply with Part II of the *Environmental Assessment Act*); or
- (b) the Vendor receives any notice or communication from any Governmental Authority that it is considering whether to make or issue any such order or directive; or
- (c) a written request has been made to the Minister of the Environment, of which the Vendor has notice, that other or different measures be taken to comply with the Environmental Requirements;

then the Vendor may, at its option and in its sole discretion, extend the Date of Closing for such period of time as is necessary in the determination of the Vendor to comply with any such actions, measures, orders or directives by notice in writing to the Purchaser during which time the Vendor shall

- (d) take any such actions, measures and comply with any such orders or directives (as the same may be modified or withdrawn) at its own expense; or
- (e) terminate this Agreement by written notice to the Purchaser.

## **8.5 First Nation Claims**

If at any time prior to the Date of Closing the Vendor receives notification or otherwise becomes aware of any claim or potential claim whatsoever for an interest in respect of the Lands, by any First Nation or other aboriginal group or individual, in relation to any constitutional right, treaty right, land claim, surrender agreement or consultation right, including, without limitation, an interest in the title to the Lands, a right to the use of the whole or any part of the Lands, a restriction on the use of the Lands or any part thereof for any purpose, a restriction on access to the Lands or any part thereof, a claim for compensation, arising out of any interest or claimed interest in the Lands or a right of consultation in relation to the Lands, then the Vendor may at its option and in its sole discretion extend the Date of Closing by notice in writing to Purchaser during which time the Vendor shall:

- (a) determine in its sole discretion if such claim, potential claim or interest is valid and if so is capable of being satisfied or appropriate releases can be obtained from all interested parties to enable the Vendor to complete the sale of the Lands to the Purchaser by the Date of Closing free and clear of any such claim, potential claim or interest, in which event, the Vendor shall satisfy such claims or obtain such releases by the Date of Closing; or
- (b) have the right to terminate this Agreement by written notice to the Purchaser.

## **8.6 Letters of Credit**

On or before the Date of Closing, the Vendor shall have received the following:

- (a) the Third Party Facility Conversion Costs LC in accordance with Section 18.17(a) of the Project Agreement;
- (b) the Municipal Works Letter of Credit in accordance with Section 18.18(a) of the Project Agreement; and
- (c) the LEED Letter of Credit in accordance with Section 22.5(a) of the Project Agreement.

## **8.7 Insurance**

On Closing, the Vendor shall have received satisfactory evidence that the Purchaser continues to carry the insurance required by the Project Agreement.

## **8.8 Project Agreement Termination**

The Vendor and the Purchaser acknowledge and agree that if the Project Agreement is terminated before the Date of Closing, this Agreement shall be terminated, notwithstanding any intermediate act or negotiations; provided that, for the purposes of this Section 8.8, a novation under section 10 of the Lenders' Direct Agreement (irrespective of whether a replacement Project Agreement is entered into) shall not be considered to be a termination of the Project Agreement.

## **8.9 HMQ Event of Default**

The Vendor and the Purchaser acknowledge and agree that a termination of this Agreement under any of Sections 8.4(e), 8.5(b) and 13.4 or a default by the Vendor that results in the Closing not occurring through no fault of the Purchaser shall constitute an HMQ Event of Default under the Project Agreement and the Purchaser acknowledges and agrees that its sole compensation as a result of such termination of this Agreement shall be as provided for under the Project Agreement in the event of an HMQ Event of Default and neither the Vendor nor the Purchaser shall be liable to the other for any loss, costs or damages under this Agreement as a result of such termination.

## **8.10 Extension of the Date of Closing**

If the Vendor exercises its right to extend the closing under any of Sections 8.4, 8.5 or 13.4 for a period in excess of 60 days in the aggregate then the period of extension beyond 60 days shall be deemed to be a Compensation Event under the Project Agreement and the provisions of the Project Agreement relating to a Compensation Event shall apply.

## **9. RISK OF PROPERTY AND INSURANCE**

## **9.1 Risk Until Completion**

Subject to the Project Co Services Agreement, until completion of this Agreement on the Date of Closing, the risk of damage or destruction of the Project Co Stage 1 Condominium Facilities shall be at the risk of the Purchaser.

## **9.2 Insurance, Damage**

The Purchaser acknowledges that Project Co, in respect of damage to the Lands, carries the insurances set out in Schedule 25 - Insurance and Performance Security Requirements under the Project Agreement. The Purchaser further acknowledges that it is a condition of achieving Financial Close that such insurances shall be in place as at Financial Close and that the interests of the Purchaser in such insurances shall be as required in the said Schedule 25 to the Project Agreement. In the event of damage to the Project Co Stage 1 Condominium Facilities on or before the Date of Closing, subject to the Project Co Services Agreement, the Purchaser shall nonetheless complete the Closing and, either before or after Closing, the Purchaser will repair the Project Co Stage 1 Condominium Facilities in accordance with the Project Agreement and/or the Loan Agreement, as applicable. In either event, the Vendor and the Purchaser will complete the transaction without an abatement in the Purchase Price.

# **ARTICLE 10A ASSISTANCE TO PURCHASER**

## **10A.1 Assistance to Purchaser**

In support of the development of the Lands in accordance with the Project Agreement:

- (1) at the request of the Purchaser and at the sole cost and expense of the Purchaser, the Vendor shall convey any portion or portions of the Lands to any Governmental Authority in connection with the servicing, subdivision and/or development of the Lands;
- (2) at the request of the Purchaser and at the sole cost and expense of the Purchaser, the Vendor shall grant easements to any Governmental Authority or utility or cable provider in connection with the operation, servicing and/or development of the Lands and shall be a party to any servicing agreements, site plan agreement, subdivision agreement, agreement pursuant to section 37 of the *Planning Act* (Ontario) and other similar documentation as may be required by the Purchaser so long as the Vendor incurs no liability thereunder or receives an indemnity of the Purchaser therefor that is satisfactory to the Vendor in form and substance;
- (3) at the request of the Purchaser and at the sole cost and expense of the Purchaser, the Vendor shall apply to bring the Lands under the *Condominium Act*, 1998 (Ontario) provided that the Vendor shall not be required to sign any declaration or description under the *Condominium Act*, 1998 (Ontario) nor shall it be required to execute any document which would create a liability under the *Condominium Act*, 1998 (Ontario); and
- (4) at the request of the Purchaser and at the sole cost and expense of the Purchaser, the Vendor shall execute:

(a) any and all authorizations, applications and consents necessary to permit the registration of any condominium plan in respect of any part of the Lands provided that the Vendor shall not be required to sign any declaration or description under the *Condominium Act*, 1998 (Ontario) nor shall it be required to execute any document which would create a liability under the *Condominium Act*, 1998 (Ontario); and

(b) subject to Section 26.1(h) of the Project Agreement, any and all applications for minor variances and consents to severance which the Purchaser shall reasonably require in connection with development of the Lands.

All documentation described above in this Section 10A.1 shall be prepared by the Purchaser at the sole cost and expense of the Purchaser, subject to the approval of the Vendor;

(5) the Vendor covenants to do and perform all acts and execute and deliver all documents as are reasonably necessary and within its reasonable control in order to cause the conveyance of lands for the purposes of public roads to the City in accordance with the terms of the Subdivision Agreement, provided that the Vendor shall not be required to incur any out-of-pocket costs in connection with this covenant. The Vendor covenants not to oppose any dedication and/or assumption of such lands as public highways, however nothing in this agreement shall be deemed to limit or circumscribe the powers of the legislature of Ontario or the discretion of HMQ to implement public policy;

(6) the Vendor covenants to use reasonable commercial efforts to close the open permits and committee of adjustment applications listed in Schedule "I" (the "**Open Permits**") at its own cost in due course, unless any Open Permits are required by the Vendor or any other entity for on-going work at the West Don Lands. In the event that any Open Permits can be closed by the Purchaser during its permitting process without any additional cost to the Purchaser, the Purchaser covenants to close them; and

(7) the Purchaser and Vendor acknowledge that Section 36 of Schedule B-1 of the Subdivision Agreement obligates the Vendor to provide easements over Blocks 1 and/or 4, 14, 8 and/or 20, and 17 (as listed on Schedule B, part 2, numbers 7 and 8, the "**Future Easements**") to secure public access to provide for the public use of the proposed open space, as generally shown in the accepted West Don Lands Block Plan And Design Guidelines, to the satisfaction of the City. The Vendor agrees that the Purchaser shall be permitted to provide reasonable prior input on the contents of the Future Easements and the Parties shall work together to ensure that any reasonable comments are addressed with the City and implemented into the Future Easements where possible.

## **10. VENDOR'S WARRANTIES, REPRESENTATIONS AND COVENANTS**

### **10.1 Section 116 of Income Tax Act**

The Vendor represents and warrants to the Purchaser that it is not a non-resident of Canada within the meaning and intended purpose of Section 116 of the *Income Tax Act*, R.S.C. 1970, c. I. 5 (Canada).

## **10.2 Vendor Power and Authority**

The Vendor represents and warrants to the Purchaser that it is a non-share capital corporation continued and amalgamated under the *Ontario Infrastructure and Lands Corporation Act*, 2011, S.O. 2011, c. 9, Schedule 32, as amended, and includes any successors thereto or persons exercising delegated power and the Minister's authority, as agent for Her Majesty the Queen in Right of Ontario as represented by the Minister of Infrastructure, and has all the requisite corporate power and authority to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Agreement as agent for the Province.

## **10.3 Agent for the Province**

The Vendor represents and warrants to the Purchaser that it has obtained all necessary approvals to enter into this Agreement as agent for the Province.

## **10.4 Intentionally Deleted**

## **10.5 Enforceability**

The Vendor represents and warrants to the Purchaser that this Agreement has been duly authorized, executed, and delivered by it and constitutes a legal, valid, and binding obligation, enforceable against it in accordance with its terms, subject only to:

- (a) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, moratorium, winding up, arrangement, reorganization, fraudulent preference and conveyance and other laws of general application affecting the enforcement of creditors' rights generally;
- (b) general equitable principles and the fact that the availability of equitable remedies such as specific performance and injunction are not available against the Vendor and that a court may stay proceedings or the execution of judgments;
- (c) statutory limitations of general application respecting the enforceability of claims against it or its property;
- (d) Section 11.3 of the *Financial Administration Act* (Ontario);
- (e) any terms and conditions set out in the approval that has been provided in connection with this Project Agreement for the purposes of Section 28 of the *Financial Administration Act*; and
- (f) the powers of the Minister of Finance to effect set offs against amounts owing by it pursuant to Section 43 of the *Financial Administration Act*;

## **10.6 No Conflict**

The Vendor represents and warrants to the Purchaser that the execution, delivery, and performance by it of this Project Agreement does not and will not violate or conflict with, or constitute a default under:

- (a) the *Ontario Infrastructure and Lands Corporation Act*, 2011, S.O. 2011, c. 9, Schedule 32, as amended, or any regulations made in respect thereof;
- (b) the Executive Council Act (Ontario);
- (c) any Applicable Law; or
- (d) any covenant, contract, agreement, or understanding to which it is a party or by which it or any of its properties or assets is bound or affected.

#### **10.7 Compliance with Agreements, etc.**

The Vendor represents and warrants to the Purchaser that, except to the extent such matters are the obligation of Project Co under the Project Agreement, it has complied with all Permitted Encumbrances as of Financial Close and will have complied with all such Permitted Encumbrances as of the Date of Closing.

### **11. PURCHASER'S WARRANTIES, REPRESENTATIONS AND COVENANTS**

#### **11.1 Purchaser Power and Authority**

The Purchaser represents and warrants to the Vendor that as of the date of this Agreement:

- (a) The Purchaser is a [REDACTED], and has all the requisite power and authority to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Agreement and to perform its obligations hereunder;
- (b) [REDACTED];
- (c) [REDACTED];
- (d) The Purchaser has the requisite power, authority and capacity to execute and deliver and perform this Agreement, and to do all acts and things, and execute, deliver and perform all other agreements, instruments, undertakings and documents as are required by this Agreement to be done, executed, delivered or performed;
- (e) this Agreement has been duly authorized, executed, and delivered by the Purchaser and constitutes a legal, valid, and binding obligation of the Purchaser, enforceable against the Purchaser in accordance with its terms, subject only to:



- (i) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, moratorium, winding-up, arrangement, reorganization, fraudulent preference and conveyance and other laws of general application affecting the enforcement of creditors' rights generally; and
  - (ii) general equitable principles and the fact that the availability of equitable remedies is in the discretion of a court and that a court may stay proceedings or the execution of judgments;
- (f) the execution, delivery, and performance by the Purchaser of this Agreement does not and will not violate or conflict with, or constitute a default under:
- (i) its constating, formation or organizational documents, including any by-laws;
  - (ii) any Applicable Law; or
  - (iii) any covenant, contract, agreement, or understanding to which it is a party or by which it or any of its properties or assets is bound or affected;
- (g) the Purchaser is registered under Division V of Part IX of the *Excise Tax Act* (Canada) and its HST registration number is [REDACTED];
- (h) [REDACTED]; and
- (i) [REDACTED].

## **11.2 Permitted Encumbrances**

From and after the Date of Closing, the Purchaser shall comply with the terms of the Permitted Encumbrances including any Reciprocal Agreements, any agreement entered into by the Vendor with any Governmental Authority relating to the Lands as contemplated in the Project Agreement, all other agreements relating to public utilities and municipal services that are either contemplated in the Project Agreement or necessary or desirable in connection with the development and construction of the Facilities, the Land Use Regulations and all relevant municipal by-laws and all registered restrictions.

## **12. PLANNING ACT COMPLIANCE**

### **12.1 Purchaser Responsibility**

The Purchaser shall be responsible for ensuring, at its cost, that the transfer of the Lands to the Purchaser complies with the subdivision control provisions of the *Planning Act* on or before the Date of Closing. Any conditions that are to be fulfilled in connection with the consent are to be fulfilled by and at the cost of the Purchaser.

## **13. TITLE**

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### **13.1 Purchaser Satisfaction as to Title**

The Purchaser acknowledges and agrees that it has had an opportunity to review the title to the Lands and acknowledges and agrees that, subject to Section 13.4, it is fully satisfied with the title to the Lands to be delivered by the Vendor under this Agreement, including in respect to the Permitted Encumbrances, and the Purchaser acknowledges that as of the Date of Closing the Lands will be subject to the additional Permitted Encumbrances anticipated in Schedule "B" – Permitted Encumbrances, including the Reciprocal Agreement(s) and any reciprocal rights and easements under the Reciprocal Agreement(s) as may be registered against the title to the Lands.

### **13.2 Direction of Title**

The Purchaser may direct title in respect to any portion of the Lands on which a Project Co Stage 1 Condominium Facility has been constructed, to a direct or indirect wholly-owned subsidiary of Project Co, or a bare trustee on behalf of such a subsidiary, and for such purpose the Purchaser shall provide to the Vendor the relevant information regarding such party including evidence that such party is a direct or indirect wholly-owned subsidiary of the Purchaser and such other information regarding such subsidiary as the Vendor may reasonably request; provided that, where the Lenders' Agent is pursuant to the Lending Agreements exercising the rights of the Purchaser hereunder, the Lenders' Agent may direct title to an Appointed Representative under and as defined in the Lenders' Direct Agreement.

### **13.3 Acceptance of Title on the Date of Closing**

On the Date of Closing, the Purchaser shall, subject to Section 13.4, accept title to the Lands in the condition contemplated in Section 7, subject to the following:

- (a) the Land Use Regulations; and
- (b) all Permitted Encumbrances.

### **13.4 Subsearch of Permitted Encumbrances Prior to Closing**

The Vendor shall provide to the Purchaser an updated Schedule "B" setting out the current Permitted Encumbrances based on a subsearch of the title to the Lands by the Vendor's Solicitor, not less than 30 and not more than 40 days prior to the scheduled Date of Closing (the "**Updated Permitted Encumbrances Notice**"). The Purchaser may have the Purchaser's Solicitor confirm the updated list of Permitted Encumbrances. In the event that the Updated Permitted Encumbrances Notice discloses Permitted Encumbrances that were not set out in Schedule "B" at the date of execution of this Agreement, or that were not future encumbrances that were, as described in section 2 of Schedule "B", anticipated to be registered on or before the Date of Closing ("**New Permitted Encumbrances**"), then provided any such New Permitted Encumbrances do not go to the root of title or do not materially negatively affect the use, enjoyment, value or marketability of the Lands by the Purchaser, then such New Permitted Encumbrances

shall be accepted by the Purchaser. In the event that any New Permitted Encumbrances do go to the root of title or do materially and negatively affect the enjoyment, use, value or marketability of the Lands by the Purchaser ("**Prohibited Encumbrances**"), the Vendor shall have a period of 60 days in order to endeavour to remove such Prohibited Encumbrances from the title to the Lands (including through the exercise of a Provincial right of expropriation if necessary, all at the Vendor's cost and expense) or such longer period of time as the Vendor may consider necessary but not to extend beyond 180 days from the scheduled Date of Closing. In the event that the Vendor has removed the Prohibited Encumbrances the Vendor shall give notice thereof to the Purchaser of the final Schedule "B" setting out the final Permitted Encumbrances based on a further subsearch of the title to the Lands by the Vendor's Solicitor and the date of Closing shall be the Second Business Day from the date such notice has been given to the Purchaser. In the event that the Vendor has been unable to remove such Prohibited Encumbrances, then this Agreement shall be terminated and the provisions of Section 8.9 shall apply.

### **13.5 Release of Information to City**

The Vendor hereby consents to the City and other Governmental Authorities that the Purchaser intends to approach in connection with usual due diligence inquiries for comparable transactions releasing to the Purchaser any information in their records in connection with the Lands and the Vendor agrees to execute and deliver such necessary authorizations as the Purchaser may reasonably require in this regard but any such authorization shall specifically prohibit the right of or a request for an inspection of the Lands by the City or other Governmental Authority.

## **14. NO REGISTRATION, LIMITATION ON ASSIGNMENT**

### **14.1 No Registration**

The Purchaser shall not register this Agreement, or any assignment of this Agreement, or any part of either, or register a caution in relation thereto, without obtaining the prior written consent of the Vendor.

### **14.2 Assignment**

The Purchaser shall not sell, assign, transfer, charge, mortgage, encumber, dispose of or otherwise alienate all or any part of any interest, whether legal or beneficial, in this Agreement without the prior written consent of the Vendor, in its sole discretion, save and except as permitted under the Project Agreement.

## **15. PREPARATION OF TRANSFER/DEED DOCUMENTS**

### **15.1 Preparation by Vendor**

The Transfer/Deed of the Lands will be prepared by the Vendor, except for the Affidavit of Residence and Value of the Consideration ("**Land Transfer Tax Affidavit**"), which will be prepared by the Purchaser. The Purchaser shall pay its own legal costs,

registration costs, and, subject to the adjustments in Section 17.1, all land transfer tax payable.

## **16. TENDER**

### **16.1 Tender**

Any tender of money or documents pursuant to this Agreement may be made on the Vendor or the Purchaser or their respective solicitors. Money must be tendered in Canadian funds by bank draft, wire transfer or negotiable cheque certified by a Canadian chartered bank, trust company, credit union or Province of Ontario Savings Office.

## **17. ADJUSTMENTS**

### **17.1 Closing Adjustments**

Adjustments between the Vendor and the Purchaser shall be made on the Date of Closing for taxes, local improvement rates and charges, utility costs and deposits, other matters or items which are ordinarily the subject of adjustment for the purchase and sale of a property similar to the Lands and an amount equal to the land transfer tax paid by the Purchaser as contemplated in Section 4.1. The Vendor shall be responsible for all expenses accrued from the Lands for that period ending on the day prior to the Date of Closing and the Purchaser shall be responsible for all of the expenses in respect of the Lands for the period from and after the Date of Closing. In addition, the adjustments shall include the other matters referred to in this Agreement which are stated to be the subject of adjustment and shall exclude the other matters in this Agreement which are stated not to be the subject of adjustment. Any amounts adjusted in favour of the Purchaser shall be and become the responsibility of the Purchaser to pay when due which it covenants and agrees to do and to save the Vendor harmless from any non-payment.

### **17.2 Post-Closing Adjustments**

Any adjustments that cannot be determined on the Date of Closing shall be determined by the parties as soon after the Date of Closing as is reasonably possible. Any amounts payable by one Party to the other, as determined by the parties, acting reasonably, shall be paid within ten (10) days of the request for such payment. The Vendor and Purchaser shall execute and deliver on the Date of Closing an undertaking to readjust and pay the amount of any adjustments or other of the foregoing post-closing adjustments as may be owing pursuant to the provisions of this Agreement. As a post-Closing adjustment, there shall be an adjustment in favour of the Purchaser in the amount of any additional land transfer taxes, together with any interest and penalties payable in respect of such additional land transfer taxes.

### **17.3 Interest on Default of Payment**

All amounts payable to the Vendor under this Agreement will bear simple interest at the Default Rate of Interest. Interest will be calculated and payable from and including the

day after the day the amount is due until payment in full of the overdue amount is received by the Vendor. Interest will be calculated only on the principal amount outstanding from time to time, and interest charges will not be added to the outstanding principal amount for purposes of calculating interest. Payments will be applied first to outstanding interest charges and the balance (if any) will be applied to the outstanding principal amount. The rights of the Vendor to charge and receive interest in accordance with this Section are without prejudice to any of the other rights of the Vendor at law or otherwise.

## **18. ELECTRONIC REGISTRATION**

### **18.1 Completion by Electronic Registration**

Where the Lands is in an area where electronic registration is mandatory and the transaction will be completed by electronic registration pursuant to Part III of the *Land Registration Reform Act*, R.S.O. 1990, c. L-4, and the *Electronic Registration Act*, 1991, S.O. 1991, c.-44, and any amendments thereto, the Vendor and Purchaser acknowledge and agree that the exchange of closing funds, non-registerable documents and other closing deliverables provided for herein and the release thereof to the Vendor and Purchaser will:

- (a) not occur at the same time as the registration of the transfer/deed (and any other documents intended to be registered in connection with the completion of this transaction); and
- (b) be subject to conditions whereby the lawyer(s) receiving any of the closing deliverables will be required to hold same in trust and not release same except in accordance with the terms of a document registration agreement between the said lawyers, the form of which is as recommended from time to time by the Law Society of Upper Canada.

## **19. CLOSING AND CLOSING DELIVERABLES**

### **19.1 Intentionally Deleted**

### **19.2 Vendor Deliveries**

The Vendor covenants that it will deliver or cause to be delivered to the Purchaser on or before the Date of Closing, subject to the provisions of this Agreement, each of the following:

- (a) an Assignment and Assumption of the Permitted Encumbrances;
- (b) executed Transfer(s)/Deed(s) of the Lands in registerable form duly executed by the Vendor in favour of the Purchaser (save for any Land Transfer Tax Affidavit);

- (c) vacant possession of the Lands in an “As Is Where Is” condition subject to the Project Agreement and the Project Co Services Agreement;
- (d) a direction regarding the payment of the Purchase Price;
- (e) statement of adjustments;
- (f) an undertaking to re-adjust the statement of adjustments, if necessary, upon written demand;
- (g) the assignment of all guarantees and warranties to the Purchaser as provided for in Section 17.4 of the Project Agreement;
- (h) discharges of or an undertaking to discharge all encumbrances that are not Permitted Encumbrances or New Permitted Encumbrances;
- (i) the Document Registration Agreement as set out in Schedule “E”; and
- (j) such other documents as the Purchaser or Purchaser’s Solicitors may reasonably require in order to implement the intent of this Agreement.

### **19.3 Intentionally Deleted**

### **19.4 Purchaser Deliveries to Vendor**

The Purchaser covenants that it will deliver or cause to be delivered to the Vendor on or before the Date of Closing, subject to the provisions of this Agreement, each of the following:

- (a) a direction as to title, if necessary;
- (b) the Document Registration Agreement as set out in Schedule “E”;
- (c) a statutory declaration updated to the Date of Closing in the form set out in Schedule “C”;
- (d) **[Intentionally Deleted]**;
- (e) the replacement letters of credit and/or security deposits contemplated by Section 9.4 of the Project Agreement and the letters of credit described in Section 8.6;
- (f) a certified cheque or bank draft for the balance of the Purchase Price due on the Date of Closing;
- (g) the HST declaration and indemnity, if applicable referred to in Section 3.2;

- (h) an undertaking to re-adjust the statement of adjustments, if necessary, upon written demand;
- (i) the Reciprocal Agreements duly executed by the Purchaser;
- (j) all of the documentation, registrations, reports, opinions and all other materials required to be delivered under and the performance of all matters to be performed by the Purchaser in furtherance of Article 6 including the Section 118 Restriction under and in accordance with Section 6.2 and, unless the Purchaser and the Lender's Agent have each irrevocably waived its right to draw the loan under the Loan Agreement, the delivery of the Debenture under and in accordance with Section 6.2; and
- (k) such other documents as the Vendor or its solicitors may reasonably require in order to implement the intent of this Agreement.

## **20. NOTICE**

### **20.1 Address for Notice**

Any notice under this Agreement is sufficiently given if delivered personally or if sent by ordinary prepaid mail or prepaid courier or electronic facsimile machine addressed to the Purchaser at:

**[REDACTED]**

Attention: **[REDACTED]**  
Telephone: **[REDACTED]**  
Facsimile: **[REDACTED]**

And:

**[REDACTED]**

Attention: **[REDACTED]**  
Telephone: **[REDACTED]**  
Facsimile: **[REDACTED]**

and to the Purchaser's Solicitors at:

**[REDACTED]**

Attention: **[REDACTED]**  
Telephone: **[REDACTED]**  
Facsimile: **[REDACTED]**

and to the Vendor at:

c/o **Ontario Infrastructure and Lands Corporation**  
**[REDACTED]**

Attention: **[REDACTED]**

Telephone: **[REDACTED]**

Facsimile: **[REDACTED]**

And:

Attention: **[REDACTED]**

Telephone: **[REDACTED]**

Facsimile: **[REDACTED]**

and to the Vendor's Solicitors at:

**McCarthy Tétrault LLP**  
**[REDACTED]**

Attention: **[REDACTED]**

Telephone: **[REDACTED]**

Facsimile: **[REDACTED]**

or at such other addresses as the Vendor and the Purchaser may designate from time to time. Any such notice shall be conclusively deemed to have been given and received upon the same day if personally delivered or sent by facsimile or, if mailed, three (3) Business Days after the same is mailed. Any Party may, at any time by notice given in writing to the other Party, change its address for service of notice on it.

## **21. GENERAL**

### **21.1 Time**

Time shall in all respects be of the essence of this Agreement, provided that the time for doing or completing any matter provided for in this Agreement may be extended or abridged by an agreement in writing, signed by the Vendor and the Purchaser or by an agreement between their respective solicitors who are hereby expressly authorized in this regard. Except as expressly set out in this Agreement, the computation of any period of time referred to in this Agreement shall exclude the first day and include the last day of such period. If the time limited for the performance or completion of any matter under this Agreement expires or falls on a day that is not a Business Day, the time so limited shall extend to the next following Business Day.

### **21.2 Successors and Assigns**

This Agreement shall be binding upon, and enure to the benefit of, the Vendor and the Purchaser and their respective successors and permitted assigns.



### **21.3 Merger**

The Vendor and the Purchaser acknowledge and agree that subject to the survival of Sections 3.2 (Purchaser Registered Under *Excise Tax Act*), 4.2 (Indemnity by Purchaser for Failure to Pay Taxes), Article 7 (“As is where is” Condition and Environmental Indemnity), Section 8.9 (HMQ Event of Default), Article 10 (Vendor’s Warranties, Representations and Covenants), Article 11 (Purchaser’s Warranties, Representations and Covenants), Article 14 (No Registration, Limitation on Assignment), Sections 17.2 (Post-Closing Adjustments) and 17.3 (Interest on Default of Payment), Sections 21.7 (Confidentiality, FIPPA), 21.8 (Purchaser Party Confidentiality) and 21.11 (Unenforceable Provisions) and all of the representations, covenants, agreements, rights and obligations of the Vendor and the Purchaser under this Agreement under and in respect to such Sections and Articles of this Agreement (collectively, the “**Surviving Obligations**”), all of the remaining provisions of this Agreement shall merge on the completion of this transaction, and shall not survive completion and shall terminate and be of no force and effect.

### **21.4 Number, Gender**

Whenever the singular is used in this Agreement, it shall mean and include the plural and whenever the masculine gender is used in this Agreement it shall mean and include the feminine gender if the context so requires.

### **21.5 Entire Agreement**

This Agreement constitutes the entire agreement between the parties and there is no representation, warranty, collateral agreement or condition affecting this Agreement or the Lands other than as set out in this Agreement.

### **21.6 Governing Law**

- (a) This Agreement and the rights and obligations of the Vendor and the Purchaser shall be determined in accordance with the laws of the Province of Ontario. Unless otherwise expressly stated in this Agreement, all references to money shall refer to Canadian funds.
- (b) The Parties agree that the courts of the Province of Ontario and all courts competent to hear appeals therefrom shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Agreement and, subject to the *Proceedings Against the Crown Act* (Ontario), hereby irrevocably attorn to the exclusive jurisdiction of such courts.

### **21.7 Confidentiality, FIPPA**

The Vendor and Purchaser agree to maintain the confidentiality of the terms and conditions contained herein subject to and in accordance with Section 49 and 50 of the Project Agreement, *mutatis mutandis*.

## **21.8 Purchaser Party Confidentiality**

The Purchaser agrees to ensure that the Purchaser, its partners, directors, officers, employees, agents, sub-contractors, volunteers and its financial institution shall maintain the confidentiality and security of all material and information which is the property of the Vendor and in the possession or under the control of the Purchaser pursuant to this Agreement as well as any information arising out of the Purchaser's access to the Lands and its own due diligence with respect thereto. The Purchaser agrees to ensure that the Purchaser, its partners, directors, employees, agents, sub-contractors, volunteers, contractors, consultants and its financial institutions shall not, directly or indirectly, disclose or use, either during or following the term of this Agreement, except where required by law, any material or information belonging to the Vendor pursuant to this Agreement, without first obtaining the written consent of the Vendor for such disclosure or use and in the event of termination of this Agreement, the Purchaser will be responsible for returning all such documentation and information to the Vendor without making copies. The Purchaser shall not use any such confidential information for any purposes not related to this transaction or in any way detrimental to the Vendor. The foregoing obligations shall not extend to information or material in the public realm or disclosure required by Applicable Law.

## **21.9 Planning Act Compliance**

This Agreement is entered into subject to the express condition that it is to be effective only if the subdivision control provisions of the *Planning Act* (Ontario) are complied with on or before the Date of Closing.

## **21.10 Contract Interpretation**

No principle or presumption of contract interpretation shall be used to construe the whole or any part of this Agreement on the basis that it was prepared by the Vendor.

## **21.11 Unenforceable Provisions**

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

***Remainder of this page intentionally left blank***

**Amended and Restated Project Agreement – Schedule 17**  
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**OFFERED BY** the Purchaser this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

**DUNDEE KILMER DEVELOPMENTS L.P.**

**[REDACTED]**

**ACCEPTED BY** the Vendor this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

**HER MAJESTY THE QUEEN IN RIGHT OF  
ONTARIO as represented by the Minister of  
Infrastructure, as represented by Ontario  
Infrastructure and Lands Corporation**

**[REDACTED]**

**SCHEDULE "A"**

**LEGAL DESCRIPTION OF THE PROJECT CO STAGE 1 LANDS**

**1. Block 4 - PIN 21077-0300 (LT)**

Block 4 on Plan 66M2488, subject to an easement as in Instrument No. AT2824753, in the City of Toronto.

**2. Block 11 - PIN 21077-0307 (LT)**

Block 11 on Plan 66M2488, subject to an easement as in Instrument No. AT2824753, in the City of Toronto.

**3. Part of Blocks 14 and 15 - Part of PIN 21077-0310 (LT) and 21077-0311 (LT) as further identified pursuant to Section 26.2(a) of the Project Agreement**

Block 14 on Plan 66M2488, subject to an easement as in AT2824753, in the City of Toronto.

Block 15 on Plan 66M2488, subject to an easement as in AT2824753, in the City of Toronto.

**SCHEDULE "B"**

**PERMITTED ENCUMBRANCES**

**1. General Encumbrances:**

- (a) liens, charges or prior claims for taxes (which term includes charges, rates and assessments) or utilities (including levies or imposts for sewers and other municipal utility services) not yet due or if due, the validity of which is being contested in good faith, and liens or charges for the excess of the amount of any past due taxes or utilities charges for which a final assessment or account has not been received over the amount of such taxes or utilities charges as estimated and paid by the Vendor;
- (b) inchoate means incidental to construction, renovations or current operations, a claim for which shall not at the time have been registered against the Lands or of which notice in writing shall not at the time have been given to the Vendor pursuant to the *Construction Lien Act* (Ontario) or otherwise or any lien or charge, a claim for which, although registered, or notices of which, although given, relate to obligations not overdue or delinquent and in respect of any of the foregoing cases, the Vendor has, where applicable, complied with the holdback or other similar provisions or requirements of the relevant construction contracts so as to protect the Lands therefrom;
- (c) easements, rights of way, restrictions, building schemes, licences, restrictive covenants and servitudes, rights of access or user, airport zoning regulations and other similar rights in land (including, without limitation, rights of way and servitudes for sewers, drains, gas and water mains, electrical power, telephone and cable conduits, poles, wires or cables) granted to, reserved or taken by any person, and any rights reserved or vested in any Governmental Authority or public or private utility by the terms of any lease, licence, franchise, grant, agreement or permit, subdivision, development, servicing, encroachment, site plan, parking or other similar agreement with any Governmental Authority or public or private utility, provided same are complied with by the Vendor and do not individually or in the aggregate materially and negatively affect the value, use or marketability of the Lands for residential and retail condominium and rental facilities;
- (d) title defects or irregularities which do not, in the aggregate, materially and adversely impair the value, use or marketability of the Lands for the purpose of a residential and retail condominium and rental facilities;
- (e) cost sharing, common use, reciprocal or other similar agreements (including the Reciprocal Agreement), if any, relating to the use and/or operation of the Lands and/or adjoining properties and all security given by the parties thereto to each other to secure their respective obligations thereunder;

- (f) any subsisting reservations, limitations, provisions and conditions contained in any original grants from the Crown of any land or interests therein, reservations of under-surface rights to mines and minerals of any kind;
- (g) any rights of expropriation, access or use, or any other right conferred or reserved by or in any statute of Canada or the Province of Ontario;
- (h) zoning (including, without limitation, airport zoning regulations), use and building by-laws and ordinances, federal, provincial or municipal by-laws and regulations as to the use of the Lands, which do not materially impair the value of the Lands or materially interfere with the use of the Lands for the purposes of the Project;
- (i) any encroachments, easements, rights of way or similar interests which would be revealed by an up-to-date survey of the Lands, which do not materially interfere with the value of the Lands or materially interfere with the Purchaser's use of the Lands for the purpose of the Project;
- (j) the rights reserved to or vested in any municipality or governmental or other public authority by any statutory provision.

**2. Specific Encumbrances:**

<b>No</b>	<b><u>Block</u></b>	<b>Instrument No.</b>	<b>Party to</b>	<b>Nature of Encumbrance</b>
1.	All	66M2488	n/a	Plan of Subdivision
2.	All	AT2824469	City of Toronto	Subdivision Agreement
3.	1, 2, 3, 4, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 26	AT2824749	City of Toronto	Restrictive Covenant re: slope
4.	[PT] 4, 8, 9, 10, 11, 12, 13, [PT] 14, [PT] 15, 16, [PT] 17 and 20	AT2824752	Metrolinx	Metrolinx Agreement, including Restrictive Covenants and Environmental Easement
5.	[PT] 4, 8, 9, 10, 11, 12, 13, [PT] 14, [PT] 15, 16, [PT] 17 and 20	AT2824753	Metrolinx	Metrolinx Easement

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<b>No</b>	<b><u>Block</u></b>	<b>Instrument No.</b>	<b>Party to</b>	<b>Nature of Encumbrance</b>
6.	1, 2, 3, 4, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20 and 26	AT2825068	TRCA	TRCA Restrictive Covenant Agreement
7.	1 and/or 4	Not yet registered		Future Easement: Blocks 1 and/or 4 (to be registered through SPA process when publicly accessible open space is designed), per s. 36 of schedule B-1 of subdivision agreement
8.	14	Not yet registered		Future Easement: Block 14 (to be registered through SPA process when publicly accessible open space is designed), per s. 36 of schedule B-1 of subdivision agreement
9.	Phase 1, Block 16 6, 10, 11, 12, 13, 21, 22, 23, 34	Not yet registered		Certificate of Requirement related to Certificate of Property Use – RA Group 5
10.	1, 14, 15	Not yet registered		Certificate of Requirement related to Certificate of Property Use – RA Group 7

**SCHEDULE "C"**

**STATUTORY DECLARATION – VENDOR FORM**

Canada	)	IN THE MATTER OF THE TITLE TO <>
Province of Ontario	)	
	)	AND IN THE MATTER OF A SALE THEREOF from
	)	HER MAJESTY THE QUEEN IN RIGHT OF
	)	ONTARIO
	)	as represented by the MINISTER OF
	)	INFRASTRUCTURE,
	)	as represented by ONTARIO INFRASTRUCTURE
	)	LANDS CORPORATION (the “Vendor”)
	)	<●> (the “Purchaser”)
TO WIT:	)	
	)	
	)	
	)	
	)	

I, \_\_\_\_\_, of the \_\_\_\_\_, in the Province of Ontario,

DO SOLEMNLY DECLARE, that:

1. I am the \_\_\_\_\_ {title} of \_\_\_\_\_ {name of Purchaser}, the Purchaser in the above-captioned transaction and as such have knowledge of the matters hereinafter declared.
2. \_\_\_\_\_ {name of Purchaser} and ONTARIO INFRASTRUCTURE AND LANDS CORPORATION are arm's length parties and \_\_\_\_\_ {name of Purchaser} has received no special knowledge or special consideration in entering into the above Agreement of Purchase and Sale not arising from the Project Agreement, which would lead to the presumption that the parties are not arm's length parties.
3. \_\_\_\_\_ {name of Purchaser} and HER MAJESTY THE QUEEN, IN RIGHT OF ONTARIO as represented by THE MINISTER OF INFRASTRUCTURE, as represented by ONTARIO INFRASTRUCTURE AND LANDS CORPORATION are arm's length parties and \_\_\_\_\_ {name of Purchaser} has received no special knowledge or special consideration in entering into the above Agreement of Purchase and Sale not arising from the Project Agreement, which would lead to the presumption that the parties are not arm's length parties.
4. There are no outstanding legal disputes or actions between the Vendor and Purchaser other than disputes that may have arisen under the Project Agreement or the Project Co Services Agreement.



5. \_\_\_\_\_ {name of Purchaser} is not in conflict with ONTARIO INFRASTRUCTURE AND LANDS CORPORATION (or any of its employees) with respect to the above transaction.
6. \_\_\_\_\_ {name of Purchaser} is not in conflict with HER MAJESTY THE QUEEN, IN RIGHT OF ONTARIO as represented by THE MINISTER OF INFRASTRUCTURE, as represented by ONTARIO INFRASTRUCTURE AND LANDS CORPORATION (or any of its employees) with respect to the above transaction.

AND I make this solemn Declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath and by virtue of the *Canada Evidence Act*.

DECLARED by the above-named \_\_\_\_\_ )  
Declarant, before me at the \_\_\_\_\_ )  
\_\_\_\_\_ of \_\_\_\_\_, this \_\_\_\_\_ )  
day of \_\_\_\_\_, 201 \_\_\_\_\_ )  
\_\_\_\_\_. )  
A Commissioner, etc. )

\_\_\_\_\_

**SCHEDULE "D"**

**INTENTIONALLY DELETED**

**SCHEDULE "E"**

[NTD: This schedule will be updated to reflect the current Law Society form.]

**DOCUMENT REGISTRATION AGREEMENT**

**BETWEEN:**

**McCarthy Tétrault LLP**

(hereinafter referred to as the “**Vendor’s Solicitors**”)

- and -

●

(hereinafter referred to as the “**Purchaser’s Solicitors**”)

RE: Her Majesty the Queen in right of Ontario as represented by the Minister of Infrastructure, as represented by Ontario Infrastructure and Lands Corporation (the “**Vendor**”) sale to ● (the “**Purchaser**”) of the property legally described as ●, City of ●, being the whole of PIN ●(LT) (the “**Lands**”) pursuant to an Agreement of Purchase and Sale between the Purchaser, as purchaser, and the Vendor, as vendor, dated ● and accepted ● (the “**Purchase Agreement**”), scheduled to be completed on ● (the “**Closing Date**”)

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**FOR GOOD AND VALUABLE CONSIDERATION** (the receipt and sufficiency of which is hereby expressly acknowledged), the parties hereto hereby undertake and agree as follows:

Holding Deliveries In Escrow	1. The Vendor’s Solicitors and the Purchaser’s Solicitors shall hold all funds, keys and closing documentation exchanged between them (the “ <b>Requisite Deliveries</b> ”) in escrow, and shall not release or otherwise deal with same except in accordance with the terms of this Agreement. Both the Vendor’s Solicitors and the Purchaser’s Solicitors have been authorized by their respective clients to enter into this agreement. Once the Requisite Deliveries can be released in accordance with the terms of this Agreement, any monies representing payout funds for mortgages to be discharged, if any, shall be forwarded promptly to the appropriate mortgage lender. <sup>1</sup>
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<sup>1</sup> Solicitors should continue to refer to the Law Society of Upper Canada practice guidelines relating to recommended procedures to follow for the discharge of mortgages.

Advising of Concerns with Deliveries      2.      Each of the parties hereto shall notify the other as soon as reasonably possible following their respective receipt of the Requisite Deliveries (as applicable) of any defect(s) with respect to same.

Selecting Solicitors Responsible for Registration      3.      The Purchaser's Solicitors shall be responsible for the registration of the Electronic Documents (as hereinafter defined) unless the box set out below indicating that the Vendor's Solicitors will be responsible for such registration has been checked. For the purposes of this Agreement, the solicitors responsible for such registration shall be referred to as the "**Registering Solicitors**" and the other solicitors shall be referred to as the "**Non-Registering Solicitors**":

Vendor's Solicitors will be registering the Electronic Documents

☐

Responsibility of Non-Registering Solicitors

4.      The Non-Registering Solicitors shall, upon his/her receipt and approval of the Requisite Deliveries (as applicable), electronically release for registration the Electronic Documents and shall thereafter be entitled to release the Requisite Deliveries from escrow forthwith following the earlier of:
- (a)      the registration of the Electronic Documents;
  - (b)      the closing time specified in the Purchase Agreement unless a specific time has been inserted as follows [\_\_\_\_\_ **a.m./p.m. on the Closing Date**] (the "**Release Deadline**"), and provided that notice under paragraph 7 below has not been received; or
  - (c)      receipt of notification from the Registering Solicitors of the registration of the Electronic Documents.

If the Purchase Agreement does not specify a closing time and a Release Deadline has not been specifically inserted the Release Deadline shall be 6.00 p.m. on the Closing Date.

Responsibility of Registering Solicitors      5.      The Registering Solicitors shall, subject to paragraph 7 below, on the Closing Date, following his/her receipt and approval of the Requisite Deliveries (as applicable), register the documents listed in Schedule "A" annexed hereto (referred to in this agreement as the "**Electronic Documents**") in the stated order of priority therein set out, as soon as reasonably possible once same have been released for registration by the Non- Registering Solicitors,

- and immediately thereafter notify the Non-Registering Solicitors of the registration particulars thereof by telephone or telefax (or other method as agreed between the parties).
- |   |  |
|---|--|
| Release of Requisite Deliveries by Non-Registering Solicitors | 6. Upon registration of the Electronic Documents and notification of the Non-Registering solicitors in accordance with paragraph 5 above, the Non- Registering Solicitors and the Registering Solicitors shall be entitled to forthwith release the Requisite Deliveries from escrow.  |
| Returning Deliveries where Non-registration                   | 7. Any of the parties hereto may prior to the Release Deadline notify the other Party that he/she does not wish to proceed with the registration <sup>2</sup> of the Electronic Documents, and provided that such notice is received by the other Party before the release of the Requisite Deliveries pursuant to this Agreement and before the registration of the Electronic Documents, then each of the parties hereto shall forthwith return to the other Party their respective Requisite Deliveries.                                |
| Counterparts & Gender   | 8. This agreement may be signed in counterparts, and shall be read with all changes of gender and/or number as may be required by the context.   |
| Purchase Agreement Prevails if Conflict or Inconsistency      | 9. Nothing contained in this agreement shall be read or construed as altering the respective rights and obligations of the Purchaser and the Vendor as more particularly set out in the Purchase Agreement, and in the event of any conflict or inconsistency between the provisions of this agreement and the Purchase Agreement, then the latter shall prevail.  |
| Telefaxing Deliveries & Providing Originals if Requested      | 10. This agreement (or any counterpart hereof), and any of the closing documents hereinbefore contemplated, may be exchanged by telefax or similar system reproducing the original, provided that all such documents have been properly executed by the appropriate parties. The Party transmitting any such document(s) shall also provide the original executed version(s) of same to the recipient within 2 business days after the Closing Date, unless the recipient has indicated that he/she does not require such original copies. |
| Technical Issues on Registration                              | 11. If there is a problem with the Teraview electronic registration system which does not allow the parties to   |

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<sup>2</sup> For the purpose of this Agreement, the term “**registration**” shall mean the issuance of registration number(s) in respect of the Electronic Documents by the appropriate Land Registry Office.

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electronically register all registration documents on Closing, the Closing Date shall be deemed to be extended until the next day when the said system is accessible and operating for the applicable Land Titles Office applicable to the Lands.

Dated this \_\_ day of ●, 201\_\_\_\_.

Dated this \_\_ day of ●, 201\_\_\_\_.

Name/Firm Name of Vendor's  
Solicitors  
McCarthy Tétrault LLP

Name/Firm Name of Purchaser's  
Solicitors

●

●

●

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

***Note: This version of the Document Registration Agreement was adopted by the Joint LSUC-CBAO Committee on Electronic Registration of Title Documents on March 29, 2004 and posted to the web site on April 8, 2004.***

**Schedule "A"**

1. Transfer from ● to ●.

**SCHEDULE "F"**

**INTENTIONALLY DELETED**

**SCHEDULE "G"**

**INTENTIONALLY DELETED**



**SCHEDULE "H"**

**FORM OF ACKNOWLEDGEMENT AND AGREEMENT RE RECIPROCAL  
AGREEMENT**

- Re: Agreement of purchase and sale for the Project Co Stage 1 Lands between Her Majesty the Queen in Right of Ontario as represented by the Minister of Infrastructure, as represented by Ontario Infrastructure and Lands Corporation (the "Vendor") and Dundee Kilmer Developments L.P. ("Project Co")**
- And Re: Agreement of purchase and sale for part of blocks 1 and 14 on plan 66M-2488 between the Vendor and George Brown College ("George Brown") [NTD: To be deleted for Acknowledgement and Agreement re Reciprocal Agreement for Block 15]**
- And Re: Agreement of purchase and sale for part of blocks 1 and 14 on plan 66M-2488 between the Vendor and YMCA of Greater Toronto ("YMCA") [NTD: To be deleted for Acknowledgement and Agreement re Reciprocal Agreement for Block 15]**
- And Re: Agreement of purchase and sale for block 3 on plan 66M-2488 between the Vendor and a purchaser to be determined (the "Affordable Housing Provider") [NTD: To be revised for Acknowledgement and Agreement re Reciprocal Agreement for Block 15 to reflect Affordable Housing Provider purchasing part of block 15 on plan 66M-2488]**

Each of Project Co, YMCA, George Brown and Affordable Housing Provider acknowledges pursuant to the aforementioned agreement of purchase and sale to which it is a party, that it will negotiate in good faith and on a commercially reasonable basis a Reciprocal Agreement with the others and confirms that the intent is to finalize such Reciprocal Agreement at least nine months prior to the date scheduled under the Project Agreement for Project Substantial Completion. Each of Project Co, YMCA, George Brown and Affordable Housing Provider agrees that if for any reason they are unable to finalize the Reciprocal Agreement 12 months prior to the scheduled date under the Project Agreement for Project Substantial Completion, they will proceed to settle all outstanding matters by binding arbitration in accordance with the *Arbitration Act* (Ontario) or as the parties may otherwise agree. The costs of the arbitrator(s) shall be shared equally among Project Co, YMCA, George Brown and Affordable Housing Provider.

All capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the respective purchase agreements.

This Agreement may be executed in multiple counterparts, each of which will be deemed to be an original and all of which taken together will constitute one and the same instrument. Delivery

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of an executed signature page to this Agreement by a party by electronic transmission will be as effective as delivery of a manually executed copy of this Agreement by such party.

***[SIGNATURE PAGES FOLLOW]***

Dated at Toronto this ● day of ●, 2011.

**DUNDEE KILMER DEVELOPMENTS L.P.**

**[REDACTED]**

**YMCA OF GREATER TORONTO**

**[REDACTED]**

**GEORGE BROWN COLLEGE**

**[REDACTED]**

**AFFORDABLE HOUSING PROVIDER**

**[REDACTED]**

---

**SCHEDULE "I"**

**OPEN PERMITS**

- |    |                         |  |
|----|-------------------------|--|
| 1. | <b>453 Cherry St.</b>   | Demolition permit 05 204354 DEM 00 DM<br><br>HVAC installation 98 024810 HVA 00 MS   |
| 2. | <b>160 Mill St.</b>     | Demolition permit 05 204401 DEM 00 DM  |
| 3. | <b>2 Overend St.</b>    | Demolition permit 05 204347 DEM 00 DM  |
| 4. | <b>515 Front St. E.</b> | Building permit 10 143952 BLD 00 NB<br><br>Building permit 10 143952 PLB 00 PS<br><br>Building permit 10 143952 HVA 00 MS<br><br>Building permit 10 143952 STS 00 DR |

**SCHEDULE 17**

**PROJECT CO STAGE 2 LANDS AGREEMENT OF PURCHASE AND SALE**

**PART B**

**AGREEMENT OF PURCHASE AND SALE  
FOR THE PROJECT CO STAGE 2 LANDS AND IN CONNECTION WITH THE  
PAN/PARAPAN AM GAMES**

**BETWEEN**

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO** as represented by the Minister of Infrastructure, as represented by Ontario Infrastructure and Lands Corporation, a non-share capital corporation continued and amalgamated under the *Ontario Infrastructure and Lands Corporation Act, 2011, S.O. 2011, c. 9, Schedule 32*, as amended

**(hereinafter called the “Vendor”)**

**AND**

**DUNDEE KILMER DEVELOPMENTS L.P.,  
[REDACTED]**

**(hereinafter called the “Purchaser”)**

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**AGREEMENT OF PURCHASE AND SALE**

**BETWEEN:**

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO** as represented by the Minister of Infrastructure, as represented by Ontario Infrastructure and Lands Corporation, a non-share capital corporation continued and amalgamated under the *Ontario Infrastructure and Lands Corporation Act*, 2011, S.O. 2011, c. 9, Schedule 32, as amended

(hereinafter called the “**Vendor**”)

- and -

**DUNDEE KILMER DEVELOPMENTS L.P., [REDACTED]**

(hereinafter called the “**Purchaser**”)

**RECITALS:**

- A. Her Majesty the Queen in Right of Ontario as represented by the Minister of Infrastructure (the “**Owner**”) is the owner in fee simple of the lands described in Schedule “A” of this Agreement.
- B. The Vendor is the designated agent of the Owner and, for the purposes of this Agreement, has the authority to exercise all necessary responsibilities and authorities of the Minister of Infrastructure pursuant to subsections 7(2), 7(5), 9(1), 9(2) and 9(3) and section 5 of the *Ministry of Infrastructure Act, 2011*, and both the Owner and the Vendor are and shall be bound by all the Vendor’s covenants, representations and warranties as provided herein.
- C. In preparation for the Toronto 2015 Pan/Parapan American Games (the “**Pan/Parapan Am Games**”), Vendor has entered into a project agreement (the “**Project Agreement**”) with the Purchaser (in the capacity of Project Co under the Project Agreement) in furtherance of RFP No. OIPC-11-00-I024 (the “**RFP**”) issued by the Vendor for the construction of the Pan/Parapan Am Games Athletes Village Project.
- D. Under the Project Agreement, the Purchaser (in its capacity as Project Co under the Project Agreement) will design, construct and finance the Proposed Development on the Project Co Stage 2 Lands, subject to and in accordance with the provisions of the Project Co Stage 2 Lands Development Agreement.
- E. The Purchaser has offered to purchase the Project Co Stage 2 Lands (hereinafter also referred to only as the “**Lands**”) from the Vendor and the Vendor has agreed to sell the Lands to the Purchaser on the terms and conditions hereinafter set forth.

**NOW THEREFORE** in consideration of the mutual covenants hereinafter set forth and other good and valuable consideration, the parties hereto agree as follows:

## **ARTICLE 1 DEFINITIONS AND SCHEDULES**

### **1.1 Definitions**

As used in this Agreement, the following terms shall have the following meanings:

- (a) **“Agreement”** means this agreement, and includes all Schedules to this agreement, and every properly executed instrument which by its terms amends, modifies or supplements this agreement.
- (b) **“Applicable Law”** means:
  - (i) any statute or proclamation or any delegated or subordinate legislation including regulations and by-laws;
  - (ii) any Authority Requirement;
  - (iii) any judgment of a relevant court of law, board, arbitrator or administrative agency which is a binding precedent in the Province of Ontario; and
  - (iv) includes any Environmental Law,in each case, (1) in force in the Province of Ontario, or otherwise binding on the Purchaser or the Vendor and (2) as amended, re-enacted, consolidated or replaced from time to time and in the case of any such amendment, re-enactment, consolidation or replacement, reference herein to a particular provision shall be read as referring to such amended, re-enacted, consolidated or replaced provision.
- (c) **“As Is Where Is”** has the meaning given in Section 5.1 of this Agreement.
- (d) **“Authority Requirements”** means any order, direction, directive, request for information, policy, administrative interpretation, guideline or rule of or by any Governmental Authority.
- (e) **“Block”** means a Block as shown on the Plan of Subdivision.
- (f) **“Business Day”** means any day other than a Saturday, a Sunday, a statutory holiday in the Province or any day on which banks are not open for business in the City of Toronto, Ontario.
- (g) **“Certificate of Property Use”** means the Certificate of Property Use to be issued in furtherance of the Record of Site Conditions, in each case as applicable to the Lands.
- (h) **“City”** means the City of Toronto, its successors and assigns.

- (i) “**Class EA**” means the Ministry of Energy and Infrastructure Class Environmental Assessment Process for Realty Activities as approved, amended, or renewed from time to time by the Minister of the Environment pursuant to Section 14 of the *Environmental Assessment Act*, R.S.O. 1990, c. E. 18.
- (j) “**Closing**” means the completion of the sale of the Lands to the Purchaser on the Date of Closing in accordance with the provisions of this Agreement.
- (k) “**Contamination**” has the meaning given in the Project Agreement.
- (l) “**Date of Closing**” means the Project Co Lands Transfer Date under the Project Agreement.
- (m) “**Date of Financial Close**” means the date on which Financial Close is achieved under the Project Agreement.
- (n) “**Debenture**” has the meaning given in the Loan Agreement.
- (o) “**Default Rate of Interest**” means interest at the rate equal to [REDACTED]% over the rate of interest per annum quoted by [REDACTED] from time to time as its reference rate for Canadian dollar demand loans made to its commercial customers in Canada and which it refers to as its “prime rate”, as such rate may be changed by it from time to time.
- (p) “**Development Agreement Letter of Credit**” has the meaning given in the Project Co Stage 2 Lands Development Agreement.
- (q) “**Environmental Law**” includes, but is not limited to all applicable federal and provincial statutes, municipal and local laws, common law, and deed restrictions, all statutes, by-laws, regulations, codes, licences, permits, orders, directives, guidelines that have the force of law, decisions rendered by any Governmental Authority relating to the protection of the environment, natural resources, occupational health and safety or the manufacture, processing, distribution, use, treatment, storage, disposal, packaging, transport, handling, containment, clean-up or other remediation or corrective action of any Contamination or Hazardous Substance.
- (r) “**Environmental Reports and Designated Substance Reports**” has the meaning given in the Project Agreement.
- (s) “**Excise Tax Act**” has the meaning given in Section 3.1 of this Agreement.
- (t) “**Financial Close**” has the meaning given in the Project Agreement.
- (u) “**Geotechnical Reports**” has the meaning given in the Project Agreement.

- (v) **“Governmental Authority”** means any federal, provincial, territorial, regional, municipal or local governmental authority, quasi-governmental authority, court, government or self-regulatory organization, commission, board, tribunal, organization, or any regulatory, administrative or other agency, or any political or other subdivision, department, or branch of any of the foregoing, having legal jurisdiction in any way over a party relating to the Lands or any aspect of the performance of this Agreement, in each case to the extent it has or performs legislative, judicial, regulatory, administrative or other functions within its jurisdiction.
- (w) **“Hazardous Substance”** has the meaning given in the Project Agreement.
- (x) **“HST”** has the meaning given in Section 3.1 of this Agreement.
- (y) **“Indemnified Parties”** has the meaning given in Section 4.2 of this Agreement.
- (z) **“Independent Certifier”** has the meaning given in the Project Agreement.
- (aa) **“Land Use Regulations”** means any land use policies, regulations, by laws, or plans of any Governmental Authority that apply to the use or development of all or any part of the Lands, including the existing Official Plans, zoning by laws and zoning orders and conditions of approval of the Plan of Subdivision, in each case, as at the date of submission of the Proposal under the Project Agreement except for changes following the date of submission that are contemplated by the Project Agreement.
- (bb) **“Lands”** where used on its own is an abbreviated reference to the Project Co Stage 2 Lands.
- (cc) **“Legal Descriptions”** has the meaning given in the Project Agreement.
- (dd) **“Lender”** has the meaning given in the Loan Agreement.
- (ee) **“Lenders’ Agent”** has the meaning given in the Project Agreement.
- (ff) **“Lenders’ Direct Agreement”** has the meaning given in the Project Agreement.
- (gg) **“Lending Agreements”** has the meaning given in the Project Agreement.
- (hh) **“Loan Agreement”** means the loan agreement between the Purchaser, as Borrower, and Her Majesty the Queen in Right of Ontario as represented by a Minister of the Crown, as Lender, as the same may be amended, supplemented or restated from time to time.
- (ii) **“MOE”** means the Minister of the Environment of the Province of Ontario and any successor Governmental Authority with comparable jurisdiction.

- (jj) **“New Permitted Encumbrances”** has the meaning given in Section 12.4 of this Agreement.
- (kk) **“Non-Resident”** means a person that is, at the relevant time, a non-resident of Canada for the purposes of the *Income Tax Act* (Canada).
- (ll) **“Owner”** means Her Majesty the Queen in Right of Ontario as represented by the Minister of Infrastructure.
- (mm) **“Pan/Parapan Am Games”** has the meaning given in Recital C of this Agreement.
- (nn) **“Party”** means any of the Vendor and the Purchaser, and **“Parties”** means all of them.
- (oo) **“Permits”** means all consents, licences, certificates, approvals, authorizations, registrations or any item with similar effect issued or granted to the Vendors by any Governmental Authority respecting environmental matters concerning the Lands or otherwise relating to the operation or occupancy of the Lands.
- (pp) **“Permitted Encumbrances”** means all encumbrances and instruments registered against the Lands as of the date of this Agreement, including, but not limited to, the encumbrances listed in Schedule B to this Agreement and all future encumbrances described in Schedule B anticipated to be registered on or before the Date of Closing, provided, in each case, that the Vendor is not in material default thereunder.
- (qq) **“Person”** means an individual, a partnership, a corporation, a trust, an unincorporated organization, a government or any department or agency thereof and the heirs, executors, administrators or other legal representatives of an individual.
- (rr) **“Plan of Subdivision”** means the final plan of subdivision registered as instrument 66M-2488 on September 9, 2011.
- (ss) **“Prohibited Encumbrances”** has the meaning given in Section 12.4 of this Agreement.
- (tt) **“Project Agreement”** has the meaning given in Recital C of this Agreement.
- (uu) **“Project Co Stage 2 Lands”** means the lands described in Schedule “A” of this Agreement.
- (vv) **“Project Co Stage 2 Lands Development Agreement”** means the development agreement entered into between Toronto Waterfront Revitalization Corporation and the Purchaser on or about Financial Close.

- (ww) **“Proposed Development”** has the meaning given in the Project Co Stage 2 Lands Development Agreement.
- (xx) **“Province Persons”** has the meaning given in the Project Agreement.
- (yy) **“Purchase Price”** means the total amount as set out in Section 2.1 that shall be paid by the Purchaser to the Vendor for the Lands, exclusive of HST and subject to the adjustments specified in Section 2.2 of this Agreement.
- (zz) **“Purchaser’s Solicitors”** means such firm or firms of solicitors or agents as are retained by the Purchaser from time to time and notice of which is provided to the Vendor.
- (aaa) **“RA/RM Plan”** means the risk assessment and risk management plan prepared and submitted by CH2M HILL Canada Limited to, and accepted by, the MOE.
- (bbb) **“Record of Site Conditions”** means a record of site conditions filed in the environmental site registry maintained by the MOE in respect of the Lands.
- (ccc) **“Reference Plans”** has the meaning given in the Project Agreement.
- (ddd) **“RFP”** has the meaning given in Recital C of this Agreement.
- (eee) **“Section 118 Restriction”** has the meaning given in the Loan Agreement.
- (fff) **“Site Conditions”** means the condition of the Lands, including the physical, geophysical, climatic, ecological, environmental, geotechnical and archaeological conditions.
- (ggg) **“sole discretion”** means a discretion that may be exercised solely, arbitrarily and unreasonably by the Party having the right to exercise same.
- (hhh) **“Subdivision Agreement”** means the subdivision agreement dated August 22, 2011 entered into between the City and the Vendor, a notice of which was registered as instrument AT2824469 on September 28, 2011.
- (iii) **“Surviving Obligations”** has the meaning given in Section 20.3 of this Agreement.
- (jjj) **“Technical Reports”** means the Environmental Reports and Designated Substance Reports and the Geotechnical Reports.
- (kkk) **“Updated Permitted Encumbrances Notice”** has the meaning given in Section 12.4 of this Agreement.
- (lll) **“Vendor”** means Her Majesty the Queen in right of Ontario as represented by the Minister of Infrastructure, as represented by Ontario Infrastructure and Lands Corporation, a non-share capital corporation continued and amalgamated under

the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c. 9,  
Schedule 32, as amended.

(mmm) “**Vendor’s Solicitors**” means McCarthy Tétrault LLP or such other firm or firms of solicitors or agents as are retained by the Vendor from time to time and notice of which is provided to the Purchaser.

(nnn) “**Waterfront Toronto**” means Toronto Waterfront Revitalization Corporation, its successors and assigns.

## **1.2 Schedules**

The following schedules attached hereto form part of this Agreement:

Schedule “A”	-	Legal Description of the Project Co Stage 2 Lands
Schedule “B”	-	Permitted Encumbrances
Schedule “C”	-	Statutory Declaration – Vendor Form
Schedule “D”	-	Intentionally Deleted
Schedule “E”	-	Document Registration Agreement
Schedule “F”	-	Open Permits

## **1.3 Interpretation**

The provisions of Section 2 – Interpretation of Schedule I – Definitions and Interpretations of the Project Agreement are hereby incorporated by reference into this Agreement.

## **1.4 Sole Discretion**

Unless it is specifically provided that a consent, approval or satisfaction is in the sole discretion of a Party, no consent, approval or satisfaction shall be unreasonably withheld or delayed.

# **ARTICLE 2 AGREEMENT TO SELL AND PURCHASE PRICE**

## **2.1 Agreement to Sell**

Under this Agreement, the Vendor agrees to sell to the Purchaser and the Purchaser agrees to purchase from the Vendor the Lands on the Date of Closing subject to and in accordance with the terms of this Agreement.

## **2.2 Purchase Price**

- (a) The Vendor and the Purchaser agree that the Purchase Price to be paid by the Purchaser for the Lands is the amount of [REDACTED] (\$[REDACTED]) Canadian dollars, payable by the Purchaser to the Vendor’s Solicitors in trust, by

certified cheque, bank draft or wire transfer on the Closing, subject to the adjustments as set out in Article 16.

### **2.3 Date of Closing**

This Agreement shall be completed on the Date of Closing at the offices of the Vendor's Solicitors in Toronto, subject to real property registrations being electronically effected at the applicable land titles office.

## **ARTICLE 3 HARMONIZED SALES TAX**

### **3.1 Payment of HST**

The Purchase Price of the Lands does not include the Harmonized Sales Tax ("HST") payable by the Purchaser in respect of the purchase of the Lands pursuant to the *Excise Tax Act*, R.S. 1985, c. E.15 (Canada) (the "**Excise Tax Act**"). Subject to Section 3.2 below, the Purchaser agrees to pay to the Vendor, on the Date of Closing, as a condition of completion of this transaction by certified cheque or bank draft, all HST payable as a result of this transaction in accordance with the *Excise Tax Act*.

### **3.2 Purchaser Registered Under Excise Tax Act**

Notwithstanding Section 3.1 above, the Vendor shall not collect HST from the Purchaser and the Purchaser shall not be required to pay HST to the Vendor in this transaction if the Purchaser is registered under the *Excise Tax Act* and in that event, the Purchaser shall file returns and remit such HST to the Receiver General for Canada when and to the extent required by the *Excise Tax Act*. The Purchaser shall provide to the Vendor, on the Date of Closing, a statutory declaration confirming that the Purchaser is registered under the *Excise Tax Act* for the purposes of collecting and remitting HST, and confirming its HST registration number under the *Excise Tax Act*, together with an indemnity in favour of the Vendor for any costs or expenses payable by the Vendor as a result of the Vendor's failure to collect HST from the Purchaser on the Date of Closing, such statutory declaration and indemnity to be in a form satisfactory to the Vendor's Solicitors, acting reasonably.

## **ARTICLE 4 LAND TRANSFER TAX AND FEES**

### **4.1 Payment by Purchaser**

The Purchaser shall be responsible for the payment of land transfer taxes (and the amount of such land transfer taxes shall be adjusted in favour of the Purchaser as part of the Closing adjustments) and all registration fees payable in respect of registration by it of any documents on Closing including the transfer/deed of the Lands (other than discharges of encumbrances which are required to be made by the Vendor, which shall be the responsibility of the Vendor) and any other taxes and fees payable upon or in connection with the conveyance or transfer of the Lands.



#### **4.2 Indemnity by Purchaser for Failure to Pay Taxes**

Subject to Article 16, the Purchaser shall indemnify and save harmless the Vendor, the Province Persons and each of their respective shareholders, directors, officers, employees, agents and representatives (collectively the “**Indemnified Parties**”) from all claims, actions, causes of action, proceedings, losses, damages, costs, liabilities and expenses incurred, suffered or sustained by an Indemnified Party as a result of a failure by the Purchaser:

- (a) to pay any federal, provincial or other taxes payable by the Purchaser in connection with the conveyance or transfer of the Lands whether arising from a reassessment or otherwise, including provincial retail sales tax and goods and services tax, if applicable; and/or
- (b) to file any returns, certificates, filings, elections, notices or other documents required to be filed by the Purchaser with any federal, provincial or other taxing authorities in connection with the conveyance or transfer of the Lands.

### **ARTICLE 5 “AS IS WHERE IS” CONDITION AND ENVIRONMENTAL INDEMNITY**

#### **5.1 [INTENTIONALLY DELETED]**

#### **5.2 As is Where is Condition of Lands**

Subject to the provisions of the Project Agreement, the Project Co Services Agreement and this Agreement, the Purchaser shall accept, assume and take title to the Lands in an “As Is Where Is” condition. The term “**As Is Where Is**” means in its condition or state on the Date of Closing without any agreement, representation or warranty of any kind, either express or implied on the part of the Vendor or the Owner, including without limitation, as to Site Conditions, including its environmental condition, deficiencies and encroachments from and onto the Lands, the condition of the soil, the subsoil, the ground and surface water or any other environmental matters, the condition of the Lands or the condition of the Facility, area, suitability for purpose, physical characteristics, profitability, the existence of latent defects, or any other matter respecting the Lands whatsoever, including without limitation, compliance with Environmental Law, the existence of any Hazardous Substance or Contaminant, or the use to which the Lands may be put and its zoning. Without limiting the foregoing, it is understood that the Purchaser accepts, assumes and takes title to the Lands subject to the land uses permitted on the Lands by the applicable Land Use Regulations and the Purchaser shall not make and is not authorized by the Vendor or the Owner to make, prior to completion of this transaction, any applications to the City or any Governmental Authority for changes or variances to the uses currently permitted on the Lands including, without limitation, changes or variances to official plans and/or zoning by-laws applicable to the Lands. Neither the Vendor nor the Owner shall have any liability, obligation or responsibility to the Purchaser after Closing with respect to any matter relating to the Lands or any part thereof or the condition thereof, other than those liabilities, obligations and

responsibilities expressly set out in the Project Agreement, the Project Co Services Agreement and this Agreement.

### **5.3 Site Conditions Not Properly Inferable**

Notwithstanding Section 5.1, the Vendor shall, in respect to the construction of the Proposed Development by the Purchaser, be solely responsible for all Site Conditions respecting the ground and the subsoil, the level and quantity of groundwater, the form and nature of the Lands, the loadbearing and other relevant properties of the Lands, the nature of the materials (whether natural or otherwise) to be excavated and any other Site Conditions which are the subject matter of the Technical Reports, save and except for any such Site Conditions that were described in, or were properly inferable, readily apparent or readily discoverable from the Technical Reports

### **5.4 Provision of Technical Reports**

The Purchaser acknowledges that the Vendor has made available to the Purchaser the Technical Reports under the Project Agreement subject to the confidentiality obligations with respect to the delivery and use of those reports as set out in the Project Agreement. The Vendor makes no representations or warranties with respect to the completeness or accuracy of the Technical Reports and shall not be liable to the Purchaser, its agents, employees or lending institution in any way for any omission or inaccuracy contained therein. Nothing herein shall release, relieve or otherwise abrogate from the obligations of the Vendor under the Project Agreement respecting any liability of the Vendor relating to such Technical Reports, including the provisions of Sections 6 and 16 thereof.

### **5.5 Project Agreement Provisions for Condition of Lands**

The Purchaser acknowledges that upon Project Substantial Completion as a part of the performance of the Works by the Purchaser under the Project Agreement, the Purchaser will have satisfied the requirements of Environmental Law (except to the extent same are the responsibility of the Vendor under the Project Agreement in which event the processes and procedures set forth therein shall apply) in respect to any remediation required in respect of the Lands and for clarity, the Purchaser shall accept title to the Lands subject to the Certificate of Property Use and subject to the registration of the Record of Site Conditions in the environmental site registry maintained by the MOE. Nothing herein shall release, relieve or otherwise abrogate from the obligations of the Vendor under the Project Agreement in respect of the remediation or funding of the remediation of the Lands.

### **5.6 Certificate of Property Use and Record of Site Conditions**

The Purchaser shall accept title to the Lands subject to the registration of the Certificate of Property Use and subject to the filing of the Record of Site Conditions in the environmental site registry maintained by the MOE.

### **5.7 Purchaser CPU Indemnity**

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The Purchaser shall be responsible for and hereby releases and indemnifies and saves harmless the Indemnified Persons from all costs, including legal and witness costs, claims, demands, civil actions, prosecutions or administrative hearings, fines, judgments, awards including awards of costs, that may arise as a result of any failure by the Purchaser to comply with the Certificate of Property Use or, subject to the obligations and liabilities of the Vendor under the Project Agreement with respect to environmental matters, any other breach of Environmental Law on or about the Lands by the Purchaser, its agents or contractors.

## **5.8 Release and Indemnity of Vendor**

Subject to the obligations and liabilities of the Vendor under the Project Agreement with respect to environmental matters, the Purchaser shall be responsible for and hereby releases the Vendor and indemnifies and saves harmless the Indemnified Parties from any costs, including legal and witness costs, claims, demands, civil actions, prosecutions, or administrative hearings, fines, judgments, awards, including awards of costs, that may arise as a result of the condition of the Lands, any order issued by any competent Governmental Authority in connection with the condition of the Lands, or any loss, damage, or injury caused either directly or indirectly as a result of the condition of the Lands including, without limitation, non-compliance with Environmental Law or the existence of any Hazardous Substance or Contaminant.

## **ARTICLE 6 LOAN AGREEMENT CONDITION**

### **6.1 Loan Agreement Compliance**

Unless and until the Purchaser and the Lender's Agent have each irrevocably waived its right to draw the loan under the Loan Agreement, the Purchaser agrees to comply with all of the requirements of Section 9.02(1) of the Loan Agreement.

### **6.2 Registration of Debenture and Section 118 Restriction**

Unless and until the Purchaser and the Lender's Agent have each irrevocably waived its right to draw the loan under the Loan Agreement, the Purchaser acknowledges and agrees that the registration of the Section 118 Restriction against the title to the Project Co Stage 2 Lands will occur immediately prior to the registration of the Transfer/Deed of the Project Co Stage 2 Lands on the Date of Closing and the registration of the Debenture will occur as the first registration immediately following the registration of such Transfer/Deed and that execution and delivery of the Debenture and the Section 118 Restriction and their registration in accordance with the foregoing and the satisfaction by the Purchaser of all other requirements of Section 9.02(1) of the Loan Agreement shall be a condition of the registration of the Transfer/Deed of the Project Co Stage 2 Lands, but for the avoidance of doubt, shall not be a condition to the advance of the loan under the Loan Agreement.

## **ARTICLE 7 VENDORS' CONDITIONS**

## **7.1 Vendor's Conditions**

This Agreement is subject to the conditions set forth in Sections 7.3, 7.4, 7.5, 7.6, 7.7 and 7.8 hereof which have been inserted for the sole benefit of the Vendor and may be waived in whole or in part by the Vendor in its sole discretion, or by the Vendor's Solicitors on its behalf. The conditions are conditions precedent to the obligation of the Vendor to complete this Agreement on the Date of Closing (subject to the Vendor's right to waive any of the conditions as set out above).

## **7.2 Non-Fulfillment of Conditions**

If a condition set forth in this Article 7 is not fulfilled within the applicable time period, if any, and the Vendor fails to notify the Purchaser or the Purchaser's Solicitors that such condition has been waived or the time period for compliance has been extended within the applicable time period allowed, if any, this Agreement shall be terminated, notwithstanding any intermediate act or negotiations.

## **7.3 Loan Agreement Compliance Condition**

Unless the Purchaser and the Lender's Agent have each irrevocably waived its right to draw the loan under the Loan Agreement, the Purchaser shall have complied with its obligations under Article 6 on or prior to the Date of Closing.

## **7.4 Environmental Assessment Act**

The Vendor has undertaken such actions and measures as it deems necessary to comply with the requirements of the *Environmental Assessment Act*, R.S.O. 1990, c. E. 18 and the Class EA in each such case as they apply to the Lands and the transaction contemplated by this Agreement, including the Class EA (collectively, the "Environmental Requirements"). Notwithstanding any other provision of this Agreement, the completion of the transaction is subject to continuing compliance to the Date of Closing with all such Environmental Requirements and in the event that prior to the Date of Closing:

- (a) any Governmental Authority makes or issues any order or directive pursuant to the Environmental Requirements that necessitates that the Vendor, in addition to the actions and measures taken aforesaid, to take other or different actions or measures to comply with the Environmental Requirements (including, without limitation, an order or directive requiring the Vendor to comply with Part II of the *Environmental Assessment Act*); or
- (b) the Vendor receives any notice or communication from any Governmental Authority that it is considering whether to make or issue any such order or directive; or

- (c) a written request has been made to the Minister of the Environment, of which the Vendor has notice, that other or different measures be taken to comply with the Environmental Requirements;

then the Vendor may, at its option and in its sole discretion, extend the Date of Closing for such period of time as is necessary in the determination of the Vendor to comply with any such actions, measures, orders or directives by notice in writing to the Purchaser during which time the Vendor shall

- (d) take any such actions, measures and comply with any such orders or directives (as the same may be modified or withdrawn) at its own expense; or
- (e) terminate this Agreement by written notice to the Purchaser.

## **7.5 First Nation Claims**

If at any time prior to the Date of Closing the Vendor receives notification or otherwise becomes aware of any claim or potential claim whatsoever for an interest in respect of the Lands, by any First Nation or other aboriginal group or individual, in relation to any constitutional right, treaty right, land claim, surrender agreement or consultation right, including, without limitation, an interest in the title to the Lands, a right to the use of the whole or any part of the Lands, a restriction on the use of the Lands or any part thereof for any purpose, a restriction on access to the Lands or any part thereof, a claim for compensation, arising out of any interest or claimed interest in the Lands or a right of consultation in relation to the Lands, then the Vendor may at its option and in its sole discretion extend the Date of Closing by notice in writing to Purchaser during which time the Vendor shall:

- (a) determine in its sole discretion if such claim, potential claim or interest is valid and if so is capable of being satisfied or appropriate releases can be obtained from all interested parties to enable the Vendor to complete the sale of the Lands to the Purchaser by the Date of Closing free and clear of any such claim, potential claim or interest, in which event, the Vendor shall satisfy such claims or obtain such releases by the Date of Closing; or
- (b) have the right to terminate this Agreement by written notice to the Purchaser.

## **7.6 Execution of the Project Co Stage 2 Lands Development Agreement**

The Purchaser shall have executed and delivered to Waterfront Toronto the Project Co Stage 2 Lands Development Agreement.

## **7.7 Letters of Credit**

On or before the Date of Closing, the Vendor shall have received the following:

- (a) the Third Party Facility Conversion Costs LC in accordance with Section 18.17(a) of the Project Agreement;
- (b) the Municipal Works Letter of Credit in accordance with Section 18.18(a) of the Project Agreement;
- (c) the LEED Letter of Credit in accordance with Section 22.5(a) of the Project Agreement; and
- (d) the Development Agreement Letter of Credit in accordance with Section 8.02(b) of the Project Co Stage 2 Lands Development Agreement.

## **7.8 Insurance**

On Closing, the Vendor shall have received satisfactory evidence that the Purchaser continues to carry the insurance required by the Project Agreement.

## **7.9 Project Agreement Termination**

The Vendor and the Purchaser acknowledge and agree that if the Project Agreement is terminated before the Date of Closing, this Agreement shall be terminated, notwithstanding any intermediate act or negotiations; provided that, for the purposes of this Section 7.9, a novation under section 10 of the Lenders' Direct Agreement (irrespective of whether a replacement Project Agreement is entered into) shall not be considered to be a termination of the Project Agreement.

## **7.10 HMQ Event of Default**

The Vendor and the Purchaser acknowledge and agree that a termination of this Agreement under any of Sections 7.4(e), 7.5(b) and 12.4, or a default by the Vendor that results in the Closing not occurring through no fault of the Purchaser shall constitute an HMQ Event of Default under the Project Agreement and the Purchaser acknowledges and agrees that its sole compensation as a result of such termination of this Agreement shall be as provided for under the Project Agreement in the event of an HMQ Event of Default and neither the Vendor nor the Purchaser shall be liable to the other for any loss, costs or damages under this Agreement as a result of such termination.

## **7.11 Extension of the Date of Closing**

If the Vendor exercises its right to extend the closing under any of Sections 7.4, 7.5 or 12.4 for a period in excess of 60 days in the aggregate then the period of extension beyond 60 days shall be deemed to be a Compensation Event under the Project Agreement and the provisions of the Project Agreement relating to a Compensation Event shall apply.

## **ARTICLE 8 RISK OF PROPERTY AND INSURANCE**

## **8.1 Risk Until Completion**

Until completion of this Agreement on the Date of Closing, any improvements on the Lands shall be at the risk of the Purchaser.

## **ARTICLE 9A ASSISTANCE TO PURCHASER**

### **9A.1 Assistance to Purchaser**

In support of the development of the Lands in accordance with the Project Agreement:

- (1) at the request of the Purchaser and at the sole cost and expense of the Purchaser, the Vendor shall convey any portion or portions of the Lands to any Governmental Authority in connection with the servicing, subdivision and/or development of the Lands;
- (2) at the request of the Purchaser and at the sole cost and expense of the Purchaser, the Vendor shall grant easements to any Governmental Authority or utility or cable provider in connection with the operation, servicing and/or development of the Lands and shall be a party to any servicing agreements, site plan agreement, subdivision agreement, agreement pursuant to section 37 of the *Planning Act* (Ontario) and other similar documentation as may be required by the Purchaser so long as the Vendor incurs no liability thereunder or receives an indemnity of the Purchaser therefor that is satisfactory to the Vendor in form and substance;
- (3) at the request of the Purchaser and at the sole cost and expense of the Purchaser, the Vendor shall apply to bring the Lands under the *Condominium Act*, 1998 (Ontario) provided that the Vendor shall not be required to sign any declaration or description under the *Condominium Act*, 1998 (Ontario) nor shall it be required to execute any document which would create a liability under the *Condominium Act*, 1998 (Ontario); and
- (4) at the request of the Purchaser and at the sole cost and expense of the Purchaser, the Vendor shall execute:
  - (a) any and all authorizations, applications and consents necessary to permit the registration of any condominium plan in respect of any part of the Lands provided that the Vendor shall not be required to sign any declaration or description under the *Condominium Act*, 1998 (Ontario) nor shall it be required to execute any document which would create a liability under the *Condominium Act*, 1998 (Ontario); and
  - (b) any and all applications for minor variances and consents to severance which the Purchaser shall reasonably require in connection with development of the Lands.

All documentation described above in this Section 9A.1 shall be prepared by the Purchaser at the sole cost and expense of the Purchaser, subject to the approval of the Vendor;

- (5) the Vendor covenants to do and perform all acts and execute and deliver all documents as are reasonably necessary and within its reasonable control in order to cause the conveyance of lands for the purposes of public roads to the City in accordance with the terms of the Subdivision

Agreement, provided that the Vendor shall not be required to incur any out-of-pocket costs in connection with this covenant. The Vendor covenants not to oppose any dedication and/or assumption of such lands as public highways, however nothing in this agreement shall be deemed to limit or circumscribe the powers of the legislature of Ontario or the discretion of HMQ to implement public policy; and

(6) the Vendor covenants to use reasonable commercial efforts to close the open permits and committee of adjustment applications listed in Schedule "I" (the "**Open Permits**") at its own cost in due course, unless any Open Permits are required by the Vendor or any other entity for on-going work at the West Don Lands. In the event that any Open Permits can be closed by the Purchaser during its permitting process without any additional cost to the Purchaser, the Purchaser covenants to close them.

## **ARTICLE 9 VENDOR'S WARRANTIES, REPRESENTATIONS AND COVENANTS**

### **9.1 Section 116 of Income Tax Act**

The Vendor represents and warrants to the Purchaser that it is not a non-resident of Canada within the meaning and intended purpose of Section 116 of the *Income Tax Act*, R.S.C. 1970, c. I. 5 (Canada).

### **9.2 Vendor Power and Authority**

The Vendor represents and warrants to the Purchaser that it is a non-share capital corporation continued and amalgamated under the Ontario Infrastructure and Lands Corporation Act, 2011, S.O. 2011, c. 9, Schedule 32, as amended, and includes any successors thereto or persons exercising delegated power and the Minister's authority, as agent for Her Majesty the Queen in Right of Ontario as represented by the Minister of Infrastructure, and has all the requisite corporate power and authority to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Agreement as agent for the Province.

### **9.3 Agent for the Province**

The Vendor represents and warrants to the Purchaser that it has obtained all necessary approvals to enter into this Agreement as agent for the Province.

### **9.4 Intentionally Deleted**

### **9.5 Enforceability**

The Vendor represents and warrants to the Purchaser that this Agreement has been duly authorized, executed, and delivered by it and constitutes a legal, valid, and binding obligation, enforceable against it in accordance with its terms, subject only to:

- (a) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, moratorium, winding up, arrangement, reorganization, fraudulent



preference and conveyance and other laws of general application affecting the enforcement of creditors' rights generally;

- (b) general equitable principles and the fact that the availability of equitable remedies such as specific performance and injunction are not available against the Vendor and that a court may stay proceedings or the execution of judgments;
- (c) statutory limitations of general application respecting the enforceability of claims against it or its property;
- (d) Section 11.3 of the *Financial Administration Act* (Ontario);
- (e) any terms and conditions set out in the approval that has been provided in connection with this Project Agreement for the purposes of Section 28 of the *Financial Administration Act*; and
- (f) the powers of the Minister of Finance to effect set offs against amounts owing by it pursuant to Section 43 of the *Financial Administration Act*;

## **9.6 No Conflict**

The Vendor represents and warrants to the Purchaser that the execution, delivery, and performance by it of this Project Agreement does not and will not violate or conflict with, or constitute a default under:

- (a) the *Ontario Infrastructure and Lands Corporation Act*, 2011, S.O. 2011, c.9, Schedule 32, as amended, or any regulations made in respect thereof;
- (b) the *Executive Council Act* (Ontario);
- (c) any Applicable Law; or
- (d) any covenant, contract, agreement, or understanding to which it is a party or by which it or any of its properties or assets is bound or affected.

## **9.7 Compliance with Agreements, etc.**

The Vendor represents and warrants to the Purchaser that, except to the extent such matters are the obligation of Project Co under the Project Agreement, it has complied with all Permitted Encumbrances as of Financial Close and will have complied with all such Permitted Encumbrances as of the Date of Closing.

# **ARTICLE 10 PURCHASER'S WARRANTIES, REPRESENTATIONS AND COVENANTS**

## **10.1 Purchaser Power and Authority**

The Purchaser represents and warrants to the Vendor that as of the date of this Agreement:

- (a) The Purchaser is a [REDACTED], and has all the requisite power and authority to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Agreement and to perform its obligations hereunder;
- (b) [REDACTED];
- (c) [REDACTED];
- (d) The Purchaser has the requisite power, authority and capacity to execute and deliver and perform this Agreement, and to do all acts and things, and execute, deliver and perform all other agreements, instruments, undertakings and documents as are required by this Agreement to be done, executed, delivered or performed;
- (e) this Agreement has been duly authorized, executed, and delivered by the Purchaser and constitutes a legal, valid, and binding obligation of the Purchaser, enforceable against the Purchaser in accordance with its terms, subject only to:
  - (i) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, moratorium, winding-up, arrangement, reorganization, fraudulent preference and conveyance and other laws of general application affecting the enforcement of creditors' rights generally; and
  - (ii) general equitable principles and the fact that the availability of equitable remedies is in the discretion of a court and that a court may stay proceedings or the execution of judgments;
- (f) the execution, delivery, and performance by the Purchaser of this Agreement does not and will not violate or conflict with, or constitute a default under:
  - (i) its constating, formation or organizational documents, including any by-laws;
  - (ii) any Applicable Law; or
  - (iii) any covenant, contract, agreement, or understanding to which it is a party or by which it or any of its properties or assets is bound or affected;
- (g) the Purchaser is registered under Division V of Part IX of the *Excise Tax Act* (Canada) and its HST registration number is [REDACTED];
- (h) [REDACTED]; and
- (i) [REDACTED].

## **10.2 Permitted Encumbrances**

From and after the Date of Closing, the Purchaser shall comply with the terms of the Permitted Encumbrances including any agreement entered into by the Vendor with any Governmental Authority relating to the Lands as contemplated in the Project Agreement, all other agreements relating to public utilities and municipal services that are contemplated in the Project Agreement, the Land Use Regulations and all relevant municipal by-laws and all registered restrictions.

## **ARTICLE 11 PLANNING ACT COMPLIANCE**

### **11.1 Purchaser Responsibility**

The Purchaser shall be responsible for ensuring, at its cost, that the transfer of the Lands to the Purchaser complies with the subdivision control provisions of the *Planning Act* on or before the Date of Closing. Any conditions that are to be fulfilled in connection with the consent are to be fulfilled by and at the cost of the Purchaser.

## **ARTICLE 12 TITLE**

### **12.1 Purchaser Satisfaction as to Title**

The Purchaser acknowledges and agrees that it has had an opportunity to review the title to the Lands and acknowledges and agrees that, subject to Section 12.4, it is fully satisfied with the title to the Lands to be delivered by the Vendor under this Agreement, including in respect to the Permitted Encumbrances, and the Purchaser acknowledges that as of the Date of Closing the Lands will be subject to the additional Permitted Encumbrances anticipated in Schedule "B" – Permitted Encumbrances.

### **12.2 Direction of Title**

The Purchaser may direct title in respect to any portion of the Lands to a direct or indirect wholly-owned subsidiary of Project Co, or a bare trustee on behalf of such a subsidiary, and for such purpose the Purchaser shall provide to the Vendor the relevant information regarding such party including evidence that such party is a direct or indirect wholly-owned subsidiary of the Purchaser and such other information regarding such subsidiary as the Vendor may reasonably request; provided that, where the Lenders' Agent is pursuant to the Lending Agreements exercising the rights of the Purchaser hereunder, the Lenders' Agent may direct title to an Appointed Representative under and as defined in the Lenders' Direct Agreement.

### **12.3 Acceptance of Title on the Date of Closing**

On the Date of Closing, the Purchaser shall, subject to Section 12.4, accept title to the Lands in the condition contemplated in Article 5, subject to the following:

- (a) the Land Use Regulations; and

(b) all Permitted Encumbrances.

#### **12.4 Subsearch of Permitted Encumbrances Prior to Closing**

The Vendor shall provide to the Purchaser an updated Schedule “B” setting out the current Permitted Encumbrances based on a subsearch of the title to the Lands by the Vendor’s Solicitor, not less than 30 and not more than 40 days prior to the scheduled Date of Closing (the “**Updated Permitted Encumbrances Notice**”). The Purchaser may have the Purchaser’s Solicitor confirm the updated list of Permitted Encumbrances. In the event that the Updated Permitted Encumbrances Notice discloses Permitted Encumbrances that were not set out in Schedule “B” at the date of execution of this Agreement, or that were not future encumbrances that were, as described in section 2 of Schedule “B”, anticipated to be registered on or before the Date of Closing (“**New Permitted Encumbrances**”), then provided any such New Permitted Encumbrances do not go to the root of title or do not materially negatively affect the use, enjoyment, value or marketability of the Lands by the Purchaser, then such New Permitted Encumbrances shall be accepted by the Purchaser. In the event that any New Permitted Encumbrances do go to the root of title or do materially and negatively affect the enjoyment, use, value or marketability of the Lands by the Purchaser (“**Prohibited Encumbrances**”), the Vendor shall have a period of 60 days in order to endeavour to remove such Prohibited Encumbrances from the title to the Lands (including through the exercise of a Provincial right of expropriation if necessary, all at the Vendor’s cost and expense) or such longer period of time as the Vendor may consider necessary but not to extend beyond 180 days from the scheduled Date of Closing. In the event that the Vendor has removed the Prohibited Encumbrances the Vendor shall give notice thereof to the Purchaser of the final Schedule “B” setting out the final Permitted Encumbrances based on a further subsearch of the title to the Lands by the Vendor’s Solicitor and the date of Closing shall be the Second Business Day from the date such notice has been given to the Purchaser. In the event that the Vendor has been unable to remove such Prohibited Encumbrances, then this Agreement shall be terminated and the provisions of Section 7.10 shall apply.

#### **12.5 Release of Information to City**

The Vendor hereby consents to the City and other Governmental Authorities that the Purchaser intends to approach in connection with usual due diligence inquiries for comparable transactions releasing to the Purchaser any information in their records in connection with the Lands and the Vendor agrees to execute and deliver such necessary authorizations as the Purchaser may reasonably require in this regard but any such authorization shall specifically prohibit the right of or a request for an inspection of the Lands by the City or other Governmental Authority.

### **ARTICLE 13 NO REGISTRATION, LIMITATION ON ASSIGNMENT**

#### **13.1 No Registration**

The Purchaser shall not register this Agreement, or any assignment of this Agreement, or any part of either, or register a caution in relation thereto, without obtaining the prior written consent of the Vendor.

### **13.2 Assignment**

The Purchaser shall not sell, assign, transfer, charge, mortgage, encumber, dispose of or otherwise alienate all or any part of any interest, whether legal or beneficial, in this Agreement without the prior written consent of the Vendor, in its sole discretion, save and except as permitted under the Project Agreement.

## **ARTICLE 14 PREPARATION OF TRANSFER/DEED DOCUMENTS**

### **14.1 Preparation by Vendor**

The Transfer/Deed of the Lands will be prepared by the Vendor, except for the Affidavit of Residence and Value of the Consideration (“**Land Transfer Tax Affidavit**”), which will be prepared by the Purchaser. The Purchaser shall pay its own legal costs, registration costs, and, subject to the adjustments in Section 16.1, all land transfer tax payable.

## **ARTICLE 15 TENDER**

### **15.1 Tender**

Any tender of money or documents pursuant to this Agreement may be made on the Vendor or the Purchaser or their respective solicitors. Money must be tendered in Canadian funds by bank draft, wire transfer or negotiable cheque certified by a Canadian chartered bank, trust company, credit union or Province of Ontario Savings Office.

## **ARTICLE 16 ADJUSTMENTS**

### **16.1 Closing Adjustments**

Adjustments between the Vendor and the Purchaser shall be made on the Date of Closing for taxes, local improvement rates and charges, utility costs and deposits, and other matters or items which are ordinarily the subject of adjustment for the purchase and sale of a property similar to the Lands and an amount equal to the land transfer tax paid by the Purchaser as contemplated in Section 4.1. The Vendor shall be responsible for all expenses accrued from the Lands for that period ending on the day prior to the Date of Closing and the Purchaser shall be responsible for all of the expenses in respect of the Lands for the period from and after the Date of Closing. In addition, the adjustments shall include the other matters referred to in this Agreement which are stated to be the subject of adjustment and shall exclude the other matters in this Agreement which are stated not to be the subject of adjustment. Any amounts adjusted in favour of the Purchaser shall be and become the responsibility of the Purchaser to pay when due which it covenants and agrees to do and to save the Vendor harmless from any non-payment.

## **16.2 Post-Closing Adjustments**

Any adjustments that cannot be determined on the Date of Closing shall be determined by the parties as soon after the Date of Closing as is reasonably possible. Any amounts payable by one Party to the other, as determined by the parties, acting reasonably, shall be paid within ten (10) days of the request for such payment. The Vendor and Purchaser shall execute and deliver on the Date of Closing an undertaking to readjust and pay the amount of any adjustments or other of the foregoing post-closing adjustments as may be owing pursuant to the provisions of this Agreement. As a post-Closing adjustment, there shall be an adjustment in favour of the Purchaser in the amount of any additional land transfer taxes, together with any interest and penalties payable in respect of such additional land transfer taxes.

## **16.3 Interest on Default of Payment**

All amounts payable to the Vendor under this Agreement will bear simple interest at the Default Rate of Interest. Interest will be calculated and payable from and including the day after the day the amount is due until payment in full of the overdue amount is received by the Vendor. Interest will be calculated only on the principal amount outstanding from time to time, and interest charges will not be added to the outstanding principal amount for purposes of calculating interest. Payments will be applied first to outstanding interest charges and the balance (if any) will be applied to the outstanding principal amount. The rights of the Vendor to charge and receive interest in accordance with this Section are without prejudice to any of the other rights of the Vendor at law or otherwise.

# **ARTICLE 17 ELECTRONIC REGISTRATION**

## **17.1 Completion by Electronic Registration**

Where the Lands is in an area where electronic registration is mandatory and the transaction will be completed by electronic registration pursuant to Part III of the *Land Registration Reform Act*, R.S.O. 1990, c. L-4, and the *Electronic Registration Act*, 1991, S.O. 1991, c.-44, and any amendments thereto, the Vendor and Purchaser acknowledge and agree that the exchange of closing funds, non-registerable documents and other closing deliverables provided for herein and the release thereof to the Vendor and Purchaser will:

- (a) not occur at the same time as the registration of the transfer/deed (and any other documents intended to be registered in connection with the completion of this transaction); and
- (b) be subject to conditions whereby the lawyer(s) receiving any of the closing deliverables will be required to hold same in trust and not release same except in accordance with the terms of a document registration agreement between the said lawyers, the form of which is as recommended from time to time by the Law Society of Upper Canada.

## **ARTICLE 18 CLOSING AND CLOSING DELIVERABLES**

### **18.1 Intentionally Deleted**

### **18.2 Vendor Deliveries**

The Vendor covenants that it will deliver or cause to be delivered to the Purchaser on or before the Date of Closing, subject to the provisions of this Agreement, each of the following:

- (a) an Assignment and Assumption of the Permitted Encumbrances;
- (b) an executed Transfer(s)/Deed(s) of the Lands in registerable form duly executed by the Vendor in favour of the Purchaser (save for any Land Transfer Tax Affidavit);
- (c) vacant possession of the Lands in an “As Is Where Is” condition subject to the Project Agreement and the Project Co Services Agreement;
- (d) a direction regarding the payment of the Purchase Price;
- (e) statement of adjustments;
- (f) an undertaking to re-adjust the statement of adjustments, if necessary, upon written demand;
- (g) the Document Registration Agreement as set out in Schedule “E”;
- (h) discharges of or an undertaking to discharge all encumbrances that are not Permitted Encumbrances or New Permitted Encumbrances; and
- (i) such other documents as the Purchaser or Purchaser’s Solicitors may reasonably require in order to implement the intent of this Agreement.

### **18.3 Intentionally Deleted**

### **18.4 Purchaser Deliveries to Vendor**

The Purchaser covenants that it will deliver or cause to be delivered to the Vendor on or before the Date of Closing, subject to the provisions of this Agreement, each of the following:

- (a) a direction as to title, if necessary;
- (b) the Document Registration Agreement as set out in Schedule “E”;
- (c) a statutory declaration updated to the Date of Closing in the form set out in Schedule “C”;

- (d) **[Intentionally Deleted];**
- (e) a certified cheque or bank draft for the balance of the Purchase Price due on the Date of Closing;
- (f) an undertaking to re-adjust the statement of adjustments, if necessary, upon written demand;
- (g) the HST declaration and indemnity, if applicable referred to in Section 3.2;
- (h) the letters of credit described in Section 7.7; and
- (i) such other documents as the Vendor or its solicitors may reasonably require in order to implement the intent of this Agreement.

## **ARTICLE 19 NOTICE**

### **19.1 Address for Notice**

Any notice under this Agreement is sufficiently given if delivered personally or if sent by ordinary prepaid mail or prepaid courier or electronic facsimile machine addressed to the Purchaser at:

**[REDACTED]**

Attention: **[REDACTED]**  
Telephone: **[REDACTED]**  
Facsimile: **[REDACTED]**

And:

**[REDACTED]**

Attention: **[REDACTED]**  
Telephone: **[REDACTED]**  
Facsimile: **[REDACTED]**

and to the Purchaser's Solicitors at:

**[REDACTED]**

Attention: **[REDACTED]**  
Telephone: **[REDACTED]**  
Facsimile: **[REDACTED]**



and to the Vendor at:

c/o **Ontario Infrastructure and Lands Corporation**  
**[REDACTED]**

Attention: **[REDACTED]**  
Telephone: **[REDACTED]**  
Facsimile: **[REDACTED]**

And:

Attention: **[REDACTED]**  
Telephone: **[REDACTED]**  
Facsimile: **[REDACTED]**

and to the Vendor's Solicitors at:

**McCarthy Tétrault LLP**  
**[REDACTED]**

Attention: **[REDACTED]**  
Telephone: **[REDACTED]**  
Facsimile: **[REDACTED]**

and with a copy to Waterfront Toronto at:

**Toronto Waterfront Revitalization Corporation**  
**[REDACTED]**

Attention: **[REDACTED]**  
Telephone: **[REDACTED]**  
Facsimile: **[REDACTED]**

or at such other addresses as the Vendor and the Purchaser may designate from time to time. Any such notice shall be conclusively deemed to have been given and received upon the same day if personally delivered or sent by facsimile or, if mailed, three (3) Business Days after the same is mailed. Any Party may, at any time by notice given in writing to the other Party, change its address for service of notice on it.

## **ARTICLE 20 GENERAL**

### **20.1 Time**

Time shall in all respects be of the essence of this Agreement, provided that the time for doing or completing any matter provided for in this Agreement may be extended or abridged by an agreement in writing, signed by the Vendor and the Purchaser or by an agreement between their respective solicitors who are hereby expressly authorized in this regard. Except as expressly set out in this Agreement, the computation of any period of time referred to in this Agreement shall exclude the first day and include the last day of such period. If the time limited for the performance or completion of any matter under this Agreement expires or falls on a day that is not a Business Day, the time so limited shall extend to the next following Business Day.

### **20.2 Successors and Assigns**

This Agreement shall be binding upon, and enure to the benefit of, the Vendor and the Purchaser and their respective successors and permitted assigns.

### **20.3 Merger**

The Vendor and the Purchaser acknowledge and agree that subject to the survival of Sections 3.2 (Purchaser Registered Under *Excise Tax Act*), 4.2 (Indemnity by Purchaser for Failure to Pay Taxes), Article 5 (“As is where is” Condition and Environmental Indemnity), Section 7.10 (HMQ Event of Default), Article 9 (Vendor’s Warranties, Representations and Covenants), Article 10 (Purchaser’s Warranties, Representations and Covenants), Article 13 (No Registration, Limitation on Assignment), Sections 16.2 (Post-Closing Adjustments) and 16.3 (Interest on Default of Payment), Sections 20.6(a) (Confidentiality, FIPPA), 20.8 (Purchaser Party Confidentiality) and 20.11 (Unenforceable Provisions) and all of the representations, covenants, agreements, rights and obligations of the Vendor and the Purchaser under this Agreement under and in respect to such Sections and Articles of this Agreement (collectively, the “**Surviving Obligations**”), all of the remaining provisions of this Agreement shall merge on the completion of this transaction, and shall not survive completion and shall terminate and be of no force and effect.

### **20.4 Number, Gender**

Whenever the singular is used in this Agreement, it shall mean and include the plural and whenever the masculine gender is used in this Agreement it shall mean and include the feminine gender if the context so requires.

### **20.5 Entire Agreement**

This Agreement constitutes the entire agreement between the parties and there is no representation, warranty, collateral agreement or condition affecting this Agreement or the Lands other than as set out in this Agreement.

## **20.6 Governing Law**

- (a) This Agreement and the rights and obligations of the Vendor and the Purchaser shall be determined in accordance with the laws of the Province of Ontario. Unless otherwise expressly stated in this Agreement, all references to money shall refer to Canadian funds.
- (b) The Parties agree that the courts of the Province of Ontario and all courts competent to hear appeals therefrom shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Agreement and, subject to the *Proceedings Against the Crown Act* (Ontario), hereby irrevocably attorn to the exclusive jurisdiction of such courts.

## **20.7 Confidentiality, FIPPA**

The Vendor and Purchaser agree to maintain the confidentiality of the terms and conditions contained herein subject to and in accordance with Section 49 and 50 of the Project Agreement, *mutatis mutandis*.

## **20.8 Purchaser Party Confidentiality**

The Purchaser agrees to ensure that the Purchaser, its partners, directors, officers, employees, agents, sub-contractors, volunteers and its financial institution shall maintain the confidentiality and security of all material and information which is the property of the Vendor and in the possession or under the control of the Purchaser pursuant to this Agreement as well as any information arising out of the Purchaser's access to the Lands and its own due diligence with respect thereto. The Purchaser agrees to ensure that the Purchaser, its partners, directors, employees, agents, sub-contractors, volunteers, contractors, consultants and its financial institutions shall not, directly or indirectly, disclose or use, either during or following the term of this Agreement, except where required by law, any material or information belonging to the Vendor pursuant to this Agreement, without first obtaining the written consent of the Vendor for such disclosure or use and in the event of termination of this Agreement, the Purchaser will be responsible for returning all such documentation and information to the Vendor without making copies. The Purchaser shall not use any such confidential information for any purposes not related to this transaction or in any way detrimental to the Vendor. The foregoing obligations shall not extend to information or material in the public realm or disclosure required by Applicable Law.

## **20.9 Planning Act Compliance**

This Agreement is entered into subject to the express condition that it is to be effective only if the subdivision control provisions of the *Planning Act* (Ontario) are complied with on or before the Date of Closing.

## **20.10 Contract Interpretation**

No principle or presumption of contract interpretation shall be used to construe the whole or any part of this Agreement on the basis that it was prepared by the Vendor.

## **20.11 Unenforceable Provisions**

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

*Remainder of this page intentionally left blank*

**Amended and Restated Project Agreement – Schedule 17**  
**2015 Pan/Parapan American Games Athletes' Village Project** **Execution Version**

**OFFERED BY** the Purchaser this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

**DUNDEE KILMER DEVELOPMENTS L.P.,**

**[REDACTED]**

**ACCEPTED BY** the Vendor this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

**HER MAJESTY THE QUEEN IN RIGHT OF  
ONTARIO as represented by the Minister of  
Infrastructure, as represented by Ontario  
Infrastructure and Lands Corporation**

**[REDACTED]**

**SCHEDULE A**

**LEGAL DESCRIPTION OF THE PROJECT CO STAGE 2 LANDS**

1. **BLOCK 12:**

**PIN 21077-0308 (LT)**

Block 12 on Plan 66M2488, subject to an easement as in AT2824753, in the City of Toronto.

2. **BLOCK 13:**

**PIN 21077-0309 (LT)**

Block 13 on Plan 66M2488, subject to an easement as in AT2824753, in the City of Toronto.

3. **BLOCK 16:**

**PIN 21077-0312 (LT)**

Block 16 on Plan 66M2488, subject to an easement as in AT2824753, in the City of Toronto.

**SCHEDULE B**

**PERMITTED ENCUMBRANCES**

**1. General Encumbrances:**

- (a) liens, charges or prior claims for taxes (which term includes charges, rates and assessments) or utilities (including levies or imposts for sewers and other municipal utility services) not yet due or if due, the validity of which is being contested in good faith, and liens or charges for the excess of the amount of any past due taxes or utilities charges for which a final assessment or account has not been received over the amount of such taxes or utilities charges as estimated and paid by the Vendor;
- (b) inchoate means incidental to construction, renovations or current operations, a claim for which shall not at the time have been registered against the Lands or of which notice in writing shall not at the time have been given to the Vendor pursuant to the *Construction Lien Act* (Ontario) or otherwise or any lien or charge, a claim for which, although registered, or notices of which, although given, relate to obligations not overdue or delinquent and in respect of any of the foregoing cases, the Vendor has, where applicable, complied with the holdback or other similar provisions or requirements of the relevant construction contracts so as to protect the Lands therefrom;
- (c) easements, rights of way, restrictions, building schemes, licences, restrictive covenants and servitudes, rights of access or user, airport zoning regulations and other similar rights in land (including, without limitation, rights of way and servitudes for sewers, drains, gas and water mains, electrical power, telephone and cable conduits, poles, wires or cables) granted to, reserved or taken by any person, and any rights reserved or vested in any Governmental Authority or public or private utility by the terms of any lease, licence, franchise, grant, agreement or permit, subdivision, development, servicing, encroachment, site plan, parking or other similar agreement with any Governmental Authority or public or private utility, provided same are complied with by the Vendor and do not individually or in the aggregate materially and negatively affect the value, use or marketability of the Lands for residential and retail condominium and rental facilities;
- (d) title defects or irregularities which do not, in the aggregate, materially and adversely impair the value, use or marketability of the Lands for the purpose of a residential and retail condominium and rental facilities;
- (e) cost sharing, common use, reciprocal or other similar agreements, if any, relating to the use and/or operation of the Lands and/or adjoining properties and all security given by the parties thereto to each other to secure their respective obligations thereunder;

**Amended and Restated Project Agreement – Schedule 17**  
**2015 Pan/Parapan American Games Athletes' Village Project** **Execution Version**

- (f) any subsisting reservations, limitations, provisions and conditions contained in any original grants from the Crown of any land or interests therein, reservations of under-surface rights to mines and minerals of any kind;
- (g) any rights of expropriation, access or use, or any other right conferred or reserved by or in any statute of Canada or the Province of Ontario;
- (h) zoning (including, without limitation, airport zoning regulations), use and building by-laws and ordinances, federal, provincial or municipal by-laws and regulations as to the use of the Lands, which do not materially impair the value of the Lands or materially interfere with the use of the Lands for the purposes of the Project;
- (i) any encroachments, easements, rights of way or similar interests which would be revealed by an up-to-date survey of the Lands, which do not materially interfere with the value of the Lands or materially interfere with the Purchaser's use of the Lands for the purpose of the Project.

**2. Specific Encumbrances:**

<b>No</b>	<b>Block</b>	<b>Instrument No.</b>	<b>Party to</b>	<b>Nature of Encumbrance</b>
1.	All	66M2488	n/a	Plan of Subdivision
2.	All	AT2824469	City of Toronto	Subdivision Agreement
3.	1, 2, 3, 4, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20 and 26	AT2824749	City of Toronto	Restrictive Covenant Agreement re: Slope of Lands
4.	[PT] 4, 8, 9, 10, 11, 12, 13, [PT] 14, [PT] 15, 16, [PT] 17 and 20	AT2824752	Metrolinx	Metrolinx Agreement, including Restrictive Covenants and Environmental Easement
5.	[PT] 4, 8, 9, 10, 11, 12, 13, [PT] 14, [PT] 15, 16, [PT] 17 and 20	AT2824753	Metrolinx	Metrolinx Easement



**Amended and Restated Project Agreement – Schedule 17**  
**2015 Pan/Parapan American Games Athletes' Village Project** **Execution Version**

<b><u>No</u></b>	<b><u>Block</u></b>	<b><u>Instrument No.</u></b>	<b><u>Party to</u></b>	<b><u>Nature of Encumbrance</u></b>
6.	1, 2, 3, 4, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20 and 26	AT2825068	TRCA	TRCA Restrictive Covenant Agreement
7.	12, 13 and 16	Not yet registered	Project Co, Waterfront Toronto	Project Co Stage 2 Lands Development Agreement
8.	Phase 1, Block 16 6, 10, 11, 12, 13, 21, 22, 23, 34	Not yet registered		Certificate of Requirement related to Certificate of Property Use – RA Group 5
9.	1, 2, 3, 4, 7, 14, 15, 16, 19, 24, 25, 27, 30, 31, 33	Not yet registered		Certificate of Requirement related to Certificate of Property Use – RA Group 7

**SCHEDULE C**

**STATUTORY DECLARATION – VENDOR FORM**

Canada	)	IN THE MATTER OF THE TITLE TO <>
Province of Ontario	)	
	)	AND IN THE MATTER OF A SALE THEREOF from
	)	HER MAJESTY THE QUEEN IN RIGHT OF
	)	ONTARIO as represented by the MINISTER OF
	)	INFRASTRUCTURE, as represented by ONTARIO
	)	INFRASTRUCTURE AND LANDS CORPORATION
	)	(the “Vendor”) to <●> (the “Purchaser”)
TO WIT:	)	
	)	
	)	
	)	

I, \_\_\_\_\_, of the \_\_\_\_\_, in the Province of Ontario,

DO SOLEMNLY DECLARE, that:

- (1) I am the \_\_\_\_\_ {title} of \_\_\_\_\_ {name of Purchaser}, the Purchaser in the above-captioned transaction and as such have knowledge of the matters hereinafter declared.
- (2) \_\_\_\_\_ {name of Purchaser} and ONTARIO INFRASTRUCTURE AND LANDS CORPORATION are arm's length parties and \_\_\_\_\_ {name of Purchaser} has received no special knowledge or special consideration in entering into the above Agreement of Purchase and Sale not arising from the Project Agreement, which would lead to the presumption that the parties are not arm's length parties.
- (3) \_\_\_\_\_ {name of Purchaser} and HER MAJESTY THE QUEEN, IN RIGHT OF ONTARIO as represented by THE MINISTER OF INFRASTRUCTURE, as represented by ONTARIO INFRASTRUCTURE AND LANDS CORPORATION are arm's length parties and \_\_\_\_\_ {name of Purchaser} has received no special knowledge or special consideration in entering into the above Agreement of Purchase and Sale not arising from the Project Agreement, which would lead to the presumption that the parties are not arm's length parties.
- (4) There are no outstanding legal disputes or actions between the Vendor and Purchaser other than disputes that may have arisen under the Project Agreement or the Project Co Services Agreement.

- (5) \_\_\_\_\_ {name of Purchaser} is not in conflict with ONTARIO INFRASTRUCTURE AND LANDS CORPORATION (or any of its employees) with respect to the above transaction.
- (6) \_\_\_\_\_ {name of Purchaser} is not in conflict with HER MAJESTY THE QUEEN, IN RIGHT OF ONTARIO as represented by THE MINISTER OF INFRASTRUCTURE, as represented by ONTARIO INFRASTRUCTURE AND LANDS CORPORATION (or any of its employees) with respect to the above transaction.

AND I make this solemn Declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath and by virtue of the *Canada Evidence Act*.

DECLARED by the above-named \_\_\_\_\_ )  
Declarant, before me at the \_\_\_\_\_ )  
\_\_\_\_\_ of \_\_\_\_\_, this \_\_\_\_\_ )  
day of \_\_\_\_\_, 201 \_\_\_\_\_ )  
\_\_\_\_\_. )  
A Commissioner, etc. )

\_\_\_\_\_

**SCHEDULE D**

**INTENTIONALLY DELETED**

**SCHEDULE E**

[NTD: This schedule will be updated to reflect the current Law Society form.]

**DOCUMENT REGISTRATION AGREEMENT**

**BETWEEN:**

**McCarthy Tétrault LLP**

(hereinafter referred to as the “**Vendor’s Solicitors**”)

- and -

●

(hereinafter referred to as the “**Purchaser’s Solicitors**”)

RE: Her Majesty the Queen in right of Ontario as represented by the Minister of Infrastructure, as represented by Ontario Infrastructure and Lands Corporation (the “**Vendor**”) sale to ● (the “**Purchaser**”) of the property legally described as ●, City of ●, being the whole of PIN ●(LT) (the “**Lands**”) pursuant to an Agreement of Purchase and Sale between the Purchaser, as purchaser, and the Vendor, as vendor, dated ● and accepted ● (the “**Purchase Agreement**”), scheduled to be completed on ● (the “**Closing Date**”)

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**FOR GOOD AND VALUABLE CONSIDERATION** (the receipt and sufficiency of which is hereby expressly acknowledged), the parties hereto hereby undertake and agree as follows:

Holding Deliveries In Escrow	1. The Vendor’s Solicitors and the Purchaser’s Solicitors shall hold all funds, keys and closing documentation exchanged between them (the “ <b>Requisite Deliveries</b> ”) in escrow, and shall not release or otherwise deal with same except in accordance with the terms of this Agreement. Both the Vendor’s Solicitors and the Purchaser’s Solicitors have been authorized by their respective clients to enter into this agreement. Once the Requisite Deliveries can be released in accordance with the terms of this Agreement, any monies representing payout funds for mortgages to be discharged, if any, shall be forwarded promptly to the appropriate mortgage lender. <sup>1</sup>
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<sup>1</sup> Solicitors should continue to refer to the Law Society of Upper Canada practice guidelines relating to recommended procedures to follow for the discharge of mortgages.

Advising of Concerns with Deliveries      2.      Each of the parties hereto shall notify the other as soon as reasonably possible following their respective receipt of the Requisite Deliveries (as applicable) of any defect(s) with respect to same.

Selecting Solicitors Responsible for Registration      3.      The Purchaser's Solicitors shall be responsible for the registration of the Electronic Documents (as hereinafter defined) unless the box set out below indicating that the Vendor's Solicitors will be responsible for such registration has been checked. For the purposes of this Agreement, the solicitors responsible for such registration shall be referred to as the "**Registering Solicitors**" and the other solicitors shall be referred to as the "**Non-Registering Solicitors**":

Vendor's Solicitors will be registering the Electronic Documents

☐

Responsibility of Non-Registering Solicitors

4.      The Non-Registering Solicitors shall, upon his/her receipt and approval of the Requisite Deliveries (as applicable), electronically release for registration the Electronic Documents and shall thereafter be entitled to release the Requisite Deliveries from escrow forthwith following the earlier of:
- (a)    the registration of the Electronic Documents;
  - (b)    the closing time specified in the Purchase Agreement unless a specific time has been inserted as follows [\_\_\_\_\_ **a.m./p.m. on the Closing Date**] (the "**Release Deadline**"), and provided that notice under paragraph 7 below has not been received; or
  - (c)    receipt of notification from the Registering Solicitors of the registration of the Electronic Documents.

If the Purchase Agreement does not specify a closing time and a Release Deadline has not been specifically inserted the Release Deadline shall be 6.00 p.m. on the Closing Date.

- |   |   |
|---|---|
| Responsibility of Registering Solicitors                      | 5. The Registering Solicitors shall, subject to paragraph 7 below, on the Closing Date, following his/her receipt and approval of the Requisite Deliveries (as applicable), register the documents listed in Schedule “A” annexed hereto (referred to in this agreement as the “ <b>Electronic Documents</b> ”) in the stated order of priority therein set out, as soon as reasonably possible once same have been released for registration by the Non- Registering Solicitors, and immediately thereafter notify the Non-Registering Solicitors of the registration particulars thereof by telephone or telefax (or other method as agreed between the parties). |
| Release of Requisite Deliveries by Non-Registering Solicitors | 6. Upon registration of the Electronic Documents and notification of the Non-Registering solicitors in accordance with paragraph 5 above, the Non- Registering Solicitors and the Registering Solicitors shall be entitled to forthwith release the Requisite Deliveries from escrow.   |
| Returning Deliveries where Non-registration                   | 7. Any of the parties hereto may prior to the Release Deadline notify the other Party that he/she does not wish to proceed with the registration <sup>2</sup> of the Electronic Documents, and provided that such notice is received by the other Party before the release of the Requisite Deliveries pursuant to this Agreement and before the registration of the Electronic Documents, then each of the parties hereto shall forthwith return to the other Party their respective Requisite Deliveries.   |
| Counterparts & Gender   | 8. This agreement may be signed in counterparts, and shall be read with all changes of gender and/or number as may be required by the context.  |
| Purchase Agreement Prevails if Conflict or Inconsistency      | 9. Nothing contained in this agreement shall be read or construed as altering the respective rights and obligations of the Purchaser and the Vendor as more particularly set out in the Purchase Agreement, and in the event of any conflict or inconsistency between the provisions of this agreement and the Purchase Agreement, then the latter shall prevail.   |

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<sup>2</sup> For the purpose of this Agreement, the term “**registration**” shall mean the issuance of registration number(s) in respect of the Electronic Documents by the appropriate Land Registry Office.

- |  |  |
|--|--|
| Telefaxing Deliveries<br>& Providing Originals<br>if Requested | 10. This agreement (or any counterpart hereof), and any of the closing documents hereinbefore contemplated, may be exchanged by telefax or similar system reproducing the original, provided that all such documents have been properly executed by the appropriate parties. The Party transmitting any such document(s) shall also provide the original executed version(s) of same to the recipient within 2 business days after the Closing Date, unless the recipient has indicated that he/she does not require such original copies. |
| Technical Issues on<br>Registration                            | 11. If there is a problem with the Teraview electronic registration system which does not allow the parties to electronically register all registration documents on Closing, the Closing Date shall be deemed to be extended until the next day when the said system is accessible and operating for the applicable Land Titles Office applicable to the Lands.   |

Dated this \_\_ day of ●, 201\_\_\_\_.

Dated this \_\_ day of ●, 201\_\_\_\_.

Name/Firm Name of Vendor's  
Solicitors  
McCarthy Tétrault LLP

Name/Firm Name of Purchaser's  
Solicitors

●

●

●

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

***Note: This version of the Document Registration Agreement was adopted by the Joint LSUC-CBAO Committee on Electronic Registration of Title Documents on March 29, 2004 and posted to the web site on April 8, 2004.***

### Schedule "A"

1. **Transfer from ● to ●.**



**SCHEDULE F**

**OPEN PERMITS**

- |    |                         |  |
|----|-------------------------|--|
| 1. | <b>453 Cherry St.</b>   | Demolition permit 05 204354 DEM 00 DM<br><br>HVAC installation 98 024810 HVA 00 MS   |
| 2. | <b>160 Mill St.</b>     | Demolition permit 05 204401 DEM 00 DM  |
| 3. | <b>2 Overend St.</b>    | Demolition permit 05 204347 DEM 00 DM  |
| 4. | <b>515 Front St. E.</b> | Building permit 10 143952 BLD 00 NB<br><br>Building permit 10 143952 PLB 00 PS<br><br>Building permit 10 143952 HVA 00 MS<br><br>Building permit 10 143952 STS 00 DR |

## **SCHEDULE 18**

### **COMMUNICATIONS PROTOCOL**

#### **1. GENERAL**

##### **1.1 Communications Principles**

The Project represents an important infrastructure commitment by the Province and one that is critical to Waterfront Toronto's vision for revitalization of the West Don Lands. Accordingly, a comprehensive communications and stakeholder relations plan is required to ensure the public is informed and engaged where necessary and to meet HMQ's business and communications objectives. This plan will support effective communications between Project Co, HMQ, HMQ's stakeholders and affected communities.

##### **1.2 Marketing**

“**Marketing**” means activities related to the promotion of (i) for-sale residential condominiums, (ii) the lease of purpose-built residential properties or (iii) the lease of retail or commercial space in the Facilities. Such activities may include, but are not limited to:

- (a) placing advertisements in newspapers, magazines and on billboards;
- (b) subject to Section 14.11 of the Project Agreement, the construction and operation of a sales and leasing pavilion;
- (c) the development of a Project web-site for Marketing purposes;
- (d) subject to Section 5 of this Schedule 18, erecting and maintaining Site and other signage (including signage on Site hoarding);
- (e) the creation and distribution of printed and virtual materials promoting the project;
- (f) holding events to generate interest, including preview and sales events; and
- (g) engaging the real estate broker community to attract potential purchasers.

For clarity, Marketing is separate and distinct from Project Communications.

#### **2. HMQ'S RESPONSIBILITIES**

##### **2.1 Lead Communications Role**

HMQ shall be the lead in respect of and shall direct all Project Communications matters, including but not limited to:

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

## **2.2 HMQ's Communications Responsibilities**

HMQ shall be responsible for the following matters (collectively, "**Project Communications**"):

- (a) **Communications:** HMQ, in cooperation with Project Co, shall undertake the development of a comprehensive communications strategy and issues management program that includes overarching principles to guide all communication activities, including community relations, media relations, special events, employee communications and government relations regarding issues related to the Project.
- (b) **Crisis Communications:** HMQ shall undertake, in cooperation with Project Co, required planning for potential crisis issues related to the Project. HMQ, with the cooperation of Project Co, shall develop a plan within 30 days following Financial Close outlining the roles and responsibilities of HMQ and Project Co in the event of a crisis situation.
- (c) **West Don Lands and Pan/Parapan Am Games Athletes' Village Related Communications:** HMQ, in cooperation with Project Co, shall provide all communications related to the provision of stakeholder relations related to the Pan/Parapan Am Games.
- (d) **Performance Review:** HMQ shall review, on a periodic basis, Project Co's performance in providing communications support as outlined in Section 3 of this Schedule 18.

**2.3 [INTENTIONALLY DELETED]**

**3. PROJECT CO RESPONSIBILITIES**

**3.1 Support Communications Role**

Project Co shall support HMQ's Project Communications role and shall be responsible for the following:

- (a) providing an identified, dedicated media-trained lead media spokesperson (with back-up media-trained personnel, as required) with 24/7 availability on applicable aspects of communications;
- (b) responding to communications issues in accordance with agreed timeframes;
- (c) reviewing and/ or providing communications and/ or technical materials reasonably requested by HMQ for communications purposes;
- (d) updating, in collaboration with HMQ, internal/ external stakeholders, as required, including involvement and participation in community events;
- (e) providing the public, partner organizations and the media reasonable access to the Site for milestone events;
- (f) working with HMQ and other project partners regarding all media enquiries and interview requests not related to Marketing;
- (g) maintaining a written record of all material public enquiries, complaints and communications and providing copies to HMQ's lead communications contact on a weekly basis (or immediately if urgent);
- (h) reporting to HMQ on communications matters on an agreed upon basis;
- (i) participating in HMQ communications meetings, as required and assigning a communications representative for the project communications sub-committee, as required; and
- (j) during a crisis situation, ensuring and making available sufficient resources to work effectively with HMQ and proactively manage and perform all required communications responsibilities.

### **3.2 Project Co Communications Responsibilities**

Project Co shall:

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

**3.3 [INTENTIONALLY DELETED]**

**4. PUBLIC DISCLOSURE AND MEDIA RELEASES**

**4.1 Public Disclosure and Media Releases**

- (a) Project Co shall not, and shall ensure that no Project Co Party shall, issue or disseminate any media release, public announcement or public disclosure (whether for publication in the press, on the radio, television, internet or any other medium) relating to the Project, this Project Agreement, or any matters related thereto except for the purposes of Marketing, without the prior written consent of HMQ (which may be provided or withheld in its sole and absolute discretion) or, in the case of any media release, public announcement or public disclosure required by Applicable Law, without the prior written consent of HMQ. For greater certainty, while it is not the intention of HMQ to restrict the ability of Project Co to perform Marketing, Project Co shall be responsible for obtaining the prior consent of HMQ for media releases, public announcements, or public disclosures to the extent they include information about HMQ or the Pan/Parapan Am Games.
- (b) Unless otherwise required by Applicable Law (but only to that extent), neither Project Co nor HMQ shall use the other Party's name or refer to the other Party, the names of partner organizations directly or indirectly, in any media release, public announcement, or public disclosure (whether for publication in the press, on the radio, television, internet or any other medium) relating to the Project, this Project Agreement, or any matter related thereto (except for in respect of Marketing), without the prior written consent of the other Party.
- (c) Project Co shall, and shall ensure that all Project Co Parties and its and their subcontractors, agents, employees, officers and directors, in each case, comply, at all times, with HMQ's media release and publicity protocols or guidelines, as such protocols and/or guidelines are updated by HMQ from time to time.

**5. CONSTRUCTION SIGNAGE**

**5.1 Construction Signage**

Subject to the provisions of Section 5.2 Project Co may, with the prior written consent of HMQ, not to be unreasonably withheld or delayed and which consent may take into consideration any applicable governmental guidelines (and the requirements set out in this Schedule 18 – Communications Protocol):

- (a) for the period prior to the Project Co Lands Transfer Date, erect and maintain static board Signage (which may include the Project Co Parties' and Lenders' logos and

trade names) for the sole purpose of identifying their respective roles in connection with the development and construction of the Project; and

- (b) after the Project Co Lands Transfer Date and only in respect of the Third Party Facilities, and until the Third Party Facility Substantial Completion Date in respect to each of the Third Party Lands erect and maintain signage (which may include the Project Co Parties' and Lenders' logos and trade names) identifying their respective roles in connection with the development and construction of the Project.

For clarity, the signage to be erected by Project Co under this Section 5.1 shall be included in the Signage Plan to be prepared by Project Co and approved by HMQ under the provisions of Appendix 1 – Signage Rights and is included in Project Co Signage.

## **5.2 Subsequent HMQ Rights**

HMQ may direct Project Co to remove a logo and trade name from the Project Co Signage contemplated by Section 5.1 on the grounds that the display of such logo and trade name on the Site is contrary to or prohibited by any Signage or sponsorship rights granted by Toronto 2015 to a third party in relation to Toronto 2015 or the Pan/Parapan Am Games. In addition, and for clarity, the Project Co Signage permitted under this Section 5.1 is subject to the provisions of Appendix 1 – Signage Rights including Sections 2.4 and 4.1.

## **6. RELATIONSHIP WITH TORONTO 2015 AND THE PAN/PARAPAN AM GAMES**

### **6.1 No Association with Toronto 2015 or the Pan/Parapan Am Games**

- (a) Project Co agrees and shall cause all Project Co Parties and the Lenders to agree that nothing contained in the Project Agreement permits or shall be deemed to confer upon Project Co, the Lenders or any Project Co Party, the right to any Toronto 2015 Intellectual Property or to associate with Toronto 2015 or the Pan/Parapan Am Games in any way including their role in relation to Toronto 2015 or the venue of the Pan/Parapan Am Games athlete's village or in respect to any Marketing of the Project Co Stage 1 Condominium Facilities without the consent, in writing and at the sole discretion of Toronto 2015.
- (b) Without limiting the generality of Section 6.1(a), Project Co agrees and shall cause all Project Co Parties and the Lenders to agree that none of them shall advertise or promote itself as an official supplier to Toronto 2015 or the Pan/Parapan Am Games or claim any official affiliation with Toronto 2015 or the Pan/Parapan Am Games or any of their roles in relation to the venue of the Pan/Parapan Am Games athlete's village or in respect to any Marketing of the Project Co Stage 1 Condominium Facilities.

**6.2 No Unpermitted Use of Insignia or Logo of Toronto 2015**

- (a) Project Co agrees and shall cause all Project Co Parties and the Lenders to agree that none of them shall use any Toronto 2015 Intellectual Property including any insignia, logo, official mark, symbol colour scheme or nomenclature of Toronto 2015 or the Pan/Parapan Am Games without the prior written consent of Toronto 2015, which consent may be withheld in the sole discretion of Toronto 2015
- (b) Project Co may contact Katherine Henderson, Senior Vice President, Marketing and Revenue of Toronto 2015 regarding acquiring the rights to use any logo or other Toronto 2015 Intellectual Property or other Intellectual Property of the Pan/Parapan Am Games.

**6.3 Naming Rights**

- (a) Project Co acknowledges and agrees that Toronto 2015 shall have the exclusive naming rights in respect to the Pan/Parapan Am Games Athletes Village which naming rights shall extend over the entirety of the Site and to all of the Facilities contained therein on a collective basis, that is such Toronto 2015 naming rights shall be in respect to the name to be given to the Pan/Parapan Am Games Athletes Village as a whole and the rights to exclusively or non-exclusively licence such name including on a sponsorship basis (the “Toronto 2015 Athletes Village Naming Rights”).
- (b) Project Co. will be entitled to enter into negotiations with Toronto 2015 for a limited licence of the name established by Toronto 2015 for the Pan/Parapan Am Games Athletes Village for the purpose of using such name in the Marketing of the Project Co Stage 1 Condominium Facilities on such terms and at such pricing as are consistent with other similar sponsorship and/or licencing rights granted by Toronto 2015 to other third parties. For clarity, Project Co is not hereby intended to be a sponsor of the Pan/Parapan Am Games Athletes Village but only a licensee with a right to use such name in its Marketing. However, nothing in the foregoing precludes Project Co from becoming a sponsor of the Pan/Parapan Am Games Athletes Village or Toronto 2015 or of any other element of the Pan /Parapan Am Games.
- (c) Project Co agrees its naming of any or all of the Project Co Stage 1 Condominium Facilities shall not infringe upon or in any manner be contrary to Toronto 2015 Intellectual Property or to the provisions of Sections 6.1 and 6.2. Further Project Co acknowledges and agrees that during the Toronto 2015 Signage Period that HMQ on behalf of and for the benefit of Toronto 2015 shall have the exclusive naming rights in relation to the Pan/Parapan Am Games Athletes Village or any of the Facilities.



**6.4 Depiction of Facilities**

- (a) Project Co agrees that HMQ on behalf of and for the benefit of Toronto 2015 will, at all times, have the right, assignable by Toronto 2015 to a third party in relation to sponsorship rights granted by Toronto 2015 for the Pan/Parapan Am Games, to the use of depictions of the Facilities for purposes of the Pan/Parapan Am Games.

**6.5 Third Party Sponsors of Project Co**

In order to give full effect to the provisions of this Schedule 18 – Communications Protocol, Project Co agrees that to the extent it grants or has granted any sponsorship or other rights to any third party allowing such party to associate itself with Project Co and/or any property or services of Project Co, Project Co shall ensure that such rights do not provide such third party with any right of association with Toronto 2015 or the Pan/Parapan Am Games.

## **APPENDIX 1 - SIGNAGE RIGHTS**

### **1. DEFINITIONS**

For the purposes of this Schedule, the following definitions apply:

- 1.1** “**Signage**” means any signs, advertisements, displays, banners, lighting, projection lighting, aerial balloons and displays, posters, decals, building wrap, murals, marketing materials, colour scheme, commercial branding or imaging messaging, or related materials that are capable of being affixed, installed, erected, and/or displayed (whether electronically, physically or otherwise) at, near, or anywhere on the Site or on the exterior or interior of any or all of the Facilities (or any portion or portions thereof) on a permanent or temporary basis.
- 1.2** “**Signage Plan**” shall mean a signage plan to be prepared by Project Co including detailed plans and specifications of the Signage and the proposed location of Signage and such other information as may be required by HMQ. The use of Signage by Project Co shall only be for the purpose of the advertising specific to the Project Co Stage 1 Condominium Facilities. The Signage Plan and the Signage proposed by Project Co shall comply with all applicable provisions of the Project Agreement including without limitation Section 48.8 (HMQ and Toronto 2015 Intellectual Property) and Section 6 (Relationship with Toronto 2015 and the Pan/Parapan Am Games) of Schedule 18 – Communications Protocol and the provisions of this Appendix 1 – Signage Rights.
- 1.3** “**Toronto 2015 Signage**” means any Signage of Toronto 2015 including any signage in relation to the Pan/Parapan Am Games or Signage of any third party in relation to the Pan/Parapan Am Games with the consent of Toronto 2015.

### **2. SIGNAGE GUIDELINES**

- 2.1** Following the approval of the Signage Plan by HMQ, Project Co may utilize the Signage contemplated by the approved Signage Plan (the “**Project Co Signage**”) subject to all other provisions of the Project Agreement including Schedule 18 – Communications Protocol and this Appendix 1 – Signage Rights. HMQ when reviewing and approving the Signage Plan shall ensure there is a fair and reasonable allocation of strategic sites for Signage within the Site as between Project Co, Toronto 2015 and HMQ and an equivalent allocation of strategic high visibility sites as between the Marketing interests of Project Co and the marketing and Signage interests of Toronto 2015.
- 2.2** Nothing in this Schedule 18 – Communications Protocol restricts HMQ from putting Signage (the “**HMQ Signage**”) or Toronto 2015 from putting Toronto 2015 Signage, respectively, on the Site and/or any of the Facilities, subject to the rights granted to Project Co in respect to the Project Co Signage and to such HMQ Signage and Toronto 2015 Signage not materially interfering with the performance of the Works by Project

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Co. HMQ and Toronto 2015 may use the HMQ Signage and the Toronto 2015 Signage respectively for any purpose but shall not use it for the purpose of promoting any competing condominium developer or condominium developments nor shall Toronto 2015 enter into any arrangements with any competing condominium developer for sponsorship rights related to the Pan/Parapan Am Games Athletes Village. HMQ and Toronto 2015 shall assign the installation of such HMQ Signage and the Toronto 2015 Signage respectively to Project Co and shall pay Project Co the reasonable cost of such installation.

- 2.3** No Project Co Signage may be installed until the Signage Plan prepared by Project Co has been reviewed by HMQ and approved in writing by HMQ. A mock-up of any Project Co Signage shall be provided to HMQ prior to printing as a requirement of the Signage Plan.
- 2.4** Project Co, at its sole cost, will at all times construct, install, use, and maintain the Project Co Signage in first-class condition and repair and will comply with any Applicable Law including City of Toronto by-laws pertaining to the construction, installation, use, placement, size, operation, repair, removal and maintenance of the Project Co Signage including without limitation any necessary building permits and operating permits and will be made of appropriate materials for the intended length of use of the Project Co Signage. Project Co shall be responsible for installation, maintenance and removal of all Project Co Signage.

### **3. HOARDING SIGNAGE**

- 3.1** The Site hoarding on each side of the Site (including any interior hoarding within the Site) shall be shared forty (40%) to Project Co, forty (40%) to Toronto 2015 and twenty (20%) to HMQ and other Government Entities in locations designated by HMQ on a fair and reasonable basis recognizing the Marketing needs of Project Co and the marketing and Signage needs of Toronto 2015. To the extent that HMQ elects to reduce its Signage requirements then it shall re-allocate its twenty percent (20%) Signage allocation equally between Project Co and Toronto 2015. HMQ and Toronto 2015 shall assign the installation of such HMQ Signage and Toronto 2015 Signage on the hoarding to Project Co and shall pay Project Co the reasonable cost of such installation. HMQ shall designate in the course of its review and approval of the Signage Plan particular sections of Site perimeter hoarding or fencing (intended to generally be along the south side of the Site with exposure to the Gardiner Expressway and the east side of the Site with exposure to the Don Valley Parkway) which would be maintained through to the end of the Toronto 2015 Signage Period. For clarity such designated perimeter hoarding or fencing shall, in furtherance of Section 4.1, only be available to HMQ, Toronto 2015 and other Government Entities during the Toronto 2015 Signage Period.

**4. SIGNAGE PROTOCOL FROM THE TORONTO 2015 SIGNAGE DATE TO THE EARLIEST OF THE PAN/PARAPAN AM GAMES SITE TURNBACK DATES (SUCH PERIOD, THE “TORONTO 2015 SIGNAGE PERIOD”)**

- 4.1** During the Toronto 2015 Signage Period, all Project Co Signage Rights shall be suspended and HMQ and Toronto 2015 shall have exclusive Signage rights over the entire Site including the perimeter hoarding to be maintained under Section 3.1. Further, during the Toronto 2015 Signage period, HMQ may utilize any existing Project Co Signage structure including the Site hoarding for HMQ Signage and Project Co will cooperate and remove or cover over any of its Project Co Signage as requested by HMQ and Toronto 2015 and will allow the installation of HMQ Signage and Toronto 2015 Signage on any of the Project Co Signage structures and on any of the Facilities and HMQ shall assign the installation of such HMQ Signage and Toronto 2015 Signage to Project Co and shall pay Project Co the reasonable cost of such installation. On expiry of the Toronto 2015 Signage Period, Project Co shall remove such HMQ Signage and Toronto 2015 Signage at HMQ's and Toronto 2015's reasonable cost respectively and may replace and restore any Project Co Signage at Project Co's own cost.
- 4.2** Project Co may negotiate additional Signage rights with Toronto 2015 during the Toronto 2015 Signage Period, under a separate sponsorship arrangement to be negotiated between each of them on such terms and at such pricing as may be agreed upon.
- 4.3** Project Co will cooperate with HMQ and Toronto 2015 to oppose or prohibit any intentional or unintentional attempt by a third party who is not an official sport governing body or a Toronto 2015 sponsor (a “**Non-Partner**”) to create a false or unauthorized commercial association with the Pan/Parapan Am Games, including but not limited to:
- (a) a Non-Partner's use of creative means to generate a false association with the Pan/Parapan Am Games;
  - (b) a Non-Partner's infringement of the various laws that protect the use of Pan/Parapan Am Games imagery and indicia; and
  - (c) a Non-Partner's activities that intentionally or unintentionally interfere with the legitimate marketing activities of Pan/Parapan Am Games partners;

(collectively, “**Ambush Marketing**”),

where such Ambush Marketing occurs on or about the Facilities or anywhere on the Site, in an effort to protect the rights of Toronto 2015 and those Parties authorized by Toronto 2015 including a sport governing body to exclusively associate themselves and their products or services with the Pan/Parapan Am Games.

**SCHEDULE 19**

**HERITAGE GUIDELINES AND PROTOCOLS**

See attached.

**BEST PRACTICE GUIDELINES FOR THE  
TREATMENT OF HUMAN SKELETAL REMAINS DISCOVERED OUTSIDE  
A LICENSED CEMETERY**

The attached document is a “best practices” guideline describing the procedures for the treatment of human skeletal remains discovered outside a licensed cemetery. It reflects an agreement among members of the various ministries and agencies involved in the resolution of such burials (i.e., First Nations Burial Committee of Toronto; Toronto Police Service; Ministry of Citizenship, Culture and Recreation; Cemeteries Regulation Section of Ministry of Consumer and Commercial Relations; Ministry of Transportation; and The Office of the Chief Coroner) and reflects what is seen as the best practice.

The document is intended to serve as a guide to approval authorities as a discovery goes through the many different steps involved in a reburial to ensure that human remains are treated with respect and dignity and processed in a timely and efficient manner.

It is intended that this guide be reviewed periodically to reflect experiences with the topic. The signatories to this guideline have agreed to ensure that staffs within their jurisdictions have access to this guideline.

Should clarification be required, please refer to the *Cemeteries Act* (Revised) R.S.O.1990 or contact one of the signatories.

Signatories:

First Nations Burial Committee of Toronto  
Toronto Police Service  
Ministry of Citizenship, Culture and Recreation  
Cemeteries Regulation Section of Ministry of Consumer and Commercial Relations  
Ministry of Transportation  
Office of the Chief Coroner

## **The Discovery of Human Remains - Best Practices**

### **Introduction**

The following is designed to assist all those involved in responding to and addressing discoveries of human skeletal remains outside of a licensed cemetery. The advice is presented as a series of best practices among the many overlapping interests and jurisdictions of several ministries, agencies, police services and other government bodies that are triggered when human skeletal remains are uncovered. This approach has been developed with the support and approval of the First Nations Burial Committee of Toronto. The practices outlined here are equally applicable to discoveries of human remains across Ontario.

These best practices support the existing regulatory and statutory mechanisms in Ontario. Responsibility for a burial passes through a number of jurisdictions (i.e., Police, Coroner, Cemeteries Regulation Section) and the intent of this document is to ensure this flow is effective and seamless. This information should be read along with the attached flow chart outlining the mandatory process to be followed under existing statutes. Although the flow chart describes the process as being linear, in many instances events can and do happen simultaneously.

### **A Note on Public Notification:**

Getting through the entire discovery and disposition process when human remains are found will see the authority of the issue shift among several agencies. As such, until all investigations have been carried out and the disposition resolved, formal press releases or contacting the media should only occur if all affected authorities have concurred (i.e. police, coroner and Cemeteries Registrar). In addition, after all investigations have been completed, the concerns of the landowner and group acting as representative for the deceased (e.g. First Nation) should be considered before media contact. Premature media notification, particularly prior to having accurate identification of the deceased, will lead to misinformation, misplaced concerns being raised, and potentially a hardening of attitudes. This can make a final disposition agreement more difficult to reach.

Any media interest should be directed to the agency that has authority over the burial site at the time of the media contact (i.e. police, Coroner's Office or Cemeteries Registrar). Media photography of the remains should be avoided: a publicly displayed photograph of skeletal remains is both disrespectful to the deceased and offensive to representatives for the deceased.

### **A Note on Archaeology:**

It is important to note that the discovery of human remains will occur in two basic contexts: either through accidental discovery by an individual in unexpected circumstances, or through discovery as part of an archaeological examination/excavation of a locale by a trained archaeologist, licensed by the Ministry of Citizenship, Culture & Recreation (MCzCR) under the *Ontario Heritage Act*. In the latter case, the archaeologist will possess the skills, knowledge and expertise to assist both the police and coroner in determining the age of the interment, as well as to assist the landowner in generating the information the Cemeteries Registrar will require to determine the nature, extent and cultural affiliation of the persons buried. His or her presence at the front end of the discovery process will

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greatly aid all authorities in making quick and accurate determinations, and as such should be relied on as much as possible in such circumstances.

***Under the Coroner’s Act***

1. A person finding skeletal material may first contact staff in an agency other than the police or coroner (e.g. MCzCR or Ministry of Consumer & Commercial Relations [MCCR] staff). When that occurs, the person is to be immediately instructed to report the find to the local police or coroner. An appropriate contact list (e.g. Regional Coroner’s offices) should be maintained by all agencies that may be first contacted about such a discovery.
2. When the police are first contacted they will attend the scene, protect the site and contact the local coroner. The coroner, or the police on behalf of the coroner, will conduct an investigation to determine if: a) the skeletal material is human and b) if the site represents a crime scene. The investigators will need to obtain all the information required to make a determination. However, efforts should be made at this stage to minimize site disturbance. All bone and associated grave goods still embedded in the ground should not be disturbed unless removal is essential for the coroner to make a determination. Poking, pulling, and digging up the bone in an uncontrolled manner can quickly destroy critical data essential to making accurate identifications.
3. Whenever possible, the police and coroner should seek the assistance of an archaeologist in conducting the investigation. This is especially critical since burials are archaeological deposits in their own right, and are often found as part of more extensive archaeological deposits. As such, confirming an association of the burial with a surrounding archaeological site will help determine whether or not the remains are part of a crime scene. Also, the archaeologist can help ensure that the larger heritage resource is not destroyed or damaged during investigation of the skeletal material. MCzCR staff can sometimes be called on to visit the scene with the police.
4. Archaeologists will consider issues such as the condition and discoloration of the bone, presence of artefacts around the discovery site, and knowledge of known archaeological sites in the area to determine chronological (and cultural) associations. If intact deposits are examined, features such as the presence/absence of a coffin, depth of remains, position of body, presence of grave goods, etc., will also assist the determination.
5. When skeletal material is found and it is not readily obvious that this material is either a burial or crime scene, coroners will often employ the services of a physical anthropologist or osteologist to examine the bone in detail. While the coroner requires only a basic determination of age (i.e. recent vs. historic/ancient) and nature of the interment, the physical anthropologist’s study can also determine cultural affiliation (based on the presence/absence of specific skeletal traits), age of the individual at death, sex, and even funerary practices. This information will be essential for both the Cemeteries Registrar’s investigation, as well as for the deceased’s representative in determining the appropriate re-interment requirements. As such, latitude in allowing the physical anthropologist to complete a full, basic descriptive analysis of the skeletal material as a part of the coroner’s investigation will greatly aid in addressing remaining issues associated with this process.



6. When the Coroner is satisfied the discovery site is not a crime scene, it is essential that he/she notifies the Registrar of Cemeteries of the discovery, and passes along any relevant information (e.g. contacts, results of any analyses, etc.). It is also essential that the landowner understand that he/she will need to preserve and protect the site from the point when the police are no longer involved, and until a disposition is made under the *Cemeteries Act*.

### **Under the *Cemeteries Act***

1. Under the *Cemeteries Act* the Registrar will be required to determine and formally declare what the locale is: either an irregular burial site (unintentional interment), or an unapproved cemetery or unapproved Aboriginal Peoples cemetery. When the information is not already in hand (i.e. based on archaeological findings or the results of the coroner’s investigation) the landowner normally will be required to undertake an investigation. Such an investigation will generate the information necessary for the Registrar to make an accurate declaration.

2. In most cases, such investigations will be undertaken by a licensed and qualified archaeologist hired by the landowner. MCzCR ensures that the Cemeteries Registrar has a current list of such licensees which can be made available to the landowner.

3. The intent of the investigation is to provide the Cemeteries Registrar with, the data necessary to make a declaration. As such, burial investigations will minimize normal archaeological fieldwork and reporting requirements. It will be determined following the Registrar’s declaration and disposition agreement reached between landowner and deceased’s representative whether disinterment is necessary.

4. The investigation for the Registrar must determine whether or not the interment(s) were intentional, and the basis on which this is made, the cultural affiliation of the deceased, and the defined limits of the area containing burials, the style and manner in which the remains are interred, and a description of the artefacts determined to form part of the burial site. It may also be necessary to determine the exact number of discrete burials present in the area. Excavation methods should maximize recovery of this data, while minimizing disturbances to the remains. Recording should also be limited to that required by the Registrar (e.g. emphasis on mapping location of burials in relation to property lines, existing structures, or other reference points). MCzCR will advise licensed archaeologists of the appropriate archaeological methods.

5. During the investigation, the remains must be treated with respect and care. All artefacts found in the burial are to be considered grave goods, and should be treated as part of the burial, and kept with the skeletal remains. Burials must not be unnecessarily exposed to the elements or to casual viewing, and must be covered over as soon as possible following identification. The landowner continues to be responsible for preserving and protecting the site during this investigation, and until a disposition is made under the *Cemeteries Act*.

6. At the conclusion of the investigation a report must be submitted to the Registrar. This report will need to include the information required in Point 4. For sites that date to the last 200 years, historical research (e.g. land title search, newspapers, local informant interviews, etc.) may be required to answer some of the information points outlined in Point 4. This report will also serve to

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address the archaeologist's reporting requirements for the license issued by MCzCR under the *Ontario Heritage Act*.

7. Once the Registrar can make a declaration, and the locale is determined to be an unapproved cemetery, he/she will locate a representative for the deceased. If the locale is an unapproved Aboriginal Peoples cemetery, the Registrar will contact the nearest First Nation Government. Another community of Aboriginal People whose members have a close cultural affinity to the interred person may also act as representative. As well, if agreed-to and established before-hand, a designated "Burials Committee" can serve as the first point of Aboriginal contact for the Registrar. If the burial is non-aboriginal, the Registrar will attempt to find a representative through media notification. Where no descendant is found, a representative of the same religious denomination as the person buried can act for the deceased.

8. The representative and landowner will agree to a disposition agreement outlining what is to be done with the burials. Where there is no agreement, binding arbitration is provided under the *Cemeteries Act*. Typically there are three options: 1) leave the remains intact and establish the site as a cemetery; 2) establish a cemetery nearby, remove the remains and re-inter them there; 3) remove the remains and reinter them in an existing cemetery. The option selected with respect to an unapproved cemetery or unapproved Aboriginal Peoples cemetery will be negotiated between the landowner and representative for the deceased.

9. If the discovery is declared to be an irregular burial site, there are three options: 1) leave the remains intact and establish the site as a cemetery; 2) establish a cemetery nearby, remove the remains and re-inter them there; 3) remove the remains and re-inter them into an existing cemetery. The landowner will decide which option and is responsible for all costs.

10. In respect to an unapproved cemetery or unapproved Aboriginal Peoples cemetery, if a disinterment/reburial option is selected, the burials will need to be fully uncovered, removed and reinterred with a minimum of damage and time. Costs associated with a disposition agreement will be negotiated by the landowner and representative. While the time it takes to complete this work will be subject to the wishes of the landowner and representative, factors such as the number and nature of interments, level of observations required by the representative for re-interment purposes, etc., will affect the length of time needed to complete the removal and reinterment. Consequently, in order to minimize time while maximizing care and documentation, this work is best done by a licensed archaeologist under the direction of the disposition agreement.

11. During removal, detailed observations will need to be made of the archaeological context of the burial to ensure that all associated remains and grave goods are fully recovered. Age at death and sex of the individual should also be noted. This information will assist in determining the appropriate methods of re-interment, as well as to assist in determining what specific ceremonies need to accompany the reburial. Basic mapping can be used to aid in making these observations. No scientific analysis of the skeletal remains or grave goods can occur during this process without the consent of the representative of the deceased.

12. Should the disposition agreement impact on adjacent archaeological remains, or should concerns be raised for these deposits during negotiations, MCzCR will advise and work closely with the Cemeteries Registrar and others concerned to determine what is the most appropriate course of action. MCzCR will also assist in mediating any issues that might arise between the licensed archaeologist and other parties.

July 15, 1998

**CULTURAL HERITAGE PROTOCOL  
AGREEMENT BETWEEN  
THE MINISTRY OF GOVERNMENT SERVICES &  
THE MINISTRY OF CULTURE & COMMUNICATIONS**

**Introduction**

The Cultural Heritage Protocol is an agreement between the Ministry of Government Services (MGS) and the Ministry of Culture and Communications (MCC) concerning the development of a process for identifying and protecting cultural heritage resources affected by those MGS real property undertakings addressed in the MGS Parent Class Environmental Assessment (EA).

Effective July 1, 1991, the Protocol applies to Ontario Regulation 1/90 (MGS 1021, and is intended to continue under and in parallel with the functioning of the MGS Parent Class EA.

**Cultural Heritage Resources**

The following are cultural heritage resources based in real property:

- archaeological sites
- buildings and structural remains of historical, architectural and contextual value
- districts or landscapes of historic and scenic value in rural, village and urban contexts
- places which hold significance because of sacred value or long traditional use

**MGS Responsibilities**

As a purchaser, property owner or vendor, MGS is responsible for protecting the provincial interest in preserving its cultural heritage resources. As a tenant, MGS must not adversely affect cultural heritage resources on leased property.

**Implementation Plan**

MGS will implement the Protocol in two phases commencing before the implementation date of MGS Parent Class EA.

- Phase 1 is a short-term assignment to be performed by consultants in 3 stages.
- Phase 2 is an ongoing responsibility requiring permanent resources.

**Phase 1:**

This phase will be implemented in 3 stages as follows:

- A. MGS will retain a consultant to carry out the following steps:
1. Develop operational definitions of the cultural heritage resources listed above.

2. Develop simple and effective criteria for determining whether or not a property has potential heritage significance.
  3. Prepare a list of available MGS, MCC and other government data sources for the recognition of cultural heritage resources.
  4. Identify and review existing guidelines; adopt/adapt relevant materials for MGS purposes, resulting in:
    - (a) A Guideline for Appropriate Documentation indicating where, when, who, and to what extent documentation should be collected for buildings, groups of structures, structural remains, districts and landscapes.
    - (b) An Evaluation System which can assess the significance of the resource being documented.
    - (c) A Guideline for Maintenance, Repair and Alteration identifying appropriate means of carrying out changes, renovation, rehabilitation, restoration, or additions to structures which have heritage significance.
  5. Assemble a list of government and non-government consultative sources, based on the stakeholders listed below, for the four categories of cultural heritage resources.
  6. Develop heritage inventory forms which can be used by field staff and serve as the basis for a physical file.
- B. MGS will retain consultants on a regional basis to carry out the following steps;
1. Review additional non-government consultative sources, based on the stakeholders listed in Phase 2 “Evaluation Process”, for the four categories of cultural heritage resources.
  2. Review MGS buildings and identify the potential cultural heritage resources: note any heritage implications of pertinent MGS building sites and develop an interim listing.
  3. Document any immediate threats to the heritage features, and the implications the heritage features might have on future property management or development.
- C. MGS will retain the consultant for Phase 1A to carry out the following step:
1. Review existing guidelines, as well as the “generic guidelines” developed in Phase 1A (step #4), and adopt/adapt relevant materials for MGS purposes, resulting in:
    - (a) A Guideline for the Assessment of Archaeological Sites indicating where, when and how to access.

- (b) A Guideline for Mitigative Measures relating to projects involving heritage structures. This would describe the appropriate means of dealing with unavoidable impacts and discuss relocation, moth balling, demolition and reassembly, screening, etc.
- (c) A Guideline for Compatible Development indicating appropriate ways to build new structures which are compatible with existing buildings, districts or landscapes.

## **Phase 2:**

This phase may commence before the completion of Phase 1, and will involve the following activities:

### **A. Evaluation Process**

Using the “generic guidelines” from Phase 1A (Step #4), MGS will carry out active evaluations for specific projects, involving the collection of any necessary data, to determine the significance, options and courses of action to be documented in evaluation reports.

For specific undertakings, MGS and MCC will evaluate potential cultural heritage resources in consultation with stakeholders:

- for archaeological sites:  
contact MCC, Ministry of Natural Resources (MNR), aboriginal groups, historical societies
- for buildings and structural remains of buildings:  
contact MCC, local architectural conservation advisory councils (LACACs), historical societies, local and regional municipalities
- for districts or landscapes of historic and scenic value in rural, village and urban contexts:  
contact local and regional municipalities and LACACs
- for unorganized territories:  
contact MNR, Ministry of Municipal Affairs, aboriginal groups
- for places which hold significance because of sacred values or long traditional use:  
contact aboriginal groups, local and regional municipalities

Upon approval of the MGS Parent Class EA, MGS will follow the consultation process outlined in the “Class EA Methodology” (Section 4).

**B. Inventory**

An inventory is required to capture and access heritage-related information. Based on the “interim listing” prepared as part of Phase IB (Step #2), any prevailing Information System will have fields to flag whether a property has, has not or may have heritage significance.

These “flags” must be cross-referenced to evaluation reports developed as part of the “evaluation process” which describe the heritage features in detail, identify immediate threats to them, and examine their potential implications on future property management or development.

The inventory [**Intentionally Deleted**] must be readily available to MGS personnel.

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Tim Casey  
Assistant Deputy Minister  
Realty Group  
Ministry of Government Services

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Linda Stevens  
Assistant Deputy Minister  
Cultural Division  
Ministry of Culture and Communications

**SCHEDULE 20**

**PAYMENTS AND HOLDBACKS**

**1. PAYMENT**

**1.1. General**

- (a) Subject to the provisions of the Project Agreement and the provisions of this Schedule 20 – Payments and Holdbacks, and in accordance with and subject to Applicable Law respecting holdbacks, HMQ shall make the payments set out in this Article 1.

**1.2. Interim Completion Payment**

- (a) Subject to the applicable provisions of the Project Agreement, HMQ covenants and agrees to pay to Project Co the Interim Completion Payment and the applicable HST on the Interim Completion Payment Date.

**1.3. Project Substantial Completion Payment**

- (a) Subject to the applicable provisions of the Project Agreement, HMQ covenants and agrees to pay to Project Co the Project Substantial Completion Payment and the applicable HST on the Project Substantial Completion Payment Date.

**1.4. Release of Holdbacks**

- (a) If an HMQ Project Substantial Completion Minor Deficiencies Holdback is held back by HMQ in accordance with Section 24.10 of the Project Agreement, that HMQ Project Substantial Completion Minor Deficiencies Holdback amount shall be released to Project Co in accordance with Section 24.10 of the Project Agreement.
- (b) After the issuance of the Project Substantial Completion Certificate, Project Co shall submit to the Independent Certifier:
  - (i) an application for payment of the Legislative Holdback;
  - (ii) a written request for release of the Legislative Holdback, including a declaration that no written notices of lien arising from the performance of the Works have been received by it;
  - (iii) a sworn statement that all accounts for the design services, labour, Subcontracts, products, construction machinery and equipment, and other indebtedness which may have been incurred by Project Co in the achievement of Project Substantial Completion and for which HMQ might in any way be held responsible have been paid in full, except for amounts properly retained under the CLA as a holdback or any amounts identified



- by Project Co to HMQ and the Independent Certifier as the subject of a payment dispute with such reasonable written information as requested by the Independent Certifier to verify to HMQ that such amounts are the subject of a bona fide dispute;
- (iv) a Statutory Declaration CCDC 9A; and
  - (v) an original Workplace Safety & Insurance Board Certificate of Clearance.
- (c) In respect of Project Substantial Completion, after the later of (i) the receipt of the documents set out in Section 1.4(b) of this Schedule 20 and (ii) the expiration of a period of 45 days from the date of publication of the certificate of substantial performance pursuant to the CLA, the Independent Certifier shall issue a certificate for payment of the Legislative Holdback.
- (d) Prior to the date of the release of the Legislative Holdback in respect of Project Substantial Completion, Project Co shall have removed from the Site all supplies, waste materials, rubbish and temporary facilities and all personnel except as required to correct any remaining Project Substantial Completion Minor Deficiencies, as applicable, and to provide the Project Co Services.
- (e) Subject to the provisions of Section 1.13 of this Schedule 20 and the removal of claims for lien preserved or perfected pursuant to the CLA arising from the performance of the Works, a Legislative Holdback authorized by a certificate for payment of the Legislative Holdback is due and payable on the second Business Day following the receipt of the certificate for payment of the Legislative Holdback pursuant to Section 1.4(c) of this Schedule 20.

## **1.5. Payments**

- (a) Unless specific timeframes are stipulated for payment of any amounts owing or payable by one Party to the other Party under this Project Agreement, such amounts shall be due within 30 days of receipt or deemed receipt of an invoice therefor.

## **1.6. Manner of Payment**

- (a) All payments under this Project Agreement shall be made in Canadian dollars and shall be electronically transferred, quoting the invoice number or description against which payment is made, in immediately available funds on the due date to a single bank account located in Canada as may be designated by the recipient from time to time by written notice to the other Party.
- (b) If the due date is not a Business Day, then the electronic transfer shall be made on the Business Day immediately succeeding such day.

**1.7. Payment Due under Insurance Policies**

- (a) In the event of loss or damage occurring where payment becomes due under the property and boiler insurance policies, payments shall be made in accordance with the provisions of the Insurance Trust Agreement.

**1.8. Intentionally Deleted**

**1.9. HST**

- (a) HMQ covenants and agrees to pay to Project Co the HST that may be exigible with respect to any payments made by HMQ to Project Co under the Project Agreement.

**1.10. Set-Off**

- (a) The Parties agree that their rights of set-off at law or in equity are limited to the right of:
  - (i) HMQ to set off against any amounts otherwise due to Project Co pursuant to the terms of this Project Agreement, any amounts (including, without limitation, any amounts payable under Section 53 of the Project Agreement) which are due to HMQ by Project Co pursuant to the terms of this Project Agreement; and
  - (ii) Project Co to set off against any amounts otherwise due to HMQ pursuant to the terms of this Project Agreement, any amounts (including, without limitation, any amounts payable under Section 53 of the Project Agreement) which are due to Project Co by HMQ pursuant to the terms of this Project Agreement.

**1.11. Effect of Payment**

- (a) No payment hereunder shall be construed as an acceptance or approval of incomplete, defective or improper performance by Project Co of any of its obligations under this Project Agreement, nor shall it operate to relieve Project Co from the performance of any of its obligations under this Project Agreement which have not been performed.

**1.12. No Other Entitlement**

- (a) Project Co shall not be entitled to any payments, compensation, rights, remedies, benefits or entitlements under or in connection with this Project Agreement, except as specifically and expressly set out in this Project Agreement.

**1.13. Construction Liens**

- (a) Notwithstanding anything else in this Schedule 20 – Payments and Holdbacks, in the event a claim for a construction lien is registered against the Site arising from the performance of the Works or HMQ receives any written notice of lien arising from the performance of the Works, and unless Project Co makes alternative arrangements to bond or otherwise secure the amount of the lien claim and costs associated therewith satisfactory to HMQ, acting reasonably, HMQ shall be entitled to withhold such portion of any payment otherwise due to Project Co in an amount HMQ reasonably determines would be required to satisfy the applicable lien claimant and any costs and expenses incurred by HMQ in connection therewith, including such amount on account of costs of the lien claimant such that HMQ may, upon payment of the amount of the lien claim together with such costs into court, obtain an order vacating such lien pursuant to the CLA, until such time as such claim has been dealt with as provided below.
- (b) In the event that a written notice of a construction lien arising from the performance of the Works is received by HMQ, and unless Project Co makes alternative arrangements to bond or otherwise secure the amount of the lien claim and costs associated therewith satisfactory to HMQ, acting reasonably, Project Co shall, within 30 days, at its sole expense, arrange for the withdrawal or other disposal of the written notice of a lien pursuant to the CLA.
- (c) If a construction lien arising from the performance of the Works is registered against the Site, unless Project Co makes alternative arrangements to bond or otherwise secure the amount of the lien claim and costs associated therewith satisfactory to HMQ, acting reasonably, Project Co shall, within 30 days, at its sole expense, vacate or discharge the lien from title to the Site. If the lien is merely vacated, Project Co shall, if requested, undertake HMQ's defence of any subsequent action commenced in respect of the lien at Project Co's expense.
- (d) If Project Co fails or refuses to vacate or discharge a construction lien or written notice of lien arising from the performance of the Work within the time prescribed above, and unless Project Co makes alternative arrangements to bond or otherwise secure the amount of the lien claim and costs associated therewith satisfactory to HMQ, acting reasonably, HMQ shall, at its option, be entitled to take all steps necessary to vacate and/or discharge the lien, and all costs incurred by HMQ in doing so (including legal fees on a full indemnity basis and any payment which may ultimately be made out of or pursuant to security posted to vacate the lien) shall be for the account of Project Co, and HMQ may deduct such amounts from the amounts otherwise due or owing to Project Co.
- (e) Without limiting any of the foregoing, Project Co shall satisfy all judgments and pay all costs resulting from any construction liens arising from the performance of the Works or any actions brought in connection with any such liens, or in connection

with any other claim or lawsuit brought against HMQ by any person that provided services or materials to the Site which constituted part of the Works.

- (f) The provisions of Sections 1.13(a) through (f) inclusive do not apply to construction liens (i) filed by Project Co which are claimed as a result of any default of HMQ to make payments to Project Co in accordance with the terms of the Project Agreement or (ii) filed by any HMQ Party, including for greater certainty HMQ's own forces or HMQ's other contractors, which are claimed as a result of work in relation to the Site.

## **2. PAYMENT OF INTERIM COMPLETION PAYMENT**

### **2.1. Waiver**

- (a) Payment of the Interim Completion Payment shall constitute a waiver by Project Co of all claims whatsoever against HMQ under this Project Agreement with respect to the Interim Completion Works on or before the Interim Completion Date, except (i) those made in writing by Project Co (either on its own account or arising out of a claim of a Project Co Party) prior to Project Co's application for payment upon Interim Completion and still unsettled; and (ii) any third party claim which Project Co or a Project Co Party was not aware of at such time and with respect to which Project Co or a Project Co Party is entitled to indemnification from HMQ in accordance with this Project Agreement.

## **3. PAYMENT OF PROJECT SUBSTANTIAL COMPLETION PAYMENT**

### **3.1. Waiver**

- (a) Payment of the Project Substantial Completion Payment shall constitute a waiver by Project Co of all claims whatsoever against HMQ under this Project Agreement with respect to the Works on or before the Project Substantial Completion Date, except (i) those made in writing by Project Co (either on its own account or arising out of a claim of a Project Co Party) prior to Project Co's application for payment upon Project Substantial Completion, and still unsettled; and (ii) any third party claim which Project Co or a Project Co Party was not aware of at such time and with respect to which Project Co or a Project Co Party is entitled to indemnification from HMQ in accordance with this Project Agreement.

## **4. NON-CONFORMING WORKS**

### **4.1. Non Conforming Works**

- (a) No payment by HMQ under the Project Agreement nor partial or entire use or occupancy of the Work by HMQ shall constitute an acceptance of any portion of the Work or Products which are not in accordance with the requirements of the Project Documents.

**SCHEDULE 21**

**HMQ PROJECT SECURITY**

**[REDACTED]**

## **SCHEDULE 22**

### **VARIATION PROCEDURE**

#### **1. VARIATIONS**

##### **1.1 Definitions**

- (a) The following terms shall have the following meanings:
- (i) “**Direct Cost**” has the meaning given in Appendix A of this Schedule 22.
  - (ii) “**Estimate**” has the meaning given in Section 1.4(a) of this Schedule 22.
  - (iii) “**Project Co Variation Notice**” has the meaning given in Section 2.1(a) of this Schedule 22.
  - (iv) “**Variation**” means a variation, addition, reduction, substitution, omission, modification, acceleration, deletion, removal or other change to the whole or any part of the Project Operations, including in relation to the whole or any part of the Works.
  - (v) “**Variation Confirmation**” has the meaning given in Section 1.8(a)(i) of this Schedule 22.
  - (vi) “**Variation Directive**” means a written instruction which is issued on a form designated as a “Variation Directive Form” and signed by the HMQ Representative directing Project Co to immediately proceed with a Variation pending the finalization and issuance of a Variation Confirmation for that Variation.
  - (vii) “**Variation Enquiry**” has the meaning given in Section 1.3(a) of this Schedule 22.

##### **1.2 General**

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

- (c) Project Co will not be entitled to any payment, compensation or extension of time for a Variation except to the extent provided in a Variation Confirmation or Variation Directive in accordance with this Schedule 22.

### **1.3 Variation Enquiry**

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

### **1.4 Delivery of Estimate**

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

### **1.5 Project Co Grounds for Objection**

- (a) Project Co may only refuse to deliver an Estimate if Project Co can demonstrate to HMQ's satisfaction, acting reasonably, within the period for delivery of an Estimate specified or agreed pursuant to Section 1.4(a), that:
  - (i) the implementation of the Variation would materially and adversely affect the health and safety of any person;
  - (ii) the implementation of the Variation would:
    - (A) infringe Applicable Law;

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

## **1.6 Estimate Requirements**

- (a) Unless HMQ in a Variation Enquiry requires only specified limited information, each Estimate shall include the following information, sufficient to demonstrate to HMQ's reasonable satisfaction:
  - (i) the steps Project Co will take to implement the Variation, in such detail as is reasonable and appropriate in the circumstances;



- (ii) any impact on the the Scheduled Interim Completion Date, the Scheduled Project Substantial Completion Date, the Scheduled Project Co Stage 1 Conversion Substantial Completion Date, any Scheduled Third Party Facility Conversion Substantial Completion Date or the Scheduled Project Final Completion Date, and any other schedule impact on the provision of the Facilities and completion of the Works (including for certainty, any impact of the proposed Variation after taking into consideration other Variations);
- (iii) any impact on the performance of the Project Operations and any other impact on this Project Agreement (including for certainty, any impact of the proposed Variation after taking into consideration other Variations);
- (iv) any amendments to this Project Agreement (including Schedule 20 – Payments and Holdbacks) or any Project Document required as a consequence of the Variation, the objective of such amendments being to ensure that (save for the obligation of HMQ to make payments or altered payments in respect of the Variation) the Parties are in no better and no worse position in relation to the Project than they would have been in if the Variation had not been implemented and, in particular, that there will be no material adverse change to the risk profile of the Project as a result of the Variation;
- (v) any impact on the Direct Costs of Project Co and its Subcontractors, including:
  - (A) any Capital Expenditure that will be incurred, reduced or avoided and the impact on Project Co's cash flows from incurring, reducing or avoiding such costs (whether financed by Project Co or HMQ); and
  - (B) any other costs that will be incurred, reduced or avoided and the impact on Project Co's cash flows from incurring, reducing or avoiding such costs;
- (vi) either:
  - (A) a confirmation that the proposed Variation will not affect Project Co's existing financing or that Project Co's existing financing is adequate to implement the Variation; or
  - (B) if new or additional financing is required to implement the Variation, an indication as to the availability of such new or additional financing and the cost and terms of such new or additional financing;
- (vii) Project Co's confirmation that the projected internal rate of return on any additional equity capital required to finance the Variation will be no greater than **[REDACTED]**% as calculated to the earlier of (A) the final date of repayment of the Debt Amount as projected in the Financial Model and (B) the exercise date of the Provincial Loan;

- (viii) any Permits, Licences, Approvals and Agreements that must be obtained or amended for the Variation to be implemented, and the latest date by which Project Co must receive a Variation Confirmation and obtain or amend such Permits, Licences, Approvals and Agreements for the Estimate to remain valid; and
  - (ix) the proposed methods of certification of any construction or operational aspect of the Project Operations required by the Variation if not covered by the provisions of this Project Agreement,  
  
in each case, together with such supporting information and justification as is reasonably required.
- (b) In preparing its Estimate, Project Co shall include sufficient information to demonstrate to HMQ's satisfaction, acting reasonably, that:
- (i) Project Co has used or has obliged its Subcontractors (or will oblige any Subcontractors not yet selected) to use commercially reasonable efforts, including the use of competitive quotes or tenders (if appropriate or required by Sections 1.6(c) and 1.6(d)), to minimize any increase in costs and to maximize any reduction in costs;
  - (ii) all costs of Project Co and its Subcontractors are limited to Direct Costs;
  - (iii) Project Co and the Construction Contractor shall charge only the margins for overhead and profit as set out in Appendix B hereto (such margins each calculated on the basis of the applicable Direct Costs so that no margin of Project Co and the Construction Contractor is calculated on any other margin of Project Co and the Construction Contractor), and no other margins or mark-ups;
  - (iv) the margins for overheads and profit as set out in Appendix B hereto as applicable to Project Co's Direct Costs shall only be chargeable on Direct Costs of Project Co, such that Project Co shall not charge any margins on any amounts charged by the Construction Contractor;
  - (v) all costs of providing Project Operations, including Capital Expenditures, reflect:
    - (A) labour rates applying in the open market to providers of services similar to those required by the Variation;
    - (B) any and all changes in the Output Specifications arising out of the proposed Variation; and
    - (C) any and all changes in risk allocation;
  - (vi) the full amount of any and all expenditures that have been reduced or avoided (including for any Capital Expenditure) and that all such expenditures, including all applicable margins for overhead and profit anticipated to be incurred but for

the Variation, have been taken into account and applied in total to reduce the amount of all costs; and

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

## **1.7 [Intentionally Deleted]**

## **1.8 Variation Confirmation**

- (a) As soon as practicable, and in any event within 15 Business Days after the later of the date the Estimate was delivered and the date the Estimate was either agreed to or any Dispute in respect thereof was determined in accordance with Schedule 27 - Dispute Resolution Procedure, HMQ shall either:
  - (i) subject to Sections 1.2(a) and 1.8(e), withdraw the Variation Enquiry by written notice to Project Co; or
  - (ii) issue a written confirmation (the “**Variation Confirmation**”) of the Estimate, including any agreed modifications thereto or any modifications resulting for the determination of a Dispute in respect thereof, which Variation Confirmation may be subject to Project Co obtaining financing pursuant to Section 1.9.

- (b) If HMQ does not issue a Variation Confirmation within such 15 Business Days, then, subject to Sections 1.2(a) and 1.8(e), the Variation Enquiry shall be deemed to have been withdrawn.
- (c) Upon the Variation Confirmation being issued, and if applicable upon Project Co obtaining financing pursuant to Section 1.9:
  - (i) the Parties shall as soon as practicable thereafter do all acts and execute all documents to amend this Project Agreement necessary to implement the Variation, including in respect of any required extension of time and including provision for payment to Project Co as provided in Section 1.10;
  - (ii) Project Co shall implement the Variation as provided for in the Variation Confirmation, and subject to amendments pursuant to Section 1.8(c)(i), all provisions of this Project Agreement applicable to the Project Operations shall apply to the Project Operations as thereby changed and no additional claim with respect to the Variation or Variation Confirmation will be considered; and
  - (iii) payment in relation to the Variation shall be as provided for in Section 1.10 and pursuant to any amendments pursuant to Section 1.8(c)(i).
- (d) If a Variation Confirmation is subject to Project Co obtaining financing pursuant to Section 1.9, then the Variation Confirmation shall not be effective until:
  - (i) Project Co obtains such financing acceptable to HMQ in its sole discretion; or
  - (ii) HMQ in its sole discretion waives such requirement.
- (e) Except as hereinafter provided, until a Variation Confirmation has been issued:
  - (i) the determination of whether or not to proceed with a Variation shall at all times be at HMQ's sole discretion, despite any Dispute or any other matter in relation to a Variation being referred to or determined in accordance with Schedule 27 - Dispute Resolution Procedure; and
  - (ii) HMQ may at any time withdraw a Variation Enquiry and, subject to Section 1.8(f), HMQ shall not be obligated to Project Co in respect of a Variation until such time as HMQ in its sole discretion issues a Variation Confirmation and, if applicable, Project Co has obtained the financing requested by HMQ or HMQ has waived such requirement,  
  
provided that HMQ may not withdraw (or be deemed to have withdrawn) a Variation Enquiry in circumstances where HMQ is obligated pursuant to the terms of this Project Agreement to proceed with a Variation. In such circumstances Schedule 27 - Dispute Resolution Procedure shall be employed to finalize any aspects of the Variation which cannot otherwise be agreed to in accordance with the terms of this Schedule 22.

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

## **1.9 Financing**

- (a) If Project Co in its Estimate confirms that existing financing is not available to pay for the proposed Variation and if HMQ requests Project Co to obtain financing for a Variation, then a Variation Confirmation may be issued subject to Project Co obtaining financing. In such event, Project Co shall use commercially reasonable efforts to obtain the requested financing on terms satisfactory to Project Co, the Lenders and HMQ, provided that, Project Co shall not be required to seek financing from any source other than the Lenders.
- (b) If Project Co has used commercially reasonable efforts to obtain the requested financing but has been unable to obtain an offer of financing on terms reasonably satisfactory to Project Co and HMQ within 60 days of the date that HMQ issues the Variation Confirmation, then Project Co shall have no further obligation to obtain financing for the Variation and any Variation Confirmation subject to financing shall no longer have any effect unless HMQ, in its sole discretion, waives the requirement for financing or unless HMQ is obligated to proceed with the Variation pursuant to the terms of this Project Agreement.
- (c) If Project Co obtains an offer of financing on terms reasonably satisfactory to Project Co, Project Co shall provide HMQ with details of such financing, and HMQ shall, in its sole discretion, determine whether Project Co should proceed with such financing. If HMQ determines that Project Co should not proceed with such financing, then Project Co shall have no further obligation to obtain financing for the Variation and any Variation Confirmation subject to financing shall no longer have any effect unless HMQ, in its sole discretion, waives the requirement for financing or unless HMQ is obligated to proceed with the Variation pursuant to the terms of this Project Agreement.
- (d) HMQ may at any time withdraw the requirement for Project Co to use commercially reasonable efforts to obtain financing, after which Project Co shall have no further obligation to obtain financing for the Variation and any Variation Confirmation subject to financing shall no longer have any effect unless HMQ in its sole discretion waives the requirement for financing or unless HMQ is obligated to proceed with the Variation pursuant to the terms of this Project Agreement.
- (e) If HMQ waives the requirement for financing or if Project Co has no further obligation to obtain financing for the Variation pursuant to Sections 1.9(a), 1.9(b), 1.9(c) or 1.9(d), then Project Co shall proceed with the Variation as set out in the Variation Confirmation and HMQ shall pay for the Variation as provided for in Section 1.10(a)(i).

**1.10 Payment**

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

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

### **1.11 Reduction in Project Operations**

- (a) If a Variation involves any reduction in Project Operations which results in savings in Direct Costs to Project Co, such savings shall result in a reduction in the compensation payable to Project Co under this Project Agreement in an amount equal to such reduction in Direct Costs, and either the Interim Completion Payment or the Project Substantial Completion Payment, at HMQ's sole discretion, shall be reduced accordingly. For clarity, HMQ may elect, at its sole discretion, to apportion any reduction in the compensation payable to Project Co contemplated by this Section 1.11(a) between the Interim Completion Payment and the Project Substantial Completion Payment.

### **1.12 Variation Directive**

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

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

## **2. PROJECT CO VARIATIONS**

### **2.1 General**

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

## **2.2 Project Co Variation Notice**

- (a) A Project Co Variation Notice shall:
- (i) set out details of the proposed Variation in sufficient detail to enable HMQ to evaluate it in full;
  - (ii) specify Project Co's reasons for proposing the Variation;
  - (iii) indicate all reasonably foreseeable implications of the Variation, including whether there are any costs or cost savings to HMQ; and
  - (iv) indicate the latest date by which a Variation Enquiry must be issued.
- (b) If HMQ, in its sole discretion, elects to consider the Variation proposed by Project Co, HMQ may issue to Project Co a Variation Enquiry and the procedure set out in Section 1 will apply.

## **3. INTENTIONALLY DELETED**



**APPENDIX A**

**CALCULATION OF DIRECT COSTS**

**1. DIRECT COSTS**

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

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

- (viii) deposits lost;
- (ix) the amount of all Subcontracts with Subcontractors;
- (x) the amount paid for any design services;
- (xi) the cost of third party quality assurance required by HMQ, such as independent inspection and testing services;
- (xii) charges levied by Governmental Authorities, but excluding fines or penalties not related to the implementation of the Variation;
- (xiii) subject to Section 1.1(iv) of this Appendix A, Taxes, but excluding:
  - (A) HST;
  - (B) taxes imposed on Project Co or a Project Co Party based on or measured by income or profit or otherwise imposed under the *Income Tax Act* (Canada), the *Income Tax Act* (Ontario) or any similar statute in any other jurisdiction;
  - (C) capital taxes based on or measured by the capital of Project Co or a Project Co Party;
  - (D) taxes relating to withholdings on any payments by Project Co or a Project Co Party; and
  - (E) taxes relating to any business or activity other than the business or activities related to, and conducted for, the purposes of the Project Operations;
- (xiv) the cost of removal and disposal of contaminants, hazardous substances, waste products and debris for which Project Co is not responsible under this Project Agreement;
- (xv) termination payments which are required under Applicable Law to be made to employees of Project Co or its Subcontractors reasonably and properly incurred by Project Co or such Subcontractors arising as a direct result of any Variation reducing the scope of the Project Operations, except to the extent that such termination payments are provided for in contracts of employment, agreements or arrangements that were not entered into in the ordinary course of business and on commercial arm's length terms;
- (xvi) the cost of financing, including additional financing costs related to any delay caused by the implementation of the Variation;

- (xvii) the cost of competitively tendering any contract in relation to the proposed Variation which is required by Applicable Law or any policy applicable to HMQ;
- (xviii) the cost of any additional insurance or performance security required or approved by HMQ;
- (xix) the cost of obtaining all Permits, Licences, Approvals and Agreements; and
- (xx) reasonable fees and disbursements of Project Co's legal advisors.

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

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

**APPENDIX B**

**APPLICABLE MARGINS**

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

## **SCHEDULE 23**

### **COMPENSATION ON TERMINATION**

#### **1. DEFINITIONS**

##### **1.1 Definitions**

All capitalized terms not otherwise defined in this Schedule shall, unless the context otherwise requires, have the meanings given to them in the Project Agreement.

- (a) **“Debt Amount”** means, at any time, the then outstanding principal amount of debt funded by the Lenders to Project Co under the Lending Agreements, together with all interest accrued thereon at that time. For clarity, the Debt Amount excludes the Debt Makewhole.
- (b) **“Debt Makewhole”** means, at any time, any amount (other than the Debt Amount) then due and payable by Project Co to the Lenders under the Lending Agreements, including any “make whole” payments, breakage fees (less any breakage benefits) and all other fees, costs and expenses reasonably and properly incurred which Project Co is obligated to pay to the Lenders pursuant to the Lending Agreements.
- (c) **“Default Termination Payment”** has the meaning given in Section 2.1(b).
- (d) **“Invoice Date”** means the date that is the later of:
  - (i) the date on which HMQ receives an invoice from Project Co for the Non-Default Termination Sum, the Relief Event and Force Majeure Termination Sum or the Prohibited Acts Termination Sum, as the case may be; and
  - (ii) the date on which HMQ receives the supporting evidence required pursuant to Section 6.1(a).
- (e) **“Lending Agreements”** means any or all of the agreements or instruments to be entered into by Project Co or any of its Affiliates relating to the financing of the Project Operations and the Project Co Services, including, for greater certainty, the Security Documents and any agreements or instruments to be entered into by Project Co or any of its Affiliates relating to the rescheduling of their indebtedness in respect of the financing of the Project Operations and the Project Co Services or the refinancing of the Project Operations and the Project Co Services.
- (f) **“Market Shortfall”** has the meaning given in Section 2.1(b)(v).

- (g) **“Non-Default Termination Sum”** has the meaning given in Section 3.1(b).
- (h) **“Prohibited Act”** has the meaning given in the Project Agreement.
- (i) **“Prohibited Acts Termination Sum”** has the meaning given in Section 5.1(b).
- (j) **“Project Completion Costs”** means all actual costs of completing the Project (for clarity, such costs of completing the Project include (i) the Third Party Facility Conversion Work, the Project Co Stage 1 Conversion Work and any other Works required under the Project Agreement as of the Termination Date; and (ii) the costs of registration of the condominiums, the costs of completing the sales of the condominium units, and other associated condominium soft costs.
- (k) **“Project Co Stage 1 Conversion Work”** has the meaning given in the Project Agreement.
- (l) **“Relief Event and Force Majeure Termination Sum”** has the meaning given in Section 4.1(b).
- (m) **“Subcontractor Losses”** means, subject to Project Co’s obligations under the Project Agreement to limit any compensation to Subcontractors the amount reasonably and properly payable by Project Co to the Construction Contractor under the terms of the Construction Contract as a direct result of the termination of the Project Agreement (including any reasonable commercial breakage fee), provided that such amount shall be reduced to the extent that Project Co or any Subcontractors fail to take commercially reasonable steps to mitigate such amount and provided that no account should be taken of any liabilities and obligations of Project Co to the Subcontractors arising out of:
  - (i) any loss of overhead or profit of such Subcontractor relating to any period or costs after the Termination Date (save to the extent the same are properly included in any reasonable commercial breakage fee set out in any of the Ancillary Documents);
  - (ii) agreements or arrangements entered into by Project Co or the Subcontractors to the extent that such agreements or arrangements were not entered into in connection with those parties’ obligations in relation to the Project; or
  - (iii) agreements or arrangements entered into by Project Co or the Subcontractors other than in the ordinary course of business and on commercial arm’s length terms, save to the extent that amounts would have arisen if such agreements or arrangements had been entered into in the ordinary course of business and on commercial arm’s length terms.

- (n) “**Termination Costs**” means all costs arising as a result of the termination of the Project Agreement which are reasonably incurred by Project Co to (i) vacate the Site and (ii) all Subcontractor Losses.

## **2. COMPENSATION ON TERMINATION FOR PROJECT CO EVENT OF DEFAULT**

### **2.1 Compensation**

- (a) If HMQ terminates the Project Agreement pursuant to Section 42.4(a)(i) of the Project Agreement, HMQ shall pay the Default Termination Payment to Project Co.
- (b) The “**Default Termination Payment**” shall be an amount equal to all Contributed Equity plus the outstanding Debt Amount;

LESS THE FOLLOWING AMOUNTS (WITHOUT DUPLICATION):

- (i) **Intentionally Deleted;**
- (ii) all actual incremental direct and indirect costs of completing the Project (for clarity, such costs of completing the Project include (i) the Third Party Facility Conversion Work, the Project Co Stage 1 Conversion Work and all other Works required to be completed under the Project Agreement as of the Termination Date; and (ii) the costs of registration of the condominiums, the completion of sales of the condominium units, and all other associated condominium soft costs), and, for further clarity, incremental direct and indirect costs are costs which are above and beyond the budgeted costs set out in the Financial Model of the completion of the Project as set out in the foregoing (the “**Incremental Project Completion Costs**”); and
- (iii) all incremental direct and indirect costs of Toronto 2015 and HMQ as a result of the failure by Project Co to achieve Project Substantial Completion (including, but not limited to, the reasonable costs associated with providing alternative facilities and accommodations to athletes during the Pan/Para Pan Am Games which are no better than those that Project Co was obligated to deliver to HMQ upon the Project Substantial Completion Date) as, in the circumstances, Toronto 2015 and HMQ reasonably consider are required to host the Pan/Parapan Am Games incremental to the costs that would have been incurred if Project Substantial Completion had been achieved by the Longstop Date (the “**Incremental Games Costs**”); and
- (iv) all amounts funded out of the Contingency Equity prior to the Termination Date; and

- (v) the lesser of:
  - (A) the Market Shortfall; or
  - (B) the Contributed Equity less the aggregate of the amounts described in Sections 2.1(b)(ii), 2.1(b)(iii) and 2.1(b)(iv), the sum of which cannot be less than zero.

Where, “**Market Shortfall**” is the amount such that forecasted revenue from sales of the Project Co Stage 1 Condominium Facilities are less than all Project Completion Costs to HMQ plus all Incremental Games Costs to HMQ as determined by an independent estimator selected by HMQ (in consultation with the Lenders’ Agent).

- (c) Project Co acknowledges that at any time following the termination of the Project Agreement pursuant to Section 42.4(a)(i) of the Project Agreement HMQ may draw on the undrawn balance of the Contingency Equity Letter of Credit and the Cost to Complete Letter of Credit in accordance with Section 42.7(b) of the Project Agreement.
- (d) All amounts deposited in the Construction Delay Account (as such term is defined in the Lending Agreements) unless such Construction Delay Account has been assigned to HMQ.
- (e) HMQ may provide a reasonable estimate of (i) the Incremental Project Completion Costs and (ii) the Incremental Games Costs for the purpose of determining the amount of the Default Termination Payment.
- (f) **Intentionally Deleted.**
- (g) HMQ shall pay the Default Termination Payment in accordance with Section 6.

### **3. COMPENSATION ON TERMINATION FOR HMQ DEFAULT OR TERMINATION FOR CONVENIENCE**

#### **3.1 Compensation**

- (a) If Project Co terminates the Project Agreement pursuant to Section 43.2(a)(ii) of the Project Agreement or if HMQ terminates the Project Agreement pursuant to Section 44.4(a) of the Project Agreement, HMQ shall, in each case, pay to Project Co the Non-Default Termination Sum.
- (b) The “**Non-Default Termination Sum**” shall be an amount equal to the aggregate, without duplication, of:



- (i) the aggregate of all amounts owed to Early Works Project Co by HMQ pursuant to and in accordance with the Early Works Agreement but due and unpaid by HMQ on Financial Close in respect of the performance of the Early Works and on account of any unpaid portions of the Early Works Price; and
  - (ii) all Termination Costs; and
  - (iii) the Debt Amount outstanding calculated as at the date of payment of the Non-Default Termination Sum by HMQ to Project Co plus the Debt Makewhole amount; and
  - (iv) an amount which gives an internal rate of return on the committed Cost to Complete Equity equal to the Equity IRR calculated on the Termination Date.
- (c) HMQ shall pay the Non-Default Termination Sum in accordance with Section 6.

#### **4. COMPENSATION ON TERMINATION FOR AN EVENT OF FORCE MAJEURE OR A RELIEF EVENT**

##### **4.1 Compensation**

- (a) If the Project Agreement is terminated pursuant to Section 44.1(a) of the Project Agreement or if the Project Agreement is terminated pursuant to Section 44.3(a), of the Project Agreement HMQ shall, pay to Project Co the Relief Event and Force Majeure Termination Sum.
- (b) The “**Relief Event and Force Majeure Termination Sum**” shall be an amount equal to the aggregate, without duplication, of:
  - (i) the aggregate of all amounts owed to Early Works Project Co by HMQ pursuant to and in accordance with the Early Works Agreement but due and unpaid by HMQ as of Financial Close in respect of the performance of the Early Works and on account of any unpaid portions of the Early Works Price; and
  - (ii) all Termination Costs; and
  - (iii) the Debt Amount outstanding calculated as of the date of payment of the Relief Event and Force Majeure Termination Sum by HMQ to Project Co plus the Debt Makewhole; and
  - (iv) the Contributed Equity;

LESS THE FOLLOWING AMOUNTS (WITHOUT DUPLICATION), provided they are positive amounts:

- (v) all (A) credit balances on any bank accounts or balances remaining on the Cost to Complete Letter of Credit and the Contingency Equity Letter of Credit held by or on behalf of Project Co on the Termination Date and (B) the value of any insurance proceeds due to Project Co or to which Project Co would have been entitled had insurance been maintained in accordance with the requirements of the Project Agreement,

provided that the Relief Event and Force Majeure Termination Sum shall never be less than the aggregate of the Debt Amount and the Debt Makewhole.

- (c) HMQ shall pay the Relief Event and Force Majeure Termination Sum in accordance with Section 6.

## **5. COMPENSATION ON TERMINATION FOR PROHIBITED ACTS**

### **5.1 Compensation**

- (a) If HMQ terminated the Project Agreement as a result of a Project Co Event of Default for failing to comply with Section 57 of the Project Agreement, HMQ shall pay to Project Co the Prohibited Acts Termination Sum.
- (b) The “**Prohibited Acts Termination Sum**” shall be an amount equal to the aggregate, without duplication, of:
  - (i) The Debt Amount and the Debt Makewhole as of the date of payment of the Prohibited Acts Termination Sum by HMQ to Project Co; and
  - (ii) any amount payable by HMQ to Project Co in accordance with Sections 40.2(b)(ii) and (iii) of the Project Agreement and Sections 41.2(b)(ii) and (iii) of the Project Agreement; and
  - (iii) all Termination Costs calculated in respect of the Construction Contractor if the Construction Contractor is not responsible for a Prohibited Act and which Project Co can demonstrate will be paid directly to the Construction Contractor;

LESS THE FOLLOWING AMOUNTS (WITHOUT DUPLICATION), provided they are positive amounts:

- (iv) all credit balances on any bank accounts held by or on behalf of Project Co on the Termination Date and the value of any insurance proceeds due to Project Co or to which Project Co would have been entitled had insurance

been maintained in accordance with the requirements of the Project Agreement;

- (v) to the extent realized before the Invoice Date, the market value of any other assets and rights of Project Co (other than those transferred to HMQ pursuant to the Project Agreement ) less liabilities of Project Co properly incurred in carrying out its obligations under the Project Agreement as at the Termination Date, provided that no account should be taken of any liabilities and obligations of Project Co arising out of:
  - (A) agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in connection with Project Co's obligations in relation to the Project; or
  - (B) agreements or arrangements entered into by Project Co other than in the ordinary course of business and on commercial arm's length terms, save to the extent that liabilities and obligations would have arisen if such agreements or arrangements had been entered into in the ordinary course of business and on commercial arm's length terms; and
- (vi) amounts which HMQ is entitled to set off pursuant to Section 1.10 of Schedule 20 – Payments and Holdbacks of this Project Agreement, provided that HMQ shall only set off amounts which are due to HMQ by Project Co pursuant to the terms of this Project Agreement if and to the extent the Prohibited Acts Termination Sum exceeds the Debt Amount.
- (c) To the extent that such assets and rights referred to in Section 5.1(b)(v) are not realized and applied pursuant thereto, Project Co shall, on payment of the Prohibited Acts Termination Sum, assign such assets and rights to HMQ.
- (d) HMQ shall pay the Prohibited Acts Termination Sum in accordance with Section 6.

## **6. GENERAL**

### **6.1 Payment**

- (a) In the event of a termination referred to in Section 3.1(a), as soon as practicable, and in any event, within 60 days, after the Termination Date, Project Co shall give to HMQ an invoice for the Non-Default Termination Sum (reasonably estimated if not then known) and sufficient supporting evidence, reasonably satisfactory to HMQ, justifying the amount of the Non-Default Termination Sum, including a detailed breakdown of each of the individual items comprising such sum. To the

extent the Non-Default Termination Sum is based on estimates of cost, the Parties will readjust as soon as such estimated costs can be determined.

- (b) HMQ shall pay to Project Co the Non-Default Termination Sum within 60 days after the Invoice Date and so long as all demobilization of the Works has been completed.
- (c) In the event of a termination referred to in Section 4.1(a), as soon as practicable, and in any event, within 60 days, after the Termination Date, Project Co shall give to HMQ an invoice for the Relief Event and Force Majeure Termination Sum (reasonably estimated if not then known) and sufficient supporting evidence, reasonably satisfactory to HMQ, justifying the amount of the Relief Event and Force Majeure Termination Sum, including a detailed breakdown of each of the individual items comprising such sum. To the extent the Relief Event and Force Majeure Termination Sum is based on estimates of cost, the Parties will readjust as soon as such estimated costs can be determined.
- (d) HMQ shall pay to Project Co the Relief Event and Force Majeure Termination Sum within 60 days after the Invoice Date and so long as all demobilization of the Works has been completed.
- (e) In the event of a termination referred to in Section 5.1(a), as soon as practicable, and in any event, within 60 days, after the Termination Date, Project Co shall give to HMQ an invoice for the Prohibited Acts Termination Sum (reasonably estimated if not then known) and sufficient supporting evidence, reasonably satisfactory to HMQ, justifying the amount of Prohibited Acts Termination Sum, including a detailed breakdown of each of the individual items comprising such sum. To the extent the Prohibited Acts Termination Sum is based on estimates of cost, the Parties will readjust as soon as such estimated costs can be determined.
- (f) HMQ shall pay to Project Co the Prohibited Acts Termination Sum within 60 days after the Invoice Date and so long as all demobilization of the Works has been completed.
- (g) In the event of a termination referred to in Section 2.1(a), as soon as practicable, and in any event, within the earlier of 180 days after the first Pan/Parapan Am Games Site Turnback Date and 120 days after the completion of the Works contemplated in Section 2.1(b)(i) and (iii) including after the provision of any estimate provided for in Section 2.1(e), HMQ shall calculate and notify Project Co of the Default Termination Payment under Section 2.1(b), and shall deliver to Project Co sufficient supporting evidence reasonably satisfactory to Project Co.
- (h) HMQ shall pay to Project Co the Default Termination Payment as soon as reasonably practicable, and in any event within 60 days after delivering the notice described in Section 6.1(g).

- (i) Notwithstanding anything to the contrary contained herein, in no event will the Default Termination Payment be greater than the Non-Default Termination Sum.

## **6.2 Costs**

The costs and expenses to be taken into account in the calculation of the Non-Default Termination Sum due pursuant to this Schedule 23 shall only be such costs and expenses that are reasonable and proper in quantum and that have been or will be reasonably and properly incurred.

## **6.3 Undisputed Amounts**

Either HMQ or Project Co may dispute the calculation of any Compensation Payment and in the event of a dispute, any undisputed amount shall be paid in accordance with this Schedule 23 and the disputed amount shall be dealt with in accordance with Appendix A to this Schedule 23 – Dispute Resolution Procedure. Notwithstanding the foregoing, in the event any disputed amount exceeds \$[REDACTED], either party may proceed to court for the resolution of such dispute.

## **6.4 Outstanding Debt Amounts**

- (a) Subject to Section 6.3, HMQ shall be entitled to rely on a certificate of the Lenders' Agent as conclusive evidence as to the Debt Amount and the Debt Makewhole outstanding at any relevant time.
- (b) If a receipt or other acknowledgement is given by the Lenders' Agent acknowledging or otherwise confirming receipt of payment or payments in respect of the Debt Amount and the Debt Makewhole, such receipt or other acknowledgement shall discharge HMQ's obligation to pay such portion of compensation due to Project Co that is equal to the amount acknowledged or confirmed.

## **6.5 Set-off**

HMQ shall be entitled to set off against the Non-Default Termination Sum, the Default Termination Payment, the Relief Event and Force Majeure Termination Sum or the Prohibited Acts Termination Sum, such amounts not already taken into account in calculating the relevant Compensation Payment that HMQ is entitled to set off or withhold pursuant to the Project Agreement, provided that (i) the amount paid to Project Co on account of the Non-Default Termination Sum shall never be less than the Debt Amount plus the Debt Makewhole, (ii) the amount paid to Project Co on account of the Relief Event and Force Majeure Termination Sum shall never be less than the Debt Amount and the Debt Makewhole, and (iii) the amount paid to Project Co on account of the Prohibited Acts Termination Sum shall never be less than the Debt Amount.

**APPENDIX A TO SCHEDULE 23**  
**DISPUTE RESOLUTION PROCEDURE**

**1. GENERAL**

- 1.1** Notwithstanding any other provision in the Project Agreement, all disputes, controversies, or claims arising out of or relating to the calculation of any Compensation Payment under Section 6.3 of this Schedule 23 to the Project Agreement (collectively and individually for the purpose of this Appendix “A” only, a “**Dispute**”) shall, subject to the last sentence of Section 6.3 of this Schedule 23, be resolved in accordance with the provisions of this Appendix A.

**2. REFERRAL OF DISPUTES TO ARBITRATION**

- 2.1** Either Party may, by written notice, require that the Dispute be resolved by arbitration pursuant to Section 3 of this Appendix A. Such notice will not be effective unless it indicates it is a notice to arbitrate and is delivered to the other Party and provided further that such notice expressly identifies the specific Dispute that is to be the subject of the arbitration.

**3. RESOLUTION BY ARBITRATION**

- 3.1** If a Dispute is referred to arbitration pursuant to Section 2.1 of this Appendix A, the Dispute shall be resolved by arbitration in accordance with the *Arbitration Act*, 1991 (Ontario).
- 3.2** Disputes referred to arbitration shall be resolved by a single arbitrator unless one of the Parties, by notice in writing delivered to the other Party within 5 Business Days after a notice to arbitrate pursuant to Section 2.1 of this Appendix A has been delivered, expressly requires that the Dispute that is the subject of that notice to arbitrate be resolved by a 3 person arbitration tribunal, in which case that particular Dispute shall be resolved by a 3 person arbitration tribunal.
- 3.3** If the arbitration tribunal is comprised of a single arbitrator, the arbitrator shall be appointed as follows:
- (a) if the Parties agree on the arbitrator, the Parties shall jointly appoint the arbitrator as soon as possible and in any event within 10 days after delivery of the notice to arbitrate pursuant to Section 2.1 of this Appendix A; and
  - (b) if the Parties fail to agree or jointly appoint the arbitrator within such 10 day period, either Party may apply to the Ontario Superior Court of Justice for appointment of the arbitrator, in which case the court shall appoint the arbitrator at the earliest opportunity from the lists of potential arbitrators submitted to the court by the Parties, or if no list is submitted by either Party, or if the list or lists submitted do not include potential arbitrators with the necessary qualifications

and experience, the court shall be entitled, at its sole and absolute discretion, to appoint anyone who meets the requirements set out in this Appendix A for the qualifications and experience of the arbitrator.

**3.4** If the arbitration tribunal is comprised of 3 arbitrators:

- (a) the arbitrators shall be appointed as follows:
  - (i) each Party shall appoint one arbitrator no later than 5 Business Days after delivery of the notice requiring a 3 person arbitration panel pursuant to Section 2.1 of this Appendix A;
  - (ii) if a Party fails to appoint an arbitrator within 5 Business Days after delivery of the notice requiring a 3 person arbitration panel, the other Party is entitled to apply to the Ontario Superior Court of Justice to appoint that arbitrator, in which case the court shall appoint that arbitrator at the earliest opportunity using a comparable process to that described in Section 3.3(b) of this Appendix A;
  - (iii) the arbitrators appointed in accordance with the foregoing shall, within 5 Business Days after their appointment, jointly appoint a third arbitrator who shall also act as the chair of the arbitration tribunal and who, in addition to all other required qualifications, shall have experience in arbitration or judicial processes and procedures; and
  - (iv) if the 2 arbitrators appointed by the Parties fail to appoint a third arbitrator within the required time, either of the other 2 arbitrators may apply to the Ontario Superior Court of Justice for appointment of the third arbitrator, in which case the court shall appoint the third arbitrator at the earliest opportunity using a comparable process to that described in Section 3.3(b) of this Appendix A; and
- (b) the arbitrators appointed by the Parties shall at all times be neutral and act impartially and shall not act as advocates for the interests of the Party who appointed them.

**3.5** All arbitrators must have qualifications and experience relevant to the issues in the Dispute and also have qualifications and experience as arbitrators.

**3.6** No one shall be nominated or appointed to act as an arbitrator who is or was in any way financially interested in the Project or in the business affairs of HMQ, Project Co, the Construction Contractor, the Lenders, the Lenders' Agent or any consultant, subconsultant or subcontractor of any of them.

**3.7** The arbitrator(s) shall have the jurisdiction and power to:

- (a) amend or vary any and all rules under the *Arbitration Act, 1991* (Ontario), including rules relating to time limits, either by express agreement of the Parties or, failing such agreement, as the arbitrator(s) consider appropriate and necessary in the circumstances to resolve the Dispute and render an award;
  - (b) require some or all of the evidence to be provided by affidavit;
  - (c) hold a hearing at which evidence and submissions are presented by the Parties;
  - (d) direct either or both Parties to prepare and provide the arbitrator(s) with such documents or other things as the arbitrator(s) may require to assist them in the resolution of the Dispute and rendering of an award; and
  - (e) require either Party to supply or prepare for examination by the arbitrator(s) and the other Party, any document or information the arbitrator(s) considers necessary.
- 3.8** The place of arbitration shall, at the option of HMQ, be the municipality in which HMQ is located or Toronto, Ontario. The language of the arbitration shall be English.
- 3.9** The costs of an arbitration are in the discretion of the arbitrator(s) who, in addition to any jurisdiction and authority under applicable law to award costs, has the jurisdiction and authority to make an order for costs on such basis as the arbitrator(s) considers appropriate in the circumstances, including to award actual legal fees and disbursements and expert witness fees, and to specify or order any or all of the following:
- (a) the Party entitled to costs;
  - (b) the Party who must pay the costs;
  - (c) the amount of the costs or how that amount is to be determined; and
  - (d) how all or part of the costs must be paid.
- 3.10** In exercising discretion to award costs, however, the arbitrator(s) will take into account the desire of the Parties that costs should generally be awarded to each Party in proportion to the relative success that each Party has in the arbitration.
- 3.11** The award of the arbitrator(s) shall be final and binding upon both Parties, and both Parties expressly waive all rights of appeal in connection with the award of the arbitrator(s). Judgment may be entered upon the award in accordance with Applicable Law in any court having jurisdiction.
- 3.12** The Parties agree to and shall co operate fully with the arbitrator(s) and proceed with the arbitration expeditiously, including in respect of any hearing, in order that an award may be rendered as soon as practicable by the arbitrator(s), given the nature of the Dispute. The arbitrator(s) shall render a decision as soon as possible and, in any event, shall use all



reasonable efforts to render a decision no later than 45 days after the date of the hearing, or such longer period of time as agreed to in writing by the Parties. If the arbitration tribunal is comprised of 3 arbitrators, the decision of a majority of the arbitration tribunal shall be deemed to be the decision of the arbitration tribunal, and where there is no majority decision, the decision of the chair of the arbitration tribunal shall be deemed to be the decision of the arbitration tribunal.

- 3.13** This Appendix A constitutes an agreement to arbitrate that shall be specifically enforceable.

**SCHEDULE 24**

**[INTENTIONALLY DELETED]**

## **SCHEDULE 25**

### **INSURANCE AND PERFORMANCE SECURITY REQUIREMENTS**

#### **1. WORKS PHASE INSURANCE COVERAGE**

- 1.1 Subject to Section 8, from and after Financial Close and until the Project Substantial Completion Date, Project Co shall, at its own expense, obtain and maintain, or cause to be obtained and maintained, exclusively through the Infrastructure Ontario Construction Insurance Program (“**IOCIP**”) the following insurances as further described in Appendix A to this Schedule 25:
- (a) “All Risks” Course of Construction Property, including Boiler and Machinery;
  - (b) “Wrap-Up” Commercial General Liability and Non-Owned Automobile Liability;
  - (c) Project Specific Professional Liability; and
  - (d) Project Specific Pollution Liability (combined Contractors’ Pollution Liability and Pollution Legal Liability).
- 1.2 Subject to Section 8, from and after Financial Close and until the Project Substantial Completion Date, Project Co shall, at its own expense, obtain and maintain, or cause to be obtained and maintained, the following insurances as further described in Appendix A to this Schedule 25:
- (a) Automobile Liability;
  - (b) Commercial General Liability and Non-Owned Automobile Liability (to be maintained by the Construction Contractor and each of the Subcontractors involved in the Works) with respect to off-site operations and activities;
  - (c) Aircraft and Watercraft Liability (if any exposure);
  - (d) “All Risks” Marine Cargo (if any exposure);
  - (e) “All Risks” Contractors’ Equipment;
  - (f) Comprehensive Crime; and
  - (g) WSIB.

**2. INSURANCE COVERAGE – AFTER PROJECT SUBSTANTIAL COMPLETION (THIRD PARTY FACILITIES AND PROJECT CO STAGE 1 CONDOMINIUM FACILITIES)**

- 2.1 Subject to Section 8, in respect of the Third Party Facilities, from and after the Project Substantial Completion Date until the date the last Third Party Facility and the relevant Third Party Lands are transferred to the applicable Third Party Owner, Project Co shall, at its own expense, obtain and maintain, or cause to be obtained and maintained, the following insurances as further described in Appendix A to this Schedule 25:
- (a) “All Risks” Property; and
  - (b) Boiler and Machinery.
- 2.2 Subject to Section 8, in respect of the Project Co Stage 1 Condominium Facilities, from and after the Project Substantial Completion Date and until the later of the Termination Date and the date the Provincial Loan is no longer in force and the Obligations (as defined in the Provincial Loan Agreement) are no longer outstanding, Project Co shall, at its own expense, obtain and maintain, or cause to be obtained and maintained, the following insurances as further described in Appendix A to this Schedule 25:
- (a) “All Risks” Property; and
  - (b) Boiler and Machinery.
- 2.3 Subject to Section 8, from and after the Project Substantial Completion Date and until the later of the Termination Date and the date the Provincial Loan is no longer in force and the Obligations (as defined in the Provincial Loan Agreement) are no longer outstanding, Project Co shall, at its own expense, obtain and maintain, or cause to be obtained and maintained, the following insurances as further described in Appendix A to this Schedule 25:
- (a) Commercial General Liability and Non-Owned Automobile Liability;
  - (b) Environmental Impairment (Pollution) Liability;
  - (c) Automobile Liability;
  - (d) Comprehensive Crime; and
  - (e) WSIB.

**3. INSURANCE COVERAGE – THIRD PARTY FACILITY CONVERSION WORK AND PROJECT CO STAGE 1 CONVERSION WORK**

- 3.1 Subject to Section 8, from and after the first Pan/Parapan Am Games Site Turnback Date until the last Third Party Facility Conversion Substantial Completion Date, Project Co shall, at its own expense, obtain and maintain, or

cause to be obtained and maintained, the following insurances in respect of the Third Party Facility Conversion Work as further described in Appendix A to this Schedule 25:

- (a) "All Risks" Course of Construction Property, including Boiler and Machinery; and
- (b) "Wrap-Up" Commercial General Liability and Non-Owned Automobile Liability.

3.2 Subject to Section 8, from and after the first Pan/Parapan Am Games Site Turnback Date until the Project Co Stage 1 Conversion Substantial Completion Date, Project Co shall, at its own expense, obtain and maintain, or cause to be obtained and maintained, the following insurances in respect of the Project Co Stage 1 Conversion Work, as further described in Appendix A to this Schedule 25:

- (a) "All Risks" Course of Construction Property, including Boiler and Machinery; and
- (b) "Wrap-Up" Commercial General Liability and Non-Owned Automobile Liability.

**3A. NO INSURANCE REQUIRED IF PROJECT AGREEMENT TERMINATED**

3.1A For clarity, if the Project Agreement is terminated by HMQ or Project Co for any reason other than the expiry of the Project Agreement on the Expiry Date, Project Co shall be under no obligation to obtain and maintain, or cause to be obtained and maintained, any insurance under this Schedule 25 after the Termination Date.

**4. NO LIMIT ON RECOVERY**

4.1 Notwithstanding any other provision of this Project Agreement, it is hereby agreed that the limits of liability specified in this Schedule 25 for insurance policies, whether such policies are required to be obtained by the Province, MOI, HMQ, Waterfront Toronto, Toronto 2015 or MHPS or by Project Co, shall in no way limit Project Co's liability or obligations to HMQ or HMQ's liability or obligations to Project Co, as applicable.

**5. ADDITIONAL COVER**

5.1 Without prejudice to the other provisions of this Schedule 25, HMQ and Project Co shall, at all relevant times and at their own expense, obtain and maintain those insurances which they are required to obtain and maintain by Applicable Law, or that they consider necessary.

5.2 HMQ reserves the right to require Project Co to purchase such additional insurance coverage as HMQ may reasonably require. HMQ also reserves the right to request such higher or lower limits of insurance or otherwise alter the types of coverage requirements, their minimum amounts and deductibles (taking

into consideration such matters as the nature of the Works, contract value, industry standards and availability of insurance) as HMQ may reasonably require from time to time. Any additional costs of such additional and/or amended insurance shall be borne by HMQ and any cost savings resulting from the implementation of such additional and/or amended insurance shall be for the account of HMQ.

## **6. RESPONSIBILITY FOR DEDUCTIBLES**

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

## **7. COOPERATION WITH INSURER'S CONSULTANT**

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

## **8. UNINSURABLE RISKS**

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

- (b) the insurance premium payable or the terms and conditions for insuring that risk are such that the risk is not generally being insured against in the worldwide insurance market.

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

- 8.2 Project Co shall notify HMQ as soon as possible and, in any event, within 15 Business Days of becoming aware of same, that a risk, or any component of a risk, has become an Uninsurable Risk, and shall provide HMQ with all relevant details in relation to such risk, including a copy of the relevant insurance policy.
- 8.3 Project Co and HMQ shall, as soon as possible following the provision of the notice referred to in Section 8.1(a), meet to discuss, in good faith, the appropriate means by which the Uninsurable Risk should be managed and, if Project Co and HMQ are able to agree to alternative arrangements, the Uninsurable Risk shall be managed in accordance with such alternative arrangements.
- 8.4 In the event that Project Co and HMQ, each acting in good faith, are unable to agree to alternative arrangements with respect to the management of an Uninsurable Risk within 15 Business Days of the expiry of the period referred to in Section 8.1(a), HMQ may, in its absolute discretion, either:
  - (a) elect to assume responsibility for the Uninsurable Risk and, in respect of the year in which the relevant risk becomes an Uninsurable Risk and every year thereafter, withhold, in equal instalments over the course of such year, from the payment or payments otherwise due to Project Co an amount equal to the annual premium (index linked) relating to the Uninsurable Risk as was current on the date immediately prior to the date on which the relevant risk became an Uninsurable Risk, in which case this Project Agreement shall continue in full force and effect; or
  - (b) terminate this Project Agreement in accordance with Section 44.3 as if such termination had occurred as a result of the Parties having failed to reach agreement in accordance with Section 44.3 following the occurrence of an event of Force Majeure, and, in accordance with the provisions of Schedule 23 – Compensation on Termination, pay to Project Co an amount equal to the Non-Default Termination Sum.
- 8.5 On the occurrence of an Uninsurable Risk, HMQ may, in its absolute discretion, either:
  - (a) pay to Project Co an amount equal to the insurance proceeds that would have been payable to Project Co in connection with such Uninsurable Risk had the relevant insurance continued to be available, in which case this Project Agreement shall continue in full force and effect; or
  - (b) terminate this Project Agreement in accordance with Section 44.3 of the Project Agreement as if such termination had occurred as a result of the

Parties having failed to reach agreement in accordance with Section 44.3 of the Project Agreement following the occurrence of an event of Force Majeure, and, in accordance with the provisions of Schedule 23 – Compensation on Termination, pay to Project Co an amount equal to the Non-Default Termination Sum.

8.6 With respect to any Uninsurable Risk:

- (a) Project Co shall continue to approach the insurance market on a regular basis and, in any event, at intervals of not less than 180 days and use reasonable efforts to obtain insurance to cover as much or all of the Uninsurable Risk as can be insured in the available insurance market from time to time; and
- (b) Subject to Section 8.6(a), Project Co shall be relieved of its obligation to maintain insurance in respect of the Uninsurable Risk.

8.7 Where a risk which was previously an Uninsurable Risk ceases to be so, Project Co shall, at its own expense, obtain and maintain insurance in accordance with the requirements of this Schedule 25 in respect of the risk and the provisions of this Section 8 shall no longer apply to such risk.

8.8 From and after the Project Substantial Completion Date, the Parties shall meet on an annual basis to review the scope of insurance coverage and deductibles provided in this Schedule 25, and may make mutually agreed changes thereto.

**9. TOTAL OR SUBSTANTIAL DESTRUCTION**

- 9.1 In the event of damage to, or destruction of, any, all or substantially all of the Facilities for which there is coverage under an insurance policy, any insurance proceeds received by Project Co shall first be applied so as to ensure the performance by Project Co of its obligations under this Project Agreement, including, where appropriate, the reinstatement, restoration or replacement of the Facilities or any other assets, materials or goods necessary or desirable for the carrying out of the Project Operations, all in accordance with the terms of the Insurance Trust Agreement.

**10. SUBCONTRACTORS**

- 10.1 Project Co shall require that all Subcontractors are covered by, or obtain, the insurance described in this Schedule 25, provided that Project Co shall determine the applicable limits to be obtained for such insurance. Project Co shall be solely responsible and liable for any damages which the Province, MOI, HMQ, Waterfront Toronto, Toronto 2015 or MHPS may suffer as a direct result of Project Co's failure to comply with the foregoing.
- 10.2 If Project Co receives notice that any Subcontractor employed by or through Project Co is not covered by any insurance required by this Schedule 25 to be obtained by Project Co, Project Co shall:



- (a) ensure that such insurance coverage is put in place;
- (b) remove the Subcontractor from the Site and ensure that such Subcontractor does not perform any further part of the Project Operations until after such insurance coverage is put in place; or
- (c) if the Subcontractor cannot be covered by a particular policy as required by this Schedule 25, replace the Subcontractor with a new Subcontractor who can obtain the required insurance coverage; it being acknowledged by Project Co that the requirements and restrictions set forth in the Project Agreement regarding new and replaced Subcontractors shall be complied with.

## **11. RENEWAL**

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

## **12. NAMED AND ADDITIONAL INSURED AND WAIVER OF SUBROGATION**

- 12.1 All insurance provided by Project Co, shall:

- (a) include Project Co, the Third Party Owners and the Province, MOI, HMQ, Waterfront Toronto, Toronto 2015 and MHPS as Named Insureds to the extent specified in Appendix A of this Schedule 25;
- (b) include the Third Party Owners, the Province, MOI, HMQ, Waterfront Toronto, Toronto 2015 and MHPS the Lenders' and the Lenders' Agent as Additional Insureds, or loss payees to the extent of their respective insurable interests to the extent specified in Appendix A of this Schedule 25;
- (c) except with respect to the Automobile Liability, Comprehensive Crime and WSIB specified in Appendix A to this Schedule 25, contain a waiver of subrogation as against the Third Party Owners, the Province, MOI, HMQ, Waterfront Toronto, Toronto 2015 and MHPS and their respective shareholders, officials, directors, officers, employees, servants, consultants (other than Design Consultants) and agents;
- (d) contain a breach of warranty provision whereby a breach of a condition by Project Co will not eliminate or reduce coverage for any other insured; and
- (e) be primary insurance with respect to any similar coverage provided by any insurance obtained by or available to the Third Party Owners or the Province, MOI, HMQ, Waterfront Toronto, Toronto 2015 and MHPS.

**13. CERTIFICATES OF INSURANCE AND CERTIFIED COPIES OF POLICIES**

- 13.1 Prior to the commencement of any part of the Works, Project Co will provide HMQ with certified copies of policies, confirming that the insurances specified in Section 1.1 have been obtained and are in full force and effect.
- 13.2 Prior to the commencement of any part of the Works, Project Co will provide HMQ with certificates of insurance or certified copies of policies, confirming that the insurances specified in Section 1.2 have been obtained and are in full force and effect. If certificates of insurance are provided, certified copies of the entire contents of all relevant insurance policies will be subsequently provided to HMQ no later than 90 days after Financial Close.
- 13.3 Prior to the commencement of any part of the Project Co Services, Project Co will provide HMQ with certificates of insurance or certified copies of policies, confirming that the insurances specified in Sections 2.1, 2.2 and 2.3 have been obtained and are in full force and effect. If certificates of insurance are provided, certified copies of the entire contents of all relevant insurance policies will subsequently be provided to HMQ no later than 90 days after the Project Substantial Completion Date; however specimen wordings of all such insurance policies, along with the corresponding summary of coverage, limits and deductibles, must be provided to HMQ no later than 90 days prior to the Project Substantial Completion Date.
- 13.4 Prior to the commencement of any part of the Third Party Facility Conversion Work or the Project Co Stage 1 Conversion Work, Project Co will provide HMQ with certificates of insurance or certified copies of policies, confirming that the insurances specified in Sections 3.1 and 3.2 have been obtained and are in full force and effect. If certificates of insurance are provided, certified copies of the entire contents of all relevant insurance policies will subsequently be provided to HMQ no later than 90 days after the commencement of any part of the Third Party Facility Conversion Work or the Project Co Stage 1 Conversion Work; however specimen wordings of all such insurance policies, along with the corresponding summary of coverage, limits and deductibles, must be provided to HMQ no later than 90 days prior to the commencement of any part of the Third Party Facility Conversion Work or the Project Co Stage 1 Conversion Work.

**14. FAILURE TO MEET INSURANCE REQUIREMENTS**

- 14.1 If Project Co fails to obtain or maintain the insurance required by this Schedule 25, fails to furnish to HMQ a certified copy of each policy required to be obtained by this Schedule 25 or if, after furnishing such certified copy, the policy lapses, is cancelled, or is materially altered, then HMQ shall have the right, without obligation to do so, to obtain and maintain such insurance itself in the name of Project Co, and the cost thereof shall either, at HMQ's option, be payable by Project Co to HMQ on demand or be deducted by HMQ from the next payment or payments otherwise due to Project Co.

- 14.2 If coverage under any insurance policy required to be obtained by Project Co should lapse, be terminated or be cancelled, then, if directed by HMQ, all work by Project Co shall immediately cease until satisfactory evidence of renewal is produced.

**15. MODIFICATION OR CANCELLATION OF POLICIES**

- 15.1 Except as noted in Appendix A to this Schedule 25, all insurance provided by Project Co shall contain endorsements confirming that the policy will not be cancelled, adversely reduced, adversely materially altered or adversely materially amended without the insurer(s) giving at least ninety (90) days prior written notice by registered mail, at the address specified, to the Province, MOI, HMQ, Waterfront Toronto, Toronto 2015, MHPS, the Lenders' Agent and Ontario Infrastructure and Lands Corporation. For greater certainty, the terms "adversely reduced", "adversely materially altered" and "adversely materially amended" as used in this provision shall mean any decrease or reduction in policy limits, aggregate limits or sub-limits (other than as a result of claims under the policy), any increase in any policy deductible or self-insured retention, any reduction in the policy coverage period, cancellation or suspension of coverage with respect to any insured parties from the time the policy was issued for that policy period, addition of any exclusions or restrictions from the time the policy was issued for that policy period and any reduction or restriction in the scope of coverage provided under the policy, in all cases when such adverse reduction, adverse material alteration or adverse material amendment is initiated by the insurer.
- 15.2 All insurance provided by Project Co shall contain endorsements confirming that, in the event of cancellation for non-payment of premium, the insurer(s) will give at least fifteen (15) days prior written notice by registered mail, at the address specified, to HMQ, the Lenders' Agent and Ontario Infrastructure and Lands Corporation.
- 15.3 With respect to insurances described in Sections 1.1(a), (b) and (d), Section 1.2(d), Sections 2.1(a) and (b), Sections 2.2(a) and (b), Sections 2.3(a) and (b), Sections 3.1(a) and (b) and Sections 3.2(a) and (b) breach of any of the terms or conditions of the policies required to be provided by Project Co, or any negligence or wilful act or omission or false representation by an Insured under these policies, shall not invalidate the insurance with respect to the Third Party Owners, the Province, MOI, HMQ, Waterfront Toronto, Toronto 2015, MHPS, the Lenders or any other Insured, but only to the extent that such breach is not known to these parties.

**16. INSURERS**

- 16.1 All policies of insurance to be obtained by Project Co in accordance with this Schedule 25 shall be issued by financially sound Insurers acceptable to HMQ and Lenders, acting reasonably, and, where required by statute, be licensed to insure such risk in the Province of Ontario.

- 16.2 To be eligible to provide insurance, an Insurer must have the capacity to provide the particular insurance and shall have current ratings from time to time of either:
- (a) a Financial Strength Rating of not lower than “A-” for three out of the previous five years but not lower than “B” at any time during those five years, and a Financial Size Category not lower than VII, such ratings being those established by A.M. Best Company (**Best**); or
  - (b) a Long-Term Financial strength Rating of not lower than “A-” for three out of the past five years but not less than “BBB” at any time during those five years, a Short-Term Financial Strength Rating of not lower than “A-3” for three out of the previous five years and a Financial Enhancement Rating of not lower than “A-” for three out of the previous five years but not less than “BB+” at any time during those five years, such ratings being those established by Standard and Poor’s (**S&P**); or
  - (c) if the Insurer is not rated by Best or S&P, an Insurer that is acceptable to HMQ and Lenders, acting reasonably, with respect to the insurances required by this Schedule 25.

## **17. POLICY TERMS AND CONDITIONS**

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

## **18. FAILURE TO COMPLY**

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

## **19. PERFORMANCE SECURITY REQUIREMENTS**

- 19.1 [REDACTED]

## **20. INSURANCE TRUST AGREEMENT**

- 20.1 All losses under (i) the “All Risks” Course of Construction Property Insurance policy, including Boiler & Machinery Insurance carried by Project Co prior to the Project Substantial Completion Date; (ii) the Property Insurance carried by Project Co after the Project Substantial Completion Date; (iii) the Boiler and Machinery Insurance carried by Project Co after the Project Substantial Completion Date; and (iv) the “All Risks” Course of Construction Property Insurance Policy, including Boiler and Machinery Insurance carried by Project Co after the first Pan/Parapan Am Games Site Turnback Date with respect to Third

Party Facility Conversion Work and Project Co Stage 1 Conversion Work which, in each case, relate to Equipment purchased by HMQ, shall be payable solely to HMQ and shall not be payable to the Account Trustee or distributed pursuant to the Insurance Trust Agreement.

## APPENDIX A

TO SCHEDULE 25  
INSURANCE REQUIREMENTS**Works Phase Insurance – 2015 Pan/Parapan American Games Athletes' Village Project**

From First Access to Site until Project Substantial Completion Date

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

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
<b>"All Risks" Course of Construction Property Including Boiler and Machinery</b>	<p>Value declared to be equal to the estimated completed project value of the Facilities, including Property of Every Description and all other property supplied by HMQ or HMQ Parties for incorporation into the Facilities.</p> <p>In addition to the above-noted, the value declared will further include <b>[\$[REDACTED]]</b>% of the replacement cost value of the Early Works completed prior to termination of the Early Works Agreement.</p> <p>Delay in Start-up <b>[\$[REDACTED]]</b>, covering a 24 month indemnity period, including Contingent Delayed Start-Up regarding losses at Suppliers' or Manufacturers' premises, or other temporary storage locations (<b>[\$[REDACTED]]</b> sub-limit).</p> <p>Soft Costs <b>[\$[REDACTED]]</b>, (representing <b>[\$[REDACTED]]</b>% of Recurring / Continuing Soft Costs)</p>	<p><b>[\$[REDACTED]]</b>% of loss value / <b>[\$[REDACTED]]</b> minimum Earthquake</p> <p><b>[\$[REDACTED]]</b> Flood</p> <p><b>[\$[REDACTED]]</b> Testing and Commissioning</p> <p><b>[\$[REDACTED]]</b> All other losses</p> <p>30 days waiting period applicable to time element coverages</p> <p>48 hour waiting period applicable to Off Premises Services Service Interruption</p>	<p>"All Risks" Course of Construction Property Insurance covering the full insurable replacement cost of the Works including cold and hot testing / commissioning, of Boiler &amp; Machinery equipment, including HVAC, Delay in Start-Up, Soft Costs, with no early occupancy restriction.</p> <p>This coverage shall be primary with respect to the Facilities without right of contribution of any insurance carried by the Province, MOI, HMQ, Waterfront Toronto, Toronto 2015 and MHPS or the Lenders.</p>	TBD

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
	Extra and Expediting Expense (minimum \$[REDACTED] sub-limit)			
	Principal Extensions:			
	<ul style="list-style-type: none"> <li>Replacement Cost Valuation (Property)</li> <li>Most Recent Technology Replacement Cost Valuation (Equipment or Machinery)</li> <li>Flood (to policy limit with annual aggregate)</li> <li>Natural or man-made earth movement, including earthquake, landslide or subsidence (to policy limit with annual aggregate)</li> <li>Electronic Data Processing equipment and media, including data restoration and re-creation costs</li> <li>Transit</li> <li>Unnamed locations</li> <li>Bylaws (with respect to Existing or Renovated Buildings) (minimum \$[REDACTED] sub-limit)</li> <li>Debris Removal (minimum \$[REDACTED] sub-limit)</li> <li>Off Premises Services (\$[REDACTED] sub-limit)</li> <li>Professional Fees (minimum \$[REDACTED]n sub-limit)</li> </ul>			

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
	<ul style="list-style-type: none"> <li>Fire Fighting Expenses (minimum \$[REDACTED] sub-limit)</li> <li>Valuable Papers (minimum \$[REDACTED] sub-limit)</li> <li>Accounts Receivable (minimum \$[REDACTED] sub-limit)</li> <li>Green Building and LEED Upgrades (subject to a \$[REDACTED] sub-limit)</li> <li>Defence Costs (subject to a \$[REDACTED] sub-limit)</li> <li>Radioactive contamination caused by sudden and accidental release of radioactive isotopes (resulting from an accident to measuring, testing or equipment and subject to a \$[REDACTED] sub-limit)</li> <li>Contamination Clean-up or Removal (minimum \$[REDACTED] sub-limit)</li> <li>Ammonia Contamination (minimum \$[REDACTED] sub-limit)</li> <li>LEED Certification, Building Commissioning and Air Testing and Outdoor Ventilation of the Reconstructed Air Spaces Expenses (\$[REDACTED] sublimit)</li> <li>Civil Authority Access</li> </ul>			



Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
	<p>Interruption (8 weeks)</p> <ul style="list-style-type: none"> <li>Prevention of Ingress/Egress (8 weeks)</li> <li>Permission for Partial Occupancy prior to Project Final Completion</li> <li>Cost of Carrying Project Financing (24 Months), included in Delayed Start-Up or Soft Costs coverage</li> <li>Margin of Profit Extension for Contractors</li> </ul> <p>Permitted Exclusions:</p> <ul style="list-style-type: none"> <li>Cyber risk</li> <li>Mould, fungi and fungal derivatives</li> <li>Faulty workmanship, materials construction, or design but resultant damage to be insured to a DE4 standard</li> <li>War risk</li> <li>Terrorism</li> <li>Nuclear or radioactive contamination, except re radioactive isotopes intended for scientific, industrial or commercial use</li> <li>Contractors' equipment</li> </ul>			

<i>Comments</i>	<ul style="list-style-type: none"> <li>• Named Insured includes Project Co, Lenders, Lender's Agent, the Construction Contractor, subcontractors, sub-subcontractors, consultants, sub-consultants, the Province, MOI, HMQ, Waterfront Toronto, Toronto 2015 and MHPS as their respective interests may appear</li> <li>• No provision permitted allowing a coinsurance penalty</li> <li>• Insurance shall be primary without right of contribution of any other insurance carried by any Named Insured</li> <li>• Additional key extensions of coverage: <ul style="list-style-type: none"> <li>– Underground services, temporary works involved in the Project such as scaffolding, hoarding, etc., site preparation, including excavation and associated improvements, landscaping and property of others used in the Project</li> <li>– Losses payable in accordance with the Insurance Trust Agreement</li> <li>– Waiver of subrogation against all Named and Unnamed Insureds, including but not limited to Project Co, the Province, MOI, HMQ, Waterfront Toronto, Toronto 2015 and MHPS, the Construction Contractor, subcontractors, professional consultants (other than for their professional liability), Lenders, Lenders' Agent, as well as officers, directors and employees, servants, and agents of the foregoing</li> <li>– Frost or freezing to concrete – but only resultant damage from a peril not otherwise excluded</li> <li>– Liberalization Clause</li> <li>– Errors and Omissions</li> <li>– Breach of Conditions</li> <li>– Interims Payments Clause</li> </ul> </li> </ul>
<b>Underwriters</b>	Principal underwriters in compliance with Clause 16 of this Schedule 25.

**Works Phase Insurance –2015 Pan/Parapan American Games Athletes' Village Project****From First Access to Site until Project Substantial Completion Date****Insurances to be provided, or caused to be provided, by Project Co and arranged through the IOCIP program**

Type	Amount	Maximum Deductible(s)	Principal Cover	Estimated Premium
<b>"Wrap-Up" Commercial General Liability and Non-Owned Automobile Liability</b>	<p>[\$REDACTED] each occurrence, and in the annual aggregate with respect to Broad Form Products and Completed Operations</p> <p>Sub-limits:</p> <ul style="list-style-type: none"> <li>• [\$REDACTED] Non-Owned Automobile Liability</li> <li>• [\$REDACTED] Sudden and Accidental Pollution and Hostile Fire Pollution Liability</li> <li>• [\$REDACTED] "All Risks" Tenants' Legal Liability</li> <li>• [\$REDACTED] Prairie or Forest Fire Fighting Expenses</li> <li>• [\$REDACTED] Employee Benefits Administrative Errors and Omissions</li> <li>• [\$REDACTED] Contractors Rework</li> <li>• [\$REDACTED] Legal Liability for Damages To Non-owned Automobiles (SEF 94)</li> <li>• [\$REDACTED]/\$ [REDACTED] Medical Payments</li> </ul> <p>Principal Extensions:</p> <ul style="list-style-type: none"> <li>• Owner's and Contractor's Protective</li> <li>• Blanket Contractual (written and oral)</li> <li>• Direct and Contingent Employers Liability</li> <li>• Employee Benefits Administrative Errors and Omissions</li> <li>• Personal Injury (nil participation)</li> <li>• Cross Liability and Severability of Interest with respect to each insured party</li> <li>• Blasting/demolition/excavating/underpinning/pile driving/shoring/caisson work/work below ground surface/tunnelling/grading, and similar operations associated with the Works, as</li> </ul>	<p>[\$REDACTED] per occurrence</p> <p>[\$REDACTED] per claim with respect to Contractors Rework</p> <p>[\$REDACTED] per claim with respect to each SEF 94, Tenants' Legal Liability, Employee Benefits Administrative Errors and Omissions and Prairie or Forest Fire Fighting Expenses</p>	<p>"Wrap-Up" Commercial General Liability and Non-Owned Automobile Liability insurance covering all construction operations on an occurrence basis against claims for Bodily Injury (including Death), Personal Injury, Property Damage (including Loss of Use), and including Products and Completed Operations Liability extension for a period of not less than 24 months, effective from the Project Substantial Completion Date.</p> <p>Coverage shall be maintained continuously from the date of the first activities at the Site, until the Project Substantial Completion Date, at which time the Products and Completed Operations extension will take effect.</p> <p>Sudden and Accidental Pollution and Hostile Fire Pollution coverage to be not less than IBC 2313 form (240 hours detection/240 hours notice coverage structure).</p> <p>This coverage shall be primary with respect to the Facilities without right of contribution of any insurance carried by the Province, MOI, HMQ, Waterfront Toronto, Toronto 2015 and MHPS or the Lenders.</p>	

Type	Amount	Maximum Deductible(s)	Principal Cover	Estimated Premium
	<ul style="list-style-type: none"> <li>applicable</li> <li>Elevator and Hoist Collision Liability</li> <li>Liberalized Notice of Claim Requirement, i.e., requirement to report will commence when knowledge is held by a designated project person(s) – to be identified by Project Co</li> <li>Non-Owned Automobile Liability</li> <li>Tenants' Legal Liability (All Risks) – subject to sub-limit</li> <li>Medical Expenses – subject to sub-limit</li> <li>Prairie or Forest Fire Fighting Expenses – subject to sub-limit</li> <li>Sudden and Accidental Pollution and Hostile Fire Pollution – subject to sub-limit</li> <li>Permission for Unlicensed Vehicles (partial road use)</li> <li>Unlicensed Equipment</li> <li>Loss of Use Without Property Damage</li> <li>Loading and Unloading of Automobiles</li> <li>Broad Form Property Damage</li> <li>Broad Form Completed Operations</li> <li>Intentional Injury, committed to Protect Persons or Property</li> <li>Accident Benefits</li> <li>Worldwide Territory, subject to suits being brought in Canada or the US</li> </ul>			
	<p>Permitted Exclusions:</p> <ul style="list-style-type: none"> <li>Injury to employees, where WSIB provides valid coverage</li> <li>Property in the care, custody or control of the insured, except as provided under Broad Form Products and Completed Operations</li> <li>Operation of licensed motor vehicles, other than attached machinery while used for its purpose, at the Project Site</li> <li>Physical damage to the Project, except during Broad Form Products and Completed Operations extension period</li> </ul>			

Type	Amount	Maximum Deductible(s)	Principal Cover	Estimated Premium
	<ul style="list-style-type: none"> <li>• Cyber risk</li> <li>• Mould, fungi and fungal derivatives</li> <li>• Professional liability of engineers, architects, and other professional consultants</li> <li>• Nuclear or radioactive contamination, except release radioactive isotopes intended for scientific, medical, industrial or commercial use</li> </ul>			
<i>Comments</i>	<ul style="list-style-type: none"> <li>• Named Insured includes Project Co and its Affiliates, HMQ, Ontario Infrastructure and Lands Corporation, the Province, MOI, HMQ, Waterfront Toronto, Toronto 2015 and MHPS, the Lenders, Project Co parties involved in the Works, including the Construction Contractor, all subcontractors, sub-subcontractors, suppliers while working on Site, tradesmen while working on Site, engineers, architects, consultants and sub-consultants, (other than for professional liability), others as Additional Insureds, as may be required from time to time, arising from all operations and activities pertaining to the Works and the control and use of the Site</li> <li>• Directors, officers, shareholders, employees of the insured parties involved in the Works covered as Additional Insureds</li> <li>• Insurance shall be primary without right of contribution of any other insurance carried by any Named Insured</li> <li>• Aggregate limits will be permitted for Products and Completed Operations, Prairie and Forest Fire Fighting Expenses, Sudden and Accidental Pollution and Hostile Fire Pollution and Employee Benefits Administrative Errors &amp; Omissions Liability; no policy general aggregate will be permitted</li> <li>• Professional service activities integral to the project, but not covering engineers, architects or other professional consultants, i.e., incidental professional liability risk of a Named Insured and their employed professionals is to be covered, but not the professional liability of independent fee-for-service professional consultants, architects or engineers</li> <li>• Waiver of subrogation of insurers' rights of recovery, against all Named and/or Additional Insureds, including Project Co, the Province, MOI, HMQ, Waterfront Toronto, Toronto 2015 and MHPS, the Construction Contractor, subcontractors, sub-subcontractors, professional consultants, engineers, architects (other than for their professional liability), Lenders, Lenders' Agent, as well as officers, directors, employees, servants and agents of the foregoing</li> </ul>			
<b>Underwriters</b>	Principal underwriters in compliance with Clause 16 of this Schedule 25.			

**Works Phase Insurance –2015 Pan/Parapan American Games Athletes' Village Project****From First Access to Site until Project Substantial Completion Date****Insurances to be provided, or caused to be provided, by Project Co and arranged through the IOCIP program**

Type	Amount	Maximum Self-Insured Retention	Principal Cover	Estimated Premium
<b>Project Specific Professional Liability</b>	<p>[\$[REDACTED]] minimum per claim / [\$[REDACTED]] in the aggregate (inclusive of defense and related costs and supplementary payments).</p> <p>Principal Extensions:</p> <ul style="list-style-type: none"> <li>• Primary insurance extension</li> <li>• Automatic addition of firms</li> <li>• Present, former partner, executive officer, director or shareholder of Named Insureds while acting within their scope of duties for the Named Insured</li> <li>• Any individuals or personal corporations retained by the Named Insured under a personal services contract</li> <li>• Claim defined as a written or oral demand for money or a written or oral allegation in breach in the rendering or failure to render professional services received by the Insured or Named Insured and resulting from a single error, omission or negligent act</li> <li>• Lawyer fees and associated expenses incurred in the investigation, defence, settlement, arbitration or litigation of claims</li> <li>• Duty to defend, even if the</li> </ul>	[\$[REDACTED]] per claim	<p>Project Specific Professional Liability Insurance in connection with the design and construction of the Project from beginning of first design, through the entire construction period to the Project Substantial Completion Date, plus coverage for an extended reporting period of not less than 36 months.</p> <p>This coverage shall be primary with respect to the Facilities without right of contribution of any insurance carried by the Province, MOI, HMQ, Waterfront Toronto, Toronto 2015 and MHPS or the Lenders.</p>	

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Type	Amount	Maximum Self-Insured Retention	Principal Cover	Estimated Premium
	<p>allegations are groundless, false or fraudulent</p> <ul style="list-style-type: none"> <li>Worldwide Territory, subject to suits brought in Canada</li> </ul> <p>Permitted Exclusions:</p> <ul style="list-style-type: none"> <li>Express warranties or guarantees</li> <li>Estimates on profit, return</li> <li>Faulty workmanship, construction or work which is alleged or in fact not constructed in accordance with the design of the Project or the construction documents</li> <li>Design or manufacture of any good or products sold or supplied by the Named Insured</li> <li>Terrorism</li> <li>Nuclear Liability</li> <li>Judgments and awards deemed uninsurable by law</li> <li>Liability assumed under design contract, unless such liability would have attached to the Named Insured by law in the absence of such agreement</li> <li>Punitive or exemplary damages, fines, penalties or interest or liquidated punitive or exemplary damages or fees</li> <li>Refusal to employ, termination of employment, humiliation or discrimination on any basis or other employment related practices or policies</li> </ul>			

<i>Comments</i>	<ul style="list-style-type: none"><li>• Named Insured: Project Co (as appropriate), all engineers, architects, and other professional consultants that provide professional design services in connection with the Project</li><li>• Professional services covered: All architectural, engineering, land surveying, environmental, landscape architectural, interior design/space planning, soil and material testing services, geotechnical services, and procurement services, including their replacements and/or sub-consultants of any tier</li><li>• Retroactive date: Full retroactive coverage from date of first design activity</li><li>• Policy to be non-cancellable except for premium non-payment, material misrepresentation or concealment of facts, or a material breach of any condition of the policy</li></ul>
<b>Underwriters</b>	Principal underwriters in compliance with Clause 16 of this Schedule 25.



**Works Phase Insurance – 2015 Pan/Parapan American Games Athletes' Village Project**

From First Access to Site until Project Substantial Completion Date

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

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
<b>Project Specific Pollution Liability (combined Contractors' Pollution Liability and Pollution Legal Liability):</b>  Combined Limit subject to Contractors' Pollution Legal Liability with a minimum <b>\$(REDACTED)</b> sub-limit	<b>\$(REDACTED)</b> per claim and in the aggregate for all claims, inclusive of defense and all costs and expenses  Principal Extensions: <ul style="list-style-type: none"> <li>• Hazardous Substances occurring at or emanating from the Facilities or Site during the Policy Period</li> <li>• Microbial Matter (including Fungus/Mould)</li> <li>• Underground / above ground storage tanks</li> <li>• First Party Restoration and Clean-up Costs</li> <li>• Disposal Site Extension, including Transportation (reporting required)</li> <li>• Duty to Defend</li> <li>• Canada and US Territory</li> <li>• Contractual Liability</li> <li>• Emergency Response Costs</li> </ul> Permitted Exclusions: <ul style="list-style-type: none"> <li>• Terrorism</li> <li>• War</li> <li>• Intentional Non-compliance</li> <li>• Prior Knowledge/Known Conditions</li> <li>• WSIB</li> <li>• Employers' Liability</li> <li>• Professional Liability</li> </ul>	<b>\$(REDACTED)</b> per claim inclusive of defense and all costs and expenses	Pollution Liability insurance covering third party bodily injury, property damage consequential loss or damage, including clean-up and restoration costs, both at the Site and off-Site, as required.  Extended Reporting Period: Minimum of 36 months after Project Substantial Completion Date.  This coverage shall be primary with respect to the Facilities without right of contribution of any insurance carried by the Province, MOI, HMQ, Waterfront Toronto, Toronto 2015 and MHPS or the Lenders.	

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Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
	<ul style="list-style-type: none"> <li>Nuclear Liability</li> <li>Property Damage to Motor Vehicles during Transportation</li> </ul>			
<hr/>				
<i>Comments</i>	<ul style="list-style-type: none"> <li>Named Insured will include Project Co, its Affiliates, Project Co parties and all other parties engaged in the Works, including the Construction Contractor, subcontractors, sub-subcontractors, consultants and sub-consultants</li> <li>The Province, MOI, HMQ, Waterfront Toronto, Toronto 2015 and MHPS and the Lenders will be identified as Additional Insureds or insured clients of Project Co and its Affiliates</li> <li>The directors, officers, shareholders, and employees of the foregoing shall be Additional Insureds</li> </ul>			
<b>Underwriters</b>	Principal underwriters in compliance with Clause 16 of this Schedule 25.			

**Works Phase Insurance – 2015 Pan/Parapan American Games Athletes' Village Project****From First Access to Site until Project Substantial Completion Date****Insurances to be provided, or caused to be provided by Project Co**

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
<b>Automobile Liability</b>	<p>[\$REDACTED] (Minimum) for Project Co and Project Co's Construction Contractor vehicles</p> <p>[\$REDACTED] (Minimum) for vehicles of any other subcontractors, sub-subcontractors, consultants, and sub-consultants, and workmen, tradesmen or other persons working on or at the Site</p>		<p>Standard Ontario Owners Form for all vehicles operated by Project Co, the Construction Contractor, all subcontractors, sub-subcontractors, consultants and sub-consultants in connection with the Project.</p> <p>Business Automobile Liability insurance covering third party property damage and bodily injury liability (including accident benefits) arising out of any licensed vehicle.</p> <p>Policies shall be endorsed to preclude cancellation, except upon 60 days prior written notice provided to the Province, MOI, HMQ, Waterfront Toronto, Toronto 2015 and MHPS and the Lenders.</p>	
<p><b>Commercial General Liability and Non-Owned Automobile Liability</b></p> <p>For Project Co, the Construction Contractor, all subcontractors, sub-subcontractors, consultants and sub-consultants, including Direct and Contingent Employers Liability, Products and Completed Operations</p>	<p>[\$REDACTED] each occurrence, and in the annual aggregate with respect to Broad Form Products and Completed Operations for Project Co and Project Co's Construction Contractor</p> <p>[\$REDACTED] each occurrence and in the annual aggregate with respect to Broad Form Completed Operations for any other contractor, subcontractors, sub-subcontractors, consultants and sub-consultants, workmen, tradesmen, or other persons involved in the Works</p> <p>In both instances, limits of liability may be structured as any combination of primary plus supplementary layers and Umbrella and/or Excess, or primary plus Umbrella and/or Excess</p> <p>Sub-limits (Project Co and Project Co's Construction Contractor):</p> <ul style="list-style-type: none"> <li>Full policy limits with respect to Non-Owned</li> </ul>		<p>Commercial General Liability insurance covering all operations on an occurrence basis against claims for Bodily Injury (including Death), Broad Form Property Damage (including Loss of Use), and including Broad Form Products and Completed Operations Liability.</p> <p>This Commercial General Liability insurance will cover off-site activities connected to the Project and Products and Completed Operations Liability beyond the "Wrap-Up" Commercial General Liability Insurance policy's Products and Completed Operations extension period.</p> <p>This insurance shall be maintained in effect during the Works phase until twelve (12) months following the earlier of the termination of the insured's person's</p>	

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Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
Liability, and HMQ's and Contractor's Protective extensions	<p>Automobile Liability</p> <ul style="list-style-type: none"> <li>• \$[REDACTED] Prairie or Forest Fire Fighting Expenses</li> </ul> <p>Principal Extensions (required to be provided by the Project Co. and its Construction Contractor; shall be endeavoured to be provided by any other contractor, subcontractors, sub-subcontractors, consultants, sub-consultants, workmen, tradesmen or other persons involved in the Works):</p> <ul style="list-style-type: none"> <li>• Owner's and Contractor's Protective</li> <li>• Blanket Contractual (written)</li> <li>• Direct and Contingent Employers Liability</li> <li>• Personal Injury (nil participation)</li> <li>• Cross Liability and Severability of Interest with respect to each insured party</li> <li>• Blasting/demolition/excavating/underpinning/pile driving/shoring/caisson work/work below ground surface/tunnelling/grading, and similar operations associated with the Works as applicable</li> <li>• Elevator and Hoist Collision Liability</li> <li>• Non-Owned Automobile Liability</li> <li>• Prairie or Forest Fire Fighting Expenses – subject to sub-limit</li> <li>• Permission for Unlicensed Vehicles' (partial road use)</li> <li>• Unlicensed Equipment</li> <li>• Loss of Use Without Property Damage</li> <li>• Loading and Unloading of Automobiles</li> <li>• Broad Form Property Damage</li> <li>• Broad Form Completed Operations</li> <li>• Intentional Injury, committed to Protect Persons or Property</li> <li>• Worldwide Territory, subject to suits being brought in Canada or the US</li> </ul> <p>Permitted Exclusions:</p>		<p>involvement in the Works and Project Substantial Completion Date.</p> <p>Policies shall be endorsed to preclude cancellation, except upon 90 days prior written notice provided to the Province, MOI, HMQ, Waterfront Toronto, Toronto 2015 and MHPS and the Lenders</p>	

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
	<ul style="list-style-type: none"><li>Injury to employees, where WSIB provides valid coverage</li><li>Property in the care, custody or control of the insured, except as provided under Broad Form Products and Completed Operations</li><li>Operation of licensed motor vehicles, other than attached machinery while used for its purpose, or at the Project Site</li><li>Cyber risk</li><li>Mould, fungi and fungal derivatives</li><li>Professional liability of engineers, architects, and other professional consultants</li><li>Nuclear or radioactive contamination, except release of radioactive isotopes intended for scientific, medical, industrial or commercial use</li></ul>			
Comments	<ul style="list-style-type: none"><li>The Province, MOI, HMQ, Waterfront Toronto, Toronto 2015 and MHPS and the Lenders will be identified as Additional Insureds or insured clients of Project Co and its Affiliates</li></ul>			
Aircraft and Watercraft Liability  (If any exposure)	Minimum \$[REDACTED] inclusive, including \$[REDACTED] passenger hazard – Owned Aircraft  Minimum \$[REDACTED] inclusive – Non-Owned Aircraft  Minimum \$[REDACTED] inclusive Owned or Non-Owned Watercraft	To be determined	Policies shall be endorsed to preclude cancellation, except upon 90 days prior written notice provided to the Province, MOI, HMQ, Waterfront Toronto, Toronto 2015 and MHPS and the Lenders.	
Comments	<ul style="list-style-type: none"><li>The Province, MOI, HMQ, Waterfront Toronto, Toronto 2015 and MHPS and the Lenders will be identified as Additional Insureds or insured clients of Project Co and its Affiliates</li></ul>			
“All Risks” Ocean Marine Cargo  (If any exposure)	[REDACTED]% Replacement Cost Valuation basis	\$[REDACTED]	Property of Every description destined for incorporation into the Facilities, during marine transit, on a full replacement value basis, with no co-insurance provision.  This coverage shall be primary with respect to the Facilities without right of contribution of any insurance carried by the Province,	

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
			MOI, HMQ, Waterfront Toronto, Toronto 2015 and MHPS or the Lenders.	
Comments	<ul style="list-style-type: none"><li>Named Insured includes Project Co, Lenders, Lender's Agent, the Construction Contractor, subcontractors, sub-subcontractors, consultants and sub-consultants; the Province, MOI, HMQ, Waterfront Toronto, Toronto 2015 and MHPS as their respective interests may appear.</li></ul>			
<b>"All Risks" Contractors' Equipment</b>  To cover Project Co, the Construction Contractor, subcontractors, sub-subcontractors consultants and sub-consultants	If Site equipment is three years old or less the sum insured shall be equal to [REDACTED]% of the replacement value of all contractors equipment used at the project. If Site equipment is more than three years old, actual cash value basis of loss settlement is acceptable.		"All Risks" coverage on all owned, rented, leased or borrowed contractors' equipment used at the Project Site.	
Comments	<ul style="list-style-type: none"><li>Waiver of subrogation rights against Project Co, the Province, MOI, HMQ, Waterfront Toronto, Toronto 2015 and MHPS, the Construction Contractor, subcontractors, sub-subcontractors, consultants, sub-consultants, Lenders, Lenders' Agent as well as officers, directors, shareholders and employees of the foregoing</li></ul>			

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
<b>Comprehensive Crime</b>	[\$REDACTED] per loss with respect to Employee Dishonesty		<p>Employee Dishonesty insurance against the fraudulent/dishonest acts of employees of Project Co and Project Co Parties including additional coverage for Broad Form Money and Securities, Money Orders and Counterfeit Paper, Depositors' Forgery, Computer Fraud and Funds Transfer Fraud, Audit Expenses and Credit Card Forgery.</p> <p>Custodial endorsement extending protection to third parties.</p> <p>Insurance primary without right of contribution of any other insurance carried by the Province, MOI, HMQ, Waterfront Toronto, Toronto 2015 and MHPS or the Lenders.</p>	
<b>Underwriters (All non-IOCIP Works Phase insurances that are to be provided or caused to be provided by Project Co)</b>	Principal underwriters in compliance with Clause 16 of this Schedule 25.			

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
WSIB	In accordance with Ontario Act's established benefits and schedules	Not Applicable	<p>(i) Project Co and its Affiliates shall obtain and maintain at Project Co's expense, WSIB Insurance, in accordance with the Province of Ontario requirements.</p> <p>(ii) Project Co shall ensure that satisfactory evidence of WSIB Insurance is provided by all Project Co Parties, including all other consultants, sub consultants, contractors, subcontractors, suppliers and tradesmen working at the Site.</p> <p>Prior to commencement of the Work, each of the foregoing shall provide satisfactory written confirmation of compliance, from the appropriate authority, including confirmation that all required assessments have been paid to date.</p> <p>Upon Project Substantial Completion of the Facilities, Project Co shall be provided with satisfactory written confirmation that all required assessments have been paid to date.</p> <p>On request, within 30 days of such request, Project Co shall deliver to HMQ evidence of the WSIB coverage maintained by any person involved in the Works, or confirmation of that person's exemption from WSIB coverage.</p>	



**Post-Project Substantial Completion Insurance Coverage – 2015 Pan/Parapan American Games Athletes' Village Project**

From the Project Substantial Completion Date until the last Third Party Facility and relevant Third Party Lands are transferred to the applicable Third Party Owner with respect to Third Party Facilities and until the later of the Termination Date and the date the Provincial Loan is no longer in force and the Obligations (as defined in the Provincial Loan Agreement) are no longer outstanding with respect to the Project Co Stage 1 Condominium Facilities (as applicable)

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

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
<b>"All Risk" Property</b>	<p>Full Replacement Cost of all property associated with the Third Party Facilities and Project Co Stage 1 Condominium Facilities, while on the Sites or while in transit, including material and supplies destined for incorporation into the Third Party Facilities and Project Co Stage 1 Condominium Facilities or intended to be used in the performance of Project Co Services and all In-Contract Equipment</p> <p>Business Interruption (Gross Revenue or Gross Profits Form), – 24 months period of indemnity – including interdependency and contingent coverage re losses at key supplier premises, property in transit or in storage off-site</p> <p>Extra and Expediting Expenses (minimum \$[REDACTED] sub-limit)</p> <p>If commercially available, such business interruption insurance should be extended to include</p>	<p>[REDACTED]% of loss value / \$[REDACTED] minimum Earthquake</p> <p>\$[REDACTED] Flood</p> <p>\$[REDACTED] All other losses</p> <p>30 days waiting period applicable to time element coverages</p>	<p>All Risks Property insurance covering all property to be insured with a sum insured equivalent to the full replacement cost value of the property insured, and including necessary Business Interruption and Expediting Expenses.</p> <p>Coverage shall be maintained continuously from the Project Substantial Completion Date until the applicable date noted in the specifications.</p> <p>Such insurance will include Inland Transportation, By-Laws and Off Premises coverage.</p> <p>This coverage shall be primary without right of contribution of any insurance carried by the Province, MOI, HMQ, Waterfront Toronto, Toronto 2015 and MHPS.</p>	

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Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
	infectious disease as a peril that triggers the Business Interruption coverage			
	Principal Extensions:			
	<ul style="list-style-type: none"> <li>• Replacement Cost Valuation (Property)</li> <li>• Most Recent Technology Replacement Cost Valuation (Equipment or Machinery)</li> <li>• Flood (to policy limit with annual aggregate)</li> <li>• Natural or man-made earth movement, including earthquake, landslide or subsidence (to policy limit with annual aggregate)</li> <li>• Electronic Data Processing equipment and media, including data restoration and re-creation costs</li> <li>• Debris Removal (minimum \$[REDACTED] sub-limit)</li> <li>• Transit (minimum \$[REDACTED] sub-limit)</li> <li>• Unnamed locations (minimum \$[REDACTED] sub-limit)</li> <li>• Professional Fees (minimum \$[REDACTED] sub-limit)</li> <li>• Fire Fighting Expenses (minimum \$[REDACTED] sub-limit)</li> <li>• Valuable Papers (minimum \$[REDACTED] sub-limit)</li> <li>• Accounts Receivable (minimum \$[REDACTED] sub-limit)</li> <li>• Contamination Clean-up or Removal (minimum \$[REDACTED] sub-limit)</li> <li>• Civil Authority Access</li> </ul>			

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Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
	<ul style="list-style-type: none"> <li>Interruption (minimum 8 weeks)</li> <li>Prevention of Ingress/Egress (minimum 8 weeks)</li> <li>Automatic Coverage for Newly Acquired Locations (90 day reporting period acceptable)</li> <li>By-Laws including demolition and increased replacement / repair costs</li> <li>Off premises services interruption</li> <li>Margin of profit extension for contractors</li> <li>Radioactive contamination caused by sudden and accidental release of radioactive isotopes resulting from an accident to medical equipment)</li> <li>Joint Loss Agreement (if separate "All Risk" Property and Boiler and Machinery policies are arranged)</li> </ul>			
	<p>Permitted Exclusions:</p> <ul style="list-style-type: none"> <li>Cyber risk</li> <li>Mould, fungi and fungal derivatives</li> <li>Faulty workmanship, materials construction, design or latent defects but resultant damage to be insured</li> <li>War risk</li> <li>Terrorism</li> <li>Nuclear or radioactive contamination, except regarding radioactive isotopes intended for scientific, medical, industrial or</li> </ul>			

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
commercial use				
<i>Comments</i>	<ul style="list-style-type: none"> <li>Named Insured will include Project Co, the Province, MOI, HMQ, Waterfront Toronto, Toronto 2015 and MHPS and the Lenders - Lenders will be covered as Loss Payee and Mortgagee</li> <li>All loss proceeds payable to the Insurance Trustee in accordance with the Insurance Trust Agreement</li> <li>No provision allowing a coinsurance penalty</li> <li>Waiver of Subrogation against all Insureds, including but not limited to Project Co, the Lenders, Lenders' Agent, as well as officers, directors and employees, servants, and agents of the foregoing</li> </ul>			
<b>Underwriters</b>	Principal underwriters in compliance with Clause 16 of this Schedule 25.			

**Post-Project Substantial Completion Insurance Coverage – 2015 Pan/Parapan American Games Athletes' Village Project**

From the Project Substantial Completion Date until the last Third Party Facility and relevant Third Party Lands are transferred to the applicable Third Party Owner with respect to Third Party Facilities and until the later of the Termination Date and the date the Provincial Loan is no longer in force and the Obligations (as defined in the Provincial Loan Agreement) are no longer outstanding with respect to the Project Co Stage 1 Condominium Facilities (as applicable)

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

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
<b>Boiler &amp; Machinery</b>	<p>Limit as per "All Risks" Property each Accident to an Insured Object at the Third Party Facilities and Project Co Stage 1 Condominium Facilities</p> <p>As per "All Risks" Property Business Interruption Insurance included, subject to a 24 month period of indemnity</p> <p>If a covered accident to insured objects(s) causes an interruption to Project Co Services, the Business Interruption loss will include the costs of carrying the Project financing, during the affected period</p> <p>Sub-limits (\$[REDACTED] each):</p> <ul style="list-style-type: none"> <li>• Ammonia Contamination</li> <li>• Automatic Coverage</li> <li>• Bylaws</li> <li>• Errors and Omissions</li> <li>• Expediting Expenses</li> <li>• Extra Expense</li> <li>• Hazardous Substances</li> <li>• Professional Fees</li> </ul>	<p>\$[REDACTED] per claim, Direct Damage</p> <p>Business Interruption – Maximum 30 day Waiting Period</p>	<p>From the date of Substantial Performance, or activation, whichever shall first occur, Boiler &amp; Machinery insurance on a Comprehensive Policy Form basis including HVAC, but not medical equipment, on a full replacement cost basis, including all appropriate endorsements and extensions as well as necessary Business Interruption and Expediting and Extra Expense coverage.</p> <p>Coverage shall be maintained continuously from the Project Substantial Completion Date until the applicable date noted in the specifications.</p> <p>Boiler and Machinery Insurance may be arranged on a combined Property/Boiler and Machinery basis, subject to the Boiler and Machinery section of such a policy being arranged on a Comprehensive Form basis.</p> <p>This coverage shall be primary without right of contribution of any insurance carried by Third Party Owners, the Province, MOI, HMQ, Waterfront Toronto, Toronto 2015 and MHPS or the Lenders.</p>	

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
	<ul style="list-style-type: none"> <li>Water Damage</li> </ul>			
<i>Comments</i>	<ul style="list-style-type: none"> <li>Named Insured will include Project Co, Third Party Owners, and the Lenders. Lenders will be covered as Loss Payee and Mortgagee</li> <li>All loss proceeds payable to the Insurance Trustee in accordance with the Insurance Trust Agreement</li> <li>As nearly as possible, coverage will be structured to dovetail with the Property Insurance</li> </ul>			
<b>Underwriters</b>	Principal underwriters in compliance with Clause 16 of this Schedule 25.			

### ***Post-Project Substantial Completion Insurance Coverage – 2015 Pan/Parapan American Games Athletes' Village Project***

From the Project Substantial Completion Date until the last Third Party Facility and relevant Third Party Lands are transferred to the applicable Third Party Owner with respect to Third Party Facilities and until the later of the Termination Date and the date the Provincial Loan is no longer in force and the Obligations (as defined in the Provincial Loan Agreement) are no longer outstanding with respect to the Project Co Stage 1 Condominium Facilities (as applicable)

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

Type	Amount	Maximum Deductible	Principal Cover	Estimated Annual Premium
<b>Commercial General Liability and Non-Owned Automobile Liability</b>	<p>\$(REDACTED) each accident or occurrence and in the aggregate with respect to Products and Completed Operations</p> <p>Sub-limits:</p> <ul style="list-style-type: none"> <li>• \$(REDACTED) Non-Owned Automobile Liability, unless coverage provided under automobile liability insurance</li> <li>• \$(REDACTED) Sudden and Accidental Pollution, and Hostile Fire Pollution</li> <li>• \$(REDACTED) "All Risks" Tenants' Legal Liability, if any exposure</li> <li>• \$(REDACTED) Prairie or Forest Fire Fighting Expense</li> <li>• \$(REDACTED) Employee Benefits Administrative Errors and Omission Liability</li> <li>• \$(REDACTED) Legal Liability for Damages To Non-owned Automobiles (SEF 94), unless coverage provided under automobile liability insurance</li> <li>• \$(REDACTED)/\$ (REDACTED) Medical</li> </ul>	\$(REDACTED) per occurrence	<p>Commercial General Liability insurance covering all operations on an occurrence basis against claims for personal injury (including bodily injury and death), Broad Form Property Damage (including Loss of Use), and including Broad Form Products and Completed Operation Liability insurance.</p> <p>Coverage shall be maintained continuously from the Project Substantial Completion Date until the applicable date noted in the specifications.</p> <p>Pollution Liability – Sudden and Accidental and Hostile Fire Pollution coverage to be not less than IBC 2313 form (120 hours detection/120 hours notice coverage structure).</p> <p>This coverage shall be primary with respect to the Third Party Facilities and Project Co Services without right of contribution of any insurance carried by Third Party Owners, the Province, MOI, HMQ, Waterfront Toronto, Toronto 2015 and MHPS or the Lenders.</p>	

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Type	Amount	Maximum Deductible	Principal Cover	Estimated Annual Premium
	Payments			
	Principal Extensions:			
	<ul style="list-style-type: none"> <li>Owner's and Contractor's Protective</li> <li>Blanket Contractual (written and oral)</li> <li>Direct and Contingent Employers Liability</li> <li>Employee Benefits</li> <li>Administrative Errors and Omissions</li> <li>Personal Injury (nil participation)</li> <li>Cross Liability and Severability of Interest with respect to each insured party</li> <li>Blasting/demolition/excavating /under-pinning/pile driving/shoring/caisson work/work below ground surface/tunnelling/grading, and similar operations as applicable</li> <li>Elevator and Hoist Collision Liability</li> <li>Liberalized Notice of Claim Requirement, i.e., requirement to report will commence when knowledge is held by a designated Project person(s) – to be identified by Project Co</li> <li>Non-owned Automobile Tenants' Legal Liability (All Risks) – subject to sub-limit</li> <li>Medical Expenses – subject to sub limit</li> <li>Prairie or Forest Fire Fighting Expenses – subject to sub-limit</li> </ul>			



Type	Amount	Maximum Deductible	Principal Cover	Estimated Annual Premium
	<ul style="list-style-type: none"> <li>Sudden and Accidental Pollution – subject to sub-limit</li> <li>Permission for unlicensed vehicles' partial road use</li> <li>Unlicensed Equipment</li> <li>Loss of Use Without Property Damage</li> <li>Loading and Unloading of Automobiles</li> <li>Broad Form Property Damage</li> <li>Broad Form Completed Operations</li> <li>Intentional Injury, committed to Protect Persons or Property</li> <li>Voluntary Compensation</li> <li>Worldwide Territory, subject to suits being brought in Canada or the US</li> </ul>			
	<p>Permitted Exclusions:</p> <ul style="list-style-type: none"> <li>Injury to employees, where WSIB provides valid coverage</li> <li>Property in the care, custody or control of the insured, except as provided under Broad Form Products and Completed Operations</li> <li>Operation of licensed motor vehicles, other than attached machinery while used for its purpose, or at the Sites</li> <li>Cyber risk</li> <li>Mould, fungi and fungal derivatives</li> <li>Professional liability of engineers, architects, and other professional consultants</li> <li>Asbestos</li> <li>Nuclear or radioactive contamination, except</li> </ul>			

Type	Amount	Maximum Deductible	Principal Cover	Estimated Annual Premium
	radioactive isotopes intended for scientific, medical, industrial or commercial use			
<i>Comments</i>	<ul style="list-style-type: none"> <li>Named Insured includes Project Co and its Affiliates, the Province, MOI, HMQ, Waterfront Toronto, Toronto 2015 and MHPS, Third Party Owners, Ontario Infrastructure and Lands Corporation, the Lenders, Project Co parties involved in the Project Co Services, including all other contractors, subcontractors, sub-subcontractors, suppliers while working on Site, tradesmen while working on Site, engineers, architects, consultants and sub consultants, (other than for professional liability); and others as additional insureds, as may be required from time to time, arising from all operations and activities pertaining to the Project Co Services and the control and use of the Site</li> <li>Directors, officers, shareholders, employees of the insured parties involved in the Project Co Services are covered as Additional Insureds</li> <li>Insurance primary without right of contribution of any other insurance carried by any Named Insured</li> <li>Aggregate limits will be permitted for Products and Completed Operations, Prairie and Forest Fire Fighting Expenses, Sudden and Accidental and Hostile Fire Pollution and Employee Benefits Administrative Errors &amp; Omissions Liability; no policy general aggregate will be permitted</li> <li>Professional service activities integral to the Project, but not covering engineers, architects or other professional consultants, i.e., incidental professional liability risk of a Named Insured and their employed professionals is to be covered, but not the professional liability of independent fee-for-service professional consultants, architects or engineers</li> <li>Waiver of Subrogation or insurers' rights of recovery, against all Named and/or Additional Insureds, including Project Co, the Province, MOI, HMQ, Waterfront Toronto, Toronto 2015 and MHPS, Third Party Owners, contractors, Project Co Parties, subcontractors; sub-subcontractors, professional consultants, engineers, architects (other than for their professional liability); Lenders, Lenders' Agent, as well as officers, directors, employees, servants and agents of the foregoing</li> </ul>			
<b>Underwriters</b>	Principal underwriters in compliance with Clause 16 of this Schedule 25.			

### ***Post-Project Substantial Completion Insurance Coverage – 2015 Pan/Parapan American Games Athletes' Village Project***

From the Project Substantial Completion Date and until the later of the Termination Date and the date the Provincial Loan is no longer in force and the Obligations (as defined in the Provincial Loan Agreement) are no longer outstanding

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

Type	Amount	Maximum Deductible	Principal Cover	Estimated Annual Premium
<b>Environmental Impairment (Pollution) Liability</b>	<p>Minimum \$[REDACTED] per claim and in the aggregate for all claims, inclusive of defense and all costs and expenses</p> <p>Principal Extensions:</p> <ul style="list-style-type: none"> <li>Hazardous Substances occurring at or emanating from the Facilities or Site during the Policy Period</li> <li>Microbial Matter (including Fungus/Mould)</li> <li>Biological Agents</li> <li>Underground / above ground storage tanks</li> <li>First Party Restoration and Clean-up</li> <li>Duty to Defend</li> <li>Contractual Liability</li> </ul> <p>Permitted Exclusions:</p> <ul style="list-style-type: none"> <li>Terrorism</li> <li>Intentional Non-Compliance</li> <li>WSIB</li> <li>War</li> <li>Employers Liability</li> <li>Nuclear Liability</li> <li>Professional Liability</li> </ul>	\$[REDACTED] per claim inclusive of defense and all costs and expenses	<p>Pollution Liability insurance covering third party bodily injury and property damage liability, consequential loss or damage, including necessary on-site and off-site clean-up costs, both at the Site and Off-Site, as required. Coverage is extended to include underground and above ground storage tanks.</p> <p>Coverage shall be maintained continuously from the Project Substantial Completion Date until the Termination Date.</p> <p>This insurance shall include a twelve (12) month extended discovery period and reporting period provision in the event of termination of the Policy or in the event termination of the Project Agreement for any reason, including its expiration.</p> <p>This coverage shall be primary without right of contribution of any insurance carried by the Province, MOI, HMQ, Waterfront Toronto, Toronto 2015 and MHPS, Third Party Owners or the Lenders.</p>	

<i>Comments</i>	<ul style="list-style-type: none"><li>It is permissible for Project Co to extend the construction pollution policy to include pollution events occurring during the Services phase on an annual basis throughout the term (if available).</li></ul>
<b>Underwriters</b>	Principal underwriters in compliance with Clause 16 of this Schedule 25.

**Post-Project Substantial Completion Insurance Coverage – 2015 Pan/Parapan American Games Athletes' Village Project**

From the Project Substantial Completion Date and until the later of the Termination Date and the date the Provincial Loan is no longer in force and the Obligations (as defined in the Provincial Loan Agreement) are no longer outstanding

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

Type	Amount	Maximum Deductible	Principal Cover	Estimated Annual Premium
<b>Automobile Liability</b>	<p>[\$REDACTED] (Minimum) for Project Co and Project Co's Contractor vehicles</p> <p>[\$REDACTED] (Minimum) for vehicles of any other Contractor, Project Co Parties, subcontractors, sub-subcontractors, consultants, sub-consultants, workmen, tradesmen, or other persons working on or at the Site</p>		<p>Standard Ontario Owners Form For all vehicles operated by Project Co, Contractor, all Project Co Parties, subcontractors, sub-subcontractors, consultants, and sub-consultants.</p> <p>Coverage shall be maintained continuously from the Project Substantial Completion Date until the Termination Date.</p> <p>Business Automobile Liability insurance covering third party property damage and bodily injury liability (including accident benefits) arising out of any licensed vehicle.</p> <p>Policies shall be endorsed to preclude cancellation, except upon 60 days prior written notice provided to the Province, MOI, HMQ, Waterfront Toronto, Toronto 2015 and MHPS, Third Party Owners and the Lenders.</p>	
<b>Comments</b>				
<b>Underwriters</b>	Principal underwriters in compliance with Clause 16 of this Schedule 25.			

**Post-Project Substantial Completion Insurance Coverage – 2015 Pan/Parapan American Games Athletes' Village Project**

From the Project Substantial Completion Date and until the later of the Termination Date and the date the Provincial Loan is no longer in force and the Obligations (as defined in the Provincial Loan Agreement) are no longer outstanding

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

Type	Amount	Maximum Deductible	Principal Cover	Estimated Annual Premium
<b>Comprehensive Crime</b>	[\$[REDACTED]] per extension		<p>Employee Dishonesty insurance against the fraudulent/dishonest acts of employees of Project Co and its Affiliates, including additional coverage for Broad Form Money and Securities, Money Orders and Counterfeit Paper, Depositors' Forgery, Computer Fraud and Funds Transfer Fraud, Audit Expenses and Credit Card Forgery.</p> <p>Custodial endorsement extending protection to third parties.</p> <p>Coverage shall be maintained continuously from the Project Substantial Completion Date until the Termination Date.</p> <p>This coverage shall be primary with respect to the Facilities without right of contribution of any insurance carried by the Province, MOI, HMQ, Waterfront Toronto, Toronto 2015 and MHPS, Third Party Owners or the Lenders</p>	
<b>Comments</b>				
<b>Underwriters</b>	Principal underwriters in compliance with Clause 16 of this Schedule 25.			
<b>WSIB</b>	In accordance with Ontario Act's established benefits and schedules	Not Applicable	<p>(i) Project Co and its Affiliates shall obtain and maintain at Project Co's expense, WSIB Insurance, in accordance with the Province of Ontario requirements.</p> <p>(ii) Project Co shall ensure that satisfactory evidence</p>	

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Type	Amount	Maximum Deductible	Principal Cover	Estimated Annual Premium
			<p>of WSIB Insurance is provided by all Project Co Parties, including all consultants, sub consultants, contractors, subcontractors, suppliers and tradesmen working at the Site.</p> <p>Prior to commencement of Project Co Services Third Party Facility Conversion Work or Project Co Stage 1 Conversion Work, each of the foregoing shall provide satisfactory written confirmation of compliance, from the appropriate authority, including confirmation that all required assessments have been paid to date.</p> <p>Upon completion of Termination Date, Project Co shall be provided with satisfactory written confirmation that all required assessments have been paid to date.</p> <p>On request, within 30 days of such request, Project Co shall deliver to HMQ evidence of the WSIB coverage maintained by any person involved in Project Co Services, or confirmation of that person's exemption from WSIB coverage.</p>	

### ***Third Party Facility Conversion Work and Project Co Stage 1 Conversion Work Insurance 2015 Pan/Parapan American Games Athletes' Village Project***

**From Pan/Parapan Am Games Turnover Date and until Third Party Facility Conversion Substantial Completion Date or Project Co Stage 1 Conversion Substantial Completion (as applicable)**

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

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
<b>"All Risks" Course of Construction Property Including Boiler and Machinery</b>	<p>Value declared to be equal to the estimated value of the Third Party Facility Conversion Work, including Property of Every Description and all other property supplied by Third Party Owners, HMQ or HMQ Parties for incorporation into the Third Party Facilities.</p> <p>Delay in Start-up <b>[\$[REDACTED]]</b>, covering a 24 month indemnity period, including Contingent Delayed Start-Up regarding losses at Suppliers' or Manufacturers' premises, or other temporary storage locations (<b>[\$[REDACTED]]</b> sub-limit).</p> <p>Soft Costs <b>[\$[REDACTED]]</b>, (representing <b>[REDACTED]]%</b> of Recurring / Continuing Soft Costs)</p> <p>Extra and Expediting Expense (minimum <b>[\$[REDACTED]]</b> sub-limit)</p> <p>Principal Extensions:</p> <ul style="list-style-type: none"> <li>• Replacement Cost Valuation (Property)</li> <li>• Most Recent Technology Replacement Cost Valuation (Equipment or Machinery)</li> <li>• Flood (to policy limit with</li> </ul>	<p><b>[REDACTED]]%</b> of loss value / <b>[\$[REDACTED]]</b> minimum Earthquake</p> <p><b>[\$[REDACTED]]</b> Flood</p> <p><b>[\$[REDACTED]]</b> Testing and Commissioning</p> <p><b>[\$[REDACTED]]</b> All other losses</p> <p>30 days waiting period applicable to time element coverages</p> <p>48 hour waiting period applicable to Off Premises Services Service Interruption</p>	<p>"All Risks" Course of Construction Property Insurance covering the full insurable replacement cost of the Third Party Facility Conversion Work including cold and hot testing / commissioning, of Boiler &amp; Machinery equipment, including HVAC, Delay in Start-Up, Soft Costs, with no early occupancy restriction.</p> <p>Coverage shall be maintained continuously from Pan/Parapan Am Games Turnover Date until Third Party Facility Conversion Substantial Completion or Project Co Stage 1 Conversion Substantial Completion (as applicable).</p> <p>This coverage shall be primary with respect to the Facilities without right of contribution of any insurance carried by the Province, MOI, HMQ, Waterfront Toronto, Toronto 2015 and MHPS or the Lenders.</p>	TBD



Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
	<ul style="list-style-type: none"> <li>annual aggregate)</li> <li>Natural or man-made earth movement, including earthquake, landslide or subsidence (to policy limit with annual aggregate)</li> <li>Electronic Data Processing equipment and media, including data restoration and re-creation costs</li> <li>Transit (\$[REDACTED] sub-limit)</li> <li>Unnamed locations (\$[REDACTED] sub-limit)</li> <li>Bylaws (minimum \$[REDACTED] sub-limit)</li> <li>Debris Removal (minimum \$[REDACTED] sub-limit)</li> <li>Off Premises Services (\$[REDACTED] sub-limit)</li> <li>Professional Fees (minimum \$[REDACTED] sub-limit)</li> <li>Fire Fighting Expenses (minimum \$[REDACTED] sub-limit)</li> <li>Valuable Papers (minimum \$[REDACTED] sub-limit)</li> <li>Accounts Receivable (minimum \$[REDACTED] sub-limit)</li> <li>Contamination Clean-up or Removal (minimum \$[REDACTED] sub-limit)</li> <li>Ammonia Contamination (minimum \$[REDACTED] sub-limit)</li> <li>Radioactive contamination caused by sudden and accidental release of radioactive isotopes (resulting from an accident to</li> </ul>			

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
	measuring, testing or equipment and subject to a \$[REDACTED] sub-limit) <ul style="list-style-type: none"> <li>• Civil Authority Access Interruption (4 weeks)</li> <li>• Prevention of Ingress/Egress (4 weeks)</li> <li>• Permission for Partial Occupancy prior to Project Final Completion</li> <li>• Cost of Carrying Project Financing (24 Months), included in Delayed Start-Up or Soft Costs coverage</li> <li>• Margin of Profit Extension for Contractors</li> </ul> Permitted Exclusions: <ul style="list-style-type: none"> <li>• Cyber risk</li> <li>• Mould, fungi and fungal derivatives</li> <li>• Faulty workmanship, materials construction, or design but resultant damage to be insured to a DE4 standard</li> <li>• War risk</li> <li>• Terrorism</li> <li>• Nuclear or radioactive contamination, except re radioactive isotopes intended for scientific, industrial or commercial use</li> <li>• Contractors' equipment</li> </ul>			
Comments	<ul style="list-style-type: none"> <li>• Named Insured includes Project Co, Lenders, Lender's Agent, the Construction Contractor, subcontractors, sub-subcontractors, consultants, sub-consultants, Third Party Owners, the Province, MOI, HMQ, Waterfront Toronto and MHPS as their respective interests may appear</li> <li>• No provision permitted allowing a coinsurance penalty</li> <li>• Insurance shall be primary without right of contribution of any other insurance carried by any Named Insured</li> <li>• Additional key extensions of coverage:</li> </ul>			

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- Underground services, temporary works involved in the Project such as scaffolding, hoarding, etc., site preparation, including excavation and associated improvements, landscaping and property of others used in the Project
- Losses payable in accordance with the Insurance Trust Agreement
- Waiver of subrogation against all Named and Unnamed Insureds, including but not limited to Project Co, Third Party Owners, the Province, MOI, HMQ, Waterfront Toronto and MHPS, the Construction Contractor, subcontractors, professional consultants (other than for their professional liability), Lenders, Lenders' Agent, as well as officers, directors and employees, servants, and agents of the foregoing
- Frost or freezing to concrete – but only resultant damage from a peril not otherwise excluded
- Liberalization Clause
- Errors and Omissions
- Breach of Conditions
- Interims Payments Clause

**Underwriters**      Principal underwriters in compliance with Clause 16 of this Schedule 25.

**Third Party Facility Conversion Work and Project Co Stage 1 Conversion Work Insurance 2015 Pan/Parapan American Games Athletes' Village Project**

From Pan/Parapan Am Games Turnover Date and until Third Party Facility Conversion Substantial Completion Date or Project Co Stage 1 Conversion Substantial Completion (as applicable)

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

Type	Amount	Maximum Deductible(s)	Principal Cover	Estimated Premium
<b>"Wrap-Up" Commercial General Liability and Non-Owned Automobile Liability</b>	<p>[\$[REDACTED]] each occurrence, and in the annual aggregate with respect to Broad Form Products and Completed Operations</p> <p>Sub-limits:</p> <ul style="list-style-type: none"> <li>• \$[REDACTED] Non-Owned Automobile Liability</li> <li>• \$[REDACTED] Sudden and Accidental Pollution and Hostile Fire Pollution Liability</li> <li>• \$[REDACTED] "All Risks" Tenants' Legal Liability</li> <li>• \$[REDACTED] Prairie or Forest Fire Fighting Expenses</li> <li>• \$[REDACTED] Employee Benefits Administrative Errors and Omissions</li> <li>• \$[REDACTED] Legal Liability for Damages To Non-owned Automobiles (SEF 94)</li> <li>• \$[REDACTED]/\$ [REDACTED] Medical Payments</li> </ul> <p>Principal Extensions:</p> <ul style="list-style-type: none"> <li>• Owner's and Contractor's Protective</li> <li>• Blanket Contractual (written and oral)</li> <li>• Direct and Contingent Employers Liability</li> <li>• Employee Benefits Administrative Errors and Omissions</li> <li>• Personal Injury (nil participation)</li> <li>• Cross Liability and Severability of Interest with respect to each insured party</li> <li>• Blasting/demolition/excavating/underpinning/pile driving/shoring/caisson work/work below ground surface/tunnelling/grading, and similar operations associated with the Works, as</li> </ul>	<p>[\$[REDACTED]] per occurrence</p> <p>[\$[REDACTED]] per claim with respect to each SEF 94, Tenants' Legal Liability, Employee Benefits Administrative Errors and Omissions and Prairie or Forest Fire Fighting Expenses</p>	<p>"Wrap-Up" Commercial General Liability and Non-Owned Automobile Liability insurance covering all construction operations on an occurrence basis against claims for Bodily Injury (including Death), Personal Injury, Property Damage (including Loss of Use), and including Products and Completed Operations Liability extension for a period of not less than 24 months, effective from the Third Party Facility Conversion Substantial Completion Date or Project Co Stage 1 Conversion Substantial Completion Date (as applicable).</p> <p>Coverage shall be maintained continuously from Pan/Parapan Am Games Turnover Date until Third Party Facility Conversion Substantial Completion or Project Co Stage 1 Conversion Substantial Completion (as applicable).</p> <p>Sudden and Accidental Pollution and Hostile Fire Pollution coverage to be not less than IBC 2313 form (120 hours detection/120 hours notice coverage structure).</p> <p>This coverage shall be primary with respect to the Facilities without right of contribution of any insurance carried by the Province, MOI, HMQ, Waterfront Toronto and MHPS or the Lenders.</p>	

Type	Amount	Maximum Deductible(s)	Principal Cover	Estimated Premium
	<ul style="list-style-type: none"> <li>applicable</li> <li>Elevator and Hoist Collision Liability</li> <li>Liberalized Notice of Claim Requirement, i.e., requirement to report will commence when knowledge is held by a designated project person(s) – to be identified by Project Co</li> <li>Non-Owned Automobile Liability</li> <li>Tenants' Legal Liability (All Risks) – subject to sub-limit</li> <li>Medical Expenses – subject to sub-limit</li> <li>Prairie or Forest Fire Fighting Expenses – subject to sub-limit</li> <li>Sudden and Accidental Pollution and Hostile Fire Pollution – subject to sub-limit</li> <li>Permission for Unlicensed Vehicles (partial road use)</li> <li>Unlicensed Equipment</li> <li>Loss of Use Without Property Damage</li> <li>Loading and Unloading of Automobiles</li> <li>Broad Form Property Damage</li> <li>Broad Form Completed Operations</li> <li>Intentional Injury, committed to Protect Persons or Property</li> <li>Accident Benefits</li> <li>Worldwide Territory, subject to suits being brought in Canada or the US</li> <li>Damage to Existing Structures</li> </ul>			
	<p>Permitted Exclusions:</p> <ul style="list-style-type: none"> <li>Injury to employees, where WSIB provides valid coverage</li> <li>Property in the care, custody or control of the insured, except as provided under Broad Form Products and Completed Operations</li> <li>Operation of licensed motor vehicles, other than attached machinery while used for its purpose, at the Project Site</li> <li>Physical damage to the Project, except during Broad Form Products and Completed</li> </ul>			

Type	Amount	Maximum Deductible(s)	Principal Cover	Estimated Premium
	<ul style="list-style-type: none"> <li>Operations extension period</li> <li>Cyber risk</li> <li>Mould, fungi and fungal derivatives</li> <li>Professional liability of engineers, architects, and other professional consultants</li> <li>Nuclear or radioactive contamination, except release radioactive isotopes intended for scientific, medical, industrial or commercial use</li> </ul>			
Comments	<ul style="list-style-type: none"> <li>Named Insured includes Project Co and its Affiliates, the Province, MOI, HMQ, Waterfront Toronto and MHPS, Third Party Owners, the Lenders, Project Co parties involved in the Works, including the Construction Contractor, all subcontractors, sub-subcontractors, suppliers while working on Site, tradesmen while working on Site, engineers, architects, consultants and sub-consultants, (other than for professional liability), others as Additional Insureds, as may be required from time to time, arising from all operations and activities pertaining to the Works and the control and use of the Site</li> <li>Directors, officers, shareholders, employees of the insured parties involved in the Works covered as Additional Insureds</li> <li>Insurance shall be primary without right of contribution of any other insurance carried by any Named Insured</li> <li>Aggregate limits will be permitted for Products and Completed Operations, Prairie and Forest Fire Fighting Expenses, Sudden and Accidental Pollution and Hostile Fire Pollution and Employee Benefits Administrative Errors &amp; Omissions Liability; no policy general aggregate will be permitted</li> <li>Professional service activities integral to the project, but not covering engineers, architects or other professional consultants, i.e., incidental professional liability risk of a Named Insured and their employed professionals is to be covered, but not the professional liability of independent fee-for-service professional consultants, architects or engineers</li> <li>Waiver of subrogation of insurers' rights of recovery, against all Named and/or Additional Insureds, including Project Co, the Province, MOI, HMQ, Waterfront Toronto and MHPS, Third Party Owners, the Construction Contractor, subcontractors, sub-subcontractors, professional consultants, engineers, architects (other than for their professional liability), Lenders, Lenders' Agent, as well as officers, directors, employees, servants and agents of the foregoing</li> </ul>			
Underwriters	Principal underwriters in compliance with Clause 16 of this Schedule 25.			

**SCHEDULE 26**

**RECORD PROVISIONS**

**1. General Requirements**

- 1.1 Project Co shall prepare, retain and maintain at its own expense, all the records (including superseded records) referred to in Section 2.1 of this Schedule 26, as follows:
- (a) in accordance with this Section 1 of this Schedule 26;
  - (b) in accordance with the Output Specifications;
  - (c) in accordance with the requirements of Good Industry Practice;
  - (d) having due regard to the guidelines and policies of the Office of the Information and Privacy Commissioner of Ontario;
  - (e) in accordance with the most stringent of Project Co's and the Construction Contractor's normal business practices;
  - (f) in accordance with Canadian GAAP;
  - (g) in chronological order;
  - (h) in sufficient detail, in appropriate categories and generally in such a manner as to enable Project Co to comply with Project Co's obligations under Section 34 of this Project Agreement; and
  - (i) in a form that is capable of audit.
- 1.2 Project Co shall retain and maintain all records on the Site.
- 1.3 Wherever practical, original records shall be retained and maintained in a hard copy form. Project Co may retain true copies of original records where it is not practical to retain original records.
- 1.4 Any drawings (including, without limitation, the As Built Drawings) required to be made or supplied pursuant to this Project Agreement shall be of a size appropriate to show the detail to be depicted clearly without magnifying aids, shall be consistent in size and format to drawings previously submitted by Project Co to HMQ, and shall conform to the Output Specifications and Good Industry Practice. Where by prior agreement HMQ and Project Co have agreed to accept microfilm, microfiche, CD-ROM or other storage media, Project Co shall make or supply drawings and other documents in such form as has been agreed by the Parties and shall include secure back up facilities.

- 1.5 Records may, with the consent of HMQ, not to be unreasonably withheld or delayed, be stored in electronic form if HMQ has access thereto and will continue to have access thereto, such that HMQ will be able to read, copy, download, and search same without licence or payment.
- 1.6 Subject to Sections 1.7 and 1.8 of this Schedule 26, Project Co shall retain and maintain in safe storage, at its expense, all records referred to in Section 2.1 of this Schedule 26 for a period of at least 7 years or such longer period as required by Applicable Law.
- 1.7 Project Co shall notify HMQ if Project Co wishes to destroy any records referred to in this Schedule 26 which are more than 7 years old, or in respect of which the required period under Applicable Law for their retention has expired. The Parties agree that:
- (a) within 60 days of such notice, HMQ may elect to require Project Co to deliver such records to HMQ, in which case Project Co shall, at the expense of HMQ, deliver such records (with the exception of Sensitive Information) to HMQ in the manner and to the location as HMQ shall specify; or
  - (b) if HMQ fails to notify Project Co of its election pursuant to Section 1.7(a) of this Schedule 26 within such 60 day period, Project Co may, at its expense, destroy such records.
- 1.8 In the event of termination of this Project Agreement prior to the Expiry Date, Project Co shall deliver all records that Project Co retains and maintains pursuant to this Schedule 26 to HMQ in the manner and to the location that HMQ shall reasonably specify. HMQ shall make available to Project Co all the records Project Co delivers pursuant to this Section 1.8 of this Schedule 26 subject to prior reasonable notice. Project Co may deliver true copies of original records required by:
- (a) statute to remain with Project Co;
  - (b) Project Co in connection with its fulfilment of any outstanding obligations under this Project Agreement; or
  - (c) Project Co in connection with its fulfilment of any outstanding obligations under the Lending Agreements.
- 1.9 Where the termination of this Project Agreement arises:
- (a) as a result of an HMQ Event of Default or pursuant to Section 43.2 of this Project Agreement, then the costs of delivering the records and the costs for retaining such records in safe storage will be borne by HMQ; or
  - (b) for any other cause, then the costs of delivering the records and the costs for retaining such records in safe storage for a period of at least six years following the Termination Date (unless a longer period is required by Applicable Law), shall be borne by Project Co.



- 1.10 Within 30 days after the end of each Contract Year, Project Co shall deliver to HMQ a report, as reasonably requested by HMQ in connection with HMQ's financial reporting, detailing to the best of Project Co's knowledge at the time of any such report any and all liabilities, claims and demands, including contingent liabilities, claims and demands, that Project Co has or may have against HMQ or that may be owing by HMQ to Project Co. The Parties acknowledge and agree that the contents of any such report or the failure to mention any matter in any such report shall not limit either Party's rights or remedies against the other Party as contemplated by this Project Agreement.
- 1.11 Project Co shall provide to HMQ not later than 45 days after the end of the first three fiscal quarters a copy of Project Co's quarterly unaudited management financial statements, in respect of each period and 120 days after the end of each fiscal year, part or all of which falls in a Contract Year, a copy of Project Co's audited financial statements, in respect of that period, prepared in accordance with Applicable Law and Canadian GAAP, together with copies of all related auditors' reports and, to the extent publicly available, all related directors' reports and other notices and circulars to shareholders or partners, all of which documents, whether or not marked or identified as confidential or proprietary but subject to the exceptions contained in Section 50 of this Project Agreement, shall be treated by HMQ as Confidential Information of Project Co.

## **2. Records To Be Kept**

- 2.1 Without limiting any other requirement of this Project Agreement, Project Co shall prepare, retain and maintain at its own expense:
- (a) this Project Agreement, its Schedules and the Project Documents, including all amendments to such agreements;
  - (b) all records relating to the appointment and replacement of the HMQ's Representative and the Project Co Representative;
  - (c) any documents, drawings (including, without limitation, the As Built Drawings) or submissions in accordance with Schedule 10 - Review Procedures - Part A - Works;
  - (d) any documents relating to Development Approvals and other Permits, Licences, Approvals and Agreements, including any refusals and appeals relating to any applications;
  - (e) all records relating to any statutory inspections of the Facilities or the Site, including any roadways;
  - (f) any notices, reports, results and certificates relating to Interim Completion, Project Substantial Completion, Project Co Stage 1 Conversion Substantial Completion, any Third Party Facility Conversion Substantial Completion and Project Final Completion of the Works and completion of the Project Substantial Completion Commissioning, the Project Co Stage 1 Conversion Substantial Completion

Commissioning, the Third Party Facility Conversion Substantial Completion Commissioning and Project Co Commissioning;

- (g) any documents relating to events of Force Majeure, Delay Events, Compensation Events and Relief Events;
- (h) all documents submitted in accordance with Schedule 22 - Variation Procedure;
- (i) any documents related to decisions resulting from the Dispute Resolution Procedure;
- (j) any documents related to a Project Co Change in Ownership or Change in Control;
- (k) all accounts for Taxes and transactions relating to Taxes, including in relation to HST applicable to the Project, but excluding any records for:
  - (i) Project Co's liabilities or payments under the Income Tax Act (Canada), the Income Tax Act (Ontario) or any similar statute in any other jurisdiction;
  - (ii) Project Co's liabilities or payments for capital taxes based on or measured by the capital of Project Co;
  - (iii) the withholdings of any payments by Project Co; or
  - (iv) any business or activity in addition to the business or activities related to, and conducted for, the purpose of the Project;
- (l) the financial accounts of Project Co referred to in Section 1.11 of this Schedule 26 above;
- (m) all records required by Applicable Law (including in relation to health and safety matters) to be maintained by Project Co with respect to the Project Operations;
- (n) any documents relating to insurance and insurance claims;
- (o) all Jointly Developed Materials;
- (p) all documents in its possession related to the Security and Background Check Requirements or other security or background checks and investigations undertaken pursuant to Section 27 of the Project Agreement; and
- (q) all other records, documents, information, notices or certificates expressly required to be produced or maintained by Project Co pursuant to this Project Agreement.

2.2 Either Party may review the documents required to be prepared, retained and maintained by Project Co pursuant to Section 2.1 of this Schedule 26.

**SCHEDULE 27**

**DISPUTE RESOLUTION PROCEDURE**

**1. General**

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

**2. Amicable Resolution by Party Representatives**

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

**3. Amicable Resolution by Senior Officers of each Party**

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

**4. Independent Certifier**

- 4.1 This Section 4 applies to all Disputes that fall within the description of Section 4.2 of this Schedule 27 that cannot be resolved as provided in Sections 2 and 3 of this Schedule 27 or as otherwise agreed to in writing by the Parties pursuant to Section 13.6 of this Schedule 27.
- 4.2 All Disputes related to the Works and that:
- (a) arise prior to, or otherwise in relation to, Interim Completion, Project Substantial Completion, Project Co Stage 1 Conversion Substantial Completion or any Third Party Facility Conversion Substantial Completion;
  - (b) relate to completion of Project Substantial Completion Minor Deficiencies, Project Co Stage 1 Conversion Substantial Completion Minor Deficiencies or any Third Party Facility Conversion Substantial Completion Minor Deficiencies;
  - (c) relate to whether any proposed work constitutes a Variation;
  - (d) relate to a review of Estimates or any other matters relating to Variations as the Independent Certifier is entitled to review and determine pursuant to Section 36 of the Project Agreement;
  - (e) are referred to in this Project Agreement for determination by the Independent Certifier; or

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

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

- 4.3 Without limiting any obligations of the Parties under the Independent Certifier Agreement, the Parties shall cooperate with the Independent Certifier and provide such information, records and documents as may be required by the Independent Certifier to make the determination within the period referred to in Section 4.2 of this Schedule 27.
- 4.4 The Independent Certifier's decision to issue or not to issue either the Interim Completion Certificate or the Project Substantial Completion Certificate shall be final and binding on the Parties solely in respect of determining the Interim Completion Payment Date and the Project Substantial Completion Payment Date, as applicable, and a Dispute in relation to either the Interim Completion Payment Date or the Project Substantial Completion Payment Date shall not be subject to resolution pursuant to this Schedule 27. Save and except as aforesaid, the Independent Certifier's determinations are not binding on the Parties, and all Disputes in relation to the Independent Certifier's decisions shall be resolved pursuant to this Schedule 27, provided however that Sections 5 and 6 of this Schedule 27 shall not apply unless otherwise agreed by the Parties on terms acceptable to the Parties.

## **5. Expert Determination**

- 5.1 If, following the process referred to in Section 2 and 3 (or as otherwise agreed to in writing by the Parties pursuant to Section 13.6 of this Schedule 27) of this Schedule 27, any Dispute as to:

- (a) whether Project Co has achieved all necessary prerequisites, credits and points under the LEED Rating System in accordance with the specific requirements under this Project Agreement to achieve the LEED Gold Rating;

has not been resolved within 10 Business Days after the date the Dispute was referred to the executives of the Parties for resolution by them, or within such longer period of time as the executives may expressly agree in writing in respect of a specific Dispute to allow them to continue their efforts to resolve the Dispute, then either Party may at any time thereafter, by written notice signed by their Party Representative and delivered to the other Party Representative, require that the Dispute be resolved on an expedited basis by a qualified and experienced expert (the "**Expert**").

- 5.2 The Expert shall be appointed as follows:

- (a) if the Parties agree on the Expert, the Parties shall jointly appoint the Expert as soon as possible and, in any event, within 5 Business Days after delivery of the notice requiring that the Dispute be resolved by an Expert;

- (b) if the Parties fail to agree or jointly appoint the Expert within such 5 Business Day period, either Party may apply to the Ontario Superior Court of Justice for appointment of the Expert, in which case the court shall appoint the Expert at the earliest opportunity from the list of potential Experts submitted by the Parties or, if either or both Parties fail to submit their list of potential Experts within 7 Business Days, the court may appoint such person as the Expert who meets the requirements set out in this Schedule 27 for qualifications and experience of the Expert.
- 5.3 No one shall be nominated or appointed to act as an Expert who is or was in any way interested, financially or otherwise, in the conduct of the Project Operations or in the business affairs of HMQ, Project Co, or any consultant, subconsultant or subcontractor of any of them.
- 5.4 Subject to the matters the Expert is authorized to determine pursuant to Section 5.1 of this Schedule 27, the Expert will be appointed on a Dispute by Dispute basis, with each Expert having the qualifications and experience relevant to the issues in the particular Dispute for which the Expert is appointed.
- 5.5 The Expert shall determine the appropriate process for timely and cost effective resolution of the Dispute and, without limiting the generality of the foregoing, the Expert has discretion to, among other things:
  - (a) solicit submissions and documents from both Parties, and impose deadlines for the receipt of such submissions;
  - (b) require some or all of the evidence to be provided by affidavit;
  - (c) direct either or both Parties to prepare and provide the Expert with such documents, test results or other things as the Expert may require to assist the Expert in the resolution of the Dispute and rendering of a decision;
  - (d) require either Party to supply or prepare for examination by the Expert and the other Party, any document or information the Expert considers necessary;
  - (e) inspect the Project Operations, giving reasonable notice to each Party of the time when, and the place where, the Expert intends to conduct any inspections;
  - (f) convene meetings of the Parties to have the Parties discuss the issues in Dispute in the presence of the Expert; and
  - (g) take, or require either or both Parties to take and provide to the Expert, such measurements, perform such tests, audit such processes and procedures, and take any and all such other measures and steps as the Expert considers necessary to make a final determination in the Dispute.
- 5.6 The Expert shall render a decision as soon as possible and, in any event, shall use all reasonable efforts to render a decision no later than 10 Business Days after the date of the

appointment of the Expert, or such longer period of time as agreed to in writing by the Parties. The Expert shall give reasons or a summary of reasons for the Expert’s decision.

- 5.7 The Expert shall keep all information about the Dispute confidential and shall not disclose such information to anyone other than the Parties.
- 5.8 Each Party shall bear its own costs of the process for resolution of the Dispute by the Expert. In addition, the costs of the Expert shall be borne equally by the Parties.
- 5.9 Subject to a right to require the Dispute to be arbitrated or litigated pursuant to Sections 7, 8 and 9 of this Schedule 27 by giving the required notices to arbitrate or litigate within the time periods specified therein, the Parties agree that the Expert’s determination shall be final and binding on both Parties and not subject to appeal, adjudication, arbitration, litigation or any other dispute resolution process, and both Parties expressly waive all rights of appeal in connection with the Expert’s determination. For greater certainty, the final determination by the Expert shall not be referred to an Adjudicator (as defined below) for determination under Section 6 of this Schedule 27.

**6. Adjudication**

- 6.1 If the Parties fail to resolve any Dispute through the process referred to in Section 2 and 3 of this Schedule 27 within 15 Business Days following referral of the Dispute to an executive in accordance with Section 3.1 (or such other period as may be agreed or expressly stipulated in respect of the relevant matter) and it is not a Dispute referred to in Sections 4.2 or 5.1 of this Schedule 27 or a Dispute referred to arbitration or litigation pursuant to Sections 4.4 or 5.9 of this Schedule 27 (except as otherwise agreed to in writing by the Parties pursuant to Section 13.6 of this Schedule 27), either Party may refer the Dispute to an adjudicator selected in accordance with Section 6.2 of this Schedule 27 (the “**Adjudicator**”).
- 6.2 The Adjudicator nominated by the Party issuing the Notice of Dispute shall be agreed between the Parties or, failing agreement, shall be determined by the Ontario Superior Court of Justice (following an application thereto by the Party issuing the Notice of Dispute) and shall:
- (a) be independent of and at arm’s length to Project Co, HMQ, MHPS, the Province, any Government Entity, the Lenders and any other person having an interest in the Facilities or any of the Project Documents; and
  - (b) if the Dispute arises during the Project Term, be familiar with the Works; and
  - (c) be a person who has the qualifications and experience with respect to the particular issues in Dispute.
- 6.3 The Adjudicator shall resolve the Dispute in accordance with the United Kingdom Construction Industry Council’s *Model Adjudication Procedure* (Fourth Edition) the terms of which are incorporated herein by reference, subject to the following modifications:

- (a) notwithstanding paragraph 14 of the *Model Adjudication Procedure*, within 7 Business Days of appointment in relation to a particular Dispute, the Adjudicator shall require the Parties to submit in writing their respective arguments; provided that, where necessary, the onus of proving that the Facilities are permitting the Project Operations to proceed in accordance with all relevant specifications and requirements set forth in the Project Agreement is on Project Co. The Adjudicator shall, in his absolute discretion, determine the procedure of the adjudication proceedings including without limitation, whether a hearing is necessary in order to resolve the Dispute;
- (b) notwithstanding paragraphs 16 and 24 of the *Model Adjudication Procedure*, in any event, and subject to Section 6.4 of this Schedule 27, the Adjudicator shall provide to both Parties his written decision on the Dispute, within 10 Business Days of appointment (or within such other period as the Parties may agree after the reference). The Adjudicator shall give detailed reasons for the Adjudicator's decision. The Adjudicator shall be entitled to award compensation to a Party and shall be entitled to state the relief for such Party, which may include deeming the occurrence of any Delay Event, Relief Event and/or Compensation Event. Unless otherwise provided for in this Schedule 27, the Adjudicator's decision shall be binding on the Parties, but not final.
- (c) notwithstanding paragraphs 29 and 30 of the *Model Adjudication Procedure*, the Adjudicator's costs, including any legal fees, of any reference shall be borne as the Adjudicator shall specify or in default, equally by the Parties. In no circumstances shall the Adjudicator be entitled to order a successful or partially successful Party in an adjudication to pay more than one half of the Adjudicator's fees. Each Party shall bear its own costs arising out of the reference, including legal costs and the costs and expenses of any witnesses.
- (d) the Adjudicator shall be deemed not to be an arbitrator but shall render his decision as an expert and the provisions of the *Arbitration Act* (Ontario) and the law relating to arbitration shall not apply to the Adjudicator or his determination or the procedure by which he reached his determination;
- (e) notwithstanding paragraph 26 of the *Model Adjudication Procedure*, the Adjudicator shall act impartially and may take the initiative in ascertaining the facts and the law. Unless otherwise expressly provided in this Project Agreement, the Adjudicator shall have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given under this Project Agreement. For greater certainty, the Independent Certifier's decision to issue or not to issue either the Interim Completion Certificate or the Project Substantial Completion Certificate shall be final and binding solely in respect of determining the Interim Completion Payment Date and the Project Substantial Completion Payment Date, as applicable, and a Dispute in relation to either the Interim Completion Payment Date or the Project Substantial Completion Payment Date shall not be subject to resolution pursuant to this Schedule 27;



- (f) the Adjudicator shall execute a non-disclosure agreement (the "**Non-Disclosure Agreement**") in a form satisfactory to the Parties, providing that, among other things, all information, data and documentation disclosed or delivered by a Party to the Adjudicator in consequence of or in connection with his appointment as the Adjudicator shall be treated as confidential and without prejudice to any potential litigation proceedings. The Adjudicator shall not, save except as expressly permitted by the Non-Disclosure Agreement, disclose to any person any such information, data or documentation, and all such information, data or documentation shall remain the property of the Party disclosing or delivering the same and all copies shall be returned to such Party on completion of the Adjudicator's mandate with respect to the Dispute; and
- (g) notwithstanding paragraph 34 of the *Model Adjudication Procedure*, the Adjudicator shall not be liable for anything done or omitted to be done in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith. Any employee or agent of the Adjudicator is similarly protected from liability.

6.4 Where it is determined by the Adjudicator that:

- (a) corrective measures must be taken by Project Co to resolve a Dispute, those measures must be implemented by Project Co as soon as reasonably practical, without payment by HMQ unless (i) the Adjudicator determines otherwise; or (ii) that determination is subsequently reversed by a binding and final determination made in a court proceeding;
- (b) corrective measures are not required to be taken by Project Co to resolve a Dispute, HMQ may, at its option, require corrective measures to be taken forthwith by Project Co, in which case those measures must be implemented by Project Co as soon as reasonably practical provided that HMQ undertakes to pay Project Co for Direct Costs, plus reasonable overhead and profit incurred by Project Co as such costs are so incurred; provided that no such costs should exceed the amount Project Co is entitled to receive pursuant to Schedule 22 – Variation Procedure thereby incurred upon completion of those corrective measures, but any such undertaking and payment shall be without prejudice to HMQ's right to contest the determination made by the Adjudicator in a subsequent proceeding. HMQ shall provide Project Co such reasonable extensions of time in respect of Project Co's obligations under this Agreement necessary to allow Project Co to effect the corrective measures and such extension of time may be treated as a Delay Event, if so determined by the Adjudicator.

6.5 Subject to a right to require the Dispute to be arbitrated or litigated pursuant to Sections 7, 8 and 9 of this Schedule 27 by giving the required notices to arbitrate or litigate within the time periods specified therein, the Parties agree that the Adjudicator's determination is final and binding and not subject to appeal, arbitration, litigation or any other dispute resolution

process, and both Parties expressly waive all rights of appeal in connection with the Adjudicator's determination.

**7. Referral of Disputes to Arbitration or Litigation**

**7.1 If:**

- (a) the amount awarded by the Expert to a Party pursuant to Section 5 of this Schedule 27 or by the Adjudicator pursuant to Section 6 of this Schedule 27 is more than \$[REDACTED] (index linked) in the aggregate or \$[REDACTED] (index linked) in any one year,
- (b) the Dispute involves issues other than monetary claims by one Party against the other Party and which a Party reasonably believes are material and significant to that Party, or
- (c) a Notice of Dispute has been issued for a Dispute in relation to the Independent Certifier's decisions for which Section 4.4 of this Schedule 27 provides that Sections 5 and 6 of this Schedule 27 shall not apply to resolve such Dispute,

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

- 7.2** If a Party is entitled to refer a Dispute to which Sections 5 or 6 of this Schedule 27 apply to arbitration or litigation pursuant to Sections 7.1 or 9.1 of this Schedule 27 then, unless the Parties otherwise expressly agree in writing, all information, documents and submissions prepared by a Party for the Expert or the Adjudicator which are not business records that would otherwise be kept in the normal course of business by the Party for its business purposes, and all decisions and determinations by the Expert or the Adjudicator, shall be confidential and inadmissible in any arbitration or litigation proceeding. For greater certainty, neither the Expert or the Adjudicator shall be called as a witness by either party in any arbitration or litigation proceeding.

**8. Resolution by Arbitration**

8.1 Upon the mutual written consent of the parties,

- (a) where the Parties fail to resolve a Dispute through the process set out in Sections 2, 3, 4, 5 and 6 (to the extent required) of this Schedule 27, and
- (b) all other requirements set out in this Schedule 27 have been satisfied,

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

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

8.3 If the arbitration tribunal is comprised of a single arbitrator, the arbitrator shall be appointed as follows:

- (a) if the Parties agree on the arbitrator, the Parties shall jointly appoint the arbitrator as soon as possible and in any event within 5 Business Days after delivery of the notice to arbitrate pursuant to Section 7 of this Schedule 27; and
- (b) if the Parties fail to agree or jointly appoint the arbitrator within such 5 Business Day period, either Party may apply to the Ontario Superior Court of Justice for appointment of the arbitrator, in which case the court shall appoint the arbitrator at the earliest opportunity in accordance with the following:
  - (i) from the lists of potential arbitrators submitted to the court by the Parties, provided that potential arbitrators meeting the necessary qualifications and experience set out in this Schedule 27 are on the list; or
  - (ii) if one Party fails to submit its list of potential arbitrators to the court within 5 Business Days of a request from the court to submit a list, from the list submitted by the other Party provided that potential arbitrators meeting the necessary qualifications and experience set out in this Schedule 27 are on the list of that other Party; or
  - (iii) if no list is submitted by either Party, or if the list or lists submitted do not include potential arbitrators with the necessary qualifications and experience, the court shall be entitled at its sole discretion to appoint anyone who meets the requirements set out in this Schedule 27 for the qualifications and experience of the arbitrator.

- 8.4 If the arbitration tribunal is comprised of three arbitrators:
- (a) the arbitrators shall be appointed as follows:
    - (i) each Party shall appoint one arbitrator no later than 5 Business Days after delivery of the notice to arbitrate pursuant to Section 7 of this Schedule 27;
    - (ii) if a Party fails to appoint an arbitrator within 5 Business Days after delivery of the notice to arbitrate, the other Party is entitled to apply to the Ontario Superior Court of Justice to appoint that arbitrator, in which case the court shall appoint that arbitrator at the earliest opportunity using a comparable process to that described in Section 8.3(b) of this Schedule 27;
    - (iii) the arbitrators appointed in accordance with the foregoing shall, within 5 Business Days after their appointment, jointly appoint a third arbitrator who shall also act as the chair of the arbitration tribunal and who, in addition to all other required qualifications, shall have experience in arbitration or judicial processes and procedures; and
    - (iv) if the two arbitrators appointed by the Parties fail to appoint a third arbitrator within the required time, either of the other two arbitrators may apply to the Ontario Superior Court of Justice for appointment of the third arbitrator, in which case the court shall appoint the third arbitrator at the earliest opportunity using a comparable process to that described in Section 8.3(b) of this Schedule 27; and
  - (b) the arbitrators appointed by the Parties shall at all times be neutral and act impartially and shall not act as advocates for the interests of the Party who appointed them.
- 8.5 All arbitrators must have qualifications and experience relevant to the issues in the Dispute and also have qualifications and experience as arbitrators.
- 8.6 No one shall be nominated or appointed to act as an arbitrator who is or was in any way interested, financially or otherwise, in the conduct of the Project Operations or in the business affairs of HMQ, Project Co, or any consultant, subconsultant or subcontractor of any of them.
- 8.7 The arbitrator(s) shall have the jurisdiction and power to:
- (a) amend or vary any and all rules under the *Arbitration Act, 1991* (Ontario), including rules relating to time limits, either by express agreement of the Parties or, failing such agreement, as the arbitrator(s) consider appropriate and necessary in the circumstances to resolve the Dispute and render an award;
  - (b) require some or all of the evidence to be provided by affidavit;
  - (c) hold a hearing at which evidence and submissions are presented by the Parties;

- (d) direct either or both Parties to prepare and provide the arbitrator(s) with such documents, test results or other things as the arbitrator(s) may require to assist them in the resolution of the Dispute and rendering of an award;
  - (e) require either Party to supply or prepare for examination by the arbitrator(s) and the other Party, any document or information the arbitrator(s) considers necessary;
  - (f) inspect the Project Operations, giving reasonable notice to each Party of the time when, and the place where, the arbitrator(s) intend(s) to conduct any inspections;
  - (g) award any remedy or relief that a court or judge of the Ontario Superior Court of Justice could order or grant subject to and in accordance with this Project Agreement, including, without limitation, interim orders, interim and permanent injunctions, and specific performance; and
  - (h) require either or both Parties to take and provide to the arbitrator(s) such measurements, perform such tests, perform such audits, or take any and all such other measures or steps as the arbitrator(s) consider necessary or desirable to aid them in making a fair and reasonable award.
- 8.8 The place of arbitration shall be Toronto, Ontario. The language of the arbitration shall be English.
- 8.9 The costs of an arbitration are in the discretion of the arbitrator(s) who, in addition to any jurisdiction and authority under applicable law to award costs, has the jurisdiction and authority to make an order for costs on such basis as the arbitrator(s) considers appropriate in the circumstances, including to award actual legal fees and disbursements and expert witness fees, and to specify or order any or all of the following:
- (a) the Party entitled to costs;
  - (b) the Party who must pay the costs;
  - (c) the amount of the costs or how that amount is to be determined; and
  - (d) how all or part of the costs must be paid.
- 8.10 In exercising discretion to award costs, however, the arbitrator(s) will take into account the desire of the Parties that costs should generally be awarded to each Party in proportion to the relative success that each Party has in the arbitration.
- 8.11 The award of the arbitrator(s) shall be final and binding upon both Parties, and both Parties expressly waive all rights of appeal in connection with the award of the arbitrator(s). Judgment may be entered upon the award in accordance with Applicable Law in any court having jurisdiction.

- 8.12 The Parties agree to and shall co-operate fully with the arbitrator(s) and proceed with the arbitration expeditiously, including in respect of any hearing, in order that an award may be rendered as soon as practicable by the arbitrator(s), given the nature of the Dispute. The arbitrator(s) shall render a decision as soon as possible and, in any event, shall use all reasonable efforts to render a decision no later than 20 Business Days after the date of the hearing, or such longer period of time as agreed to in writing by the Parties. If the arbitration tribunal is comprised of three arbitrators, the decision of a majority of the arbitration tribunal shall be deemed to be the decision of the arbitration tribunal, and where there is no majority decision, the decision of the chair of the arbitration tribunal shall be deemed to be the decision of the arbitration tribunal.
- 8.13 This Project Agreement, including this Schedule 27, constitutes an agreement to arbitrate that shall be specifically enforceable.
- 8.14 Any arbitrator appointed pursuant to this Section 8 of this Schedule 27 shall keep all information about the Dispute confidential and shall not disclose such information to anyone other than the Parties.

**9. Litigation**

- 9.1 Notwithstanding that a notice to arbitrate has been delivered pursuant to Section 7.1 of this Schedule 27, following receipt of the Expert's award or determination pursuant to Section 5 of this Schedule 27, or of the Adjudicator's award or determination pursuant to Section 6 of this Schedule 27, or if applicable a Notice of Dispute has been issued following receipt of a decision of the Independent Certifier if the Dispute is a Dispute in relation to the Independent Certifier's decisions for which Section 4.4 of this Schedule 27 provides that Sections 5 and 6 of this Schedule 27 shall not apply, if one or more of the following apply then either Party may elect, by written notice signed by their Party Representative, to require that the Dispute be referred to and resolved solely by litigation in the Ontario Superior Court of Justice, and both Parties agree to attorn to the exclusive jurisdiction of the courts of the Province of Ontario in respect of the Dispute:
- (a) if the actual or potential total value or amount at issue in the Dispute (as determined by adding all claims and counterclaims) is more than \$[REDACTED] (index linked) in the aggregate or \$[REDACTED] (index linked) in any one year; or
  - (b) if the Dispute is considered by HMQ to involve material issues of public health or safety.

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

9.2 If neither Party delivers a notice of election to resolve a particular Dispute by litigation in the manner and within the time specified in Section 9.1 of this Schedule 27, then:

- (a) provided that one Party has, in the manner and within the time period specified in Section 7.1 of this Schedule 27, given notice to the other Party of election to resolve that Dispute by arbitration, and subject to a consolidation of proceedings pursuant to Section 10 of this Schedule 27, that Dispute shall be resolved only by arbitration pursuant to Sections 8.2 to 8.14 of this Schedule 27; and
- (b) subject to Section 9.2(a), where a Dispute was determined by the Expert, the Expert's determination is final and binding on both Parties and not subject to appeal, arbitration, litigation or any other dispute resolution process.

10. **[Intentionally Deleted]**

11. **Consolidation with Third Party Disputes**

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

11.2 Subject to Section 11.4 of this Schedule 27, if either Party is involved in litigation in the Province of Ontario with a third party ("**Third Party Litigation**") and if:

- (a) such Third Party Litigation involves common factual or legal issues (including common issues of damages) which are the subject of a Project Agreement Arbitration; and
- (b) one of the Parties is brought directly into the Third Party Litigation as a Party to that litigation,

then on the application of either Party to the court in the Province of Ontario having jurisdiction the court may, if it determines that it is just and convenient in all the circumstances, order a stay of either or both the Project Agreement Arbitration proceeding and Third Party Litigation, or order a joinder of the Project Agreement Arbitration and the Third Party Litigation. If such joinder is ordered, the Project Agreement Arbitration and the Third Party Litigation ordered to be joined by the court shall be determined by that court or by another court in Ontario such that the Project Agreement Arbitration and the Third Party Litigation shall be resolved in one forum. For

purposes of the foregoing, joinder of the Project Agreement Arbitration and the Third Party Litigation shall be construed to include stays and conditional stays of issues in the Project Agreement Arbitration pending the commencement and completion of third party proceedings by one or both of the Parties in the Third Party Litigation.

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

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

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

12. **[Intentionally Deleted]**

13. **Miscellaneous**

13.1 Project Co and HMQ shall diligently carry out their respective obligations under this Project Agreement during the pendency of any Disputes, including, without limitation, adjudication proceedings, arbitration proceedings or litigation proceedings. If during the pendency of any Dispute it is considered necessary by either Party to proceed in respect of the matter that is in Dispute, then without prejudice to Project Co's rights in respect of the Dispute (including in respect of Delay Events, Compensation Events and Variations), Project Co shall proceed in accordance with the direction of HMQ, and in the event the matter in dispute is determined in favour of Project Co, proceeding in accordance with HMQ's position shall: (i) subject to and in accordance with Section 37 of this Project Agreement, be treated as a Delay Event; (ii) subject to and in accordance with Section 38 of this Project Agreement, be treated as a Compensation Event; and (iii) subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation. For greater certainty, in respect of any Dispute relating to the Works referred to in Section 4.2 of this Schedule 27, the Independent Certifier shall be the decision maker of first instance and the Parties shall comply with the initial decision of



the Independent Certifier unless and until it is overturned in a subsequent arbitration or litigation proceeding.

- 13.2 Nothing contained in this Schedule 27 will prevent the Parties from seeking interim protection from the courts of the Province of Ontario, including seeking an interlocutory injunction, if necessary to prevent irreparable harm to a Party.
- 13.3 The Parties shall indemnify each other in respect of any damages suffered or incurred on amounts agreed to be paid pursuant to resolution of a Dispute by the Party Representatives or by the executives of the Parties pursuant to Sections 2 and 3 of this Schedule 27, and on the amount of any award or judgment as follows:
- (a) for amounts payable by Project Co to HMQ, Project Co shall indemnify HMQ as provided for at Section 53.1(e) of this Project Agreement from and against any damages suffered or incurred resulting from any overpayment to Project Co or, as applicable, any underpayment or non-payment by Project Co from the date of any overpayment to Project Co or, as applicable, from the date on which payment was due under this Project Agreement to HMQ until the date of payment; or
  - (b) for amounts payable by HMQ to Project Co, HMQ shall indemnify Project Co as provided for at Section 53.2(c) of this Project Agreement from and against any damages suffered or incurred resulting from any overpayment to HMQ or, as applicable, any underpayment or non-payment by HMQ from the date of any overpayment to HMQ or, as applicable, from the date on which payment was due under this Project Agreement to Project Co until the date of payment.
- 13.4 Project Co shall ensure that any and all documents and other information in the possession or control of any Project Co Party that are available to Project Co and that may be necessary for the resolution of a Dispute on an informed basis by the Party Representatives or by the executives of the Parties pursuant to Sections 2 and 3 of this Schedule 27, or by an expert, an adjudicator, an arbitrator or court of competent jurisdiction, are made available in a timely manner to HMQ and the HMQ Representative.
- 13.5 HMQ shall ensure that any and all documents and other information in the possession or control of any HMQ Party that are available to HMQ and that may be necessary for the resolution of a Dispute on an informed basis by the Party Representatives or by the executives of the Parties pursuant to Sections 2 and 3 of this Schedule 27, or by an adjudicator, an arbitrator or court of competent jurisdiction, are made available in a timely manner to Project Co and the Project Co Representative.
- 13.6 The Parties can, by written agreement, on a Dispute by Dispute basis:
- (a) extend any or all timelines set out in this Schedule 27;
  - (b) agree to waive or by-pass any one or more of the Dispute resolution processes in Sections 2, 3, 4, 5 and 6 of this Schedule 27 and, instead, proceed directly to

resolution of the Dispute by arbitration or litigation pursuant to Sections 7, 8 and 9 of this Schedule 27;

- (c) agree to (i) resolve a Dispute by litigation rather than adjudication or arbitration notwithstanding the requirements of Section 6 and Section 8 of this Schedule 27, or (ii) agree to resolve a Dispute by arbitration rather than adjudication or litigation notwithstanding the requirements of Section 6 and Section 9 of this Schedule 27, or (iii) agree to resolve a Dispute by adjudication rather than arbitration or litigation notwithstanding the requirements of Section 8 and Section 9 of this Schedule 27; and
- (d) agree to resolve a Dispute relating to the decision of an Expert by adjudication, arbitration or litigation, notwithstanding the provisions of Section 5 of this Schedule 27.

## SCHEDULE 28

### SITE

The full legal description of the Site, including references to the applicable Blocks on the Plan of Subdivision, is as follows:

No	PIN	BLOCKS	LEGAL DESCRIPTION
1.	21077-0291	West 7	PCL 7-2 SEC A108; PT LT 12 N/S MILL ST PL 108 TORONTO PT 41 66R16601 S OF 66R17254; SAVE & EXCEPT 66M2488 CITY OF TORONTO
2.	21077-0293 (Part)	West Block 7 Laneway	PART OF LOTS 11& 12, NORTH SIDE OF MILL STREET, PLAN 108, DESIGNATED AS PARTS 3, 6 & 7, PLAN 66R-25445, SAVE AND EXCEPT PLAN 66M-2488 CITY OF TORONTO
3.	21077-0295	West 3, West 4	PCL 7-2 SEC A108; LT 1 PL 611 TORONTO; LT 2 PL 611 TORONTO; LT 3 PL 611 TORONTO; PRIVATE LANE PL 611 TORONTO; 2 FT RESERVE PL 611 TORONTO; LT 7 S/S FRONT ST E PL 108 TORONTO; LT 8 S/S FRONT ST E PL 108 TORONTO; LT 9 S/S FRONT ST E PL 108 TORONTO; LT 11 S/S FRONT ST E PL 108 TORONTO; LT 12 S/S FRONT ST E PL 108 TORONTO; PT LT 10 S/S FRONT ST E PL 108 TORONTO; PT LT 12 N/S MILL ST PL 108 TORONTO; PT LT 7 N/S MILL ST PL 108 TORONTO; PT LT 8 N/S MILL ST PL 108 TORONTO; PT LT 9 N/S MILL ST PL 108 TORONTO; PT LT 10 N/S MILL ST PL 108 TORONTO; PT LT 11 N/S MILL ST PL 108 TORONTO PT 41 66R16601 N OF 66R17254; SAVE & EXCEPT 66M2488 CITY OF TORONTO
4.	21077-0297	1	Block 1, Plan 66M2488 City of Toronto
5.	21077-0298	2	Block 2, Plan 66M2488 City of Toronto
6.	21077-0299	3	Block 3, Plan 66M2488 City of Toronto
7.	21077-0300	4	Block 4, Plan 66M2488 SUBJECT TO AN EASEMENT AS IN AT2824753 City of Toronto
8.	21077-0301	5	Block 5, Plan 66M2488 City of Toronto
9.	21077-0302	6	Block 6, Plan 66M2488 City of Toronto

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No	PIN	BLOCKS	LEGAL DESCRIPTION
10.	21077-0303	7	Block 7, Plan 66M2488 SUBJECT TO AN EASEMENT AS IN AT998141; SUBJECT TO AN EASEMENT AS IN AT998210; SUBJECT TO AN EASEMENT AS IN AT998268 City of Toronto
11.	21077-0304	8	Block 8, Plan 66M2488 SUBJECT TO AN EASEMENT AS IN AT2824753 City of Toronto
12.	21077-0305	9	Block 9, Plan 66M2488 SUBJECT TO AN EASEMENT AS IN CA121112; SUBJECT TO AN EASEMENT AS IN CA121111E; SUBJECT TO AN EASEMENT AS IN AT2824753; SUBJECT TO AN EASEMENT OVER PARTS 1, 2 & 3, PLAN 66R-25770 IN FAVOUR OF PART LOT 28 N/S FRONT ST. (NOW MILL ST.) PLAN 108 & PART LOT 28 S/S OF FRONT ST. PLAN 108 DESIGNATED AS PARTS 1-7 PLAN 66R-22377 AS IN AT2825067 City of Toronto
13.	21077-0306	10	Block 10, Plan 66M2488 SUBJECT TO AN EASEMENT AS IN AT2824753 City of Toronto
14.	21077-0307	11	Block 11, Plan 66M2488 SUBJECT TO AN EASEMENT AS IN AT2824753 City of Toronto
15.	21077-0308	12	Block 12, Plan 66M2488 SUBJECT TO AN EASEMENT AS IN AT2824753 City of Toronto
16.	21077-0309	13	Block 13, Plan 66M2488 SUBJECT TO AN EASEMENT AS IN AT2824753 City of Toronto
17.	21077-0310	14	Block 14, Plan 66M2488 SUBJECT TO AN EASEMENT AS IN AT2824753 City of Toronto
18.	21077-0311	15	Block 15, Plan 66M2488 SUBJECT TO AN EASEMENT AS IN AT2824753 City of Toronto
19.	21077-0312	16	Block 16, Plan 66M2488 SUBJECT TO AN EASEMENT AS IN AT2824753 City of Toronto
20.	21077-0314	18	Block 18, Plan 66M2488 City of Toronto
21.	21077-0315	19	Block 19, Plan 66M2488 City of Toronto
22.	21077-0316	20	Block 20, Plan 66M2488 SUBJECT TO AN EASEMENT AS IN CA121112; SUBJECT TO AN EASEMENT AS IN CA121111E; SUBJECT TO AN EASEMENT AS IN AT2824753 City of Toronto

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No	PIN	BLOCKS	LEGAL DESCRIPTION
23.	21077-0317	21	Block 21, Plan 66M2488 City of Toronto
24.	21077-0318	22	Block 22, Plan 66M2488 City of Toronto
25.	21077-0319	23	Block 23, Plan 66M2488 City of Toronto
26.	21077-0320	24	Block 24, Plan 66M2488 City of Toronto
27.	21077-0321	25	Block 25, Plan 66M2488 City of Toronto
28.	21077-0323	27	Block 27, Plan 66M2488 City of Toronto
29.	21077-0324	28	Block 28, Plan 66M2488 City of Toronto
30.	21077-0325	29	Block 29, Plan 66M2488 City of Toronto
31.	21077-0326	30	Block 30, Plan 66M2488 City of Toronto
32.	21077-0327	31	Block 31, Plan 66M2488 City of Toronto
33.	21077-0328	32	Block 32, Plan 66M2488 SUBJECT TO AN EASEMENT AS IN CA121112; SUBJECT TO AN EASEMENT AS IN CA121111E City of Toronto
34.	21077-0329	33	Block 33, Plan 66M2488 City of Toronto
35.	21077-0330	34	Block 34, Plan 66M2488 City of Toronto
36.	21077-0331	35	Block 35, Plan 66M2488 City of Toronto
37.	21077-0223 (Part)	Front St. E.	PCL 1-1 SEC A34E; PT FRONT ST E PL 108 TORONTO (PALACE ST) AS CLOSED BY BYLAW ES14695 PT 56 66R16601 EXCEPT 66M2473;TORONTO , CITY OF TORONTO
38.	21077-0267 (Part)	Block 19, Phase 1	BLOCK 19, PLAN 66M2473 SUBJECT TO AN EASEMENT AS IN CT16241 CITY OF TORONTO
39.	21077-0266	Block 18, Phase 1	BLOCK 18, PLAN 66M2473 CITY OF TORONTO
40.	21077-0225	Mill St.	PCL 1-1 SEC A34E; PT MILL ST PL 108 TORONTO (FRONT ST)EAST OF CHERRY ST BEING PT 58 66R16601 EXCEPT 66M2473; TORONTO , CITY OF TORONTO

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No	PIN	BLOCKS	LEGAL DESCRIPTION
41.	21077-0265	Block 17, Phase 1	BLOCK 17, PLAN 66M2473 CITY OF TORONTO
42.	21077-0264	Block 16, Phase 1	BLOCK 16, PLAN 66M2473; CITY OF TORONTO
43.	21077-0077	Cherry St. (S of Mill)	FIRSTLY; LT 18 RCP 12161 TORONTO EXCEPT PT 4 & 8 63R624; PT LT 13 S/S FRONT ST PL 108 TORONTO; PT MARSH LANDS GRANTED TO CITY OF TORONTO BY ONTARIO GOVT ON MAY 18, 1880 & DOMINION GOVT ON OCT 10, 1903 TWP OF YORK AS ESTABLISHED BY UNREGISTERED BYLAW 2747; PT OLD DON CHANNEL TWP OF YORK AS IN ES12138 (FIRSTLY) N OF PT 3 63R624; SECONDLY; PT CHERRY ST PL 159E TORONTO (CLOSED BY UNREGISTERED BYLAW 4932); BEING CHERRY ST BTN MILL ST & LAKE SHORE BLVD E; CITY OF TORONTO
44.	21077-0076 (Part)	Mill St. W of Cherry	PT FRONT ST PL 108 TORONTO (AKA MILL ST) BTN PARLIAMENT ST & CHERRY ST; CITY OF TORONTO
45.	21077-0029	Cherry St. (Front to Mill)	PCL 1-1 SEC A34E; PT CHERRY ST PL 108 TORONTO (UNNAMED ST) PT 53 66R16601; TORONTO , CITY OF TORONTO
46.	21077-0028	Cherry St. (Eastern to Front)	PCL 1-1 SEC A34E; PT CHERRY ST PL 108 TORONTO (UNNAMED ST); PT MARKET PLACE PL 108 TORONTO; PT LT 12 S/S EASTERN AV PL 108 TORONTO PT 52 66R16601; TORONTO , CITY OF TORONTO
47.	21078-0184	Old Eastern Ave.	PCL 1-1 SEC A34E; PT EASTERN AV PL 108 TORONTO PT 50 66R16601 EXCEPT 66M2473; TORONTO, CITY OF TORONTO
48.	21078-0016 (Part)	St. Lawrence St., N of Old Eastern	PCL 1-1 SEC A34E; PT ST. LAWRENCE ST PL 108 TORONTO PT 49 66R16601; TORONTO, CITY OF TORONTO
49.	21078-0154 (Part)	Eastern Ave (At and E of Cherry)	SOUTH PARK ST PL 108 TORONTO (AKA EASTERN AV) BTN W LIMIT OF CHERRY ST & S LIMIT OF PT 3 63R2772; CITY OF TORONTO
50.	21079-0042	Eastern Ave (W of Cherry)	SOUTH PARK ST PL 108 TORONTO; PT LT 14-21 PL 122 TORONTO; PT LT 5-6 PL 154E TORONTO; PT LT E PL 263E TORONTO AS IN ES57250 & ES22776; BEING SOUTH PARK ST (AKA EASTERN AV) N OF FRONT ST & W OF CHERRY ST; CITY OF TORONTO

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No	PIN	BLOCKS	LEGAL DESCRIPTION
51.	21078-0152	Cherry St. (N of Eastern)	PT LT 17 N/S SOUTH PARK ST W/S SUMACH ST PL 108 TORONTO; PT LT 18 N/S SOUTH PARK ST W/S SUMACH ST PL 108 TORONTO; PT LT 19 N/S SOUTH PARK ST W/S SUMACH ST PL 108 TORONTO; PT LT 20 N/S SOUTH PARK ST W/S SUMACH ST PL 108 TORONTO; PT LT 21 N/S SOUTH PARK ST W/S SUMACH ST PL 108 TORONTO; PT LT 20 S/S KING ST, 21 S/S KING ST PL 108 TORONTO PT 1 & 4 RD162; BEING CHERRY STREET BTN EASTERN AV & ADELAIDE ST E; CITY OF TORONTO
52.	21079-0341	WT 1	PART OF LOTS 17, 18, 19 AND 20, NORTH SIDE OF EASTERN AVENUE (FORMERLY SOUTH PARK STREET) AND WEST SIDE OF SUMACH STREET, PLAN 108, DESIGNATED AS PART 1 ON PLN 66R-24546. CITY OF TORONTO
53.	21079-0269 (Part)	Virgin Place	LANE PL D226 TORONTO (AKA VIRGIN PLACE); PT LT 20 S/S KING ST PL 108 TORONTO PT 1, 63R438; CITY OF TORONTO
54.	21079-0337	WT 2	PART LOT 20 PLAN 108, DES AS PT 1 ON PL 66R24361 CITY OF TORONTO
55.	21078-0148 (Part)	Adelaide St. E.	FIRSTLY: PRIVATE LANE PL 34E TORONTO; PT LT 1-2, 4, 6 PL 34E TORONTO; PT LT Y OR 1 PL 108 TORONTO; PT SUMACH ST, CROSS ST PL 108 TORONTO; PT LT 5 W/S CROSS ST, 6 E/S CROSS ST, 7 E/S CROSS ST, 8 E/S CROSS ST, 9 E/S CROSS ST PL 108 TORONTO; PT LT 15 N/S SOUTH PARK ST E/S SUMACH ST PL 108 TORONTO; PT LT 16 N/S SOUTH PARK ST E/S SUMACH ST PL 108 TORONTO; PT LT 17 N/S SOUTH PARK ST E/S SUMACH ST PL 108 TORONTO; PT LT 18 N/S SOUTH PARK ST E/S SUMACH ST PL 108 TORONTO; PT LT 20 N/S SOUTH PARK ST E/S SUMACH ST PL 108 TORONTO; PT LT 21 N/S SOUTH PARK ST E/S SUMACH ST PL 108 TORONTO; PT LT 21 N/S SOUTH PARK ST W/S SUMACH ST PL 108 TORONTO; PT LT 20 S/S KING ST, 21 S/S KING ST PL 108 TORONTO; PT BLK H PL DON IMPROVEMENT TORONTO PT 5, 7-8, 10-12, 17-19 RD162, PT 6 63R2357, PT 1-2 63R2358 & PT 3-5, 7-12 & 14 63R2772; SECONDLY: PT LT Y OR 1 PL 108 TORONTO PT 13-16 RD162; CITY OF TORONTO

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No	PIN	BLOCKS	LEGAL DESCRIPTION
56.	21079-0339	WT 3	PART OF LOT 21, SOUTH SIDE OF KING STREET, PLAN 108, DESIGNATED AS PART 1, PLAN 66R-24360 CITY OF TORONTO
57.	21078-0153 (Part)	Sumach St.	SUMACH ST PL 108 TORONTO; PT LT 21 S/S KING ST PL 108 TORONTO PT 6 RD162; BEING SUMACH ST BTN QUEEN ST E & ADELAIDE ST E; CITY OF TORONTO
58.	21079-0340	525 King St. E.	PART LOT 20 S/S KING ST, 21 S/S KING ST PLAN 108 TORONTO PT 21, RD161 SAVE AND EXCEPT PART 1 PLAN 66R24360 AS IN AT2184202. CITY OF TORONTO
59.	21079-0338	507 King St. E.	LT 3-4 PL D226 TORONTO; PT LT 1-2 PL D226 TORONTO; PT LT 20 S/S KING ST PL 108 TORONTO AS IN CT795013 (FIRSTLY & THIRDLY DESCRIBED) SAVE AND EXCEPT PT LT 20 PL 108 DES AS PT 1 ON PL 66R24361; T/W CT795013; CITY OF TORONTO
60.	21078-0178 (Part)	King St., E of Sumach	KING ST PL 108 TORONTO; PT LT 29 S/S KING ST PL 108 TORONTO PT 6 RD208; BEING KING ST (AKA KING ST E) BTN SUMACH ST & BAYVIEW AVE EXCEPT PT 1 PL 66R23181; CITY OF TORONTO
61.	21079-0279 (Part)	King St., W of Sumach	KING ST PL 108 TORONTO BEING KING ST E BTN THE E LIMIT OF PT 1, 63R2356 & SUMACH ST; CITY OF TORONTO
62.	21079-0342	19 Sackville	LOTS 15, 16 AND PART OF LOTS 17, 18, 19 AND 20 NORTH SIDE OF SOUTHPARK STREET AND WEST SIDE OF SUMACH STREET, PLAN 108, DESIGNATED AS PART 2 ON PLN 66R-24546. CITY OF TORONTO
63.	21078-0138	10 Sumach	PT LT 20 N/S SOUTH PARK ST W/S SUMACH ST PL 108 TORONTO; PT LT 21 N/S SOUTH PARK ST W/S SUMACH ST PL 108 TORONTO AS IN CA146477; CITY OF TORONTO
64.	21078-0137	12 Sumach	PT LT 21 N/S SOUTH PARK ST W/S SUMACH ST PL 108 TORONTO AS IN CA670134; DESCRIPTION MAY NOT BE ACCEPTABLE IN FUTURE AS IN CA670134; CITY OF TORONTO
65.	21078-0136	14 Sumach	PT LT 21 N/S SOUTH PARK ST W/S SUMACH ST PL 108 TORONTO PT 1 64R3355; CITY OF TORONTO
66.	21078-0135	16 Sumach	PT LT 21 N/S SOUTH PARK ST W/S SUMACH ST PL 108 TORONTO PT 2 63R3355; CITY OF TORONTO



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No	PIN	BLOCKS	LEGAL DESCRIPTION
67.	21078-0109	29 Sumach	PT LT 24 S/S KING ST PL 108 TORONTO AS IN ES69572; CITY OF TORONTO

**SCHEDULE 29**

**LETTERS OF CREDIT**

**PART A**

**STANDBY LETTER OF CREDIT**

**[NTD: The Standby Letter of Credit must be issued by a bank acceptable to HMQ, acting reasonably, and must be callable at the bank’s counters in Toronto, Ontario.]**

Letter of Credit: #[●]

Date: [●]

**Ontario Infrastructure and Lands Corporation**

777 Bay Street, 9<sup>th</sup> Floor  
Toronto, ON  
M5G 2C8

**Attn: Senior Vice President, Project Development and Construction**

Dear Sir/Madam:

**RE: The Pan/Parapan American Games Athletes’ Village Project**

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At the request of our client, [●] (“**Project Co**”), we, [insert name and address of issuing bank], hereby issue in your favour an irrevocable standby letter of credit (the “**Letter of Credit**”) in the amount of [REDACTED] (\$[REDACTED]).

The amount available under this Letter of Credit is payable to Her Majesty the Queen in Right of Ontario as represented by the Minister of Infrastructure, as represented by Ontario Infrastructure and Lands Corporation (“**HMQ**”), at any time and from time to time, upon (a) receipt by us of a written demand for payment, accompanied by a certificate signed by two officers of HMQ certifying that HMQ is entitled to draw on this Letter of Credit pursuant to Section 2.3(c) of a project agreement dated [●] (as amended from time to time, the “**Project Agreement**”), and (b) presentation of the original of this Letter of Credit.

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

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

Partial drawings are permitted.

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

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

It is understood that [insert name of issuing bank] is obligated under this Letter of Credit for payments of monies only.

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

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

Yours very truly,

**[Name of Issuing Bank]**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**PART B**

**[INTENTIONALLY DELETED]**

**SCHEDULE 30**

**INSURANCE TRUST AGREEMENT**

**THIS AGREEMENT** is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2011

**BETWEEN:**

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO** as represented by the Minister of Infrastructure, as represented by Ontario Infrastructure and Lands Corporation, a non-share capital corporation continued and amalgamated under the *Ontario Infrastructure and Lands Corporation Act*, 2011, S.O. 2011, c. 9, Schedule 32, as amended

(“**HMQ**”)

**AND:**

[REDACTED]

(the “**Lenders’ Agent**”)

**AND:**

**DUNDEE KILMER DEVELOPMENTS L.P.**, [REDACTED]

(“**Project Co**”)

**AND:**

**COMPUTERSHARE TRUST COMPANY OF CANADA**, a trust company incorporated under the laws of Canada

(the “**Account Trustee**”)

**WHEREAS:**

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

**NOW THEREFORE** in consideration of the mutual covenants and agreements of the Parties hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

## **1. DEFINITIONS**

In this Insurance Trust Agreement, including the recitals and appendices, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Insurance Trust Agreement) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:

- (a) **“Account Trustee”** means Computershare Trust Company of Canada.
- (b) **“Bank”** means [REDACTED].
- (c) **“Business Day”** has the meaning given in the Project Agreement.
- (d) **“Change of Authorization Event”** has the meaning given in Section 7(a) of this Insurance Trust Agreement.
- (e) **“Change of Authorization Notice”** has the meaning given in Section 7(b)(ii) of this Insurance Trust Agreement.
- (f) **“Default Notice”** means a written notice given by the Lenders’ Agent to the Account Trustee that an event of default under the Lending Agreements has occurred and is continuing.
- (g) **“Default Period”** means the period commencing on the date upon which the Account Trustee receives a Default Notice and ending on the date upon which the Account Trustee receives written notice from the Lenders’ Agent that the event of default which was the subject matter of the applicable Default Notice has been cured.
- (h) **“Facilities”** has the meaning given in the Project Agreement.
- (i) **“Governmental Authority”** has the meaning given in the Project Agreement.
- (j) **“HMQ”** means Her Majesty the Queen in right of Ontario as represented by the Minister of Infrastructure, as represented by Ontario Infrastructure and Lands Corporation, a non-share capital corporation continued and amalgamated under the *Ontario Infrastructure and Lands Corporation Act*, 2011, S.O. 2011, c. 9, Schedule 32, as amended
- (k) **“Insurance Policies”** has the meaning given in Section 4(a) of this Insurance Trust Agreement.
- (l) **“Insurance Proceeds”** has the meaning given in Section 4(b) of this Insurance Trust Agreement.
- (m) **“Insurance Trust Account”** means [REDACTED].

- (n) **“Insurance Trust Agreement”** means this insurance trust agreement.
- (o) **“Lenders”** has the meaning given in the Project Agreement.
- (p) **“Lenders’ Agent”** means [REDACTED], acting as agent for and on behalf of the Lenders.
- (q) **“Lenders’ Direct Agreement”** means the lenders’ direct agreement made on or about the date hereof between HMQ, Project Co and the Lenders’ Agent.
- (r) **“Lending Agreements”** has the meaning given in the Project Agreement.
- (s) **“Order”** has the meaning given in Section 6(k) of this Insurance Trust Agreement.
- (t) **“Party”** means any of HMQ, Project Co, the Lenders’ Agent or the Account Trustee, and **“Parties”** means all of HMQ, Project Co, the Lenders’ Agent and the Account Trustee.
- (u) **“Project”** has the meaning given in the Project Agreement.
- (v) **“Project Agreement”** means the project agreement made on or about the \_\_\_\_ day of \_\_\_\_\_, 2011 between HMQ and Project Co.
- (w) **“Project Co”** means Dundee Kilmer Developments L.P.
- (x) **“Project Co Event of Default”** has the meaning given in the Project Agreement.
- (y) **“Project Operations”** has the meaning given in the Project Agreement.
- (z) **“Trust Property”** means all of the property held in trust by the Account Trustee pursuant to this Insurance Trust Agreement, including, without limitation, the Insurance Trust Account, and all amounts from time to time contained therein, the Insurance Policies and the Insurance Proceeds.

## **2. INTERPRETATION**

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

- (a) The headings in this Insurance Trust Agreement are for convenience of reference only, shall not constitute a part of this Insurance Trust Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Insurance Trust Agreement.
- (b) Unless the context otherwise requires, references to specific Sections, Clauses, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Clauses, Paragraphs, Subparagraphs, or divisions of this Insurance Trust Agreement and the terms “Section” and “Clause” are used interchangeably and are synonymous.

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



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

### **3. INSURANCE TRUST ACCOUNT**

- (a) Prior to the commencement of a Default Period, the Insurance Trust Account, and all amounts from time to time contained therein, including interest thereon, shall be held in trust by the Account Trustee for the benefit of Project Co. During a Default Period, the Insurance Trust Account, and all amounts from time to time contained therein, shall be held in trust by the Account Trustee for the benefit of the Lenders' Agent and the Lenders, provided that, upon receipt by the Account Trustee of a Change of Authorization Notice, the Insurance Trust Account, and all amounts from time to time contained therein, shall be held in trust by the Account Trustee for the benefit of HMQ.
- (b) The Account Trustee shall not release, distribute or transfer any funds from the Insurance Trust Account other than in accordance with the terms of this Insurance Trust Agreement.
- (c) Notwithstanding any other provision of this Insurance Trust Agreement and subject to Section 3(d), the Lenders' Agent, HMQ, and Project Co agree that, if any of them either receives any Insurance Proceeds from the Insurance Trust Account or has the right to direct the Account Trustee to advance funds in respect of any Insurance Proceeds from the Insurance Trust Account to third parties, such funds shall be directed, used or advanced only for one of the following purposes:
  - (i) the repair, reinstatement, restoration or replacement of the Facilities or any other assets, materials or goods necessary or desirable for the carrying out of the Project Operations in respect of which such Insurance Proceeds have been paid;
  - (ii) the completion of the Project; or
  - (i) indemnification for any HMQ loss for which the subject Insurance Proceeds were paid under the Insurance Policies (as defined below).

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

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

**4. INSURANCE**

- (a) Project Co shall deliver, or cause to be delivered, to the Account Trustee originals of all property and asset related insurance policies that Project Co is required to maintain under the Project Agreement (collectively, the “**Insurance Policies**”), and the Account Trustee shall hold the Insurance Policies in trust for the benefit of each of the beneficiaries and loss payees, as the case may be, thereunder.
- (b) The Account Trustee shall distribute any proceeds of any Insurance Policy that are paid over to it by any insurer, Project Co, the Lenders’ Agent or HMQ (the “**Insurance Proceeds**”) as follows:
  - (i) subject to Section 4(c), in the case of the all risks course of construction (builders’ risk), boiler and machinery insurance or property insurance policies that Project Co is required to maintain under the Project Agreement:
    - (A) if the Account Trustee has not received a Default Notice and:
      - (1) if the amount of such Insurance Proceeds, together with the aggregate of all Insurance Proceeds paid in respect of the same loss or claim, is less than \$[REDACTED], to Project Co to repair, restore or replace the assets in respect of which such Insurance Proceeds have been paid; or
      - (2) if the amount of such Insurance Proceeds, together with the aggregate of all Insurance Proceeds paid in respect of the same loss or claim, is equal to or greater than \$[REDACTED], to the Lenders’ Agent to reimburse Project Co for the costs of repairing, restoring or replacing the assets in respect of which such Insurance Proceeds have been paid; or
    - (B) if the Account Trustee has received a Default Notice, to the Insurance Trust Account to be distributed by the Account Trustee in such amounts and to such persons as the Lenders’ Agent may at any time or from time to time direct in writing, provided that, if the Account Trustee has received a Change of Authorization Notice, the Account Trustee shall release such Insurance Proceeds from the Insurance Trust Account in such amounts and to such parties as HMQ may at any time or from time to time direct in writing, in each case, to repair, restore or replace the assets in respect of which such Insurance Proceeds have been paid; and
  - (ii) in the case of any other Insurance Policies, to the Lenders’ Agent, or, following receipt by the Account Trustee of a Change of Authorization Notice, to HMQ, to be distributed to the parties entitled thereto.
- (c) All losses under (i) all risks course of construction (builders risk) including boiler and machinery insurance carried by Project Co prior to Project Final Completion; and (ii)

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property insurance and boiler and machinery insurance carried by Project Co after Project Substantial Completion, which in each case is related to Equipment purchased by HMQ, if any, shall be payable solely to HMQ and shall not be payable to the Account Trustee or distributed pursuant to the Insurance Trust Agreement.

- (d) The Account Trustee shall distribute any excess Insurance Proceeds remaining after the distributions contemplated in Section 4(b)(ii) have been made, including, without limitation, any Insurance Proceeds held in the Insurance Trust Account:
  - (i) if the Account Trustee has not received a Default Notice, to Project Co; and
  - (ii) if the Account Trustee has received a Default Notice, to such persons as the Lenders' Agent, or, following receipt by the Account Trustee of a Change of Authorization Notice, HMQ, may at any time or from time to time direct in writing.

## **5. ACCOUNT AGREEMENT**

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

## **6. THE ACCOUNT TRUSTEE**

- (a) The Account Trustee shall not have any duty or obligation to manage, control, use, make any payment in respect of, register, record, insure, inspect, sell, dispose of or otherwise deal with any part of the Trust Property except as expressly provided by the terms of this Insurance Trust Agreement. The Account Trustee shall carry out all written directions given by the Lenders' Agent, HMQ or Project Co, as applicable, in accordance with this Insurance Trust Agreement and shall not be required to exercise any discretion in exercising any of its duties under this Insurance Trust Agreement in pursuance of such written directions. The Account Trustee shall not be bound to do or take any act, action or proceeding by virtue of the powers conferred on it hereby unless and until it shall have been required to do so under the terms hereof and has received instruction, advice or direction from the Lenders' Agent, HMQ or Project Co, as applicable, as to the action to be taken (except with respect to actions specifically set out herein to be performed by the Account Trustee).
- (b) The Account Trustee will exercise its powers and carry out its obligations hereunder as account trustee honestly, in good faith and in the best interests of the beneficiaries hereunder

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and in connection therewith will exercise that degree of care, diligence, and skill that a reasonably prudent professional trustee would exercise in comparable circumstances. Unless otherwise required by law, the Account Trustee will not be required to give bond surety or security in any jurisdiction for the performance of any duties or obligations hereunder. No provision of this Insurance Trust Agreement shall be construed to relieve the Account Trustee from liability for its own dishonesty, fraud, negligence (including, without limitation, negligence in the handling of funds), wilful misconduct, bad faith or reckless disregard of any duty hereunder.

- (c) The Account Trustee will not be subject to any liability whatsoever, in tort, contract or otherwise in connection with the Trust Property or the carrying out of its duties under this Insurance Trust Agreement to the Lenders' Agent, the Lenders, Project Co or any other person for any action taken or permitted by it to be taken, or for its failure to take any action, or for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of the Account Trustee (including, but not limited to, any act or provision of any present or future law or of any Governmental Authority, any act of God or war, or the unavailability of any wire or communication Facilities), provided that the foregoing limitation will not apply in respect of any action or failure to act arising from or in connection with wilful misconduct, negligence or reckless disregard of duty by the Account Trustee. The Account Trustee in doing anything or permitting anything to be done in respect of the Trust Property or the carrying out of its duties under this Insurance Trust Agreement is, and will be conclusively deemed to be, acting as trustee for the beneficiaries hereunder and not in any other capacity. Except to the extent provided in this Section 6(c), the Account Trustee will not be subject to any liability for debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Trust Property, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the execution of its duties hereunder and resort will be had solely to the Trust Property for the payment or performance thereof, and no other property or assets of the Account Trustee, whether owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure with regard to any obligation under this Insurance Trust Agreement.
- (d) The Account Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers hereunder, or in acting at the request or direction of the Lenders' Agent on behalf of the Lenders, unless it shall have received adequate indemnity or security against such risk or liability satisfactory to it.
- (e) Notwithstanding the foregoing, the Account Trustee shall be liable for any action or failure to act arising from or in connection with the dishonesty, fraud, negligence (including, without limitation, negligence in the handling of funds), wilful misconduct, bad faith or reckless disregard of any duty hereunder by the Account Trustee or any of its directors, officers or employees, or the failure to comply with the standard of care referred to in Section 6(b).
- (f) Except as otherwise provided in Sections 6(c), 6(d) and 6(e):

- (i) the Account Trustee may rely and shall be protected in acting or refraining from acting upon any signature, resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order or other paper or document reasonably believed by it in good faith to be genuine and to have been signed or presented by the proper party or parties; and
  - (ii) the Account Trustee may exercise its powers and perform its duties by or through such attorneys, representatives, agents and employees as it shall appoint; and may consult with counsel, accountants and other skilled persons selected and employed or retained by it, and the Account Trustee shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the written advice of such counsel, accountants or other skilled persons (provided that such advice pertains to such matters as the Account Trustee may reasonably presume to be within the scope of such person's area of competency) and not contrary to any express provision in this Insurance Trust Agreement.
- (g) Project Co hereby agrees to pay, indemnify and hold harmless the Account Trustee from and against any and all loss, liability, cost, claim and expense incurred by the Account Trustee with respect to the performance of this Insurance Trust Agreement by the Account Trustee or any of the Account Trustee's directors, officers or employees, unless arising from its or their own dishonesty, fraud, negligence (including, without limitation, negligence in the handling of funds), wilful misconduct, bad faith or reckless disregard of any duty hereunder.
- (h) Subject to the terms and conditions set forth in the Account Trustee fee letter, the Account Trustee shall receive from the Trust Property reasonable compensation for its services hereunder and shall be reimbursed by Project Co for its reasonable fees and expenses (including the disbursements and reasonable fees of counsel).
- (i) The Account Trustee agrees to look solely to Project Co, and not, except as expressly set forth herein, to the Lenders' Agent, the Lenders or HMQ for any claim for indemnification which may arise under this Insurance Trust Agreement.
- (j) The Account Trustee shall be responsible for keeping all appropriate books and records relating to the receipt and disbursement of all money which it receives hereunder.
- (k) If at any time the Account Trustee is served with any judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process which in any way affects the Trust Property held by it hereunder (including but not limited to orders of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of Trust Property) (each, an "**Order**"), the Account Trustee is authorized to comply therewith in any manner as it or legal counsel of its own choosing deems appropriate. The Account Trustee shall in no way be bound to call for further evidence (whether as to due execution validly or effectiveness, or the jurisdiction of any court, or as to the truth of any fact), and shall not be responsible for any loss that may be occasioned by its failing to do so. If the Account Trustee complies with any Order, the Account Trustee shall not be liable to any of the Parties hereto or to any other person or entity even though such Order may be

subsequently modified or vacated or otherwise determined to have been without legal force or effect. If the Account Trustee is served with any Order, it shall forthwith and, in any event, within three (3) Business Days, deliver a copy of such Order to each of the Lenders' Agent, HMQ and Project Co.

- (l) Unless otherwise specifically set forth herein, the Account Trustee shall proceed as soon as practicable to collect any cheques or other collection items at any time deposited hereunder. All such collections shall be subject to the Account Trustee's usual collection practices or terms regarding items received by the Account Trustee for deposit or collection. Except and to the extent provided herein, the Account Trustee shall not be required, or have any duty, to notify any person of any payment or maturity under the terms of any instrument deposited hereunder, nor to take any legal action to enforce payment of any cheque, note or security deposited hereunder, or to exercise any right or privilege which may be afforded to the holder of any such security.
- (m) In the event that the Account Trustee determines that any direction, instruction, notice or other communication given under this Insurance Trust Agreement by the Lenders' Agent or, where the Account Trustee has received a Change of Authorization Notice, HMQ, is ambiguous or uncertain, the Account Trustee may, in its sole discretion, refrain from taking any action other than retaining possession of the Trust Property, unless the Account Trustee has received written instructions, signed by the Lenders' Agent or, if the Account Trustee has received a Change of Authorization Notice, HMQ, which resolve such ambiguity or uncertainty, provided that the Account Trustee shall, forthwith upon determining that such direction, instruction, notice or other communication is ambiguous or uncertain, seek clarification from the Lenders' Agent, or where the Account Trustee has received a Change of Authorization Notice, HMQ, to resolve such ambiguity or uncertainty.
- (n) Prior to receipt of a Change of Authorization Notice by the Account Trustee, any instruction, notice or other communication delivered to the Account Trustee by the Lenders' Agent shall be paramount to and supersede any direction, instruction, notice or other communication from any other Party to this Insurance Trust Agreement, and the Account Trustee shall comply with such direction, instruction, notice or other communication from the Lenders' Agent. After the Account Trustee has received a Change of Authorization Notice, any instruction, notice or other communication delivered to the Account Trustee by HMQ shall be paramount to and supersede any direction, instruction, notice or other communication from any other Party to this Insurance Trust Agreement, and the Account Trustee shall comply with such direction, instruction, notice or other communication from HMQ.
- (o) Each of the Lenders' Agent and HMQ shall provide to the Account Trustee an incumbency certificate setting out the names and sample signatures of individuals authorized to give instructions to the Account Trustee hereunder. The Account Trustee shall be entitled to rely on each such incumbency certificate until a revised or replacement incumbency certificate is provided to the Account Trustee by the Lenders' Agent or HMQ, as applicable. The Account Trustee shall refuse to act upon any instruction given by the Lenders' Agent or HMQ which is signed by any person other than an individual named in the incumbency certificate provided to the Account Trustee by the Lenders' Agent or HMQ, as applicable.

pursuant to this Section 6(o), as any such incumbency certificate may be amended, supplemented or replaced from time to time.

- (p) The Account Trustee shall be entitled to rely on, and act upon, any direction, instruction, notice or other communication provided to it hereunder which is sent to it by facsimile transmission, provided that any such direction, instruction, notice or other communication is signed by an individual named in the incumbency certificate delivered to the Account Trustee by the Lenders' Agent or HMQ, as applicable, pursuant to Section 6(o).

## **7. LENDERS' AGENT AND HMQ RIGHTS TO DIRECT**

- (a) Until the termination of the Project Agreement in accordance with the Lenders' Direct Agreement and receipt by Project Co of any amounts to which it is entitled pursuant to Schedule 23 - Compensation on Termination to the Project Agreement and all Insurance Proceeds to the extent that the value of such Insurance Proceeds was deducted from the amounts payable to Project Co by HMQ (a "**Change of Authorization Event**"), the Lenders' Agent shall, subject to Sections 3 and 4 of this Insurance Trust Agreement, have the exclusive right to direct the Account Trustee with respect to the Insurance Trust Account, the Insurance Policies and the Insurance Proceeds.
- (b) Upon the occurrence of a Change of Authorization Event:
  - (i) the Lenders' Agent shall cease to be entitled, and HMQ shall thenceforth be entitled, to direct the Account Trustee with respect to the Insurance Trust Account, the Insurance Policies and the Insurance Proceeds; and
  - (ii) the Lenders' Agent and HMQ shall jointly provide notice to the Account Trustee (a "**Change of Authorization Notice**") that HMQ shall, as of the date of such Change of Authorization Event, have the exclusive right to direct the Account Trustee with respect to the Insurance Trust Account, the Insurance Policies and the Insurance Proceeds.
- (c) Notwithstanding the foregoing, no Change of Authorization Event shall occur and no Change of Authorization Notice shall be delivered to the Account Trustee where an HMQ Event of Default has occurred. Where an HMQ Event of Default has occurred, upon receipt by the Lenders' Agent and Lenders of all amounts owing by HMQ to the Lenders' Agent and Lenders under the Lenders' Direct Agreement, the Account Trustee shall release all amounts in the Insurance Trust Account, the Insurance Policies and the Insurance Proceeds to Project Co or as Project Co may otherwise direct from time to time.

## **8. TERMINATION**

- (a) Subject to the provisions of Section 8(b), this Insurance Trust Agreement shall remain in full force and effect and be binding in accordance with and to the extent of its terms until:
  - (i) the obligations of Project Co to the Lenders' Agent and the Lenders under the Lending Agreements have been paid and performed in full and the Lenders have no

further obligation to make any further advances or other credit accommodations under the Lending Agreements; and

- (ii) the obligations of Project Co to HMQ have been paid and performed in full.
- (b) The Account Trustee may terminate this Insurance Trust Agreement at any time upon sixty (60) days prior written notice to the other Parties hereto, provided that no termination of this Insurance Trust Agreement by the Account Trustee shall be effective until such time as the Lender's Agent, HMQ, and Project Co have entered into a replacement insurance trust agreement on the same terms and conditions as this Insurance Trust Agreement with a replacement account trustee satisfactory to the Lenders' Agent, the Lenders and HMQ.

## **9. ASSIGNMENT**

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

## **10. NOTICES**

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

If to HMQ:

**Ontario Infrastructure and Lands  
Corporation  
[REDACTED]**

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

If to the Lenders' Agent:

**[REDACTED]**

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

If to Project Co:

**[REDACTED]**

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

And:

**[REDACTED]**



Fax No.: [REDACTED]

Attn.: [REDACTED]

If to the Account Trustee:

**Computershare Trust Company of Canada**  
**[REDACTED]**

Fax No.: [REDACTED]

Attn.: [REDACTED]

- (b) Where any notice is provided or submitted to a Party via facsimile, an original of the notice sent via facsimile shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a Party's failure to comply with this Section 10(b).
- (c) Any Party to this Insurance Trust Agreement may, from time to time, change any of its contact information set forth in Section 10(a) by prior notice to the other Parties, and such change shall be effective on the Business Day that next follows the recipient Party's receipt of such notice unless a later effective date is given in such notice.
- (d) Subject to Sections 10(e), 10(f) and 10(g):
  - (i) a Notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
  - (ii) a Notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
  - (iii) a Notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.
- (e) If the Party giving the Notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such Notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission in accordance with this Section 10.
- (f) If any Notice delivered by hand or transmitted by facsimile is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such Notice shall be deemed to have been received by such recipient on the next Business Day.
- (g) A Notice given by facsimile shall be deemed to have been received by the recipient on the day it is transmitted only if a facsimile transmission report (maintained by the sender) indicates that the transmission of such Notice was successful.

**11. AMENDMENTS**

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

**12. WAIVER**

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

**13. RELATIONSHIP BETWEEN THE PARTIES**

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

**14. ENTIRE AGREEMENT**

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

**15. SEVERABILITY**

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

**16. ENUREMENT**

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

**17. GOVERNING LAW AND JURISDICTION**

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

**18. FURTHER ASSURANCE**

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

**19. LANGUAGE OF AGREEMENT**

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

**20. COUNTERPARTS**

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

**21. FORCE MAJEURE**

No party shall be liable to any other party, or held in breach of this Insurance Trust Agreement, if prevented, hindered, or delayed in the performance or observance of any provision contained herein by reason of acts of God, riots, terrorism, acts of war, epidemics, earthquakes, or any other similar causes beyond the affected party's reasonable control and where such failure in performance is not caused directly or indirectly by the affected party (including but not limited to, mechanical, electronic or communication interruptions, disruptions or failures, unless caused by the negligent or wilful misconduct of the affected party). Performance times under this Insurance Trust Agreement shall be extended for a

period of time equivalent to the time lost because of any delay that is excusable under this Section, provided that the affected party shall take commercially reasonable steps to mitigate or remedy the event giving rise to the delay.

*Remainder of this page intentionally left blank*

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

**HER MAJESTY THE QUEEN IN RIGHT  
OF ONTARIO as represented by the  
Minister of Infrastructure, as represented by  
Ontario Infrastructure and Lands  
Corporation**

**[REDACTED]**

**[REDACTED]**

**DUNDEE KILMER DEVELOPMENTS L.P.**

**[REDACTED]**

**COMPUTERSHARE TRUST COMPANY OF  
CANADA**

**[REDACTED]**

**SCHEDULE 31**

**PROJECT CO INFORMATION**

**[REDACTED]**

**SCHEDULE 32**

**FINANCIAL MODEL**

**[REDACTED]**



**SCHEDULE 33**

**TRUST ACCOUNT AGREEMENT**

**THIS TRUST ACCOUNT AGREEMENT** is made as of the \_\_\_\_ day of \_\_\_\_\_, 2011

**BETWEEN:**

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO** as represented by the Minister of Infrastructure, as represented by Ontario Infrastructure and Lands Corporation, a non-share capital corporation continued and amalgamated under the *Ontario Infrastructure and Lands Corporation Act*, 2011, S.O. 2011, c. 9, Schedule 32, as amended

("HMQ")

**AND:**

**DUNDEE KILMER DEVELOPMENTS L.P., [REDACTED]**

("Project Co")

**AND:**

**[REDACTED]**

("Lenders' Agent")

**AND:**

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

(the "Trustee")

**WHEREAS:**

- A. HMQ and Project Co have entered into the Project Agreement.
- B. The Parties wish to have certain standby letters of credit and monies held in trust in connection with the Project.
- C. Project Co is, under the Project Agreement, obligated to provide or cause the provision of the Contingency Equity Letter of Credit, the Cost to Complete Letter of Credit and the Third Party Facility Conversion Costs LC to the Trustee.
- D. The Cost to Complete Equity is to be used to fund the Project's construction costs.

- E. The Contingency Equity is to provide a liquid source of funds to cover cost overruns and delay, Project Co Event of Default and acceleration costs.
- F. The Third Party Facility Conversion Costs LC is to be used to secure Project Co's performance of the Third Party Facility Conversion Work.
- G. The Toronto 2015 Third Party Facilities Compensation Payment is to be deposited with the Trustee and to be used to fund the Third Party Facility Conversion Work.
- H. Project Co has granted to the Lenders' Agent for the benefit of the Finance Parties a security interest in all of its properties, including its interest in the Letter of Credit Funds and the Toronto 2015 Third Party Facilities Compensation Payment, pursuant to the applicable Lending Agreements.
- I. The foregoing recitals are made as statements and representations of fact by HMQ, the Lenders' Agent and Project Co, and not by the Trustee.

**NOW THEREFORE** in consideration of the mutual covenants and agreements of the Parties hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

## **1. DEFINITIONS**

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

- (a) **"Beneficiaries"** has the meaning given in Section 3(a) of this Trust Account Agreement.
- (b) **"Business Day"** has the meaning given in the Project Agreement.
- (c) **"Change of Authorization Notice"** has the meaning given in Section 4(e)(ii) of this Trust Account Agreement.
- (d) **"Contingency Equity Letter of Credit"** has the meaning given in the Project Agreement.
- (e) **"Cost to Complete Equity"** has the meaning given in the Project Agreement.
- (f) **"Cost to Complete Letter of Credit"** has the meaning given in the Project Agreement.
- (g) **"Credit Agreement"** means [REDACTED].
- (h) **"Dispute Resolution Procedure"** has the meaning given in the Project Agreement.
- (i) **"Finance Parties"** has the meaning given in the Credit Agreement.
- (j) **"Financial Close"** has the meaning given in the Project Agreement.
- (k) **"Governmental Authority"** has the meaning given in the Project Agreement.

- (l) **“Lenders”** has the meaning given in the Project Agreement.
- (m) **“Lenders’ Agent”** means [REDACTED], acting as agent for and on behalf of the Finance Parties.
- (n) **“Lenders’ Direct Agreement”** means the lenders’ direct agreement made on or about the date hereof between HMQ, Project Co and the Lenders’ Agent, as the same may be amended, supplemented or restated from time to time.
- (o) **“Lenders’ Technical Advisor”** has the meaning given in the Project Agreement.
- (p) **“Letter of Credit Funds”** means any funds drawn from any of the Letters of Credit (including, for clarity, any proceeds of a Letter of Credit deposited into a segregated bank account pursuant to Section 2.2A(g), Section 2.2B(g) or Section 18.17(j) of the Project Agreement) or deposited in respect of the Toronto 2015 Third Party Facilities Compensation Payment.
- (q) **“Letters of Credit”** means, collectively, the Contingency Equity Letter of Credit, the Cost to Complete Letter of Credit and the Third Party Facility Conversion Costs LC, and each is a **“Letter of Credit”**.
- (r) **“Major Bond Rating Agency”** means any one of Dominion Bond Rating Service Limited, Standard & Poor’s Rating Group, Moody’s Canada Inc. or any of their successors.
- (s) **“Party”** means any of HMQ, Lenders’ Agent, Project Co or the Trustee, and **“Parties”** means all of HMQ, Lenders’ Agent, Project Co and the Trustee.
- (t) **“Payment Instruction”** means a written instruction to the Trustee from:
  - (i) the Lenders’ Agent and Project Co in accordance with Section 4(g)(i) and in the form attached as Appendix A hereto;
  - (ii) the Lenders’ Agent in accordance with Section 4(g)(ii) and in the form attached as Appendix B hereto;
  - (iii) HMQ in accordance with Section 4(g)(iii) and in the form attached as Appendix C hereto; or
  - (iv) HMQ, the Lenders’ Agent or the Lenders’ Technical Advisor, as applicable, in accordance with Section 4(d) and in the form attached as Appendix D hereto,in each case directing the disposition of Letter of Credit Funds.
- (u) **“Permitted Investments”** means:

- (i) demand deposits, term deposits, bankers’ acceptances or certificates of deposit of or guaranteed by any bank or other financial institution which are rated by a Major Bond Rating Agency at least AA (low) or AA-; and
- (ii) any bonds, debentures, notes, bills of exchange, securities or other evidences of indebtedness (including specific interest and principal payments thereof) issued or guaranteed by:
  - (A) the Government of Canada; or
  - (B) any Province of Canada,provided that such instruments are rated by a Major Bond Rating Agency at least AA (low) or AA- (as such ratings are determined as of the date hereof by Dominion Bond Rating Service Limited and Standard & Poor’s Rating Group, respectively).
- (v) **“Privacy Laws”** has the meaning given in Section 7(g) of this Trust Account Agreement.
- (w) **“Project”** has the meaning given in the Project Agreement.
- (x) **“Project Agreement”** means the project agreement made on or about the \_\_\_\_ day of \_\_\_\_\_, 2011 between HMQ and Project Co as the same may be amended, supplemented or restated from time to time.
- (y) **“Termination Date”** has the meaning given in the Project Agreement.
- (z) **“Third Party Facility Conversion Costs LC”** has the meaning given in the Project Agreement.
- (aa) **“Third Party Facility Conversion Work”** has the meaning given in the Project Agreement.
- (bb) **“Toronto 2015 Third Party Facilities Compensation Payment”** has the meaning given in the Project Agreement.
- (cc) **“Trust Account”** means the segregated investment trust account bearing [REDACTED] in the name of the Trustee.
- (dd) **“Trust Account Agreement”** means this trust account agreement.
- (ee) **“Trustee”** means BNY Trust Company of Canada.
- (ff) **“Withdrawal Notice”** has the meaning given in Section 4(g) of this Trust Account Agreement.

## **2. INTERPRETATION**

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

- (a) The headings in this Trust Account Agreement are for convenience of reference only, shall not constitute a part of this Trust Account Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Trust Account Agreement.
- (b) Unless the context otherwise requires, references to specific Sections, Clauses, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Clauses, Paragraphs, Subparagraphs, or divisions of this Trust Account Agreement and the terms “Section” and “Clause” are used interchangeably and are synonymous.
- (c) Words importing persons or parties are to be broadly interpreted and include an individual, corporation, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.
- (d) Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.
- (e) References to any standard, principle, agreement, document, instrument or letter of credit include (subject to all relevant approvals and any other provisions of this Trust Account Agreement concerning amendments) a reference to that standard, principle, agreement, document, instrument or letter of credit as amended, supplemented, restated, substituted, replaced, novated or assigned.
- (f) The words in this Trust Account Agreement shall bear their natural meaning.
- (g) References containing terms such as:
  - (i) “hereof”, “herein”, “hereto”, “hereinafter”, and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Trust Account Agreement taken as a whole; and
  - (ii) “includes” and “including”, whether or not used with the words “without limitation” or “but not limited to”, shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean “includes without limitation” and “including without limitation”.
- (h) In construing this Trust Account Agreement, the rule known as the *ejusdem generis* rule shall not apply nor shall any similar rule or approach to the construction of this Trust Account Agreement and, accordingly, general words introduced or followed by the word

“other” or “including” or “in particular” shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.

- (i) Where this Trust Account Agreement states that an obligation shall be performed “no later than” or “within” or “by” a stipulated date or event which is a prescribed number of days after a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (j) Where this Trust Account Agreement states that an obligation shall be performed “on” a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (k) Any reference to time of day or date means the local time or date in Toronto, Ontario.
- (l) Unless otherwise indicated, time periods will be strictly construed.
- (m) Whenever the terms “will” or “shall” are used in this Trust Account Agreement they shall be construed and interpreted as synonymous and to read “shall”.

### **3. DECLARATION OF TRUST**

- (a) The Trustee hereby declares that it holds in trust as trustee the Contingency Equity Letter of Credit and the Cost to Complete Letter of Credit and, when delivered, the Third Party Facility Conversion Costs LC and the Toronto 2015 Third Party Facilities Compensation Payment for the benefit of Project Co, the Lenders' Agent and HMQ (collectively, the “**Beneficiaries**” and, individually, a “**Beneficiary**”), in accordance with and subject to the provisions of this Trust Account Agreement.
- (b) The purpose of this Trust Account Agreement is to cause the Trustee to hold the Letters of Credit and the Toronto 2015 Third Party Facilities Compensation Payment for the benefit of the Beneficiaries and to provide for the delivery and distribution of the Letter of Credit Funds in accordance with this Trust Account Agreement.
- (c) The Trustee hereby accepts the trusts and other obligations in this Trust Account Agreement declared and provided and agrees to perform the same upon the terms and conditions herein set forth.
- (d) Before or on Financial Close, Project Co shall (or shall cause) the Contingency Equity Letter of Credit and the Cost to Complete Letter of Credit to be issued in favour of the Trustee as beneficiary thereunder and shall cause each renewal and replacement of any and all such Letters of Credit to be issued in favour of the Trustee as beneficiary thereunder. No later than the Project Co Lands Transfer Date, Project Co shall cause the Third Party Conversion Costs LC to be issued in favour of the Trustee as a beneficiary thereunder and shall cause each renewal and replacement of such Letter of Credit to be issued in favour of the Trustee as beneficiary thereunder.

- (e) The Parties acknowledge that (i) in accordance with Sections 2.2A(a) and 2.2B(a) of the Project Agreement, each of the Contingency Equity Letter of Credit and the Cost to Complete Letter of Credit is comprised of two letters of credit, and (ii) in accordance with Section 2.2A(c) and Section 2.2B(c) of the Project Agreement, Project Co shall, if required, amend or replace each of the Contingency Equity Letter of Credit and the Cost to Complete Letter of Credit for the exclusive purpose of adjusting the aggregate amount of such Contingency Equity Letter of Credit and Cost to Complete Letter of Credit to equal the applicable amount set out in Section 2.2A(b) and Section 2.2B(b) of the Project Agreement.
- (f) The Parties agree that after the Trustee receives a Payment Instruction requesting a draw on the Contingency Equity Letter of Credit or the Cost to Complete Letter of Credit, as the case may be, in accordance with this Trust Account Agreement, the Trustee shall draw down on each letter of credit comprising the Contingency Equity Letter of Credit or the Cost to Complete Letter of Credit, as the case may be, on a pro rata basis, provided that:
  - (i) in the event the Trustee is unable to draw down on one of the two letters of credit comprising the Contingency Equity Letter of Credit or the Cost to Complete Letter of Credit, as the case may be, for the full amount of such pro rata draw (for any reason whatsoever), the Trustee shall draw down on the other letter of credit comprising the Contingency Equity Letter of Credit or the Cost to Complete Letter of Credit, as the case may be, to complete the draw request; and
  - (ii) if an event arises under Section 2.2A(f) (in the case of the Contingency Equity Letter of Credit) or Section 2.2B(f) (in the case of the Cost to Complete Letter of Credit) of the Project Agreement and the Trustee receives a Payment Instruction requesting that the Trustee draw down only on one of the letters of credit comprising the Contingency Equity Letter of Credit or the Cost to Complete Letter of Credit, as the case may be, affected by such event, the Trustee shall draw down on only the affected letter of credit in accordance with the applicable provisions of Section 2.2A(f) (in the case of the Contingency Equity Letter of Credit) or the applicable provisions of Section 2.2B(f) (in the case of the Cost to Complete Letter of Credit) of the Project Agreement.
- (g) In the event that any letter of credit held by the Trustee pursuant to this Trust Account Agreement is replaced or substituted in accordance with the Project Agreement, the Trustee shall promptly return the replaced or substituted letter of credit to Project Co.

#### **4. PURPOSE**

- (a) HMQ and Project Co acknowledge and agree that the Letters of Credit are established for the purpose of:
  - (i) in respect to the Contingency Equity Letter of Credit, to provide a liquid source of funds to cover cost overruns and delay, Project Co Event of Default and acceleration costs under the Project Agreement;

- (ii) in respect to the Cost to Complete Letter of Credit, to fund the Project's construction costs under the Project Agreement; and
  - (iii) in respect to the Third Party Facility Conversion Costs LC, to secure Project Co's performance of the Third Party Facility Conversion Work under the Project Agreement.
- (b) In accordance with Section 14.7A(d) of the Project Agreement, the Toronto 2015 Third Party Facilities Compensation Payment shall be paid into the Trust Account by Toronto 2015 and is to be applied towards the costs of completing the Third Party Facility Conversion Work.
- (c) Until the termination of the Project Agreement in compliance with the Lenders' Direct Agreement and receipt by Project Co of any amounts to which it is entitled pursuant to Schedule 23 - Compensation on Termination to the Project Agreement and all insurance proceeds to the extent that the value of such insurance proceeds was deducted from the amounts payable to Project Co by HMQ (a "**Change of Authorization Event**"), the Lenders' Agent shall, subject to this Section, have the exclusive right to direct the Trustee with respect to the Letters of Credit and monies in the Trust Account.
- (d) Pursuant to Sections 2.2A(f), 2.2B(f), 14.7A(d), 18.17(i), 42.4(a)(iii) and 42.4(a)(vi) of the Project Agreement HMQ, the Lenders' Agent or the Lenders' Technical Advisor, as applicable, may issue a Payment Instruction and cause the Trustee to apply the funds as set forth in the applicable Section of the Project Agreement.
- (e) Upon the occurrence of a Change of Authorization Event:
  - (i) the Lenders' Agent shall cease to be entitled, and HMQ shall thenceforth be entitled, to direct the Trustee with respect to the Letters of Credit and monies in the Trust Account; and
  - (ii) the Lenders' Agent and HMQ shall jointly provide notice to the Trustee in the form of Appendix E (a "**Change of Authorization Notice**") that HMQ shall, as of the date of such Change of Authorization Event, have the exclusive right to direct the Trustee with respect to the Letters of Credit and monies in the Trust Account.
- (f) Notwithstanding the foregoing, no Change of Authorization Event shall occur and no Change of Authorization Notice shall be delivered to the Trustee where an HMQ Event of Default has occurred. Where an HMQ Event of Default has occurred, upon receipt by the Lenders' Agent and the Lenders of compensation on termination pursuant to and in accordance with Schedule 23 – Compensation on Termination of the Project Agreement, the Trustee shall release all amounts in the Trust Account to Project Co or as Project Co may otherwise direct from time to time and return the Letters of Credit to Project Co.
- (g) Except as set forth in Section 4(d), the Trustee shall not accept any Payment Instruction to distribute Letter of Credit Funds other than as follows:



- (i) until receipt by the Trustee of a Change of Authorization Notice and so long as the Lenders' Agent has not notified the Trustee that there is an event of default under the Lending Agreements (as defined in the Project Agreement), in accordance with a Payment Instruction signed by both the Lenders' Agent and Project Co;
- (ii) if the Lenders' Agent has notified the Trustee that there is an event of default under the Lending Agreements and a Change of Authorization Notice has not been received by the Trustee, in accordance with a Payment Instruction signed by the Lenders' Agent; and
- (iii) following receipt by the Trustee of a Change of Authorization Notice, in accordance with a Payment Instruction signed only by HMQ.

The authorization set out in a Change of Authorization Notice delivered pursuant to this Section 4 is irrevocable unless HMQ shall deliver to the Trustee a written notice (a **“Withdrawal Notice”**), with a copy to the Lenders' Agent and Project Co, withdrawing such Change of Authorization Notice, whereupon the Lenders' Agent and Project Co shall again have the right to issue joint Payment Instructions and the Trustee shall continue to accept such Payment Instructions in accordance with Section 4(g)(i).

- (h) HMQ shall only issue a Change of Authorization Notice to the Trustee if HMQ is entitled to draw upon the Letters of Credit or to withdraw any Letter of Credit Funds from the Trust Account under the Project Agreement and the Lenders' Direct Agreement.
- (i) The Trustee shall deliver to HMQ a copy of any Payment Instruction not executed by HMQ forthwith upon receipt. At any time prior to the distribution of Letter of Credit Funds by the Trustee pursuant to any Payment Instruction not executed by HMQ, HMQ may deliver to the Trustee an objection to the distribution of such Letter of Credit Funds.
- (j) HMQ agrees that the basis of an objection is limited to the following:
  - (i) that the Payment Instruction is not for any of the purposes set out in Section 4(a) or Section 4(b), as applicable in whole or in part; or
  - (ii) that HMQ is entitled to draw on the Letters of Credit or to withdraw any Letter of Credit Funds pursuant to the Project Agreement and the Lenders' Direct Agreement.
- (k) The Trustee shall not distribute any disputed Letter of Credit Funds until any disputed Payment Instruction has been resolved in accordance with Section 4(m).
- (l) Where the objection is only in respect to a portion of the amount under a Payment Instruction, the objection of HMQ shall state the amount under the Payment Instruction that is not disputed and the undisputed portion of the amount under the Payment Instruction may be distributed by the Trustee.
- (m) Where HMQ objects to a Payment Instruction signed by both Project Co and the Lenders' Agent, by the Lenders' Agent alone or by the Lenders' Technical Advisor alone, as

applicable, such dispute shall be resolved in accordance with the Dispute Resolution Procedure and, not limiting any of Project Co's rights under Section 13.1 of Schedule 27 – Dispute Resolution Procedure, to the extent that such resolution confirms the entitlement of Project Co and/or the Lenders' Agent or the Lenders' Technical Advisor to a withdrawal of disputed Letter of Credit Funds, the Trustee shall distribute such Letter of Credit Funds pursuant to a supplementary Payment Instruction signed by Project Co and Lenders' Agent, by the Lenders' Agent alone or by the Lenders' Technical Advisor alone, as applicable.

- (n) The amount of the Third Party Facility Conversion Costs LC may be reduced in accordance with Section 18.17(b) of the Project Agreement. Upon receipt of an authorization from HMQ, the Trustee is authorized to accept a reduced Third Party Facility Conversion Costs LC in exchange for the Third Party Facility Conversion Costs LC which it then holds or to otherwise facilitate the reduction of such Third Party Facility Conversion Costs LC and HMQ agrees to provide such authorization if and to the extent such reduction is in accordance with Section 18.17(b) of the Project Agreement.

- (o) In the event that

- (i) a Letter of Credit is drawn down in accordance with Section 2.2A(f), Section 2.2B(f) or Section 18.17(i) of the Project Agreement;
- (ii) the applicable Letter of Credit Funds are deposited into a segregated bank account pursuant to Section 2.2A(g), Section 2.2B(g) or Section 18.17(j) of the Project Agreement; and
- (iii) the Letter of Credit is subsequently replaced and delivered to the Trustee,

the Trustee shall return all remaining cash proceeds and all accrued interest thereon from the segregated bank account to Project Co or as Project Co may direct within five Business Days in accordance with the applicable Section 2.2A(g), Section 2.2B(g) or Section 18.17(j) of the Project Agreement.

## **5. PAYMENT OF TRUST PROPERTY**

- (a) Subject to Section 4, the Trustee will comply with the Payment Instructions from time to time given to the Trustee. HMQ, the Lenders' Agent and Project Co agree that all Payment Instructions shall be consistent with the Project Agreement.
- (b) The Trustee will have the power to incur and make payment of any charges or expenses which in the reasonable opinion of the Trustee are necessary or incidental to or proper for carrying out any of the purposes of this Trust Account Agreement and the administration of the Trust Account.
- (c) The Trustee will be entitled to be paid by Project Co, in default of which the Trustee is entitled to be paid from the Letter of Credit Funds, such fees as the Trustee, HMQ, the Lenders' Agent and Project Co may agree to from time to time for its services hereunder and all reasonable expenses, disbursements and advances incurred or made by the Trustee in the

administration and execution of this Trust Account Agreement until all the duties of the Trustee shall be finally and fully performed, except any such expense, disbursement or advance as may arise from or in connection with the dishonesty, bad faith, wilful misconduct, fraud, negligence or reckless disregard of any duty. All such amounts will be payable at such times as the Trustee, HMQ, Lenders' Agent and Project Co may agree from time to time. Any amount not paid when due shall bear interest at a rate per annum equal to the rate designated by the Trustee as the then current rate charged by the Trustee or its successors from time to time to its corporate customers, payable on demand. After default, all amounts so payable and the interest thereon shall be payable out of any funds coming into the possession of the Trustee or its successors in the trusts hereunder in priority to any payments to Beneficiaries. Project Co agrees with HMQ and Lenders' Agent that any amount not paid by Project Co to the Trustee in accordance with the foregoing and which the Trustee has satisfied by payment out of the Letter of Credit Funds may be set-off by HMQ and/or the Lenders' Agent (which right of set-off shall be based on which of HMQ or the Lenders' Agent gives the applicable Payment Instruction) against any amounts that may from time to time be payable by HMQ to Project Co under the Project Agreement or by the Lenders' Agent under the Lending Agreements. This Section 5(c) shall survive the termination of this Trust Account Agreement or the resignation or removal of the Trustee.

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

## **6. REPLACEMENT OF TRUSTEE**

- (a) If the Trustee desires to resign and be discharged from the trusts and powers reposed in or conferred on it by this Trust Account Agreement, it shall provide not less than 60 days prior notice in writing thereof, or such lesser notice as HMQ, Lenders' Agent and Project Co may accept. The Trustee will resign in the event that a material conflict of interest arises in its role as fiduciary under this Trust Account Agreement and such conflict is not eliminated within 15 days after ascertaining that it has such a material conflict of interest. The Trustee may be replaced at any time with or without cause upon 30 days prior notice to the Trustee from HMQ, the Lenders' Agent and Project Co. Prior to the issuance of any Change of Authorization Notice, HMQ, Lenders' Agent and Project Co may, by instrument in writing, jointly appoint a successor trustee; after the issuance of any Change of Authorization Notice, HMQ may, by instrument in writing, appoint a successor trustee. Such successor so appointed will be a trust company qualified to carry on trust business in the Provinces of Canada, as necessary and applicable, and there will not exist a material conflict of interest in its role as fiduciary under this Trust Account Agreement. If HMQ, Lenders' Agent and/or Project Co, as applicable, fail to appoint a successor trustee within a reasonable period of time, then application will be made by the Trustee to a Justice of the Ontario Superior Court

- of Justice at Toronto for appointment of a successor trustee hereunder. The resignation of the Trustee shall not be effective until the appointment of its successor in accordance with the provisions of this Section 6(a). The expense of any act, document, deed or other instrument or thing required under this Section 6(a) will be satisfied from the Letter of Credit Funds.
- (b) The term of office of the Trustee will automatically terminate and a vacancy will occur in the event of the bankruptcy or insolvency of the Trustee or inability of the Trustee to exercise its duties under this Trust Account Agreement. No vacancy shall operate to annul this Trust Account Agreement. If a vacancy occurs in the office of the Trustee for any reason, HMQ, Lenders' Agent and Project Co may, prior to the issuance of a Change of Authorization Notice, by instrument in writing, jointly appoint a trustee to replace the Trustee or, after a Change of Authorization Notice has been issued, HMQ may by instrument in writing appoint a trustee to replace the Trustee. If HMQ, Lenders' Agent and Project Co, as applicable, fail to make such appointment, then an application will be made to a Justice of the Ontario Superior Court of Justice at Toronto for appointment of a successor trustee hereunder. Such application will be made by the Trustee or, if the Trustee elects not to do so, by HMQ, Lenders' Agent and Project Co, as applicable. The expense of any act, document, deed or other instrument or thing required under this Section 6(b) will be satisfied from the Letter of Credit Funds.
- (c) Any such new or successor Trustee shall, forthwith upon appointment, become vested with all the rights, powers and trusts of its predecessor in the trusts hereunder, with like effect as if originally named as Trustee herein; but nevertheless, upon the written request of the successor Trustee or of the Parties (or any one of them, provided that following the issuance of a Change of Authorization Notice, only the written request of HMQ), the Trustee ceasing to act shall, upon payment to it of all outstanding fees and expenses, execute and deliver an instrument assigning and transferring to such successor Trustee, upon the trusts herein expressed (at the expense of the Issuer), all the Letters of Credit, Letter of Credit Funds, rights, powers and trusts of the Trustee so ceasing to act, and shall duly assign, transfer and deliver all property (including its records and registers) and money and Permitted Investments held by such Trustee to the successor Trustee so appointed in its place. Should any deed, conveyance or instrument in writing from any or each of the Parties be required by any new Trustee for more fully and certainly vesting in and confirming to it such rights, powers and trusts, then any and all such deeds, conveyances and instruments in writing shall, on request of said new Trustee, be made, executed, acknowledged and delivered by such Parties.
- (d) Any company into which the Trustee may be merged or with which it may be consolidated or amalgamated, or any company resulting from any merger, consolidation or amalgamation to which the Trustee shall be a party or any company to which the Trustee has transferred substantially all of its corporate trust business shall be the successor Trustee under this Trust Account Agreement without the execution of any instrument or any further act unless in the opinion of either Parties' counsel such action would be prudent.

**7. STANDARD OF CARE, LIMITATION OF LIABILITY OF TRUSTEE AND OTHER MATTERS**

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

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

- (d) The Trustee may exercise its powers and perform its duties by or through such attorneys, representatives, agents and employees as it shall appoint; and may consult with counsel, accountants and other skilled persons selected and employed or retained by it, and the Trustee shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the written advice of such counsel, accountants or other skilled persons (provided that such advice pertains to such matters as the Trustee may reasonably presume to be within the scope of such person's area of competency) and not contrary to any express provision in this Trust Account Agreement.
- (e) The Trustee may rely and act upon any statement, report or opinion prepared by or any advice received from HMQ, Lenders' Agent and/or Project Co, and shall not be responsible or held liable for any loss resulting from so relying or acting if the Trustee acted reasonably in relying thereon.
- (f) The Trustee shall retain the right not to act and shall not be liable for refusing to act if, due to a lack of information or for any other reason whatsoever, the Trustee, in its sole judgment, determines that such act might cause it to be in non-compliance with any applicable anti-money laundering or anti-terrorist legislation, regulation or guideline. Further, should the Trustee, in its sole judgment, determine at any time that its acting under this Trust Account Agreement has resulted in its being in non-compliance with any applicable anti-money laundering or anti-terrorist legislation, regulation or guideline, then it shall have the right to resign on 30 days' written notice to Project Co, Lenders' Agent and HMQ, or any shorter period of time as agreed to by Project Co, Lenders' Agent and HMQ, notwithstanding the provisions of Section 6(a) of this Trust Account Agreement, provided that (i) the Trustee's written notice shall describe the circumstances of such non-compliance; and (ii) if such

circumstances are rectified to the Trustee's satisfaction within such 30 day period, then such resignation shall not be effective.

- (g) The parties acknowledge that federal and/or provincial legislation that addresses the protection of individuals' personal information (collectively, "**Privacy Laws**") may apply to obligations and activities under this Trust Account Agreement. Despite any other provision of this Trust Account Agreement, neither party shall take or direct any action that would contravene, or cause the other to contravene, applicable Privacy Laws. Project Co, Lenders' Agent and HMQ shall, prior to transferring or causing to be transferred personal information to the Trustee, obtain and retain required consents of the relevant individuals to the collection, use and disclosure of their personal information, or shall have determined that such consents either have previously been given upon which the parties can rely or are not required under the Privacy Laws. The Trustee shall use commercially reasonable efforts to ensure that its services hereunder comply with Privacy Laws. Specifically, the Trustee agrees: (a) to maintain policies and procedures to protect personal information and to receive and respond to any privacy complaint or inquiry; (b) to use personal information solely for the purposes of providing its services under or ancillary to this Trust Account Agreement and not to use it for any other purpose except with the consent of or direction from Project Co, Lenders' Agent or HMQ, as applicable, or the individual involved; (c) not to sell or otherwise improperly disclose personal information to any third party; and (d) to employ administrative, physical and technological safeguards to reasonably secure and protect personal information against loss, theft, or unauthorized access, use or modification.
- (h) Subject to Section 7(c), the Beneficiaries will not be held to have any personal liability as such, and no resort will be had to their private property for satisfaction of any obligation or claim arising out of or in connection with any contract or obligation in respect of which the Beneficiaries would otherwise have to indemnify the Trustee for any liability incurred by the Trustee as such, but rather the Letter of Credit Funds only will be subject to levy or execution for such satisfaction.
- (i) Any written instrument creating an obligation of the Trustee will be conclusively deemed to have been executed by the Trustee only in its capacity as the Trustee. Any written instrument creating an obligation of the Trustee will contain a provision to the effect that the obligations thereunder are not binding upon the Trustee except in its capacity as the Trustee, nor will resort be had to the property of the Trustee except in its capacity as the Trustee, but that the Letter of Credit Funds or a specific portion thereof only will be bound, and may contain any further provisions which the Trustee may deem appropriate, but the omission of any such provision will not operate to impose liability on the Trustee except as aforesaid.
- (j) If at any time the Trustee is served with any judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process which in any way affects the Letter of Credit Funds (including but not limited to orders of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of Letter of Credit Funds), the Trustee is authorized to comply therewith in any manner as it or its legal counsel of its own choosing deems appropriate. The Trustee shall in no way be bound to call for further evidence (whether as to due execution, validity or effectiveness, or the jurisdiction of any

court, or as to the truth of any fact), and shall not be responsible for any loss that may be occasioned by its failing to do so. If the Trustee complies with any such judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process, the Trustee shall not be liable to any of the parties hereto or to any other person or entity even though such order, judgment, decree, writ or process may be subsequently modified or vacated or otherwise determined to have been without legal force or effect.

- (k) The Trustee shall not incur any liability for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of the Trustee (including but not limited to any act or provision of any present or future law or regulation or governmental authority, any act of God or war, or the unavailability of any wire or communication facility).
- (l) Each of HMQ, the Lenders' Agent and Project Co shall provide to the Trustee an incumbency certificate setting out the names and sample signatures of persons authorized to give instructions to the Trustee hereunder. The Trustee shall be entitled to rely on such certificate until a revised certificate is provided to it hereunder. The Trustee shall be entitled to refuse to act upon any instructions given by a party which are signed by any person other than a person described in the incumbency certificate provided to it pursuant to this section.
- (m) The Trustee shall not be liable for any consequential, punitive or special damages. The Trustee shall be entitled to treat a facsimile, pdf or e-mail communication or communication by other similar electronic means in a form satisfactory to the Trustee ("**Electronic Methods**") from a person purporting to be (and whom such Trustee, acting reasonably, believes in good faith to be) the authorized representative of any of HMQ, the Lenders' Agent and Project Co as sufficient instructions and authority of any of HMQ, the Lenders' Agent and Project Co for the Trustee to act and shall have no duty to verify or confirm that person is so authorized. The Trustee shall have no liability for any losses, liabilities, costs or expenses incurred by it as a result of such reliance upon or compliance with such instructions or directions. Each of HMQ, the Lenders' Agent and Project Co shall assume all risks arising out of the use of Electronic Methods to submit instructions and directions to the Trustee including the risk of the Trustee acting on unauthorized instructions and the risk of interception or misuse by third parties.
- (n) The Trustee agrees to provide prompt written notice of all payments to or withdrawals from the Letter of Credit Funds and any amendments to this Trust Account Agreement to each of the Parties hereto.

## **8. RECORDS AND OTHER MATTERS**

- (a) The Trustee will keep or cause to be kept at Toronto, Ontario or at such other place in Canada designated by it proper records and books of account as are by law or good business practice necessary. Such books and records will be available for inspection by either Beneficiary upon reasonable notice during the normal business hours of the Trustee.



- (b) Any monies held by the Trustee may be invested and reinvested in the name or under the control of the Trustee in Permitted Investments, on the written direction of Project Co (which direction must also be executed by the Lenders' Agent) prior to the issuance of a Change of Authorization Notice and HMQ after the issuance of a Change of Authorization Notice. Pending such investment, such monies may be placed by the Trustee on deposit in any chartered bank in Canada against demand deposit certificates or with its own deposit department. No Party shall be responsible for ensuring the rate of return, if any, on the Permitted Investments. The Trustee shall have no responsibility or liability for any diminution of the funds invested which may result from any investment made in accordance with this Section 8(b). All interest (and interest on interest) earned shall be the property of Project Co prior to the issuance of a Change of Authorization Notice or HMQ after the issuance of a Change of Authorization Notice.

## **9. TERMINATION OF THIS AGREEMENT**

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

## **10. ASSIGNMENT**

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

## **11. NOTICES**

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

If to HMQ:

**Ontario Infrastructure and Lands  
Corporation  
[REDACTED]**

Fax No.: [REDACTED]

Attn: [REDACTED]

If to Project Co:

**[REDACTED]**

Fax No.: [REDACTED]

Attn.: [REDACTED]

And: **[REDACTED]**

Fax No.: **[REDACTED]**

Attn.: **[REDACTED]**

If to the Lenders' Agent: **[REDACTED]**

Fax No.: **[REDACTED]**

Attn.: **[REDACTED]**

If to the Trustee: **BNY Trust Company of Canada**  
**[REDACTED]**

Fax No.: **[REDACTED]**

Attn: **[REDACTED]**

- (b) Where any notice is provided or submitted to a Party via facsimile, an original of the notice sent via facsimile shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a Party's failure to comply with this Section 11(b).
- (c) Any Party to this Trust Account Agreement may, from time to time, change any of its contact information set forth in Section 11(a) by prior notice to the other Parties, and such change shall be effective on the Business Day that next follows the recipient Party's receipt of such notice unless a later effective date is given in such notice.
- (d) Subject to Sections 11(e), 11(f) and 11(g):
  - (i) a Notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
  - (ii) a Notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
  - (iii) a Notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.
- (e) If the Party giving the Notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such Notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission in accordance with this Section 11.
- (f) If any Notice delivered by hand or transmitted by facsimile is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such Notice shall be deemed to have been received by such recipient on the next Business Day.

- (g) A Notice given by facsimile shall be deemed to have been received by the recipient on the day it is transmitted only if a facsimile transmission report (maintained by the sender) indicates that the transmission of such Notice was successful.

## **12. AMENDMENTS**

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

## **13. WAIVER**

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

## **14. RELATIONSHIP BETWEEN THE PARTIES**

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

## **15. ENTIRE AGREEMENT**

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

## **16. SEVERABILITY**

Each provision of this Trust Account Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Trust Account Agreement is declared invalid, unenforceable or illegal by the courts of a competent jurisdiction, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of

this Trust Account Agreement. If any such provision of this Trust Account Agreement is invalid, unenforceable or illegal, the Parties shall, acting in good faith, promptly negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Trust Account Agreement as near as possible to its original intent and effect.

**17. ENUREMENT**

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

**18. GOVERNING LAW AND JURISDICTION**

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

**19. FURTHER ASSURANCE**

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

**20. LANGUAGE OF AGREEMENT**

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

**21. COUNTERPARTS**

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

**22. WAIVER OF JURY TRIAL**

The Parties hereto waive any right they may have to require a trial by jury.

**23. COSTS**

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

*Remainder of this page intentionally left blank*

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

**HER MAJESTY THE QUEEN IN RIGHT  
OF ONTARIO as represented by the  
Minister of Infrastructure, as represented by  
Ontario Infrastructure and Lands  
Corporation**

**[REDACTED]**

**DUNDEE KILMER DEVELOPMENTS L.P.**

**[REDACTED]**

**[REDACTED], as Lenders’ Agent**

**[REDACTED]**

**BNY TRUST COMPANY OF CANADA**

**[REDACTED]**

**APPENDIX A**

**FORM OF PAYMENT INSTRUCTION BY LENDERS' AGENT AND PROJECT CO**

**[Date]**

**BNY TRUST COMPANY OF CANADA**

**[copy to HMQ]**

Dear Sir or Madam,

**Re: Instruction for Payment**

Reference is made to the Trust Account Agreement made as of [●], 2011 (the “**Trust Account Agreement**”), between HMQ, [REDACTED], as Lenders' Agent, Dundee Kilmer Developments L.P. and BNY Trust Company of Canada. All capitalized terms used in this letter without definition shall have the respective meanings specified in the Trust Account Agreement.

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

Please draw under the **[identify the Letter of Credit or the Toronto 2015 Third Party Facilities Compensation Payment]** for the purposes of Section **[4(a)(i), (ii) or (iii) or 4(b)]** of the Trust Account Agreement in the amount of \$[●] and transfer such sum of \$[●] to [●] for credit to Account No. [●] maintained in the name [●]. **[Note: If a draw is requested on the Cost to Complete Letter of Credit or the Contingency Equity Letter of Credit, in accordance with Section 3(f) of the Trust Account Agreement, identify the amount to be drawn from each letter of credit comprising the Cost to Complete Letter of Credit or the Contingency Equity Letter of Credit]**

**DUNDEE KILMER DEVELOPMENTS L.P.**

**[REDACTED]**

**[REDACTED], as Lenders' Agent**

**[REDACTED]**

**APPENDIX B**

**FORM OF PAYMENT INSTRUCTION BY LENDERS' AGENT**

**[Date]**

**BNY TRUST COMPANY OF CANADA**

**[copy to HMQ]**

Dear Sir or Madam,

**Re: Instruction for Payment**

Reference is made to the Trust Account Agreement made as of [●], 2011 (the “**Trust Account Agreement**”), between HMQ, [REDACTED], as Lenders' Agent, Dundee Kilmer Developments L.P. and BNY Trust Company of Canada. All capitalized terms used in this letter without definition shall have the respective meanings specified in the Trust Account Agreement.

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

Please draw under the **[identify the Letter of Credit or the Toronto 2015 Third Party Facilities Compensation Payment]** for the purposes of Section **[4(a)(i), (ii) or (iii) or 4(b)]** of the Trust Account Agreement in the amount of \$[●] and transfer such sum of \$[●] to [●] for credit to Account No. [●] maintained in the name [●]. **[Note: If a draw is requested on the Cost to Complete Letter of Credit or the Contingency Equity Letter of Credit, in accordance with Section 3(f) of the Trust Account Agreement, identify the amount to be drawn from each letter of credit comprising the Cost to Complete Letter of Credit or the Contingency Equity Letter of Credit]**

[REDACTED], as Lenders' Agent

[REDACTED]



**APPENDIX C**

**FORM OF PAYMENT INSTRUCTION BY HMQ**

**[Date]**

**BNY TRUST COMPANY OF CANADA**

Dear Sir or Madam,

**Re: Instruction for Payment**

Reference is made to the Trust Account Agreement made as of [●], 2011 (the “**Trust Account Agreement**”), between HMQ, [REDACTED], as Lenders’ Agent, Dundee Kilmer Developments L.P. and BNY Trust Company of Canada. All capitalized terms used in this letter without definition shall have the respective meanings specified in the Trust Account Agreement.

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

Please draw under the [identify the Letter of Credit or the Toronto 2015 Third Party Facilities Compensation Payment] for the purposes of Section [4(a)(i), (ii) or (iii) or 4(b)] of the Trust Account Agreement in the amount of \$[●] and transfer such sum of \$[●] to [●] for credit to Account No. [●] maintained in the name [●]. **[Note: If a draw is requested on the Cost to Complete Letter of Credit or the Contingency Equity Letter of Credit, in accordance with Section 3(f) of the Trust Account Agreement, identify the amount to be drawn from each letter of credit comprising the Cost to Complete Letter of Credit or the Contingency Equity Letter of Credit]**

**HER MAJESTY THE QUEEN IN RIGHT OF  
ONTARIO as represented by the Minister of  
Infrastructure, as represented by Ontario  
Infrastructure and Lands Corporation**

**[REDACTED]**

**APPENDIX D**

**FORM OF PAYMENT INSTRUCTION BY HMQ, LENDERS' AGENT OR  
LENDERS' TECHNICAL ADVISOR**

**[Date]**

**BNY TRUST COMPANY OF CANADA**

**[As required, copy to the others of HMQ, the Lenders' Agent or the Lenders' Technical Advisor]**

Dear Sir or Madam,

**Re: Instruction for Payment**

Reference is made to the Trust Account Agreement made as of [●], 2011 (the "**Trust Account Agreement**"), between HMQ, [REDACTED], as Lenders' Agent, Dundee Kilmer Developments L.P. and BNY Trust Company of Canada. All capitalized terms used in this letter without definition shall have the respective meanings specified in the Trust Account Agreement.

In accordance with Section 4(d) of the Trust Account Agreement, this letter constitutes a Payment Instruction with respect to the payment of Letter of Credit Funds by the Trustee.

Please draw under the [identify the Letter of Credit or the Toronto 2015 Third Party Facilities Compensation Payment] for the purposes of Section 4(d) of the Trust Account Agreement in the amount of \$[●] [instruction to conform to the applicable section of the Project Agreement]. [Note: If a draw is requested on the Cost to Complete Letter of Credit or the Contingency Equity Letter of Credit, in accordance with Section 3(f) of the Trust Account Agreement, identify the amount to be drawn from each letter of credit comprising the Cost to Complete Letter of Credit or the Contingency Equity Letter of Credit]

**[HER MAJESTY THE QUEEN IN RIGHT OF  
ONTARIO as represented by the Minister of  
Infrastructure, as represented by Ontario  
Infrastructure and Lands Corporation**

**[REDACTED]**

**[REDACTED], as Lenders' Agent**

**[REDACTED]**

**[REDACTED]**

**APPENDIX E**

**CHANGE OF AUTHORIZATION**

**[Date]**

**BNY TRUST COMPANY OF CANADA**

Dear Sir or Madam,

**Re: Change of Authorization Notice**

Reference is made to the Trust Account Agreement made as of [●], 2011 (the “**Trust Account Agreement**”), between HMQ, [REDACTED], as Lenders’ Agent, Dundee Kilmer Developments L.P. and BNY Trust Company of Canada. All capitalized terms used in this letter without definition shall have the respective meanings specified in the Trust Account Agreement.

This letter shall constitute a Change of Authorization Notice for the purpose, and within the meaning, of Section 4(e)(ii) of the Trust Account Agreement. Accordingly, upon your receipt of this letter and until we provide you with written notice to the contrary, please disregard any transfer, withdrawal, disbursement or other Payment Instructions from Project Co and the Lenders’ Agent with respect to the Letters of Credit and the Letter of Credit Funds (including any such Payment Instructions by Project Co and the Lenders’ Agent prior to this Change of Authorization Notice) and immediately transfer any and all Letter of Credit Funds pursuant to Payment Instructions from HMQ only.

Thank you for your anticipated cooperation. Should you have any questions about these instructions, please contact the undersigned.

**HER MAJESTY THE QUEEN IN RIGHT OF  
ONTARIO as represented by the Minister of  
Infrastructure, as represented by Ontario  
Infrastructure and Lands Corporation**

**[REDACTED]**

**[REDACTED], as Lenders’ Agent**

**[REDACTED]**

**SCHEDULE 34**

**WORKS REPORT REQUIREMENTS**

1. The Works Report shall include the following:
  - (a) an executive summary;
  - (b) design status;
  - (c) Works Schedule summary, including:
    - (i) permits;
    - (ii) construction progress;
    - (iii) progress photos, including at least one (1) photograph from the same location every month;
    - (iv) construction milestones; and
    - (v) submissions schedule;
  - (d) contractual outstanding decisions;
  - (e) LEED status;
  - (f) quality assurance and quality control;
  - (g) organization / staffing changes and additions for Project Co and Construction Contractor;
  - (h) health and safety, including:
    - (i) lost time injuries; and
    - (ii) accidents with no lost time;
  - (i) Subcontract status, including:
    - (i) consultants;
    - (ii) Subcontracts awarded;
    - (iii) tenders;
    - (iv) shop drawing submittals status; and

- (v) labour report (average workforce);
- (j) financial status, including:
  - (i) progress and Variations;
  - (ii) insurance summary;
  - (iii) Construction Contractor default status; and
  - (iv) cash flow projection (capital cost components);
- (k) risk management, including:
  - (i) claims;
  - (ii) liens;
  - (iii) environmental issues;
  - (iv) labour;
  - (v) market conditions;
  - (vi) outstanding disputes;
  - (vii) operational risks;
  - (viii) other risks;
- (l) cash allowances, including for:
  - (i) Intelligent Communities;
  - (ii) Impacted Materials in Cherry Street and Eastern Avenue;
  - (iii) the Cherry Street LRT;
  - (iv) Temporary Power;
  - (v) Utilities;
  - (vi) Bayview Avenue and Mill Street Completion;
  - (vii) 409 Front Street (Former Palace Street School/Canary Restaurant); and
  - (viii) additional equipment, infrastructure and security equipment for the Third Party Facilities;

- (m) commissioning, occupancy and completion;
- (n) a sales update, including:
  - (i) an executive summary of the sales and marketing activities undertaken by Project Co, including a sales report for each building showing:
    - A. the condominium units sold;
    - B. the condominium units' sales prices;
    - C. the condominium unit types;
    - D. the condominium unit sizes; and
    - E. a sales status update (i.e. whether there has been a firm sale of any given condominium unit or whether the sale is still within the 10 day rescission period); and
  - (ii) a revised absorption schedule, if changed.

**SCHEDULE 35**

**LIST OF FACILITIES**

**I. Project Co Facilities**

<b>No.</b>	<b>Facility</b>	<b>Block<sup>1</sup></b>
1.	Project Co Stage 1 Condominium Facilities	Block 4, Block 11, Part of Block 14 and Part of Block 15
2.	Project Co Stage 2 Facilities <sup>2</sup>	Blocks 12, 13 and 16

**II. Third Party Facilities**

<b>No.</b>	<b>Facility</b>	<b>Block</b>
1.	YMCA Facility	Part of Blocks 1 and 14
2.	George Brown Facility	Part of Blocks 1 and 14
3.	Affordable Housing Facility 1	Block 3
4.	Affordable Housing Facility 2	Part of Block 15

**III. Temporary Underlay Facilities**

<b>No.</b>	<b>Facility</b>	<b>West Block<sup>3</sup> / Block</b>
1.	Temporary Underlay Facilities	West Blocks 3, 4, and 7, the West Block 7 Laneway and Blocks 8, 9, 10, 20 and 32

<sup>1</sup> “**Block**” means, unless otherwise expressly set out to the contrary, a block as shown on the Plan of Subdivision.

<sup>2</sup> Project Co Stage 2 Facilities are any improvements to be constructed on the Project Co Stage 2 Lands for the purpose of the Pan/Parapan Am Games together with the Works described in Section 1.2.3 of Part 1 of Schedule 15 – Output Specifications and Section 2.1 of Part 2 of Schedule 15 – Output Specifications.

<sup>3</sup> “**West Block**” means a block as shown on the sketch set out in Appendix 4 – Sketch of West Blocks to Schedule 1 – Definitions and Interpretation.

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**IV. Municipal Works Facilities**

The following is a description of each Municipal Works Facility:

<b>No</b>	<b>PIN</b>	<b>Block</b>	<b>Legal description</b>
1.	21077-0301	5	Block 5, Plan 66M2488 City of Toronto
2.	21077-0302	6	Block 6, Plan 66M2488 City of Toronto
3.	21077-0303	7	Block 7, Plan 66M2488 SUBJECT TO AN EASEMENT AS IN AT998141; SUBJECT TO AN EASEMENT AS IN AT998210; SUBJECT TO AN EASEMENT AS IN AT998268 City of Toronto
4.	21077-0314	18	Block 18, Plan 66M2488 City of Toronto
5.	21077-0315	19	Block 19, Plan 66M2488 City of Toronto
6.	21077-0317	21	Block 21, Plan 66M2488 City of Toronto
7.	21077-0318	22	Block 22, Plan 66M2488 City of Toronto
8.	21077-0319	23	Block 23, Plan 66M2488 City of Toronto
9.	21077-0320	24	Block 24, Plan 66M2488 City of Toronto
10.	21077-0321	25	Block 25, Plan 66M2488 City of Toronto
11.	21077-0323	27	Block 27, Plan 66M2488 City of Toronto
12.	21077-0324	28	Block 28, Plan 66M2488 City of Toronto
13.	21077-0325	29	Block 29, Plan 66M2488 City of Toronto
14.	21077-0326	30	Block 30, Plan 66M2488 City of Toronto
15.	21077-0327	31	Block 31, Plan 66M2488 City of Toronto
16.	21077-0328	32	Block 32, Plan 66M2488 SUBJECT TO AN EASEMENT AS IN CA121112; SUBJECT TO AN EASEMENT AS IN CA121111E City of Toronto
17.	21077-0329	33	Block 33, Plan 66M2488 City of Toronto
18.	21077-0330	34	Block 34, Plan 66M2488 City of Toronto
19.	21077-0331	35	Block 35, Plan 66M2488 City of Toronto
20.	21077-0223 (Part)	Front St. E.	PCL 1-1 SEC A34E; PT FRONT ST E PL 108 TORONTO (PALACE ST) AS CLOSED BY



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No	PIN	Block	Legal description
			BYLAW ES14695 PT 56 66R16601 EXCEPT 66M2473;TORONTO , CITY OF TORONTO
21.	21077-0267 (Part)	Block 19, Phase 1	BLOCK 19, PLAN 66M2473 SUBJECT TO AN EASEMENT AS IN CT16241 CITY OF TORONTO
22.	21077-0266	Block 18, Phase 1	BLOCK 18, PLAN 66M2473 CITY OF TORONTO
23.	21077-0225	Mill St.	PCL 1-1 SEC A34E; PT MILL ST PL 108 TORONTO (FRONT ST)EAST OF CHERRY ST BEING PT 58 66R16601 EXCEPT 66M2473; TORONTO , CITY OF TORONTO
24.	21077-0265	Block 17, Phase 1	BLOCK 17, PLAN 66M2473 CITY OF TORONTO
25.	21077-0264	Block 16, Phase 1	BLOCK 16, PLAN 66M2473; CITY OF TORONTO
26.	21077-0077	Cherry St. (S of Mill)	FIRSTLY; LT 18 RCP 12161 TORONTO EXCEPT PT 4 & 8 63R624; PT LT 13 S/S FRONT ST PL 108 TORONTO; PT MARSH LANDS GRANTED TO CITY OF TORONTO BY ONTARIO GOVT ON MAY 18, 1880 & DOMINION GOVT ON OCT 10, 1903 TWP OF YORK AS ESTABLISHED BY UNREGISTERED BYLAW 2747; PT OLD DON CHANNEL TWP OF YORK AS IN ES12138 (FIRSTLY) N OF PT 3 63R624; SECONDLY; PT CHERRY ST PL 159E TORONTO (CLOSED BY UNREGISTERED BYLAW 4932); BEING CHERRY ST BTN MILL ST & LAKE SHORE BLVD E; CITY OF TORONTO
27.	21077-0076 (Part)	Mill St. W of Cherry	PT FRONT ST PL 108 TORONTO (AKA MILL ST) BTN PARLIAMENT ST & CHERRY ST; CITY OF TORONTO
28.	21077-0029	Cherry St. (Front to Mill)	PCL 1-1 SEC A34E; PT CHERRY ST PL 108 TORONTO (UNNAMED ST) PT 53 66R16601; TORONTO , CITY OF TORONTO
29.	21077-0028	Cherry St. (Eastern to Front)	PCL 1-1 SEC A34E; PT CHERRY ST PL 108 TORONTO (UNNAMED ST); PT MARKET PLACE PL 108 TORONTO; PT LT 12 S/S EASTERN AV PL 108 TORONTO PT 52 66R16601; TORONTO , CITY OF TORONTO
30.	21078-0184	Old Eastern Ave.	PCL 1-1 SEC A34E; PT EASTERN AV PL 108

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No	PIN	Block	Legal description
			TORONTO PT 50 66R16601 EXCEPT 66M2473; TORONTO, CITY OF TORONTO
31.	21078-0154 (Part)	Eastern Ave (At and E of Cherry)	SOUTH PARK ST PL 108 TORONTO (AKA EASTERN AV) BTN W LIMIT OF CHERRY ST & S LIMIT OF PT 3 63R2772; CITY OF TORONTO
32.	21079-0042	Eastern Ave (W of Cherry)	SOUTH PARK ST PL 108 TORONTO; PT LT 14-21 PL 122 TORONTO; PT LT 5-6 PL 154E TORONTO; PT LT E PL 263E TORONTO AS IN ES57250 & ES22776; BEING SOUTH PARK ST (AKA EASTERN AV) N OF FRONT ST & W OF CHERRY ST; CITY OF TORONTO
33.	21078-0152	Cherry St. (N of Eastern)	PT LT 17 N/S SOUTH PARK ST W/S SUMACH ST PL 108 TORONTO; PT LT 18 N/S SOUTH PARK ST W/S SUMACH ST PL 108 TORONTO; PT LT 19 N/S SOUTH PARK ST W/S SUMACH ST PL 108 TORONTO; PT LT 20 N/S SOUTH PARK ST W/S SUMACH ST PL 108 TORONTO; PT LT 21 N/S SOUTH PARK ST W/S SUMACH ST PL 108 TORONTO; PT LT 20 S/S KING ST, 21 S/S KING ST PL 108 TORONTO PT 1 & 4 RD162; BEING CHERRY STREET BTN EASTERN AV & ADELAIDE ST E; CITY OF TORONTO
34.	21079-0341	WT 1	PART OF LOTS 17, 18, 19 AND 20, NORTH SIDE OF EASTERN AVENUE (FORMERLY SOUTH PARK STREET) AND WEST SIDE OF SUMACH STREET, PLAN 108, DESIGNATED AS PART 1 ON PLN 66R-24546. CITY OF TORONTO
35.	21079-0269 (Part)	Virgin Place	LANE PL D226 TORONTO (AKA VIRGIN PLACE); PT LT 20 S/S KING ST PL 108 TORONTO PT 1, 63R438; CITY OF TORONTO
36.	21079-0337	WT 2	PART LOT 20 PLAN 108, DES AS PT 1 ON PL 66R24361 CITY OF TORONTO
37.	21078-0148 (Part)	Adelaide St. E.	FIRSTLY: PRIVATE LANE PL 34E TORONTO; PT LT 1-2, 4, 6 PL 34E TORONTO; PT LT Y OR 1 PL 108 TORONTO; PT SUMACH ST, CROSS ST PL 108 TORONTO; PT LT 5 W/S CROSS ST, 6 E/S CROSS ST, 7 E/S CROSS ST, 8 E/S CROSS ST, 9 E/S CROSS ST PL 108

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No	PIN	Block	Legal description
			TORONTO; PT LT 15 N/S SOUTH PARK ST E/S SUMACH ST PL 108 TORONTO; PT LT 16 N/S SOUTH PARK ST E/S SUMACH ST PL 108 TORONTO; PT LT 17 N/S SOUTH PARK ST E/S SUMACH ST PL 108 TORONTO; PT LT 18 N/S SOUTH PARK ST E/S SUMACH ST PL 108 TORONTO; PT LT 20 N/S SOUTH PARK ST E/S SUMACH ST PL 108 TORONTO; PT LT 21 N/S SOUTH PARK ST E/S SUMACH ST PL 108 TORONTO; PT LT 21 N/S SOUTH PARK ST W/S SUMACH ST PL 108 TORONTO; PT LT 20 S/S KING ST, 21 S/S KING ST PL 108 TORONTO; PT BLK H PL DON IMPROVEMENT TORONTO PT 5, 7-8, 10-12, 17-19 RD162, PT 6 63R2357, PT 1-2 63R2358 & PT 3-5, 7-12 & 14 63R2772; SECONDLY: PT LT Y OR 1 PL 108 TORONTO PT 13-16 RD162; CITY OF TORONTO
38.	21079-0339	WT 3	PART OF LOT 21, SOUTH SIDE OF KING STREET, PLAN 108, DESIGNATED AS PART 1, PLAN 66R-24360 CITY OF TORONTO
39.	21078-0153 (Part)	Sumach St.	SUMACH ST PL 108 TORONTO; PT LT 21 S/S KING ST PL 108 TORONTO PT 6 RD162; BEING SUMACH ST BTN QUEEN ST E & ADELAIDE ST E; CITY OF TORONTO
40.	21078-0178 (Part)	King St., E of Sumach	KING ST PL 108 TORONTO; PT LT 29 S/S KING ST PL 108 TORONTO PT 6 RD208; BEING KING ST (AKA KING ST E) BTN SUMACH ST & BAYVIEW AVE EXCEPT PT 1 PL 66R23181; CITY OF TORONTO
41.	21079-0279 (Part)	King St., W of Sumach	KING ST PL 108 TORONTO BEING KING ST E BTN THE E LIMIT OF PT 1, 63R2356 & SUMACH ST; CITY OF TORONTO
42.	21078-0016 (Part)	St. Lawrence St., N of Old Eastern	PCL 1-1 SEC A34E; PT ST. LAWRENCE ST PL 108 TORONTO PT 49 66R16601; TORONTO, CITY OF TORONTO

**SCHEDULE 36**

**PROJECT CO SERVICES AGREEMENT**

**PROJECT CO SERVICES AGREEMENT  
FOR THE 2015 PAN AMERICAN AND PARAPAN AMERICAN GAMES**

**BETWEEN**

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO** as represented by the Minister of Infrastructure, as represented by Ontario Infrastructure and Lands Corporation, a non-share capital corporation continued and amalgamated under the *Ontario Infrastructure and Lands Corporation Act*, 2011, S.O. 2011, c. 9, Schedule 32, as amended

**AND**

**DUNDEE KILMER DEVELOPMENTS L.P.,  
[REDACTED]**

**AND**

**TORONTO ORGANIZING COMMITTEE FOR THE 2015 PAN AMERICAN  
AND PARAPAN AMERICAN GAMES,  
a non-share capital corporation incorporated under the laws of Ontario**

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<b>PROJECT CO SERVICES SPECIFICATIONS .....</b>		<b>1</b>

**PROJECT CO SERVICES AGREEMENT**

**THIS AGREEMENT** made as of the \_\_\_\_ day of \_\_\_\_\_, 2011.

**BETWEEN:**

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO** as represented by the Minister of Infrastructure, as represented by Ontario Infrastructure and Lands Corporation, a non-share capital corporation continued and amalgamated under the *Ontario Infrastructure and Lands Corporation Act*, 2011, S.O. 2011, c. 9, Schedule 32, as amended

(“**HMQ**”)

**OF THE FIRST PART**

- and -

**DUNDEE KILMER DEVELOPMENTS L.P., [REDACTED]**

(“**Project Co**”)

**OF THE SECOND PART**

- and –

**TORONTO ORGANIZING COMMITTEE FOR THE 2015 PAN AMERICAN AND PARAPAN AMERICAN GAMES**, a non-share capital corporation incorporated under the laws of Ontario

(“**Toronto 2015**”)

**WHEREAS**

- A. HMQ and Project Co have entered into the project agreement (the “**Project Agreement**”), which sets out the terms and conditions upon which Project Co shall perform the Project Operations before and after the Pan/Parapan Am Games on and in the Site and at the Facilities during the Project Term;
- B. Project Co agreed in the Project Agreement to enter into this Agreement with Toronto 2015 and HMQ to perform the Project Co Services on the Site and at the Facilities during the Operational Term;

**NOW THEREFORE** in consideration of the mutual covenants and agreements of each other herein set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, HMQ and Project Co hereby covenant and agree as follows:



**ARTICLE 1 – DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Agreement, capitalized terms not defined below shall have the meaning given to them in the Project Agreement:

- (a) **“Agreement”** means this Project Co Services Agreement, including all attachments to this Agreement.
- (b) **“Applicable Law”** has the meaning given in the Project Agreement.
- (c) **“Business Day”** has the meaning given in the Project Agreement.
- (d) **“Change in Law”** has the meaning given in the Project Agreement.
- (e) **“Component Facility”** has the meaning given in Schedule 15 – Output Specifications of the Project Agreement.
- (f) **“Contamination”** has the meaning given in the Project Agreement.
- (g) **“Designated Project Co Employees”** has the meaning given in the Project Agreement.
- (h) **“Direct Losses”** has the meaning given in the Project Agreement.
- (i) **“Dispute Resolution Procedure”** has the meaning given in the Project Agreement.
- (j) **“Emergency”** has the meaning given in the Project Agreement.
- (k) **“Excusing Cause”** has the meaning given in Section 10.6(a).
- (l) **“Facilities”** means, collectively, the Facilities set out in Schedule 35 – List of Facilities of the Project Agreement.
- (m) **“General Management Services”** means the Project Co Services to be performed in accordance with **Error! Reference source not found.** of Appendix 1.
- (n) **“Good Industry Practice”** has the meaning given in the Project Agreement.
- (o) **“Hazardous Substances”** has the meaning given in the Project Agreement.
- (p) **“HMQ”** means Her Majesty the Queen in right of Ontario as represented by the Minister of Infrastructure, as represented by Ontario Infrastructure and Lands Corporation, a non-share capital corporation continued and amalgamated under the *Ontario Infrastructure and Lands Corporation Act*, 2011, S.O. 2011, c. 9, Schedule 32, as amended.
- (q) **“HMQ HR Policies”** means the applicable human resources policies of Toronto 2015.

- (r) “**HMQ Party**” has the meaning given in the Project Agreement.
- (s) “**HMQ Representative**” has the meaning given in the Project Agreement.
- (t) “**Indirect Losses**” has the meaning given in the Project Agreement.
- (u) “**Maintenance Work**” means any work performed or required to be performed during the Operational Term in respect of the maintenance or repair of the Facilities in accordance with the requirements of this Agreement.
- (v) “**MSDS**” means a material safety data sheet.
- (w) “**Operational Term**” means:
  - (i) in respect of each Toronto 2015 LD Underlay Facility and the portion of the Site upon which such Toronto 2015 LD Underlay Facility was constructed, the period
    - (A) beginning on the date such Toronto 2015 LD Underlay Facility and the applicable portion of the Site have been turned over to HMQ by Project Co and the applicable Turnover Process has been completed pursuant to and in accordance with Section 14.7(a) of the Project Agreement, and
    - (B) ending on the date such Toronto 2015 LD Underlay Facility and the applicable portion of the Site has been turned back to HMQ by Toronto 2015 and the applicable Turnback Process has been completed pursuant to Section 14.7A of the Project Agreement; and
  - (ii) in respect of each Facility other than the Toronto 2015 LD Underlay Facilities and the portion of the Site upon which such Facility was constructed, the period
    - (A) beginning on the date such Facility and the applicable portions of the Site have been turned over to HMQ by Project Co and the applicable Turnover Process has been completed pursuant to and in accordance with Section 14.7(a) of the Project Agreement, and
    - (B) ending on the date such Facility and the applicable portion of the Site have been turned back to HMQ by Toronto 2015 and the applicable Turnback Process has been completed pursuant to Section 14.7A of the Project Agreement.

For greater clarity, the Operational Term shall terminate after the last Facility and the entire Site have been turned back by Toronto 2015 to HMQ pursuant to and in accordance with Section 14.7A of the Project Agreement.

- (x) “**Output Specifications**” has the meaning given in the Project Agreement.

- (y) **“Performance Monitoring Program”** has the meaning given in Section **Error! Reference source not found.** of Appendix 1.
- (z) **“Plant Services”** means the Project Co Services to be performed in accordance with **Error! Reference source not found.** of Appendix 1.
- (aa) **“Pan/Parapan Am Games”** has the meaning given in the Project Agreement.
- (bb) **“Pan/Parapan Am Games Site Turnback Date”** has the meaning given in the Project Agreement.
- (cc) **“Pan/Parapan Am Games Use Period”** means the period beginning on July 1, 2015 and ending on August 17, 2015.
- (dd) **“Payment Compensation Amount”** has the meaning given in the Project Agreement.
- (ee) **“Project Agreement”** has the meaning given in Recital A.
- (ff) **“Project Co”** means Dundee Kilmer Developments L.P.
- (gg) **“Project Co Party”** has the meaning given in the Project Agreement.
- (hh) **“Project Co Services”** has the meaning given in Section 2.1(a).
- (ii) **“Project Co Services Proposal Extracts”** means the documents attached as **Error! Reference source not found..**
- (jj) **“Project Co Services Specifications”** means the specifications for the Project Co Services set out in Appendix 1 – Project Co Services Specifications, to this Agreement.
- (kk) **“Project Co Services Quality Plan”** has the meaning given in Section 2.3.
- (ll) **“Project Co Services Committee”** has the meaning given in Section 4.1.
- (mm) **“Project Co Services Employee”** has the meaning given in Section 5.1.
- (nn) **“Project Co Stage 1 Condominium Facilities”** has the meaning given in the Project Agreement.
- (oo) **“Project Substantial Completion”** has the meaning given in the Project Agreement.
- (pp) **“Project Substantial Completion Commissioning Program”** has the meaning given in the Project Agreement.
- (qq) **“Project Substantial Completion Date”** has the meaning given in the Project Agreement.

- (rr) **“Project Substantial Completion Minor Deficiencies”** has the meaning given in the Project Agreement.
- (ss) **“Project Term”** has the meaning given in the Project Agreement.
- (tt) **“Province Persons”** has the meaning given in the Project Agreement.
- (uu) **“Quality Plan”** has the meaning given in the Project Agreement.
- (vv) **“Response Times”** means the response times set out in Section **Error! Reference source not found.** of Appendix 1.
- (ww) **“Roads and Grounds Maintenance Services”** means the Project Co Services to be performed in accordance with **Error! Reference source not found.** of Appendix 1.
- (xx) **“Roads and Grounds Maintenance Service Standards”** means the service standards for the Roads and Grounds Maintenance Services set out in Table 1 to **Error! Reference source not found.** of Appendix 1.
- (yy) **“Service Provider”** means EllisDon Facilities Services Inc., engaged by Project Co to perform the Project Co Services.
- (zz) **“Termination Date”** means the last Pan/Parapan Am Games Site Turnback Date.
- (aaa) **“Third Party Facility”** has the meaning given in the Project Agreement.
- (bbb) **“Toronto 2015”** means Toronto Organizing Committee for the 2015 Pan American and Parapan American Games.
- (ccc) **“Toronto 2015 Additional Work”** means any work in respect of the Site and any of the Facilities required by Toronto 2015 during the Operational Term other than Toronto 2015 Project Co Work.
- (ddd) **“Toronto 2015 Compensation Amount”** has the meaning given in Section 2.8.
- (eee) **“Toronto 2015 Party”** means any of Toronto 2015’s agents, contractors and subcontractors of any tier and its or their directors, officers and employees, but excluding Project Co and any Project Co Party, and **“Toronto 2015 Parties”** shall be construed accordingly.
- (fff) **“Toronto 2015 Project Co Stage 1 Condominium Facilities Compensation Amount”** has the meaning given in Section 2.8
- (ggg) **“Toronto 2015 Project Co Work”** means that work required to be completed in or on any of the Facilities during the Operational Term the performance of which would have the potential to cause damage to the Facilities or to affect any warranties in relation to the Facilities.

- (hhh) **“Toronto 2015 Third Party Facilities Compensation Amount”** has the meaning given to it in Section 2.8.
- (iii) **“Trust Account Agreement”** has the meaning given in the Project Agreement.
- (jjj) **“Trustee”** has the meaning given in the Project Agreement.
- (kkk) **“Turnback Certificate”** has the meaning given in Subsection 2.4.1.5.3 of Section 2.2.5 – Games - Turnover Process and Turnback Process of Part 2 of the Output Specifications.
- (lll) **“Turnback Process”** has the meaning given in the Project Agreement.
- (mmm) **“Turnover and Turnback Process Timetable”** has the meaning given in Section 2.7(a).
- (nnn) **“Turnover Process”** has the meaning given in the Project Agreement.
- (ooo) **“Utilities”** means energy/power supplies and waste recovery, including, but not limited to, electricity, telephone, cabling natural gas/fuel oil, water, sanitary waste and storm water.
- (ppp) **“Utilities Management Services”** means the Project Co Services to be performed in accordance with **Error! Reference source not found.** of Appendix 1.
- (qqq) **“Variation”** has the meaning given in the Project Agreement.
- (rrr) **“Variation Enquiry”** has the meaning given in the Project Agreement.
- (sss) **“Village Management Services”** means the Project Co Services to be performed in accordance with **Error! Reference source not found.** of Appendix 1.
- (ttt) **“WHMIS”** means the Workplace Hazardous Materials Information System, which, for clarity, is the national hazardous substances communications standard.
- (uuu) **“Works”** has the meaning given in the Project Agreement.
- (vvv) **“Works Committee”** has the meaning given in the Project Agreement.

## **1.2 Attachments to this Agreement**

Appendix 1 – Project Co Services Specifications

**Error! Reference source not found.** – Project Co Services Quality Plan Outline

**Error! Reference source not found.** - Project Co Services Proposal Extracts

## **1.3 Schedules**

All references to a Schedule under this Agreement that is not a direct schedule to this Agreement shall be a reference to the named Schedule under the Project Agreement.

#### **1.4 Extended Meanings**

Words importing the singular number include the plural and vice versa, and words importing the masculine gender include the feminine and neuter genders.

#### **1.5 Discretion**

Unless it is specifically provided that a consent, approval or satisfaction is in the sole discretion of HMQ or Toronto 2015, no consent, approval or satisfaction of HMQ, Toronto 2015 or the HMQ Representative shall be unreasonably withheld or delayed. Unless it is specifically provided that a consent, approval or satisfaction is in the sole discretion of Project Co, no consent, approval or satisfaction of Project Co or the Project Co Representative shall be unreasonably withheld or delayed. Where any such consent, approval or satisfaction is expressed to be in the sole discretion, such consent, approval or satisfaction is in the Party's sole and unfettered discretion.

#### **1.6 Interpretation**

Section 2 – Interpretation of Schedule 1 – Definitions and Interpretation are hereby incorporated by reference into this Agreement.

#### **1.7 Interpretation Not Affected by Headings**

The division of this Agreement into Articles and Sections and the provision of a table of contents hereto and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

#### **1.8 Accounting Principles**

All references to accounting principles and standards for this Agreement shall be to accounting principles generally accepted in Canada.

#### **1.9 Currency**

Unless otherwise specifically provided herein, all references to dollar amounts herein or other money amounts are expressed in terms of lawful money of Canada.

#### **1.10 Illegality**

If any provision of this Agreement is illegal or unenforceable, it shall be considered separate and severable from the remaining provisions of this Agreement, which shall remain in force and binding as though the provision had never been included.

#### **1.11 Time**

Time shall be of the essence hereof. No extension or variation of this Agreement operates as a waiver of this provision.

## **ARTICLE 2 – APPOINTMENT AND DUTY OF CARE**

### **2.1 Project Co Services**

- (a) Project Co hereby agrees to perform or to cause to be performed certain services (the “**Project Co Services**”) on and in the Site and at the Facilities during the Operational Term in accordance with and as described in:
  - (i) the Project Co Services Specifications;
  - (ii) the Project Co Services Proposal Extracts; and
  - (iii) the other terms and conditions of this Agreement.

### **2.2 Performance Standard Duty of Care**

Project Co shall perform the Project Co Services in accordance with Good Industry Practice.

### **2.3 Quality Assurance**

- (a) Project Co shall cause the Project Co Services to be the subject of quality management systems and a quality plan (the “**Project Co Services Quality Plan**”).
- (b) The Project Co Services Quality Plan shall be consistent with the requirements of the Project Co Services Specifications.
- (c) The Project Co Services Quality Plan shall, at a minimum, comply with the requirements of the outline of the Project Co Services Quality Plan attached hereto as **Error! Reference source not found.** – Project Co Services Quality Plan Outline. Project Co shall submit its proposed Project Co Services Quality Plan for the Project Co Services to HMQ not less than 90 days prior to the Project Substantial Completion Date.
- (d) The Project Co Services Quality Plan shall be subject to review by HMQ as though it were a Quality Plan under Schedule 10 - Review Procedure of the Project Agreement, and Project Co shall not be entitled to implement or cause the implementation of the Project Co Services Quality Plan unless and until Project Co is entitled to proceed with such implementation pursuant to Schedule 10 - Review Procedure of the Project Agreement.
- (e) Project Co shall implement the Project Co Services Quality Plan and shall perform and cause to be performed the Project Co Services in compliance with the Project Co Services Quality Plan.

- (f) Project Co and the Project Co Services Quality Plan shall comply with the requirements of Sections 13.2, 13.3 and 13.4 of the Project Agreement as though the Project Co Services Quality Plan were a Quality Plan under the Project Agreement.

## **2.4 Pan/Parapan Am Games**

- (a) Project Co shall perform or shall cause the performance of the Project Co Services so as to coordinate with the operations of Toronto 2015, the Toronto 2015 Parties, HMQ, the HMQ Parties and the Province Persons on the Site and in the Facilities and shall use commercially reasonable efforts not to adversely interfere with the operations of any such persons.
- (b) Project Co acknowledges its obligations under the Project Agreement to turn over the Site and the Facilities to HMQ for use by Toronto 2015 during the Operational Term in accordance with Section 14.7 of the Project Agreement and agrees and acknowledges that during the Operational Term neither Project Co nor any Project Co Party shall have access to the Site or the Facilities except as required (i) for the performance of the Project Co Services, (ii) to correct any Project Substantial Completion Minor Deficiencies and (iii) to perform any required warranty or seasonal work. Project Co agrees and acknowledges that nothing under this Agreement or the Project Agreement shall allow Project Co to interfere with HMQ's or Toronto 2015's use of the Site or Facilities during the Operational Term.

## **2.5 Toronto 2015 as Party**

- (a) Project Co acknowledges that during the Operational Term, the Site and the Facilities shall be under the control of Toronto 2015 for the purposes of preparing for and hosting the Pan/Parapan Am Games and Project Co acknowledges and agrees with HMQ and Toronto 2015 that Project Co shall perform or shall cause the performance of its obligations under this Agreement for the benefit of Toronto 2015.
- (b) HMQ hereby appoints Toronto 2015 as its representative under this Agreement. Project Co accordingly agrees that during the Operational Term, it shall, and it shall cause all Project Co Parties to, act in accordance with any direction, order, request, requirement or demand of Toronto 2015 that might otherwise be made by HMQ under the terms of this Agreement and Project Co and the Project Co Parties shall rely upon same as if made by HMQ and HMQ shall be bound by same as if made by HMQ.

## **2.6 Toronto 2015 Project Co Work**

- (a) Toronto 2015 agrees to contract with Project Co for the performance of any Toronto 2015 Project Co Work. Project Co agrees to perform such work at the same rates, including an allowance for overhead and profit, charged by Project Co for the performance of similar Works under the Project Agreement.
- (b) Toronto 2015 may elect to contract with Project Co for the performance of any Toronto 2015 Additional Work and, in the event that Toronto 2015 elects to contract with Project



Co for the performance of such work, Project Co agrees to perform such work at the same rates, including an allowance for overhead and profit, charged by Project Co for the performance of similar Works under the Project Agreement.

## **2.7 Turnover and Turnback of the Site and Facilities**

- (a) The Parties acknowledge the requirements in respect to the performance of the Turnover Process and the Turnback Process and the timing for same in respect to the turnover of the Site and Facilities to Toronto 2015 and the turnback of the Site and Facilities to Project Co as set out in Section 2.2.5 – Games - Turnover Process and Turnback Process of Part 2 of the Output Specifications. Toronto 2015 and Project Co shall participate in and meet the requirements of the Turnover Process and the Turnback Process within a timetable established by Project Co and set out in the Works Schedule (the “**Turnover and Turnback Process Timetable**”) but, in any event and for clarity, the Turnback Process shall be completed by each of the applicable Pan/Parapan Am Games Turnback Dates. Project Co acknowledges and confirms that the Turnover and Turnback Process Timetable is set out in the Works Schedule.
- (b) The Parties further acknowledge and agree that the Turnover Process and the Turnback Process can each be completed on a Facility by Facility basis.

## **2.8 Damage and Compensation for Damage**

- (a) The Parties acknowledge the requirements for an inspection of the Facilities as part of the Turnback Process and the assessment of any damage that results from the use or occupation of the Facilities during the Operational Term by athletes participating in the Pan/Parapan Am Games, by representatives, licensees and invitees of HMQ, the HMQ Parties, Toronto 2015, the Toronto 2015 Parties, any other Province Persons and any other persons occupying or using the Facilities.
- (b) Toronto 2015 agrees to pay to Project Co the amount of the compensation determined in accordance with Subsection 2.4.1.6 of Section 2.2.5 – Games - Turnover Process and Turnback Process of Part 2 of the Output Specifications within 30 days of the date the last Turnback Certificate has been executed and delivered under Subsection 2.4.1.5.3 of Section 2.2.5 – Games - Turnover Process and Turnback Process of Part 2 of the Output Specifications (such compensation amount being the “**Toronto 2015 Compensation Amount**”).
- (c) Toronto 2015 and Project Co acknowledge and agree that the Toronto 2015 Compensation Amount shall be subdivided between the compensation for damages to the Third Party Facilities and to the Project Co Stage 1 Condominium Facilities and that the amount attributed to the Third Party Facilities (the “**Toronto 2015 Third Party Facilities Compensation Amount**”) shall be paid by Toronto 2015 to the Trustee under the Trust Account Agreement at the direction of Project Co to be held and disbursed in accordance with the terms of the Trust Account Agreement. The balance of the Toronto 2015 Compensation Amount (the “**Toronto 2015 Project Co Stage 1 Condominium**”) shall be paid by Toronto 2015 to the Trustee under the Trust Account Agreement at the direction of Project Co to be held and disbursed in accordance with the terms of the Trust Account Agreement.

**Facilities Compensation Amount**”) shall be paid directly by Toronto 2015 to Project Co.

- (d) Sections 2.8(b) and 2.8(c) shall survive the termination of this Agreement on the Termination Date.

## **2.9 No Closure of Facilities**

Subject to Applicable Law, during the Operational Term, and notwithstanding any Excusing Cause, Project Co shall not close all or any portion of the Site or the Facilities in any circumstances, other than (i) as directed or approved by HMQ or Toronto 2015 in writing, acting reasonably, or (ii) in the event of an Emergency but only as reasonably required as a result of the nature of the Emergency and only for the duration of the Emergency.

## **ARTICLE 3 – SPECIFIC DUTIES**

### **3.1 Background**

- (a) **Intentionally Deleted.**
- (b) Project Co acknowledges its responsibilities under Section 24 of the Project Agreement in relation to the Project Substantial Completion Commissioning Program, including without limitation its obligations thereunder to verify that the mechanical, electrical, environmental and elevator systems for the Facilities are in good working order and are functioning in accordance with applicable manufacturers' specifications. Project Co further agrees that it or the relevant Project Co Party will be familiar with the Facilities prior to the Project Substantial Completion Date.

### **3.2 Directions of HMQ**

In performing the Project Co Services hereunder, Project Co shall act on specific written directions from time to time received from HMQ or Toronto 2015 as to particular matters and on policies from time to time adopted by HMQ or Toronto 2015.

### **3.3 Plans and Drawings**

Project Co will keep available on the Site all as-built plans and drawings of the Facilities including a soft copy for retention by HMQ or Toronto 2015.

### **3.4 Site Office**

During the Operational Term, Project Co shall be provided without charge an office area located on the Site as identified by HMQ for the use by Project Co suitable for the performance of the Project Co Services. Project Co shall be responsible at its sole cost for the outfitting of the office area.

**ARTICLE 4 – PROJECT CO SERVICES COMMITTEE**

**4.1 Establishment**

- (a) The Parties shall, not later than the earlier of (A) 90 days prior to the Scheduled Project Substantial Completion Date, or (B) such earlier date as requested by HMQ, acting reasonably, establish a committee (the “**Project Co Services Committee**”) for the period from the establishment of the Project Co Services Committee until the last Pan/Parapan Am Games Site Turnback Date, which shall consist of:
  - (i) two representatives appointed by Toronto 2015 from time to time;
  - (ii) two representatives appointed by HMQ from time to time one of whom shall be the HMQ Representative; and
  - (iii) two senior representatives of Project Co, one of whom shall be the Project Co Representative.
- (b) Members of the Project Co Services Committee may invite, on prior notice to all members, such advisors and consultants as they require from time to time to attend meetings and provide briefings to the Project Co Services Committee.
- (c) One of the representatives of HMQ shall be the chairperson of the Project Co Services Committee.

**4.2 Function and Role**

- (a) The Project Co Services Committee shall assist the Parties by promoting cooperative and effective communication with respect to matters related to the Project Co Services, both prior to and during the Operational Term. The Project Co Services Committee shall interface with the Works Committee as and when required.
- (b) The Project Co Services Committee shall be responsible for receiving and reviewing all matters related to the Project Co Services, both prior to and during the Operational Term, including:
  - (i) any joint review of the Project Co Services and the Project Co Services Specifications;
  - (ii) any changes to Quality Plans;
  - (iii) any performance issues;
  - (iv) the development and modification of performance standards for the Project Co Services, which performance standards shall be based on the Project Co Services Proposal Extracts and Good Industry Practice;

- (v) any interface issues between the Project Co Services and the use of the Site and the Facilities during the Operational Term;
  - (vi) any special matter referred to the Project Co Services Committee by HMQ or Project Co;
  - (vii) the requirements of and the implementation of and adherence to all HMQ HR Policies;
  - (viii) any community and media relations issues in accordance with Schedule 18 – Communications Protocol of the Project Agreement; and
  - (ix) any other issues pertaining to the Project Co Services.
- (c) Subject to Section 4.2(d), any unanimous decision of the Project Co Services Committee shall be final and binding on the Parties. If the Project Co Services Committee is unable to reach a unanimous decision, either Party may refer the matter for resolution in accordance with Schedule 27 - Dispute Resolution Procedure of the Project Agreement.
- (d) The Project Co Services Committee shall not have authority to make decisions with respect to or approve:
- (i) any amendment to or waiver of any provision of this Agreement;
  - (ii) any Variation;
  - (iii) any change that may materially adversely affect Project Co's ability to perform the Project Co Services or HMQ's use of the Facilities during the Operational Term; or
  - (iv) any matter with respect to which HMQ has a right of consent or in respect of which HMQ may have discretion pursuant to this Agreement.

#### **4.3 Replacement of Committee Members**

- (a) HMQ and Toronto 2015 shall each be entitled to replace any of their representatives on the Project Co Services Committee by written notice to Project Co.
- (b) Project Co may replace any of its representatives on the Project Co Services Committee with the prior written consent of HMQ, not to be unreasonably withheld or delayed.

#### **4.4 Procedures and Practices**

- (a) The members of the Project Co Services Committee may:
  - (i) adopt such procedures and practices for the conduct of the activities of the Project Co Services Committee as they consider appropriate from time to time;

- (ii) invite to any meeting of the Project Co Services Committee such other persons as the members of the Project Co Services Committee may agree;
  - (iii) exclude from any meeting of the Project Co Services Committee such persons as the members of the Project Co Services Committee may agree; and
  - (iv) receive and review reports from any person or organization agreed to by the members of the Project Co Services Committee.
- (b) The Project Co Services Committee shall meet at least once each week during the Operational Term, unless otherwise agreed by the members of the Project Co Services Committee or the Parties.
- (c) Any member of the Project Co Services Committee may convene a special meeting of the Project Co Services Management Committee at any time. Special meetings of the Project Co Services Committee may be convened on not less than five Business Days notice to all members of the Project Co Services Committee identifying the agenda items to be discussed at the special meeting, provided that, in an Emergency, a meeting may be called at any time on such notice as may be reasonable in the circumstances.
- (d) Unless otherwise agreed by the members of the Project Co Services Committee, the Project Co Services Committee shall meet at the Facilities or another location in Toronto, Ontario determined by HMQ. Meetings of the Project Co Services Committee may, unless otherwise requested by the chairperson, be held by means of such telephonic, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously. A person participating in a meeting by such means will be deemed to be present at such meeting.
- (e) For the period from the establishment of the Project Co Services Committee until the last Pan/Parapan Am Games Site Turnback Date, one representative of Toronto 2015, one representative of HMQ and one representative of Project Co shall constitute a quorum at any meeting of the Project Co Services Committee. A quorum of members may exercise all the powers of the Project Co Services Committee. The members shall not transact business at a meeting of the Project Co Services Committee unless a quorum is present.
- (f) Minutes of all meetings, recommendations and decisions of the Project Co Services Committee, including those made by telephone or other form of communication, shall be recorded and maintained by Project Co. Project Co shall use commercially reasonable efforts to circulate copies of such minutes within five Business Days of the holding of the meeting or the making of the recommendation or decision. Unless HMQ notifies Project Co within five Business Days of receipt of the minutes that HMQ disagrees with the contents of the minutes, Project Co and HMQ shall be deemed to have approved such minutes. Project Co shall maintain a complete set of all minutes of the meetings of the Project Co Services Committee and shall make such minutes available for inspection by Project Co during regular business hours.

## **ARTICLE 5 – PROJECT CO SERVICES EMPLOYEES**

### **5.1 Project Co Covenants with respect to Project Co Services Employees**

Project Co agrees:

- (a) that it or the relevant Project Co Party will employ employees to perform Project Co Services (the “**Project Co Services Employees**”);
- (b) that all Project Co Services Employees shall remain employees of Project Co or the relevant Project Co Party at all times and shall not be deemed employees of HMQ or Toronto 2015; and
- (c) that all Project Co Services Employees are Designated Project Co Employees subject to the provisions of Schedule 7 – Security and Background Check Requirements of the Project Agreement and represents to HMQ that none of the Project Co Services Employees have been rejected by HMQ under Section 1.1(h) of that Schedule 7 – Security and Background Check Requirements of the Project Agreement and are otherwise subject to the continuing obligations of that Schedule 7 – Security and Background Check Requirements of the Project Agreement.

### **5.2 Project Co Services Employees**

Subject to the requirements of this Article 5 and Section 10.2(c), HMQ acknowledges that Project Co will in its sole discretion determine the staffing of Project Co’s personnel for the performance of the Project Co Services.

### **5.3 Admittance of Personnel**

HMQ shall have the right to refuse admittance to, or order the removal from the Sites and/or the Facilities of any person employed by (or acting on behalf of) Project Co, or any Project Co Party, whose presence, in the reasonable opinion of HMQ, is likely to have an adverse effect on the use of the Site or the Facilities during the Operational Term or who, in the reasonable opinion of HMQ, is not a fit and proper person to be on the Site or at the Facilities for any reason. Any decision of HMQ made pursuant to this Section 5.3 shall be final and conclusive, including a failure to comply with any policy or any immediate obligation of HMQ to ensure the safety and well-being of persons on the Site or at the Facilities.

### **5.4 Confirmation of Action**

Any action taken under Section 5.3 shall promptly be confirmed by HMQ to Project Co and, for greater certainty, shall not relieve Project Co of any of its obligations under this Agreement.

### **5.5 Notification of Personnel**

Project Co shall, 60 days prior to the Scheduled Project Substantial Completion Date, provide a list of the names of all Project Co Services Employees specifying the capacities and responsibilities of

such persons and, subject to Applicable Law, giving such other particulars as HMQ may reasonably require. Project Co shall provide at least 10 days prior notice to HMQ of any change in the complement of or any new Project Co Services Employees including providing the information requested by HMQ under the foregoing sentence, in respect to any new Project Co Services Employee.

## **5.6 Staff Competency**

- (a) Project Co shall ensure that:
  - (i) there shall at all times be a sufficient number of Project Co Services Employees (including all relevant grades of supervisory staff) engaged in the provision of the Project Co Services with the requisite level of skill and experience to perform the Project Co Services in accordance with this Agreement. For greater certainty, this obligation shall include ensuring that there are sufficient employees to cover periods of holiday, sickness, other absence, and anticipated and actual peaks in demand for each of the Project Co Services;
  - (ii) all Project Co Services Employees receive such training and supervision as is necessary to ensure the proper performance of the Project Co Services under this Agreement and compliance with all health and safety rules, procedures and requirements and Applicable Law; and,
  - (iii) it creates and maintains, and causes all Project Co Parties to create and maintain, a process which allows it to assess, monitor and correct, on an ongoing basis, the competency of employees to ensure the proper performance of this Agreement.

## **5.7 Disciplinary Action**

- (a) HMQ acting reasonably, may notify Project Co of any Project Co Services Employee who engages in misconduct or is incompetent or negligent in the performance of duties or whose presence or conduct on the Site or at the Facilities or at work is otherwise considered by HMQ to be undesirable or to constitute a threat to the health and/or safety of any of the users of Site or the Facilities. Upon investigation, Project Co may institute, or cause the relevant Project Co Party to institute, disciplinary proceedings, which shall be in accordance with the requirements of Applicable Law, and shall advise HMQ in writing of the outcome of any disciplinary action taken in respect of such person.

## **5.8 Human Resources Policies**

- (a) Project Co shall ensure that there are set up and maintained by it and by all Project Co Parties, human resources policies and procedures covering all matters relating to the Project Co Services (including, for example, health and safety). Project Co shall ensure that the terms and the implementation of such policies and procedures comply with Applicable Law and Good Industry Practice and that they are published in written form and that copies of them (and any revisions and amendments to them) are available to HMQ on a timely basis.

- (b) If HMQ provides any comments on, or requests any amendments, modification or changes to the policies or procedures maintained pursuant to Subsection 5.8(a), Project Co shall consider such comments and amendments, modifications and changes and discuss them with HMQ. Project Co shall incorporate those comments, amendments, modifications and changes with which it agrees, acting reasonably, to the extent that such comments, amendments, modifications or changes comply with Applicable Law.

## **5.9 Management Organization**

- (a) Project Co shall provide, and shall ensure that all Project Co Parties provide, to HMQ, as required to keep such information current, the names of the management teams responsible for the provision of the Project Co Services.

## **5.10 Adherence to HMQ HR Policies**

- (a) Project Co shall ensure that it and all Project Co Parties comply at all times with HMQ HR Policy and any regulations, policies or directions set by any Province Persons related to labour, employment and/or human resources, including, for clarity, all HMQ staff training policies.

## **5.11 Change in HMQ HR Policy**

- (a) HMQ shall notify Project Co of any proposed change in HMQ HR Policy as soon as practicable. Notwithstanding anything else in this Agreement, any change in HMQ HR Policy shall, subject to and in accordance with Schedule 22 - Variation Procedure to the Project Agreement, result in a Variation if and to the extent such change constitutes or necessitates a change in the Project Co Services or increases the Direct Costs to Project Co of providing the Project Co Services.
- (b) Project Co may, within 90 days of becoming aware of same, notify HMQ, in writing, that a change in HMQ HR Policy either constitutes or necessitates a change in the Project Co Services or increases the Direct Costs to Project Co of providing the Project Co Services. Within 15 Business Days of receipt of such notice, HMQ shall respond to Project Co indicating whether or not it agrees that such a change has occurred and either constitutes or necessitates a change in the Project Co Services or increases the Direct Costs to Project Co of providing the Project Co Services. If it does agree, HMQ shall initiate the procedure set out in Schedule 22 - Variation Procedure to the Project Agreement as soon as reasonably practicable. If it does not agree, HMQ shall not issue a Variation Enquiry and the matter may be referred for resolution in accordance with Section 10.4.
- (c) For greater certainty, where an immediate change to HMQ HR Policy is required in the interest of public safety, Project Co shall or shall cause all applicable Project Co Parties to make all commercially reasonable efforts to ensure all the Project Co Services Employees are made aware of and act with such change without delay.



#### **5.12 Orientation Procedure**

- (a) Project Co shall not cause, authorize or permit any Project Co Services Employee or any person engaged or employed by Project Co or any Project Co Party in the delivery of the Project Co Services to commence the performance of their obligations until they have completed the orientation procedure in accordance with the applicable HMQ HR Policy.

#### **5.13 Employee Training**

- (a) Project Co shall, at its own cost and expense, provide training to the Project Co Services Employees in accordance with a training plan to be developed jointly by HMQ and Project Co. This training shall be designed and shall be of such quality so as to provide Project Co Services Employees with comprehensive coverage of the operational and security aspects of the Facilities in which the Project Co Services Employees work.

#### **5.14 Workplace Safety and Insurance Board**

- (a) Project Co and any Project Co Party shall at all times during the performance of the Project Co Services:
  - (i) comply with all requirements of the *Workplace Safety and Insurance Act* and regulations;
  - (ii) maintain their accounts with the Workplace Safety and Insurance Board in good standing; and
  - (iii) verify that such accounts are in good standing forthwith upon the request of HMQ.

#### **5.15 Labour and Industrial Relations**

- (a) Project Co shall make every reasonable effort to avoid any labour disputes in connection with the Project which could affect performance of the Project Co Services.
- (b) In the event of an actual or threatened labour dispute which could affect the timely performance of the Project Co Services, Project Co shall immediately notify HMQ of any current, pending or threatened labour dispute and within 24 hours provide HMQ with a full report on such dispute.
- (c) Project Co further agrees to work with HMQ to ensure that the Project Co Services are performed by Project Co or a Project Co Party and completed in a timely manner, notwithstanding the existence of any labour dispute.

**ARTICLE 6 – MATERIALS AND EQUIPMENT**

**6.1 Equipment for Project Co Services**

- (a) Project Co shall procure, deliver, install, commission, maintain, repair, decommission, upgrade and replace any equipment required by Project Co to provide the Project Co Services at no cost to HMQ.
- (b) Project Co shall cause the goods, equipment, consumables and materials used or supplied by it or any Project Co Party in connection with the Project Co Services to be:
  - (i) of good quality, fit for their intended purpose and maintained in a safe, serviceable and clean condition in accordance with the Project Co Services Specifications and Good Industry Practice;
  - (ii) of the type specified in the Project Co Services Specifications, if applicable; and
  - (iii) in compliance with all Applicable Law,and shall, as soon as practicable after receiving a request from the HMQ Representative, supply to the HMQ Representative evidence to demonstrate its compliance with this Section 6.1(b).
- (c) Project Co shall cause sufficient stocks of goods, consumables, equipment and materials to be held in compliance with its obligations under this Agreement.

**6.2 Hazardous Substances and Materials**

- (a) Except to the extent required pursuant to the Project Co Services Specifications, Project Co shall not bring, install, keep, maintain or use in or on the Facilities, or cause, authorize or permit any Project Co Party to bring, install, keep, maintain or use, any substances, materials, equipment or apparatus, which is likely to cause or in fact causes:
  - (i) material damage to the Site or the Facilities;
  - (ii) dust, noise or vibration or any other nuisance to the owners or occupiers of any property adjoining or near to the Site or the Facilities;
  - (iii) the generation, accumulation or migration of any Hazardous Substance in an unlawful manner whether within or outside the Site or the Facilities; or
  - (iv) an adverse effect on the health or well-being of any user of the Site or the Facilities,

and shall use commercially reasonable efforts to ensure, by directions to staff and otherwise, that all materials, equipment or apparatus in, at or on the Site or the Facilities

are operated and stored so as to minimize noise and vibration likely to cause annoyance or disturbance and the unlawful generation or migration of any Hazardous Substance.

- (b) Except for articles or things commonly used or generated in maintenance and storage facilities, Project Co shall not bring, install, keep, maintain or use, or cause, authorize or permit any person to bring, install, keep, maintain or use in or on the Site or the Facilities any Hazardous Substance or hazardous equipment without the prior written consent of HMQ and unless Project Co has complied with Applicable Law.
- (c) Where applicable, Project Co shall comply with any applicable HMQ HR Policies and Applicable Law regarding WHMIS and the transportation of Hazardous Substances, including:
  - (i) maintaining a library of MSDS at the Facilities and making MSDS labels available to all workers and HMQ, and making and posting workplace labels where applicable, for all materials designated hazardous by Applicable Law relating to WHMIS; and
  - (ii) ensuring that Hazardous Substances shipped by Project Co or any Project Co Party are shipped in accordance with Applicable Law governing the transportation of Hazardous Substances,
- (d) HMQ shall make available to Project Co, on request by Project Co, a list of Hazardous Substances prepared by HMQ as required by Applicable Law regarding WHMIS and the transportation of Hazardous Substances.
- (e) Project Co shall:
  - (i) ensure that all Hazardous Substances and hazardous materials and equipment used or stored on the Site by Project Co or any Project Co Party are kept in accordance with Applicable Law, Good Industry Practice, properly and securely labelled and stored, under appropriate supervision and used only by appropriately trained and competent staff; and
  - (ii) prevent the unlawful generation, accumulation, discharge, emission and migration of any Hazardous Substance, whether at or from the Site or the Facilities or into any conducting media or device serving the Facilities, including to:
    - (A) prevent any claims relating to Contamination arising or any circumstances likely to result in any claims relating to Contamination arising; and
    - (B) prevent any adverse effect on the health or well-being of any person on the Site or in the Facilities,

in so far as such Hazardous Substance is, or should be, under the control of Project Co or any Project Co Party pursuant to this Agreement.

### **6.3 Change in Hazardous Materials Policies**

- (a) HMQ shall notify Project Co of any proposed change in any applicable HMQ HR Policies regarding WHMIS and the transportation of Hazardous Substances as soon as practicable. Notwithstanding anything else in this Agreement, any change in such policies (other than a change arising as a result of a Change in Law, which, if applicable shall be addressed in accordance with Section 35 of the Project Agreement in the same manner as a Change of Law applicable to the Project Operations) shall, subject to and in accordance with Schedule 22 - Variation Procedure of the Project Agreement, result in a Variation if and to the extent such change constitutes or necessitates a change in the Project Co Services or increases the Direct Costs to Project Co of providing the Project Co Services.
- (b) Project Co may, within 90 days of becoming aware of same, notify HMQ, in writing, that a change in any applicable HMQ policies regarding WHMIS and the transportation of Hazardous Substances (other than a change arising as a result of a Change in Law, which, if applicable shall be addressed in accordance with Section 35 of the Project Agreement in the same manner as a Change of Law applicable to the Project Co Services) either constitutes or necessitates a change in the Project Co Services or increases the Direct Costs to Project Co of providing the Project Co Services. Within 15 Business Days of receipt of such notice, HMQ shall respond to Project Co indicating whether or not it agrees that such a change has occurred and either constitutes or necessitates a change in the Project Co Services or increases the Direct Costs to Project Co of providing the Project Co Services. If it does agree, HMQ shall initiate the procedure set out in Schedule 22 - Variation Procedure to the Project Agreement as soon as reasonably practicable. If it does not agree, HMQ shall not issue a Variation Enquiry and the matter may be referred for resolution in accordance with Section 10.4.
- (c) For greater certainty, where an immediate change to any applicable HMQ HR Policies regarding WHMIS and the transportation of Hazardous Substances is required in the interest of staff or public safety, Project Co shall make its best efforts to ensure all the Project Co Services Employees are made aware of and act with such change without delay.

## **ARTICLE 7 – INSURANCE, INDEMNITY AND LIMITS ON LIABILITY**

### **7.1 Insurance**

- (a) For clarity, during the Operational Term, Project Co shall maintain the applicable insurances required to be maintained under Schedule 25 – Insurance and Performance Security Requirements of the Project Agreement.

### **7.2 Limitations of Liability**

- (a) Notwithstanding anything contained in this Agreement to the contrary, Project Co shall not be responsible or liable for:
  - (i) any action or omission of, or any authorized action or omission on behalf of, HMQ, any HMQ Party, Toronto 2015, any Toronto 2015 Party or any other

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Province Person or any losses incurred or suffered by HMQ, any HMQ Party, Toronto 2015, any Toronto 2015 Party or any other Province Person in following or declining to follow the advice or recommendations of Project Co in circumstances where Project Co provides HMQ or Toronto 2015 with a written recommendation setting out the likely risks and benefits of the matter which is the subject of the recommendation; and

- (ii) any Indirect Losses.
- (b) Notwithstanding anything contained in this Agreement to the contrary, none of Project Co, HMQ or Toronto 2015 shall be responsible or liable for any Indirect Losses.
- (c) This Section 7.2 shall survive the termination of this Agreement on the Termination Date.

### **7.3 Indemnification**

- (a) Subject to Section 7.2, Project Co shall indemnify and save harmless HMQ, the HMQ Parties, Toronto 2015, the Toronto 2015 Parties, any other Province Persons and each of their respective directors, officers, employees, agents and representatives from and against any and all Direct Losses arising out of or relating to Project Co's failure to perform its covenants and obligations under this Agreement or the intentional misconduct or negligence of Project Co or the intentional misconduct or negligence of any Project Co Party in connection with the performance of Project Co's covenants and obligations under this Agreement unless such employees, agents or representatives are acting under the direction of HMQ, an HMQ Party, Toronto 2015, a Toronto 2015 Party or any other Province Person.
- (b) Project Co shall indemnify HMQ for damages suffered or incurred by HMQ on account of (i) any payment not duly made by Project Co pursuant to the terms of this Agreement on the due date; (ii) any overpayment to or underpayment by Project Co; or (iii) an amount determined as payable by Project Co to HMQ under Schedule 27 – Dispute Resolution Procedure of the Project Agreement, by payment of an amount equal to the Payment Compensation Amount calculated from day to day at a rate per annum from the day after the date on which payment was due, the day on which overpayment was made by HMQ, or from the date identified (if any) applicable to an amount determined as payable by Project Co to HMQ under Schedule 27 – Dispute Resolution Procedure of the Project Agreement, up to and including the date of payment.
- (c) Project Co shall indemnify Toronto 2015 for damages suffered or incurred by Toronto 2015 on account of (i) any payment not duly made by Project Co pursuant to the terms of this Agreement on the due date; (ii) any overpayment to or underpayment by Project Co; or (iii) an amount determined as payable by Project Co to Toronto 2015 under Schedule 27 – Dispute Resolution Procedure of the Project Agreement, by payment of an amount equal to the Payment Compensation Amount calculated from day to day at a rate per annum from the day after the date on which payment was due, the day on which overpayment was made by Toronto 2015, or from the date identified (if any) applicable

to an amount determined as payable by Project Co to Toronto 2015 under Schedule 27 – Dispute Resolution Procedure of the Project Agreement, up to and including the date of payment.

- (d) HMQ shall indemnify and hold harmless Project Co and the Project Co Parties and each of their respective directors, officers, employees, agents and representatives from and against any and all Direct Losses arising out of or relating to HMQ's failure to perform its covenants and obligations under this Agreement.
- (e) Toronto 2015 shall indemnify and hold harmless Project Co and the Project Co Parties and each of their respective directors, officers, employees, agents and representatives from and against any and all Direct Losses arising out of or relating to Toronto 2015's failure to perform its covenants and obligations under this Agreement.
- (f) HMQ shall indemnify Project Co for damages suffered or incurred by Project Co on account of (i) any payment not duly made by HMQ pursuant to the terms of this Agreement on the due date; (ii) any overpayment to or underpayment by HMQ; or (iii) an amount determined as payable by HMQ to Project Co under Schedule 27 – Dispute Resolution Procedure of the Project Agreement, by payment of an amount equal to the Payment Compensation Amount calculated from day to day at a rate per annum from the day after the date on which payment was due, the day on which overpayment was made by Project Co, or from the date identified (if any) applicable to an amount determined as payable by HMQ to Project Co under Schedule 27 – Dispute Resolution Procedure of the Project Agreement, up to and including the date of payment.
- (g) Toronto 2015 shall indemnify Project Co for damages suffered or incurred by Project Co on account of (i) any payment not duly made by Toronto 2015 pursuant to the terms of this Agreement on the due date; (ii) any overpayment to or underpayment by Toronto 2015; or (iii) an amount determined as payable by Toronto 2015 to Project Co under Schedule 27 – Dispute Resolution Procedure of the Project Agreement, by payment of an amount equal to the Payment Compensation Amount calculated from day to day at a rate per annum from the day after the date on which payment was due, the day on which overpayment was made by Project Co, or from the date identified (if any) applicable to an amount determined as payable by Toronto 2015 to Project Co under Schedule 27 – Dispute Resolution Procedure of the Project Agreement, up to and including the date of payment.
- (h) Toronto 2015 may set off against the Toronto 2015 Third Party Facilities Compensation Amount any unpaid amounts due and payable by Project Co to HMQ and/or Toronto 2015, as the case may be, under this Agreement.
- (i) This Section 7.3 shall survive the termination of this Agreement on the Termination Date.

## **ARTICLE 8 – PROJECT CO COSTS**

### **8.1 Costs and Fees**

Project Co shall provide all of the Project Co Services required under this Agreement without charge to HMQ. For clarity, but subject to Section 8.2, Project Co shall be responsible for all operating costs in respect of the Site and the Facilities during the Operational Term, including, but not limited to:

- (a) the costs of the operation, maintenance and repair of the mechanical, electrical, environmental and elevator systems and equipment contained within and servicing the Facilities;
- (b) the maintenance and repair of the entire exterior envelope of the Facilities, including the curtain wall and roof, exterior window washing and the operation, maintenance and repair of such window-washing equipment;
- (c) the maintenance and repair of the grounds and gardens including grounds-keeping, landscaping, snow and ice removal, and maintenance services for the Site; and
- (d) the costs of all supplies, and the fees and expenses of all Project Co Parties arising out of or in connection with the performance by Project Co of the Project Co Services.

### **8.2 Utilities**

- (a) All Utilities consumed at the Facilities shall be at the cost of HMQ during the Operational Term. Project Co shall provide invoices for all Utilities on a monthly basis with copies of the actual Utility supplier invoices attached. All Utilities supplying the Facilities shall be separately metered.

### **8.3 Taxes**

- (a) For clarity, HMQ shall be responsible for paying, when due and payable, all property taxes or payments in lieu of property taxes applicable to the Site and the Facilities during the Operational Term.

## **ARTICLE 9 – OPERATIONAL TERM**

This Agreement shall be in force and effect on its date of execution and delivery and the Project Co Services shall be provided in accordance with the terms of this Agreement throughout the Operational Term.

**ARTICLE 10 – DEFAULT, DISPUTE RESOLUTION, EXCUSING CAUSE**

**10.1 Disputes**

If Project Co either fails to or is not performing any of its obligations under or in accordance with this Agreement, Project Co shall nonetheless act in accordance with the direction of HMQ and either Project Co or HMQ may refer the matter to Project Co Services Committee for review. The Project Co Services Committee shall within five Business Days of such referral provide a report setting out an appropriate resolution to such matters. If the Project Co Services Committee is unable to come to an appropriate resolution of the matter within five Business Days, the Parties shall refer the matter to the Dispute Resolution Procedure in accordance with Section 10.4 of this Agreement.

**10.2 Default Event and HMQ Remedies**

- (a) For the purposes of this Agreement a “**Default Event**” means any one or more of the following events or circumstances:
  - (i) the occurrence of an event outlined under Section 42.1(a)(i) of the Project Agreement;
  - (ii) Project Co committing a breach of its obligations under this Agreement, other than where such breach is a consequence of a breach by HMQ or Toronto 2015 of their respective obligations under this Agreement; and
  - (iii) Project Co failing to comply with any determination, order or award made against Project Co in accordance with Section 10.1 of this Agreement.
- (b) Upon the earlier of the date that HMQ provides written notice of the occurrence of a Default Event to Project Co and the date upon which Project Co becomes aware of a Default Event, Project Co shall immediately commence and thereafter diligently continue to remedy the Default Event and to mitigate any adverse effects on HMQ, Toronto 2015 and/or the Pan/Parapan Am Games.
- (c) If a Default Event arises and the Default Event relates to an insufficient number of Project Co Services Employees performing any of the Project Co Services, HMQ may direct Project Co to increase or to cause an increase in the number of Project Co Services Employees performing such Project Co Services under this Agreement at the sole cost and expense of Project Co.
- (d) If a Default Event arises by reason of Project Co's failure to pay any monies, HMQ may (without obligation to do so) make payment on behalf of Project Co of such monies and Project Co shall thereafter indemnify HMQ as provided in Section 7.3(b) in respect of any damages suffered or incurred on such monies on the basis that the due date for the payment of such monies was the relevant payment date in an amount equivalent to the Payment Compensation Amount until the date of payment by Project Co, and all of such monies shall be payable by Project Co to HMQ on demand.



- (e) If a Default Event arises before or after the Pan/Parapan Am Games Use Period and Project Co has not cured the Default Event within 10 Business Days, HMQ may cure or attempt to cure the Default Event (but this shall not obligate HMQ to cure or attempt to cure the Default Event, or after having commenced to cure or attempt to cure such Default Event, to continue to do so or to cure or attempt to cure any subsequent Default Event) and all costs and expenses incurred by HMQ in curing or attempting to cure the Default Event shall be payable by Project Co to HMQ on demand. In respect of any amounts spent by HMQ for the costs and expenses of curing or attempting to cure the Default Event, Project Co shall thereafter indemnify HMQ as provided in Section 7.3(b) in respect of any damages suffered or incurred on such amounts on the basis that the due date for the payment of such amounts was the date upon which the relevant cost and expense was incurred by HMQ in an amount equivalent to the Payment Compensation Amount until the date of payment by Project Co. No such action by HMQ shall be deemed to be a termination of this Agreement and HMQ shall not incur any liability to Project Co or any Project Co Party whatsoever for any act or omission of HMQ in the course of curing or attempting to cure any such Default Event.
- (f) If a Default Event arises during the Pan/Parapan Am Games Use Period and Project Co has not cured the Default Event within 3 Business Days, HMQ may cure or attempt to cure the Default Event (but this shall not obligate HMQ to cure or attempt to cure the Default Event, or after having commenced to cure or attempt to cure such Default Event, to continue to do so or to cure or attempt to cure any subsequent Default Event) and all costs and expenses incurred by HMQ in curing or attempting to cure the Default Event shall be payable by Project Co to HMQ on demand. In respect of any amounts spent by HMQ for the costs and expenses of curing or attempting to cure the Default Event, Project Co shall thereafter indemnify HMQ as provided in Section 7.3(a) in respect of any damages suffered or incurred on such amounts on the basis that the due date for the payment of such amounts was the date upon which the relevant cost and expense was incurred by HMQ in an amount equivalent to the Payment Compensation Amount until the date of payment by Project Co. No such action by HMQ shall be deemed to be a termination of this Agreement and HMQ shall not incur any liability whatsoever to Project Co or any Project Co Party for any act or omission of HMQ in the course of curing or attempting to cure any such Default Event.
- (g) If a Default Event arises before or after the Pan/Parapan Am Games Use Period and Project Co has not cured such Default Event within 10 Business Days, HMQ may bring any proceedings in the nature of specific performance, injunction or other equitable remedy, it being acknowledged that damages at law may be an inadequate remedy for a Default Event.
- (h) If a Default Event arises during the Pan/Parapan Am Games Use Period and Project Co has not cured such Default Event within 3 Business Days, HMQ may bring any proceedings in the nature of specific performance, injunction or other equitable remedy, it being acknowledged that damages at law may be an inadequate remedy for a Default Event.

- (i) HMQ may bring any action at law as may be necessary or advisable in order to recover damages and costs HMQ incurs as a result of any Default Event or in curing or attempting to cure any Default Event pursuant to this Agreement.
- (j) All of the rights and remedies of HMQ set out in this Section 10.2 are to be cumulative and not alternative and the express provision of rights and remedies under this Section 10.2 is not to be interpreted as excluding any other rights or remedies available to HMQ under the Project Agreement or by statute or general law.

### **10.3 Default Event and Project Agreement**

Project Co's obligations to provide the Project Co Services arise under this Agreement and not under the Project Agreement. A Default Event under this Agreement shall not constitute a Project Co Event of Default under the Project Agreement.

### **10.4 Referral to Dispute Resolution Procedure**

Disputes which are not otherwise resolved in accordance with Article 10 of this Agreement shall be resolved in accordance with, and the Parties shall comply with, Schedule 27 – Dispute Resolution Procedure of the Project Agreement.

### **10.5 Performance Notwithstanding Dispute**

Except where clearly prevented by the nature of the matter in dispute, Project Co agrees to continue performing or to cause the continuous performance of its obligations under this Agreement in accordance with the direction of HMQ while any dispute is being resolved or arbitrated, unless and until such obligations are terminated or expire in accordance with the provisions of this Agreement.

### **10.6 Excusing Cause**

- (a) For the purposes of this Agreement, “**Excusing Cause**” means any of the following events or circumstances to the extent, in each case, that it interferes adversely with, or causes a failure of, the performance of the Project Co Services:
  - (i) any breach by HMQ or of Toronto 2015 of any of their respective obligations under this Agreement (including any obstruction of the rights afforded to Project Co under Section 14.7 of the Project Agreement, except to the extent that any such breach is caused, or contributed to, by Project Co or any Project Co Party);
  - (ii) any deliberate or negligent act or omission of HMQ, any HMQ Party, Toronto 2015, any Toronto 2015 Party or any other Province Person or any failure by HMQ, any HMQ Party, Toronto 2015, any Toronto 2015 Party or any other Province Person (having regard to the interactive nature of the activities of HMQ, Toronto 2015 and Project Co) to take commercially reasonable steps to perform its activities in a manner which minimizes undue interference with Project Co's performance of the Project Co Services, except to the extent:

- (A) any such act, omission or failure is caused, or contributed to, by Project Co or any Project Co Party;
  - (B) HMQ or the HMQ Party, Toronto 2015 or the Toronto 2015 Party is acting in accordance with a written recommendation or instruction of Project Co or any Project Co Party;
  - (C) any such act, omission or failure was contemplated in the Project Co Services or was otherwise provided for in this Agreement; or
  - (D) the consequences of any such act, omission or failure would have been prevented by the proper performance of Project Co's obligations under this Agreement;
- (iii) fire, explosion, lightning, storm, tempest, hurricane, tornado, flood, bursting or overflowing of water tanks, apparatus or pipes, ionizing radiation, earthquake, riot or civil commotion;
  - (iv) failure by any Utility Company, local authority or other like body to perform works or provide services;
  - (v) accidental loss or damage to the Site and/or the Facilities or any roads servicing the Site;
  - (vi) blockade or embargo;
  - (vii) any official or unofficial strike, lockout, work to rule or other labour-related action generally affecting the construction, building maintenance or facilities management industry (or a significant sector of that industry) in the Province of Ontario; or
  - (viii) any civil disobedience, riot, civil commotion or protest action, including any action taken by any person or persons protesting or demonstrating against the carrying out of any part of the Pan/Parapan Am Games or the operation of international athletics events facilities in general;
  - (ix) war, civil war, armed conflict, terrorism, acts of foreign enemies or hostilities;
  - (x) nuclear or radioactive contamination of the Works, the Facilities and/or the Site, unless Project Co or any Project Co Party is the source or cause of the contamination;
  - (xi) chemical or biological contamination of the Works, the Facilities and/or the Site from any event referred to in Section 10.6(a)(ix);
  - (xii) pressure waves caused by devices traveling at supersonic speeds,

provided, in each case, that such event does not arise (directly or indirectly) as a result of any act or omission of Project Co or any Project Co Party.

### **10.7 Consequences of an Excusing Cause**

- (a) Provided that the effect of an Excusing Cause is claimed by Project Co, in writing, within 10 Business Days of the date on which Project Co or any Project Co Party became aware of the occurrence of such Excusing Cause, then (subject to Sections 10.8 and 10.9):
  - (i) any failure by Project Co to perform, and any poor performance of, any affected Project Co Services shall not constitute a breach of this Agreement by Project Co and Project Co shall be relieved of its obligations to perform such Project Co Services for the duration and to the extent prevented by such Excusing Cause;
  - (ii) HMQ shall reimburse Project Co for all incremental Direct Costs (including all applicable Taxes and all legal or professional services, legal costs being on a full indemnity basis) incurred by Project Co as a result of any Excusing Cause referred to in Section 10.6(a)(i) or 10.6(a)(ii), including costs arising from any steps taken to cure or mitigate against such events, together with any applicable margin for overhead and profit on such Direct Costs as determined under Schedule 22 - Variation Procedure to the Project Agreement.

### **10.8 Mitigation**

- (a) If Project Co is (or claims to be) affected by an Excusing Cause, Project Co shall, and shall require all Project Co Parties to, take and continue to take commercially reasonable steps:
  - (i) to eliminate or mitigate the consequences of such event upon the performance of its obligations under this Agreement;
  - (ii) to continue to perform its obligations under this Agreement to the extent possible notwithstanding the Excusing Cause; and
  - (iii) to resume performance of its obligations under this Agreement affected by the Excusing Cause as soon as practicable.

To the extent that Project Co does not comply with its obligations under this Section 10.8, such failure shall be taken into account in determining Project Co's entitlement to relief pursuant to Section 10.7.

### **10.9 Insured Exposure**

The compensation payable to Project Co pursuant to this Section 10 shall be reduced by any amount which Project Co or a Project Co Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Agreement in respect of insurance or the terms of any policy of insurance required under this Agreement, which

amount, for greater certainty, shall not include any excess or deductibles or any amount over the maximum amount insured under any such insurance policy.

#### **10.10 Set-off Under the Project Agreement**

- (a) Notwithstanding any other provision in this Agreement and the Project Agreement to the contrary but only for the purpose of this Agreement and not in any way limiting the rights of Toronto 2015 under Section 7.3(h), HMQ is not permitted to set-off at law or in equity against any amounts otherwise due and payable to Project Co by HMQ under the Project Agreement, any amounts which are due to HMQ by Project Co pursuant to the terms of this Agreement, including, without limitation, pursuant to HMQ's right of set-off in Section 1.10 of Schedule 20 – Payments and Holdbacks of the Project Agreement and Section 6.5 of Schedule 23 – Compensation on Termination of the Project Agreement. This Section 10.10 shall survive the termination of this Agreement on the Termination Date.

### **ARTICLE 11 – INTENTIONALLY DELETED**

### **ARTICLE 12 – MISCELLANEOUS**

#### **12.1 No Partnership or Joint Venture**

- (a) Nothing in this Agreement shall be construed so as to make HMQ, Toronto 2015 and Project Co partners or joint venturers with each other or so as to impose any liability as such on any of them. For greater certainty, HMQ, Toronto 2015 and Project Co shall be deemed not to be partners or joint venturers with each other in respect of any matter arising out of their respective rights, duties and obligations under this Agreement.
- (b) Notwithstanding Section 12.1(a), HMQ has the right but not the obligation to supervise any of the Project Co Services performed on its property for compliance with safety and environmental laws, regulations and guidelines as well as HMQ HR Policies and procedures.

#### **12.2 Amendments**

This Agreement shall not be changed, amended or modified in whole or in part except by an instrument in writing signed by the parties hereto or their respective successor or assigns.

#### **12.3 Waiver**

Regardless of past conduct or practice with the Project Co or any other contractor, HMQ may at any time insist upon strict compliance with the terms and conditions of this Agreement.

#### **12.4 Assignment**

The Parties agree that the provision of Section 56 of the Project Agreement shall apply to this Agreement *mutatis mutandis*. In addition the Parties agree that this Agreement may be assigned to

the Service Provider provided Project Co, the Service Provider, HMQ and Toronto 2015 enter into an assignment and assumption agreement effecting such assignment on terms acceptable to HMQ and Toronto 2015, acting reasonably.

#### **12.5 Notice**

Any Notice required or permitted under this Agreement shall be made in accordance with Section 58 of the Project Agreement.

#### **12.6 Successors and Assigns**

This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assignees.

#### **12.7 Enforcement**

It is expressly understood and agreed that the covenants, agreements and obligations herein expressed to be observed and performed by the parties hereto may be enforced by any of the parties hereto without joining with any other party hereto in any proceedings.

#### **12.8 Binding Effect**

Upon the execution hereof, this Agreement shall be binding upon the parties hereto and their respective successors and permitted assigns.

#### **12.9 Jurisdiction**

- (a) This Agreement is governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein.
- (b) Subject to the *Proceedings Against the Crown Act* (Ontario), the parties irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom.

#### **12.10 Entire Agreement**

This Agreement shall constitute the entire agreement between the parties hereto pertaining to the subject matter hereof and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, with respect thereto including the Letter Agreement.

***Remainder of this page intentionally left blank***

**IN WITNESS WHEREOF** the parties hereto have executed and delivered this Agreement as of the date first set forth above.

**HER MAJESTY THE QUEEN IN RIGHT  
OF ONTARIO** as represented by the Minister  
of Infrastructure, as represented by Ontario  
Infrastructure and Lands Corporation

**[REDACTED]**

**DUNDEE KILMER DEVELOPMENTS L.P.**

**[REDACTED]**

**TORONTO ORGANIZING COMMITTEE  
FOR THE 2015 PAN AMERICAN AND  
PARAPAN AMERICAN GAMES**

**[REDACTED]**

**APPENDIX 1**

**PROJECT CO SERVICES SPECIFICATIONS**

**[REDACTED]**



**SCHEDULE 37**

**REPORTS**

**x - Means a Reliance Letter will be provided by HMQ to Project Co**

<b>No.</b>	<b>Environmental Reports and Designated Substance Reports</b>	<b>Reliance Letter</b>
1.	Designated Substances Survey, 409 Front Street Toronto ON January 26, 2011 by Golder Associates	<b>x</b>
2.	Designated Substances Survey ,420 Front Street Toronto ON January 26, 2011 by Golder Associates	<b>x</b>
3.	Bulk Sampling for Asbestos in Asphalt, Front Street WDL, by Golder Associates March 7, 2011	<b>x</b>
4.	Report to Ontario Realty Corporation Phase 1 Environmental Site Assessment West Don Lands Toronto Ontario by Decommissioning Consulting services Ltd , June 2006	
5.	Phase 1 Environmental Site Assessment Parcel 5 West Don Lands-Eastern Av, Cherry St, Front St E & Trinity St Toronto Ontario by Golder Associates March 2004	
6.	Final Phase 1 Environmental Site Assessment West Don Lands Toronto Ontario, 393 Front Street East for Ontario Realty Corporation by Jacques Whitford Ltd May 31, 2007	
7.	Draft Phase 1 Environmental Site Assessment West Don Lands Toronto Ontario Jacques 425 Cherry street for Ontario Realty Corporation by Jacques Whitford Ltd August, 2007	
8.	Final Phase 1 Environmental Site Assessment West Don Lands Toronto Ontario, Road Allowances for Ontario Realty Corporation by Jacques Whitford Ltd September, 2007	
9.	Final Phase 1 Environmental Site Assessment West Don Lands Toronto Ontario, 345 Front Street East for Ontario Realty Corporation by Jacques Whitford Ltd June 2007	
10.	Final Phase 1 Environmental Site Assessment West Don Lands Toronto Ontario, 169-185 Eastern Ave for Ontario Realty Corporation by Jacques Whitford Ltd July 17, 2007	

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No.	Environmental Reports and Designated Substance Reports	Reliance Letter
11.	Final Phase 1 Environmental Site Assessment West Don Lands Toronto Ontario, 373 Front Street East & 65 Trinity Street for Ontario Realty Corporation by Jacques Whitford Ltd August, 2007	
12.	Final Phase 1 Environmental Site Assessment West Don Lands Toronto Ontario, 153 Eastern Avenue for Ontario Realty Corporation by Jacques Whitford Ltd February 2008	
13.	Final Phase 1 Environmental Site Assessment West Don Lands Toronto Ontario, 321 Front Street East for Ontario Realty Corporation by Jacques Whitford Ltd August 2007	
14.	Phase 1 Environmental Site Assessment 45 Eastern Avenue by Trow Associates Inc. October 2003	
15.	Phase 1 Environmental Site Assessment 90 Mill St. Toronto ON for Del Management Solutions Inc by Trow Consulting Engineering Ltd February 2001	
16.	Phase II Environmental Site Assessment 153 Eastern Avenue Toronto ON for Ontario Realty Corporation by Conestoga-Rovers & Associates, April 2008	
17.	Report to Ontario Realty Corporation Phase II Environmental Site Assessment West Don Lands Toronto Ontario by Decommissioning Consulting services Ltd Volume IV Detailed Block Cross Sect Drawing Jun 2006	
18.	Report to Ontario Realty Corporation Phase II Environmental Site Assessment West Don Lands Toronto Ontario by Decommissioning Consulting services Ltd, Volume IV Soil and Groundwater June 2006	
19.	Report to Ontario Realty Corporation Phase II Environmental Site Assessment West Don Lands Toronto Ontario by Decommissioning Consulting services Ltd, Volume I June 2006	
20.	Report to Ontario Realty Corporation Phase II Environmental Site Assessment West Don Lands Toronto Ontario by Decommissioning Consulting services Ltd Volume II Detailed Block Drawings June 2006	
21.	Report to Ontario Realty Corporation Phase II Environmental Site Assessment West Don Lands Toronto Ontario by Decommissioning Consulting services Volume III Borehole and Test Pit Logs June 2006	
22.	Report to Ontario Realty Corporation Phase II Environmental Site Assessment West Don Lands Toronto Ontario by Decommissioning Consulting services Ltd Volume VI Certificates of Analysis June 2006	

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No.	Environmental Reports and Designated Substance Reports	Reliance Letter
23.	Report to Ontario Realty Corporation Phase II Environmental Site Assessment West Don Lands Toronto Ontario by Decommissioning Consulting services Ltd Volume VII Certificates of Analysis June 2006	
24.	Report to Ontario Realty Corporation Phase II Environmental Site Assessment West Don Lands Toronto Ontario by Decommissioning Consulting services Ltd Volume VIII Certificates of Analysis June 2006	
25.	Final Phase II Environmental Site Assessment Front St East & Cherry St West Don Lands for Ontario Realty Corporation by Jacques Whitford Ltd July 2008	
26.	Final Phase II Environmental Site Assessment 90 Mill St. West Don Lands for Ontario Realty Corporation by Jacques Whitford Ltd. February 2008	
27.	Supplemental Environmental Site Assessment District 4, West Don Lands for Ontario Realty Corporation by Jacques Whitford Ltd August 2008	
28.	1995 Assessment of Environmental Data for Ataratiri Lands for Waterfront Regeneration Trust by Angus Ltd March 1995	
29.	Ataratiri Soil Management Report Volume I for City of Toronto Housing Department by Trow, Dames & Moore - Aug 1991	
30.	Ataratiri Soil Management Report Volume 2 for City of Toronto Housing Department by Trow, Dames & Moore - Aug 1991	
31.	Ataratiri Soil Management Report Volume 3 for City of Toronto Housing Department by Trow, Dames & Moore - Aug 1991	
32.	Ataratiri Soil Management Report Volume 4 for City of Toronto Housing Department by Trow, Dames & Moore - Aug 1991	
33.	Asbestos Survey Sampling Report October 2007, 409 Front Street –by The Thompson Rosemount Group Inc	
34.	Asbestos Survey Sampling Report October 2007, 420 Front Street –by The Thompson Rosemount Group Inc	
35.	Designated Substances Survey and Asbestos Re-Survey – Final Report 409 Front Street, April 2009 – by The Rosemount Group Inc	
36.	Designated Substances Survey and Asbestos Re-Survey – Final Report 420 Front Street, July 2009 – by The Rosemount Group Inc	
37.	Factual Report – Phase II Environmental Site Assessment for Cherry/Sumach ROW Toronto Ontario prepared for Waterfront Toronto by WESA Inc, November 2009	<b>x</b>

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<b>No.</b>	<b>Environmental Reports and Designated Substance Reports</b>	<b>Reliance Letter</b>
38.	Interpretative Report Phase II Environmental Site Assessment for the Cherry/Sumach ROW Toronto Ontario prepared for Waterfront Toronto by WESA Inc, December 2009	<b>x</b>
39.	Phase I Environmental Site Assessment for Cherry/Sumach ROW Toronto Ontario prepared for Waterfront Toronto by WESA Inc, January 2009	<b>x</b>
40.	Factual Report – Phase II Environmental Site Assessment for Eastern portion of 19 Sackville Street Toronto Ontario prepared for Waterfront Toronto by WESA Inc, April 2009	<b>x</b>
41.	Interpretative Report – Phase II Environmental Site Assessment for Eastern portion of 19 Sackville Street Toronto Ontario prepared for Waterfront Toronto by WESA Inc, April 2009	<b>x</b>
42.	Factual Report – Phase II Environmental Site Assessment for Eastern portion of 507 King Street East Toronto Ontario prepared for Waterfront Toronto by WESA Inc, April 2009	<b>x</b>
43.	Interpretative Report – Phase II Environmental Site Assessment for Eastern portion of 507 King Street East Toronto Ontario prepared for Waterfront Toronto by WESA Inc, April 2009	<b>x</b>
44.	Factual Report – Phase II Environmental Site Assessment for Eastern portion of 525 King Street East Toronto Ontario prepared for Waterfront Toronto by WESA Inc, April 2009	<b>x</b>
45.	Interpretative Report – Phase II Environmental Site Assessment for Eastern portion of 525 King Street East Toronto Ontario prepared for Waterfront Toronto by WESA Inc, April 2009	<b>x</b>
46.	Anticipated Environmental conditional at the Utility duct bank to be installed along the west side of the Cherry/Sumach ROW Toronto Ontario prepared for Waterfront Toronto by WESA Inc, March 2011	<b>x</b>
47.	Cherry street combined sewer sediment characterization letter to David Dubois, Waterfront Toronto by WESA Inc, December 2009	<b>x</b>
48.	Environmental Investigation - Stormwater Quality Facility and Outfall Tunnel 480 Lakeshore Boulevard Toronto Ontario prepared for Waterfront Toronto by Conestoga-Rovers & Associates July 2011	<b>x</b>
49.	Phase One Environmental Site Assessment, West Don Lands, Group 1 Final April 5, 2011 submitted to Ontario Realty Corporation by CH2MHILL	<b>x</b>
50.	Phase One Environmental Site Assessment, West Don Lands, Group 2 Final May 13, 2011 submitted to Ontario Realty Corporation by CH2MHILL	<b>x</b>

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<b>No.</b>	<b>Environmental Reports and Designated Substance Reports</b>	<b>Reliance Letter</b>
51.	Phase One Environmental Site Assessment, West Don Lands, Group 4 Final May 17, 2011 submitted to Ontario Realty Corporation by CH2MHILL	<b>x</b>
52.	Phase Two Environmental Site Assessment, West Don Lands, Group 5 Final August 31, 2011 submitted to Ontario Realty Corporation by CH2MHILL	<b>x</b>
53.	Phase Two Environmental Site Assessment, West Don Lands, Group 7 Final August 24, 2011 submitted to Ontario Realty Corporation by CH2MHILL	<b>x</b>
54.	Updated Group 7 Phase Two Environmental Site Assessment, West Don Lands, November 8, 2011 submitted to Ontario Realty Corporation by CH2MHILL	<b>x</b>
55.	Phase Two Environmental Site Assessment, West Don Lands, Group 8 Final November 14, 2011 submitted to Ontario Realty Corporation by CH2MHILL	<b>x</b>
56.	Phase Two Environmental Site Assessment, West Don Lands, Group 6 Final July 15, 2011 submitted to Ontario Realty Corporation by CH2MHILL	<b>x</b>
57.	Phase Two Environmental Site Assessment, West Don Lands, Group 1 Final June 29, 2011 submitted to Ontario Realty Corporation by CH2MHILL	<b>x</b>
58.	RA Group 5 Remedial Options and Feasibility Study, prepared for Ontario Realty Corporation by CH2MHILL, February 2011	<b>x</b>
59.	RA Group 6 Remedial Options and Feasibility Study, prepared for Ontario Realty Corporation by CH2MHILL, March 2011	<b>x</b>
60.	RA Group 7 Remedial Options and Feasibility Study, prepared for Ontario Realty Corporation by CH2MHILL, February 2011	<b>x</b>
61.	RA Group 8 Remedial Options and Feasibility Study, prepared for Ontario Realty Corporation by CH2MHILL, March 2011	<b>x</b>
62.	RA Group 1 Remedial Options and Feasibility Study, prepared for Ontario Realty Corporation by CH2MHILL, June 2011	<b>x</b>
63.	Risk Assessment Group 5, West Don Lands Toronto, Ontario December 1, 2010 prepared for Ontario Realty Corporation by CH2MHILL	<b>x</b>
64.	Revised Risk Assessment Group 5, West Don Lands Toronto, Ontario January 17, 2011 prepared for Ontario Realty Corporation by CH2MHILL	<b>x</b>
65.	Errata - Risk Assessment Group 5, West Don Lands Toronto, Ontario February 3, 2011 – Memorandum for Risk Assessment Group 5, West Don Lands Toronto, Ontario prepared for Ontario Realty Corporation by CH2MHILL	<b>x</b>

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<b>No.</b>	<b>Environmental Reports and Designated Substance Reports</b>	<b>Reliance Letter</b>
66.	Revised Risk Assessment Group 5, West Don Lands Toronto, Ontario February 3, 2011 prepared for Ontario Realty Corporation by CH2MHILL, - Final Consolidated Version	<b>x</b>
67.	Risk Assessment Group 7, West Don Lands Toronto, Ontario December 8, 2010 prepared for Ontario Realty Corporation by CH2MHILL	<b>x</b>
68.	Revised Risk Assessment Group 7, West Don Lands Toronto, Ontario January 24, 2011 prepared for Ontario Realty Corporation by CH2MHILL	<b>x</b>
69.	Errata – Risk Assessment Group 7, West Don Lands Toronto, Ontario February 11, 2011 – Memorandum for Risk Assessment Group 7, West Don Lands Toronto, Ontario prepared for Ontario Realty Corporation by CH2MHILL	<b>x</b>
70.	Email of the Sampling Strategy for Soil Management Plan, February 23, 2011 by CH2MHILL	<b>x</b>
71.	Revised Risk Assessment Group 7, West Don Lands Toronto, Ontario February 11, 2011 prepared for Ontario Realty Corporation by CH2MHILL, - Final Consolidated Version	<b>x</b>
72.	Risk Assessment Group 8, West Don Lands Toronto, Ontario January 5, 2011 prepared for Ontario Realty Corporation by CH2MHILL	<b>x</b>
73.	Revised Risk Assessment Group 8, West Don Lands Toronto, Ontario February 16, 2011 prepared for Ontario Realty Corporation by CH2MHILL	<b>x</b>
74.	Errata - Risk Assessment Group 8, West Don Lands Toronto, Ontario March 17, 2011 – Memorandum for Risk Assessment Group 8, West Don Lands Toronto, Ontario prepared for Ontario Realty Corporation by CH2MHILL	<b>x</b>
75.	Email from CH2MHILL to Camilo Martinez (Risk Assessment Coordinator), providing clarification regarding CH2MHILL's response to MOE Comment #2, March 21, 2011	<b>x</b>
76.	Revised Risk Assessment Group 8, West Don Lands Toronto, Ontario March 17, 2011 prepared for Ontario Realty Corporation by CH2MHILL, - Final Consolidated Version	<b>x</b>
77.	Risk Assessment Group 6, West Don Lands Toronto, Ontario January 12, 2011 prepared for Ontario Realty Corporation by CH2MHILL	<b>x</b>
78.	Revised Risk Assessment Group 6, West Don Lands Toronto, Ontario February 23, 2011 prepared for Ontario Realty Corporation by CH2MHILL	<b>x</b>

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No.	Environmental Reports and Designated Substance Reports	Reliance Letter
79.	Errata 1 - Risk Assessment Group 6, West Don Lands Toronto, Ontario March 24, 2011 – Memorandum for Risk Assessment Group 6, West Don Lands Toronto, Ontario prepared for Ontario Realty Corporation by CH2MHILL	<b>x</b>
80.	Errata 2 – Risk Assessment Group 6, West Don Lands Toronto, Ontario April 1, 2011 – Memorandum (Errata #2) for Risk Assessment Group 6, West Don Lands Toronto, Ontario prepared for Ontario Realty Corporation by CH2MHILL	<b>x</b>
81.	Revised Risk Assessment Group 6, West Don Lands Toronto, Ontario April 1, 2011 prepared for Ontario Realty Corporation by CH2MHILL, - Final Consolidated Version	<b>x</b>
82.	Risk Assessment, Group 1, West Don Lands, Toronto, Ontario January 27,, 2011 prepared for Ontario Realty Corporation by CH2MHILL - submitted to MOE February 4, 2011	<b>x</b>
83.	Revised Risk Assessment Group 1, West Don Lands Toronto, Ontario March 23, 2011 prepared for Ontario Realty Corporation by CH2MHILL	<b>x</b>
84.	Errata Memo – Risk Assessment, Group 1, West Don Lands, Toronto Ontario May 19, 2011 - Memorandum (Errata #1) for Risk Assessment for Group 1, West Don Lands, Toronto, Ontario prepared for Ontario Realty Corporation by CH2MHILL	<b>x</b>
85.	Errata Memo – Risk Assessment, Group 1, West Don Lands, Toronto Ontario July 8, 2011 Memorandum (Errata #2) for Risk Assessment for Group 1, West Don Lands, Toronto, Ontario prepared for Ontario Realty Corporation by CH2MHILL	<b>x</b>
86.	Errata Email – Risk Assessment, Group 1, West Don Lands, Toronto Ontario July 14, 2011, Email communication from James Sprenger (QPRA) to Richard Saunders (District Engineer) providing clarification on the fill cap thickness for plants by CH2MHILL	<b>x</b>
87.	Revised Risk Assessment Group 1, West Don Lands Toronto, Ontario July 13, 2011 prepared for Ontario Realty Corporation by CH2MHILL, - Final Consolidated Version	<b>x</b>

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No.	Geotechnical Reports	Reliance Letter
1.	Hydrogeological Assessment Report 2015 Pan American Games Pan Am Athletes' Village West Don Lands Toronto, Ontario by WESA File No. T-B9125-00 January 2011	<b>x</b>
2.	Geothermal Assessment Report 2015 Pan American Games Pan Am Athletes' Village West Don Lands Toronto, Ontario by WESA File No. T-B9125-00 January 2011	<b>x</b>
3.	Geotechnical Investigations Report – 2015 Pan American Games – Pan Am Athletes' Village – Block A (Blocks 1 and 14) West Don Lands Toronto Ontario for Ontario Realty Corporation by LVM, Jan 14 2011	<b>x</b>
4.	Geotechnical Investigations Report – 2015 Pan American Games – Pan Am Athletes' Village – Block B (Block 3) West Don Lands Toronto Ontario for Ontario Realty Corporation by LVM, Jan 14 2011	<b>x</b>
5.	Geotechnical Investigations Report – 2015 Pan American Games – Pan Am Athletes' Village – Block C (Block 15) West Don Lands Toronto Ontario for Ontario Realty Corporation by LVM, Jan 11 2011	<b>x</b>
6.	Geotechnical Investigations Report – 2015 Pan American Games – Pan Am Athletes' Village – Block D (Block 16) West Don Lands Toronto Ontario for Ontario Realty Corporation by LVM, Jan 11 2011	<b>x</b>
7.	Geotechnical Investigations Report – 2015 Pan American Games – Pan Am Athletes' Village – Block DE (Block 20) West Don Lands Toronto Ontario for Ontario Realty Corporation by LVM, Jan 12 2011	<b>x</b>
8.	Geotechnical Investigations Report – 2015 Pan American Games – Pan Am Athletes' Village – Block E (Block 4) West Don Lands Toronto Ontario for Ontario Realty Corporation by LVM, Jan 11 2011	<b>x</b>
9.	Geotechnical Investigations Report – 2015 Pan American Games – Pan Am Athletes' Village – Block F (Block 10) West Don Lands Toronto Ontario for Ontario Realty Corporation by LVM, Jan 11 2011	<b>x</b>
10.	Geotechnical Investigations Report – 2015 Pan American Games – Pan Am Athletes' Village – Block G (Block 11) West Don Lands Toronto Ontario for Ontario Realty Corporation by LVM, Jan 12 2011	<b>x</b>
11.	Geotechnical Investigations Report – 2015 Pan American Games – Pan Am Athletes' Village – Block H (Block 12) West Don Lands Toronto Ontario for Ontario Realty Corporation by LVM, Jan 12 2011	<b>x</b>
12.	Geotechnical Investigations Report – 2015 Pan American Games – Pan Am Athletes' Village – Block I (Block 13) West Don Lands Toronto Ontario for Ontario Realty Corporation by LVM, Jan 11 2011	<b>x</b>



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No.	Environmental Reports and Designated Substance Reports	Reliance Letter
13.	Geotechnical Investigations Report – 2015 Pan American Games – Pan Am Athletes’ Village – Block J (Block 8) West Don Lands Toronto Ontario for Ontario Realty Corporation by LVM, Jan 12 2011	<b>x</b>
14.	Geotechnical Investigations Report – 2015 Pan American Games – Pan Am Athletes’ Village – Block K (Block 9) West Don Lands Toronto Ontario for Ontario Realty Corporation by LVM, Jan 12 2011	<b>x</b>
15.	Geotechnical Investigations Report – 2015 Pan American Games – Pan Am Athletes’ Village – Block L West Don Lands Toronto Ontario for Ontario Realty Corporation by LVM, Jan 12 2011	<b>x</b>
16.	Geotechnical Investigations Report – 2015 Pan American Games – Pan Am Athletes’ Village – Block M West Don Lands Toronto Ontario for Ontario Realty Corporation by LVM, Jan 12 2011	<b>x</b>
17.	Geotechnical Investigations Report – 2015 Pan American Games – Pan Am Athletes’ Village – Front Street (Front Street East and Blocks 33 and 34) West Don Lands Toronto Ontario for Ontario Realty Corporation by LVM, Jan 14 2011	<b>x</b>
18.	Geotechnical Investigations Report – 2015 Pan American Games – Pan Am Athletes’ Village – Road Group 1 (Blocks 24, 25, 27, 30, and 31) West Don Lands Toronto Ontario for Ontario Realty Corporation by LVM, Jan 12 2011	<b>x</b>
19.	Geotechnical Investigations Report – 2015 Pan American Games – Pan Am Athletes’ Village – Road Group 2 (Blocks 21, 22, 23, and 32) West Don Lands Toronto Ontario for Ontario Realty Corporation by LVM, Jan 12 2011	<b>x</b>
20.	Final Report to The Proctor & Redfern Group - Preliminary Assessment of Physical Hydrogeology St. Lawrence Square Toronto Ontario by Golder Associates - December 1988	
21.	Final Report Area Wide Groundwater Initiative West Don Lands for Ontario Realty Corporation by INTERA Engineering Ltd, 200 July 2005	
22.	Ataratiri Groundwater Management Report Volume 1 Text for City of Toronto Housing Department by Trow, Dames & Moore August 1991	
23.	Focused Subsurface Investigation 153 Eastern Ave Toronto Ontario for Ontario Realty Corporation (ORC Project No. D93027) by Conestoga-Rovers & Associates, April 2008	
24.	Final Geotechnical Investigation – West Don Lands Stormwater Quality Facility and Outfall Tunnel, Toronto, Ontario prepared for Waterfront Toronto by Conestoga-Rovers & Associates July 2011	<b>x</b>

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No.	Environmental Reports and Designated Substance Reports	Reliance Letter
25.	Geo-Environmental Management Plan Old Eastern Avenue Toronto Ontario Draft Report prepared for Waterfront Toronto by Stantec Consulting Ltd, December 2010	<b>x</b>
26.	Report on Geotechnical and Geochemical Investigation Proposed Cherry Street Reconstruction Toronto Ontario prepared for R. V. Associates Ltd by Coffey Geotechnics Inc, December 2008	<b>x</b>
27.	Hydrogeological Assessment Report for the Reconstruction of the Cherry/Sumach Right of Way, West Don Lands Toronto Ontario Prepared for Waterfront Toronto by WESA INC, March 2011	<b>x</b>

**SCHEDULE 38**

**PROJECT CO STAGE 2 LANDS DEVELOPMENT AGREEMENT**

**WATERFRONT TORONTO DEVELOPMENT AGREEMENT**

**BETWEEN**

**TORONTO WATERFRONT REVITALIZATION CORPORATION**

**("Waterfront Toronto")**

**AND**

**DUNDEE KILMER DEVELOPMENTS L.P.**

**(the "Purchaser")**

**DATED THE \_\_\_\_ DAY OF \_\_\_\_\_, 2011**

**WATERFRONT TORONTO DEVELOPMENT AGREEMENT**

**THIS AGREEMENT** dated as of the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

**BETWEEN:**

**TORONTO WATERFRONT REVITALIZATION CORPORATION**, a corporation incorporated under the *Business Corporations Act* (Ontario) and continued as a corporation without share capital pursuant to the *Toronto Waterfront Revitalization Corporation Act*, S.O. 2002

("Waterfront Toronto")

**OF THE FIRST PART**

- and -

**DUNDEE KILMER DEVELOPMENTS L.P., [REDACTED]**

(the "**Purchaser**")

**OF THE SECOND PART**

**WHEREAS:**

- A. Waterfront Toronto has been established pursuant to the *Toronto Waterfront Revitalization Corporation Act* (Ontario) to plan, promote and guide the revitalization of Toronto's waterfront lands and is committed to making Toronto's waterfront a national and global leader in sustainable urban communities that demonstrate excellence in urban design and architecture;
- B. Waterfront Toronto is the master developer of the West Don Lands in the City of Toronto, Ontario;
- C. The Purchaser (in its capacity as Project Co under the Project Agreement) was selected by HMQ to develop the Pan/Parapan American Games Athletes' Village for the Pan/Parapan Am Games pursuant to the Project Agreement;
- D. Her Majesty The Queen In Right Of Ontario as represented by the Minister of Infrastructure, as represented by Ontario Infrastructure and Lands Corporation, a non-share capital corporation continued and amalgamated under the *Ontario Infrastructure and Lands Corporation Act*, 2011, S.O. 2011, c. 9, Schedule 32, as amended, is the vendor (the "**Vendor**") under the Land Purchase Agreement of the Project Co Stage 2 Lands in the West Don Lands;

- E. The Purchaser has agreed to acquire the Project Co Stage 2 Lands to develop the Proposed Development and, as a condition of such acquisition, has agreed to enter into this Agreement with Waterfront Toronto regarding the nature, timing, design, construction and function of the Proposed Development; and
- F. It is the intention of both the Purchaser and Waterfront Toronto that this Agreement shall be registered on title to the Project Co Stage 2 Lands, assigned to and assumed by any successor in title to the Project Co Stage 2 Lands and that the covenants contained herein shall bind every successor in title and run with the title to the Project Co Stage 2 Lands and each and every part thereof, save and except that this Agreement shall not be assigned to and assumed by or be binding on purchasers or lessees of condominium units, or freehold or leasehold retail or commercial spaces.

**NOW THEREFORE**, in consideration of the foregoing, the covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Purchaser and Waterfront Toronto agree as follows:

## **ARTICLE I**

### **INTERPRETATION**

#### **1.01 Definitions**

The following terms and expressions used herein shall have the following meanings:

- (a) **"Agreement"** or **"Development Agreement"** means this development agreement, as amended from time to time;
- (b) **"Applicable Law"** means:
- (i) any statute or proclamation or any delegated or subordinate legislation including regulations and municipal bylaws;
  - (ii) any lawful requirement of an Authority; and
  - (iii) any applicable judgment of a relevant court of law, board, arbitrator or administrative agency of competent jurisdiction that is binding and enforceable in the Province of Ontario,
- in each case in force in the Province of Ontario;
- (c) **"Applicable Waterfront Toronto Planning Documents"** means the aggregate of the Official Plan of the City of Toronto, the Central Waterfront Secondary Plan, the King Parliament Part II Plan of the former City of Toronto, the West Don Lands Precinct Plan endorsed by Toronto City Council in May 2005, and the West Don Lands Block Plan;
- (d) **"Arbitrator Retainer Agreement"** has the meaning given to it in Section 9.03;

- (e) **"Authority"** means any governmental or quasi-governmental authority, agency, body or department whether federal, provincial, regional, municipal or local having jurisdiction over the Proposed Development from time to time, but for clarity does not include Waterfront Toronto;
- (f) **"Block"** means a block as shown on the Plan of Subdivision;
- (g) **"Block Plan"** means West Don Lands Block Plan and Urban Design Guidelines (2006), as amended in May, 2011;
- (h) **"Business Day"** means any day, other than a Saturday, Sunday or statutory holiday in Ontario;
- (i) **"Canada Green Building Council"** means the Canada Green Building Council or any successor organization that is recognized as having assumed the role of the Canada Green Building Council in respect of LEED® certification in Canada;
- (j) **"Chargee"** has the meaning given to it in Section 11.03(g);
- (k) **"Chargee Agreement"** has the meaning given to it in Section 11.03(g);
- (l) **"City"** means the City of Toronto;
- (m) **"Closing"** means the closing of the purchase of the Project Co Stage 2 Lands pursuant to the Land Purchase Agreement, at which time legal title to the Project Co Stage 2 Lands is transferred to the Purchaser or to another entity as permitted under the Land Purchase Agreement;
- (n) **"Closing Date"** has the same meaning as the "Date of Closing" in the Land Purchase Agreement;
- (o) **"Completion"** means, in respect of each Block comprising the Project Co Stage 2 Lands, completion of development, construction and commissioning of all material components of the applicable portion of the Proposed Development, Occupancy and registration of a condominium plan and LEED® Gold Certification and **"Complete"** shall have a similar meaning;
- (p) **"Completion Target Date"** means [REDACTED];
- (q) **"Condominium Act"** means the *Condominium Act*, 1998 (Ontario) S.O. 1998, c.19;
- (r) **"Consenting Party"** has the meaning given to it in Section 6.02;
- (s) **"Construction"** means, in respect of each Block comprising the Project Co Stage 2 Lands, any activity on such lands that would constitute an "improvement" as defined in the *Construction Lien Act* (Ontario);

- (t) **"Construction Liaison Committee"** means the committee of residents, businesses and land owners in the vicinity of the West Don Lands, that has been established by Waterfront Toronto to provide a forum for the reporting, monitoring, discussion and resolution of issues and concerns related to construction within the West Don Lands. Construction Liaison Committee meetings include representation from Waterfront Toronto, Eastern Construction, Ontario Infrastructure and Lands Corporation, Toronto Community Housing, Urban Capital and others, from time to time, as appropriate;
- (u) **"Construction Start Date"** means, in respect of each Block comprising the Project Co Stage 2 Lands, the day on which the Purchaser begins *bona fide* construction of the applicable portion of the Proposed Development by undertaking on the applicable Block normal site activities as undertaken on similar sites in the City, including the establishment of site offices, construction offices and hoarding, installation of piles and excavation;
- (v) **"Construction Start Target Date"** means [REDACTED];
- (w) **"Contaminant"** has, for the purposes of this Agreement, the same meaning as that contained in the *Environmental Protection Act*, R.S.O. 1990, c. E.19, as amended, and shall include the requirements of any and all guidelines and/or policies having the force of law issued by the Ontario Ministry of the Environment and/or the Ministry of Labour;
- (x) **"Default Remediation Plan"** has the meaning given to it in Section 8.01(c)(ii);
- (y) **"Description of the Proposed Development"** means the description of the features of the Proposed Development as settled to the satisfaction of Waterfront Toronto and attached hereto as Schedule "C", as amended, revised, restated and supplemented by mutual agreement between the Parties;
- (z) **"Designated Arbitrator"** has the meaning given in Section 9.02;
- (aa) **"Designated Provider"** has the meaning given in Section 5.01(b);
- (bb) **"Development Agreement Charge"** has the meaning given in Section 8.02(d);
- (cc) **"Development Schedule"** has the meaning given to it in Section 8.01(b);
- (dd) **"Development Agreement Letter of Credit"** has the meaning given to it in Section 8.02(b);
- (ee) **"Dispute"** has the meaning given to it in Section 9.01(b);
- (ff) **"Environmental Laws"** includes, but is not limited to all applicable federal and provincial statutes, municipal and local laws, common law, and deed restrictions, all statutes, by-laws, regulations, codes, licenses, permits, orders, directives, guidelines and decisions rendered by any Authority relating to the protection of

the environment, natural resources, occupational health and safety or the manufacture, processing, distribution, use, treatment, storage, disposal, packaging, transport, handling, containment, clean-up or other remediation or corrective action of any Hazardous Substance;

- (gg) **"Environmental Management Plan"** means the environmental management plan adopted by Waterfront Toronto, a copy of which has been provided to the Purchaser;
- (hh) **"Event of Default"** has the meaning given to it in Sections 8.01;
- (ii) **"Family Units"** means residential units with three (3) or more bedrooms;
- (jj) **"Financial Close"** means the Financial Close of the Project Agreement and is the date on which the Project Agreement is in full force and effect;
- (kk) **"Force Majeure"** means any *bona fide* delay beyond the control of a party resulting including those resulting from regional labour disruptions or labour disruptions at public authorities that prevent the timely processing of approvals, consents and permits, acts of God, wars, insurrection, terrorism or the responses of civil authority thereto or extreme or extraordinary weather conditions, provided that Force Majeure will not include:
  - (i) any delay resulting from construction problems (other than as a result of a regional labour disruption or inability to obtain materials for a reason other than the cost thereof);
  - (ii) material availability unless materials are unavailable on an industry-wide basis;
  - (iii) a marketing failure of the Proposed Development (but not including a broad market failure that has an impact on substantially all contemporaneously marketed projects of a similar nature);
  - (iv) financing issues (other than industry-wide financing issues): or
  - (v) delays caused by any impecuniosity of the Party;
- (ll) **"Hazardous Substance"** includes, but is not limited to any hazardous or toxic chemical, waste, by-product, pollutant, contaminant, compound, product or substance, including without limitation, any Contaminant, asbestos, polychlorinated biphenyls, petroleum and its derivatives, by-products or other hydrocarbons and any other liquid, solid or gaseous material the exposure to, or manufacture, possession, presence, use, generation, storage, transportation, treatment, release, disposal, abatement, cleanup, removal, remediation or handling of which is prohibited, controlled or regulated by any and is defined in or pursuant to any Environmental Law;



- (mm) **"HMQ"** means Her Majesty the Queen in right of Ontario as represented by the Minister of Infrastructure, as represented by Ontario Infrastructure and Lands Corporation, a non-share capital corporation continued and amalgamated under the *Ontario Infrastructure and Lands Corporation Act*, 2011, S.O. 2011, c. 9, Schedule 32, as amended;
- (nn) **"Indemnified Parties"** has the meaning given to it in Section 7.03(a);
- (oo) **"Land Purchase Agreement"** has the meaning given to it in Section 1.03;
- (pp) **"LEED®"** means Leadership in Energy and Environmental Design Green Building Rating System administered by the Canada Green Building Council, as revised and reissued from time to time;
- (qq) **"LEED® Gold Certification"** means either (i) certification by the Canada Green Building Council or a successor organization that the Proposed Development, if residential, meets or exceeds the NC 2009 standard for LEED® Gold certification, or if Non-Residential, meets or exceeds the CS 2009 standard for LEED® Gold Certification; or (ii) if Canada Green Building Council or its successor will not then certify in respect of these standards, then certification that the Proposed Development meets or exceeds these standards by another independent third party selected by the Purchaser and satisfactory to Waterfront Toronto, acting reasonably;
- (rr) **"Low-End-of-Market Housing"** means ownership dwelling units that do not exceed the following maximum size restrictions:
  - (i) a maximum residential gross floor area of 46.5 square metres for bachelor dwelling units;
  - (ii) a maximum residential gross floor area of 60.4 square metres for a one bedroom dwelling unit;
  - (iii) a maximum residential gross floor area of 79 square metres for two bedroom dwelling units;
  - (iv) a maximum residential gross floor area of 93 square metres for three bedroom dwelling units;
  - (v) a maximum residential gross floor area of 120 square metres for a two bedroom townhouse/stacked townhouse unit; and
  - (vi) a maximum residential gross floor area of 135 square metres for a three bedroom townhouse/stacked townhouse unit;
- (ss) **"Marketing"** means the process pursuant to which the Purchaser markets residential condominium units in the Proposed Development by soliciting expressions of interest by means of billboard advertising, newspaper

advertisements and other media advertising and other forms of marketing, including the issue of a disclosure statement pursuant to the *Condominium Act* and the opening of a sales office or entering into unit purchase and sale agreements;

- (tt) **"Marketing Start Date"** means, in respect of each Block comprising the Project Co Stage 2 Lands, the date on which the Purchaser begins Marketing;
- (uu) **"Marketing Start Target Date"** means [REDACTED];
- (vv) **"Milestone Target Dates"** mean the dates for achievement of each Milestone Event listed in Section 4.01(a), subject to postponement thereof from time to time as herein set forth;
- (ww) **"Milestone Events"** mean the events listed in Section 4.01(a);
- (xx) **"MOE"** means the Ministry of the Environment of the Province of Ontario and any successor Authority with comparable jurisdiction;
- (yy) **"Notice"** has the meaning given to it in Section 10.01;
- (zz) **"Occupancy"** means, in respect of each Block comprising the Project Co Stage 2 Lands, the first occupancy of new residential condominium units on such lands;
- (aaa) **"Order of Government"** means any, or all of, the Government of Canada, the Province of Ontario, or the City, as the case may be, and **"Orders of Government"** means all of the foregoing governments;
- (bbb) **"Pan/Parapan Am Games"** means the 2015 Pan/Parapan American Games;
- (ccc) **"Party"** means Waterfront Toronto or the Purchaser and **"Parties"** means both Waterfront Toronto and the Purchaser;
- (ddd) **"Period of Discussion"** has the meaning given to it in Section 9.01(d);
- (eee) **"Permitted Encumbrances"** has the meaning given to it in the Land Purchase Agreement;
- (fff) **"Person"** includes a natural person, corporation, partnership, government entity or joint venture;
- (ggg) **"Plan of Subdivision"** means plan of subdivision 66M-2488 registered on September 9, 2011, prepared by Sexton McKay Limited OLS, approved under Section 51 of the *Planning Act* (Ontario) and attached hereto as Schedule "B".
- (hhh) **"Project Agreement"** means the project agreement made on or about the \_\_\_\_\_ day of \_\_\_\_\_, 2011 between HMQ and the Purchaser (in its

capacity as Project Co under that agreement) as the same may be amended, supplemented or restated from time to time;

- (iii) **"Project Co Facilities"** means the development to be constructed by the Purchaser (in its capacity as Project Co under the Project Agreement) on the Project Co Stage 1 Lands pursuant to the Project Agreement;
- (jjj) **"Project Co Stage 1 Condominium Facilities"** means the Facilities identified as "Project Co Stage 1 Condominium Facilities" pursuant to Section 26.2(a) of the Project Agreement, which are to be completed and located on the Project Co Stage 1 Lands;
- (kkk) **"Project Co Stage 1 Lands"** has the meaning given to it in the Land Purchase Agreement;
- (lll) **"Project Co Stage 2 Lands"** means the lands described in Schedule "A" hereto;
- (mmm) **"Proposed Development"** means the development proposed by the Purchaser for the Project Co Stage 2 Lands, which, for clarity, shall be completed in accordance with the Description of the Proposed Development;
- (nnn) **"Provincial Loan"** means the funds to be provided to the Purchaser (in its capacity as Project Co under the Project Agreement), if any, pursuant to and in accordance with the Provincial Loan Agreement;
- (ooo) **"Provincial Loan Agreement"** means the agreement entered into between the Purchaser (in its capacity as Project Co under the Project Agreement), [REDACTED] and HMQ dated and effective as of the date of Financial Close;
- (ppp) **"Purchaser"** means Dundee Kilmer Developments L.P. and its successors and permitted assigns;
- (qqq) **"Registered Agreements"** means agreements, restrictions, easements and other encumbrances registered on title to the Project Co Stage 2 Lands;
- (rrr) **"Requesting Party"** has the meaning given to it in Section 6.02;
- (sss) **"RFP"** means Request for Proposals No. OIPC-11-00-I024 issued by Ontario Infrastructure and Lands Corporation for the 2015 Pan/Parapan American Games Athletes' Village on January 28, 2011, as amended;
- (ttt) **"RFP Submission"** means the proposal submitted by Dundee Kilmer Developments Limited in response to the RFP;
- (uuu) **"RFQ"** means the request for qualifications issued by Ontario Infrastructure and Lands Corporation on October 26, 2010, for potential proponents interested in receiving the RFP;

- (vvv) **"Schedule Remediation Plan"** has the meaning given to it in Section 8.01(b);
- (www) **"Sell"** means the process pursuant to which a purchaser enters into an agreement of purchase and sale for a condominium unit or a proposed condominium unit pursuant to the *Condominium Act* (Ontario);
- (xxx) **"Settlement Nominees"** has the meaning given to it in Section 9.01(c);
- (yyy) **"Sunset Date"** means [REDACTED], subject to extension due to Force Majeure;
- (zzz) **"Sustainability Requirements"** has the meaning given to it in Section 4.03;
- (aaaa) **"Technical Referee"** has the meaning given to it in Section 9.02(g);
- (bbbb) **"Vendor"** has the meaning given to it in Recital C;
- (cccc) **"Waterfront Design Review Panel"** means the advisory panel established by Waterfront Toronto to provide peer review and advice, as constituted from time to time;
- (dddd) **"Waterfront Design Review Panel's Bylaws, Policies and Procedures"** means the Waterfront Design Review Panel's Bylaws, Policies and Procedures adopted April 9, 2008 (as amended from time to time), a copy of which has been provided to the Purchaser;
- (eeee) **"West Don Lands Class Environmental Assessment"** means the West Don Lands Class Environmental Assessment Master Plan (March 2005);
- (ffff) **"West Don Lands Committee"** means the umbrella group of local residents' associations and other interest groups that meet with Waterfront Toronto on a regular basis or as requested and any successor group;
- (gggg) **"West Don Lands Precinct Plan"** means the West Don Lands Precinct Plan endorsed by the City in May 2005;
- (hhhh) **"West Don Lands Public Realm Master Plan"** means the West Don Lands Public Realm Master Plan Report (May 2011); and
- (iiii) **"WTEI" or "Waterfront Toronto Employment Initiative"** means a program committed to connecting un/under-employed Torontonians with the employment and training opportunities that are generated through the revitalization of the waterfront projects within Waterfront Toronto's mandate. The WTEI also seeks to help businesses recruit skilled workers to meet current and future hiring needs. The WTEI is led by Waterfront Toronto, the City of Toronto through the Employment & Social Services Division and other social and employment service partners as determined by Waterfront Toronto and/or the City of Toronto, which partners may change from time to time.

## **1.02 Schedules**

This Agreement is comprised of this executed agreement and the following documents, all of which are hereby incorporated by reference into and form part of this Agreement:

Schedule "A"	Legal Description of the Project Co Stage 2 Lands
Schedule "B"	Plan of Subdivision
Schedule "C"	Description of the Proposed Development
Schedule "D"	Chargee Agreement Terms
Schedule "E"	Section 1.3.2 (Sustainability) of Part 1 of the Output Specifications

## **1.03 Agreement of Purchase and Sale and Determination of the Project Co Stage 2 Lands**

This Agreement is entered into contemporaneously with the agreement of purchase and sale between the Vendor and the Purchaser (the "**Land Purchase Agreement**"). Each of the parties hereto acknowledge that the Land Purchase Agreement is subject to conditions for the benefit of each of the Vendor and the Purchaser and that, if any one of those conditions is not satisfied or if one of the parties to the Land Purchase Agreement defaults the Land Purchase Agreement may be terminated before the Project Co Stage 2 Lands has been conveyed by the Vendor to the Purchaser. If the Land Purchase Agreement is not executed by all parties thereto or, if executed, is terminated in accordance with its terms or otherwise for any reason before the Project Co Stage 2 Lands has been conveyed by the Vendor to the Purchaser, this Agreement shall be terminated without liability to either party, other than as expressly provided herein, and this Agreement shall be at an end, subject only to the survival of those provisions listed in Section 11.11 as surviving termination.

## **1.04 No Presumption**

No principle or presumption of contract interpretation shall be used to construe the whole or any part of this Agreement on the basis that it was prepared by Waterfront Toronto.

## **ARTICLE II REPRESENTATIONS**

### **2.01 Representations of Waterfront Toronto**

Waterfront Toronto represents and warrants to the Purchaser that as of the date of this Agreement:

- (a) Waterfront Toronto is a non-share capital corporation incorporated and validly existing under the laws of the Province of Ontario and has all the requisite corporate power and authority to carry on its business as it is currently being

conducted, and to execute, deliver and perform this Agreement, and to enter into and perform all other agreements, instruments, undertakings and documents as are required by this Agreement;

- (b) Waterfront Toronto has the requisite power, authority and capacity to execute and deliver and perform this Agreement, and to do all acts and things, and execute, deliver and perform all other agreements, instruments, undertakings and documents as are required by this Agreement to be done, executed, delivered or performed;
- (c) no steps or proceedings have been taken or are pending to supersede or amend its corporate power and authority in a manner that would impair or limit its ability to perform its obligations under this Agreement;
- (d) this Agreement has been duly authorized, executed, and delivered by Waterfront Toronto and constitutes a legal, valid, and binding obligation of Waterfront Toronto, enforceable against Waterfront Toronto in accordance with its terms, subject only to:
  - (i) limitations with respect to its enabling legislation, the enforcement of remedies by bankruptcy, insolvency, moratorium, winding-up, arrangement, reorganization, fraudulent preference and conveyance and other laws of general application affecting the enforcement of creditors' rights generally; and
  - (ii) general equitable principles and the fact that the availability of equitable remedies is in the discretion of a court and that a court may stay proceedings or the execution of judgments;
- (e) the execution, delivery, and performance by Waterfront Toronto of this Agreement does not and will not violate or conflict with, or constitute a default under:
  - (i) its constating or organizational documents;
  - (ii) any Applicable Law; or
  - (iii) any covenant, contract or agreement to which it is a party or by which it or any of its properties or assets is bound or affected; and
- (f) there are no actions, suits, proceedings, or (to the best of Waterfront Toronto's knowledge) investigations pending or threatened against Waterfront Toronto at law or in equity before any Authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any materially adverse effect on the business, properties, or assets or the condition, financial or otherwise, of Waterfront Toronto or in any impairment of its ability to perform its obligations under this Agreement, and Waterfront Toronto has no knowledge of any violation or default with respect to any order, writ, injunction, or decree of

any Authority or arbitral body that could result in any such materially adverse effect or impairment.

## **2.02 Representations of the Purchaser**

The Purchaser represents and warrants to Waterfront Toronto that as of the date of this Agreement:

- (a) the Purchaser is [REDACTED], and has all the requisite power and authority to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Agreement and to perform its obligations hereunder;
- (b) [REDACTED];
- (c) [REDACTED];
- (d) the Purchaser has the requisite power, authority and capacity to execute and deliver and perform this Agreement, and to do all acts and things, and execute, deliver and perform all other agreements, instruments, undertakings and documents as are required by this Agreement to be done, executed, delivered or performed;
- (e) no steps or proceedings have been taken or are pending to supersede or amend its constating documents, letters patent or by-laws in a manner that would impair or limit its ability to perform its obligations under this Agreement;
- (f) this Agreement has been duly authorized, executed, and delivered by the Purchaser and constitutes a legal, valid, and binding obligation of the Purchaser, enforceable against the Purchaser in accordance with its terms, subject only to:
  - (i) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, moratorium, winding-up, arrangement, reorganization, fraudulent preference and conveyance and other laws of general application affecting the enforcement of creditors' rights generally; and
  - (ii) general equitable principles and the fact that the availability of equitable remedies is in the discretion of a court and that a court may stay proceedings or the execution of judgments;
- (g) the execution, delivery, and performance by the Purchaser of this Agreement does not and will not violate or conflict with, or constitute a default under:
  - (i) its constating or organizational documents;
  - (ii) any Applicable Law; or

- (iii) any covenant, contract or agreement to which it is a party or by which it or any of its properties or assets is bound or affected;
- (h) there are no actions, suits, proceedings, or (to the best of the Purchaser's knowledge) investigations pending or threatened against the Purchaser at law or in equity before any Authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any materially adverse effect on the business, properties, or assets or the condition, financial or otherwise, of the Purchaser or in any impairment of its ability to perform its obligations under this Agreement, and the Purchaser has no knowledge of any violation or default with respect to any order, writ, injunction, or decree of any Authority or arbitral body that could result in any such materially adverse effect or impairment; and
- (i) the Purchaser is able to meet, and in the ordinary course of its business does meet, its obligations as they generally become due and payable.

**ARTICLE III**  
**DEVELOPMENT OBLIGATIONS OF WATERFRONT TORONTO**

**3.01 Municipal Development Approvals**

Waterfront Toronto will provide support for the Purchaser to obtain site plan approval(s), zoning and all other municipal development approvals but the Purchaser shall remain responsible for obtaining all such approvals.

**3.02 Park Land Dedication**

Waterfront Toronto shall discharge any responsibility for park land dedication required under the *Planning Act* (Ontario) in respect of the Proposed Development only to the extent that the Proposed Development complies with the zoning in place as at the date of this Agreement.

**ARTICLE IV**  
**DEVELOPMENT OBLIGATIONS OF PURCHASER**

**4.01 Target Dates and Design Team**

- (a) The Purchaser undertakes to complete the planning, development, marketing, construction and sale to end users of the Proposed Development in accordance with the Description of the Proposed Development and, subject to Section 7.05 and any postponement, as herein set forth, to achieve the following Milestone Events by the applicable Milestone Target Date:
  - (i) Marketing Start Date by each Marketing Start Target Date;
  - (ii) Construction Start Date by each Construction Start Target Date; and



- (iii) Completion by each Completion Target Date.
- (b) If Waterfront Toronto consents to the extension of any Milestone Target Date in respect of any Block comprising the Project Co Stage 2 Lands, subsequent Milestone Target Dates for Milestone Events which have not yet occurred in respect of such Block will automatically be extended for the period of such extension. For greater clarity, extensions granted to Milestone Target Dates do not extend the Sunset Date unless the extension is granted due to Force Majeure.
- (c) The Purchaser shall select key members of the design team for the Proposed Development but shall not appoint key members without the prior consent of Waterfront Toronto, acting reasonably. The Purchaser shall not make any change in the roles or responsibilities of a key design team member or remove or replace a key design team member without the prior written consent of Waterfront Toronto, acting reasonably. Waterfront Toronto's consent in either case will be conditional on a review of the proposed key design team member's qualifications with the objective of ensuring that the design team member meets or exceeds the RFQ evaluation criteria.

#### **4.02 Marketing**

- (a) The Purchaser may only begin Marketing in respect of new residential condominium units in the Proposed Development at any time after the earlier of (i) the date the Provincial Loan Agreement is no longer in force and none of the Obligations (as defined in the Provincial Loan Agreement) remain outstanding and (ii) the date the Purchaser (in its capacity as Project Co under the Project Agreement) obtains the prior written consent of HMQ under the Project Agreement to commence such Marketing, which consent, for clarity, may be withheld in HMQ's sole discretion. Notwithstanding the foregoing, after the Purchaser (in its capacity as Project Co under the Project Agreement) sells 80% of the Project Co Stage 1 Condominium Facilities, the Purchaser may begin Marketing (but not Selling) in respect of new residential condominium units in the Proposed Development. Subject to the foregoing conditions being satisfied, the Purchaser shall give Waterfront Toronto written notice of the commencement of Marketing not less than thirty (30) Business Days prior to the commencement of such Marketing.
- (b) In respect of each Block comprising the Project Co Stage 2 Lands, at any time prior to the Marketing Start Target Date, the Purchaser may request an extension of the Marketing Start Target Date for any period of up to twelve (12) months. Waterfront Toronto, acting reasonably, will consent to all such requests provided the Purchaser is working in good faith to advance the Proposed Development consistent with then current market conditions. Waterfront Toronto may refuse any request for an extension of the Marketing Start Target Date to any date more than five (5) years after the original applicable Marketing Start Target Date.

- (c) In respect of each Block comprising the Project Co Stage 2 Lands, if at any time after the Marketing Start Date the Purchaser concludes that as a result of either:
  - (i) a significant downturn in the market for residential condominium units in the City of Toronto; or
  - (ii) a lack of availability of construction financing on reasonable commercial terms;

the Purchaser may request one (1) or more extensions of the applicable Construction Start Target Date, each extension for any period of up to twelve (12) months, but not later than the Sunset Date. If Waterfront Toronto is satisfied that the circumstances described in either subparagraph (i) or (ii) have occurred Waterfront Toronto shall not unreasonably withhold its consent to such extension or extensions.

#### **4.03 Sustainability Requirements**

- (a) The Purchaser agrees to comply with the obligations of Project Co under Section 1.3.2 (Sustainability) of Part 1 of Schedule 15 – Output Specifications to the Project Agreement attached hereto as Schedule “E” in respect of the sustainability requirements for the Proposed Development (the “**Sustainability Requirements**”) and shall achieve LEED® Gold Certification for the Proposed Development.
- (b) The Purchaser shall ensure that an obligation for the continued maintenance and operation of features that are required to establish a minimum of LEED® Gold Certification or compliance with the Sustainability Requirements is assumed by any condominium corporations created on the Project Co Stage 2 Lands or by the Purchaser's successor in title (other than purchasers of condominium units and lessees of retail and commercial spaces) and shall provide to Waterfront Toronto an assumption agreement from each condominium corporation or transferee in form and content satisfactory to Waterfront Toronto, as contemplated in Section 11.03.

#### **4.04 [Intentionally Deleted]**

#### **4.05 Irrigation and Sustainability Features in Public Realm**

The Purchaser shall include in the Proposed Development power, controllers, and water for distributing water to irrigate planters and trees that are located, or planned to be located, in the adjacent public rights of way, making connections to existing or planned stub-outs, where applicable. The Purchaser shall ensure that an obligation for the continued maintenance and operation of such irrigation systems, including the provision of power and water and operation of any controllers, in a first class and fully operational condition, is assumed by any condominium corporations created on the Project Co Stage 2 Lands or by any successor in title, save and except that such obligations shall not be

assumed by any purchasers or lessees of condominium units or freehold or leasehold retail or commercial spaces.

#### **4.06 Design Development and Design Review Panel**

- (a) The Purchaser shall be responsible for developing the detailed design and ensuring that the design, construction and occupancy of the Proposed Development complies with all Applicable Law, the requirements of Registered Agreements, and the requirements of the Applicable Waterfront Toronto Planning Documents.
- (b) The Purchaser must comply with the Waterfront Design Review Panel's Bylaws, Policies and Procedures, as reasonably revised from time to time, and must coordinate its submissions with the secretary of the Waterfront Design Review Panel to ensure distribution of material to the panel members in advance of a scheduled panel meeting date and the Purchaser must present its materials at a scheduled panel meeting (Waterfront Toronto shall provide the Purchaser with a schedule for meetings of the Waterfront Design Review Panel at the Purchaser's request). If the Proposed Development requires material changes to the Block Plan an additional Design Review Panel presentation will be required prior to making any application to the City.

#### **4.07 Environmental Risk Management**

- (a) The Purchaser shall design and construct the Proposed Development without contribution from or liability of Waterfront Toronto in respect of the environmental condition of the Project Co Stage 2 Lands. The Purchaser shall obtain any environmental risk insurance that the Purchaser or its lenders considers necessary or advisable at the Purchaser's own expense.
- (b) If excess excavated material cannot be used on other lands under the control of the Purchaser, Waterfront Toronto shall have the right of first refusal for such fill to be processed at the Waterfront Toronto soils management facility if such facility is available. Such right of first refusal must be exercised by Waterfront Toronto within ten (10) days after notice from the Purchaser, failing which the right of first refusal shall lapse in respect of all soils identified in the notice and removed from the Project Co Stage 2 Lands within thirty (30) days thereafter. If Waterfront Toronto requires all or any portion of the fill from the Project Co Stage 2 Lands to be processed at Waterfront Toronto's soils management facility, Waterfront Toronto shall accept such fill and accept responsibility for its treatment and ultimate disposition at a cost to the Purchaser which will not exceed the then competitive market cost of the Purchaser's alternative MOE approved fill disposal facility, including haulage costs to the alternative MOE approved fill disposal facility. If Waterfront Toronto does not require the excess soil at the Waterfront Toronto soils management facility, excess soil shall be transported to an MOE approved soils management facility or landfill site.

#### **4.08 Municipal Approvals**

The Purchaser shall not submit any application for minor variance or rezoning without the prior written approval of Waterfront Toronto. Such approval shall not be unreasonably withheld if the application is consistent with Schedule "C" (Description of the Proposed Development) hereto. Waterfront Toronto may require the Purchaser to host a public meeting or make other reasonable efforts to consult with the local community regarding any such application as a condition of Waterfront Toronto's approval. Notwithstanding the foregoing, Waterfront Toronto shall not withhold its approval or object to any requests by the Purchaser for an application for minor variance or rezoning for up to a 20% increase in density on Block 13 and shall cooperate with the Purchaser with respect to the filing of any required applications related thereto, provided that all risks and costs related to any of the Purchaser's desired increases in the height and density of the buildings to be constructed on Block 13 shall be exclusively borne by the Purchaser.

#### **4.09 External Agency Approvals**

The Purchaser shall obtain, and is solely responsible for obtaining, all necessary approvals from all Authorities to permit the Proposed Development.

#### **4.10 Development Charges, Building Permits, Section 37 and Section 45**

- (a) The Purchaser shall pay all development charges, application fees, permit fees and other lawful levies payable to any Authority in connection with the development, planning, construction and occupancy of the Proposed Development.
- (b) If agreements pursuant to Section 37 or Section 45 of the *Planning Act* (Ontario) are required by the City the Purchaser shall consult with Waterfront Toronto on the negotiation of the agreements and shall use its reasonable commercial efforts to ensure that the terms of such agreements will be consistent with the implementation of the West Don Lands Precinct Plan.
- (c) The Purchaser shall pay to Waterfront Toronto a contribution that Waterfront Toronto shall apply to public art in an amount equal to [REDACTED] ([REDACTED]%) of the estimated hard costs of construction of the Proposed Development, as disclosed in the Purchaser's building permit application, payable on issue of a building permit for the above grade portion of the Proposed Development. The contribution outlined herein is in lieu of standard public art contributions. The Purchaser will not be required to make any other public art contribution to the City.
- (d) If any development charges are pre-paid by Waterfront Toronto or by the Vendor, the Purchaser shall reimburse the payor for the amounts so paid on issue of a building permit for the above grade portions of the Proposed Development. If development charge credits are made available to the Purchaser as a result of infrastructure paid for by Waterfront Toronto or the Vendor (including through

the Project Substantial Completion Payment provided for in the Project Agreement), the Purchaser shall pay Waterfront Toronto the full amount of such credits realized by the Purchaser within five (5) Business Days of the date the related development charges are being paid by the Purchaser to the City.

#### **4.11 Noise, Vibration and Emissions**

The Purchaser shall provide all noise, air quality and other environmental studies required under Registered Agreements, Applicable Waterfront Toronto Planning Documents and Applicable Law and shall comply with all requirements of such Registered Agreements, Applicable Waterfront Planning Documents and Applicable Law, including those regarding warning clauses and the implementation and maintenance of mitigation measures to address noise, air quality and other environmental impacts.

#### **4.12 Residential Units and Marketing**

- (a) The Purchaser shall provide to Waterfront Toronto:
  - (i) floor plans, suite mix and areas for all proposed residential units;
  - (ii) copies of all those portions of any disclosure documents prepared for distribution to buyers of proposed residential units that demonstrate compliance by the Purchaser with the terms of this Agreement;
  - (iii) the draft condominium plans for any condominium plans proposed for the Project Co Stage 2 Lands; and
  - (iv) assumption agreements for proposed condominium corporations to assume obligations that the Purchaser is required to have assumed hereunder, including, without limitation, obligations for the maintenance and operation of sustainable development features incorporated in the Proposed Development.
- (b) The Purchaser shall present its marketing plans for the Proposed Development to Waterfront Toronto before beginning Marketing. The Purchaser shall participate in any reasonable marketing program established by Waterfront Toronto to market the West Don Lands. Each of Waterfront Toronto and the Purchaser shall permit the other to use its logos, trade-marks and other intellectual property developed for the purpose of or in connection with the marketing of units on the Project Co Stage 2 Lands or other West Don Lands, subject to the approval by the other party, such approval not to be unreasonably withheld. Each of Waterfront Toronto and the Purchaser shall be responsible for their own costs of printing, advertising, distributing or otherwise disseminating promotional materials. Waterfront Toronto shall include the Purchaser's reasonable promotional materials in any sales office created by Waterfront Toronto and the Purchaser shall include Waterfront Toronto's reasonable promotional materials in any sales office created by the Purchaser. Waterfront Toronto may promote developments other than the Proposed Development and the Purchaser shall not have exclusive

rights to any Waterfront Toronto materials or resources. Waterfront Toronto will not promote competitive developments in the Purchaser's sales office.

- (c) The Purchaser will ensure that not less than five percent (5%) of the residential units created in the Proposed Development meet the requirements for Low-End-of-Market Housing.
- (d) The Purchaser shall ensure that not less than five percent (5%) of the Residential units created on the Project Co Stage 2 Lands meet the definition of Family Units. If the Purchaser, acting reasonably, is unable to sell Family Units on reasonable market terms between the Marketing Start Date in respect of a Block comprising the Project Co Stage 2 Lands and the beginning of above-grade construction on such Block, the Purchaser may reconfigure such unsold Family Units to create smaller units where the proposed reconfiguration and sale of smaller units will not materially derogate from the Proposed Development. If the Purchaser proceeds with the reconfiguration of certain Family Units the Purchaser shall continue to market the Family Units and the smaller units and only reconfigure such Family Units as necessary to accommodate actual sales or construction.
- (e) The Purchaser shall be responsible for the construction of connections to the servicing provided in the public rights-of-way abutting the Project Co Stage 2 Lands.

#### **4.13 Purchaser Performance Standards**

Without limiting any other provision of this Agreement, the Purchaser shall perform its duties and obligations under this Agreement with a standard of care, quality, diligence, and professionalism that is commensurate and consistent with the urban real estate development industry with respect to services and projects such as the Proposed Development. The Purchaser shall have the experience, professional qualifications, and the expertise that is necessary to fully perform its obligations under this Agreement. All information that is provided or disclosed by the Purchaser to Waterfront Toronto (to the extent such information is prepared by or on behalf of the Purchaser) pursuant to, or in any connection with, this Agreement shall be accurate, complete and current in all material respects, and the Purchaser accepts, acknowledges and confirms Waterfront Toronto's reliance on same.

#### **4.14 Compliance with Registered Agreements, Applicable Waterfront Toronto Planning Documents and Applicable Laws**

The Purchaser agrees that it shall fully comply with all Registered Agreements, Applicable Waterfront Toronto Planning Documents and Applicable Laws concerning this Agreement, including the Purchaser's performance of its obligations herein.

#### **4.15 Construction Hoarding**

Up to twenty-five percent (25%) of the Project Co Stage 2 Lands hoarding on each side of the Project Co Stage 2 Lands during construction may be used by Waterfront Toronto

for display of public art or promotion of Waterfront Toronto programs subject to satisfactory cost sharing arrangements between the Purchaser and Waterfront Toronto. The Purchaser shall not use construction hoarding for any display or advertising other than Waterfront Toronto or the Purchaser's display or advertising. Each of Waterfront Toronto and the Purchaser shall provide the other with prior notice of any displays and an opportunity to comment on each proposed display. Waterfront Toronto may use display space to promote other parts of the Toronto waterfront but shall not identify any potentially competitive developments.

#### **4.16 Environmental Management Plan**

Waterfront Toronto has developed an Environmental Management Plan to provide requirements and best practices for construction management for all projects. This plan incorporates application of the "Waterfront Toronto Sustainability Framework" where it relates to construction management. It is a general document that does not address site specific parameters. The Purchaser shall comply with this plan as a minimum requirement. Project Co Stage 2 Lands specific construction management considerations are the responsibility of the Purchaser to incorporate.

#### **4.17 Waterfront Toronto Employment Initiative**

The Purchaser will collaborate with Waterfront Toronto and the WTEI partners to create an employment plan to further the objectives of the WTEI to provide training and employment opportunities for un/under-employed groups throughout Toronto provided such plan does not materially increase the Purchaser's costs. The Purchaser will participate in the WTEI strategy and will provide ongoing data collection and regular status updates to monitor the progress of the initiative.

### **ARTICLE V INTELLIGENT COMMUNITIES INFRASTRUCTURE**

#### **5.01 Intelligent Communities**

- (a) The Purchaser shall not enter into any agreement to permit any infrastructure and/or content supplier of broadband, cable, wireless telecommunications, internet services or comparable services to have exclusive rights (including exclusive marketing rights) in respect of such services in the Proposed Development.
- (b) Waterfront Toronto has designated Beanfield Technologies Inc. (the "**Designated Provider**") as the provider of such services for the Proposed Development. The Purchaser shall pay to or as directed by Waterfront Toronto a connection fee for the connection of each Residential Unit to such services of [REDACTED] (\$[REDACTED]) per unit. The connection fees shall be paid by the Purchaser or the site developer on Closing.
- (c) The Purchaser shall cause every residential condominium corporation to enter into a services agreement with the Designated Provider for a term of ten (10) years

from the date of Occupancy of each Block comprising the Project Co Stage 2 Lands at a cost of [REDACTED] (\$[REDACTED]) per unit per month. The Purchaser shall indicate in the declaration of each condominium to be created an obligation on the corporation to maintain the broadband services of the Designated Provider.

- (d) The Purchaser will use its reasonable commercial efforts to facilitate introductions between the Designated Provider and any non-residential tenants or subtenants of the Proposed Development for the purpose of helping the Designated Provider secure such tenants or subtenants as customers. The Purchaser will provide the Designated Provider with reasonable access to the Proposed Development to install equipment and provide services at no cost to the Designated Provider. All such access shall be subject to the Purchaser's safety and security policies and at the sole risk of the Designated Provider exercising such right.
- (e) The Purchaser shall provide the Designated Provider with non-exclusive roof top access and license rights for the installation of wireless access points and a point of presence space of a size, configuration and location consistent with other comparable projects in the Toronto area in the Proposed Development at no charge and shall allow the Designated Provider space in its sales centres to display marketing materials for broadband and related services.
- (f) The Purchaser shall give the Designated Provider an option to lease storage space for a co-location site of a size, configuration and location consistent with other co-location sites in other contemporaneously developed real estate projects in the Toronto area for a ten (10) year term and two (2) ten (10) year optional extension terms in the Proposed Development at market rates.

## **ARTICLE VI**

### **REVIEW AND APPROVAL PROCESS**

#### **6.01 Consent Required**

The Purchaser shall obtain the prior written consent of Waterfront Toronto for:

- (a) all material changes to the Proposed Development;
- (b) all material submissions to the City or any other Authority in connection with the Proposed Development including any application for a building permit or a material amendment to a building permit;
- (c) site plan applications and any material revisions;
- (d) an application for a rezoning or a minor variance from the zoning; and
- (e) any other matters specifically identified in this Agreement as requiring Waterfront Toronto's consent or approval hereunder.



Any consent required from Waterfront Toronto pursuant to this Section 6.01 shall not be unreasonably withheld or delayed. Waterfront Toronto may withhold its consent to any application by the Purchaser for any material change in the zoning that is not consistent with the Proposed Development. If the submission for which consent is required would, in the opinion of Waterfront Toronto, if filed, submitted, approved or issued, result in the Proposed Development not achieving LEED® Gold Certification or the Sustainability Requirements, it shall not be unreasonable for Waterfront Toronto to refuse its consent. Waterfront Toronto shall act reasonably in forming its opinion as to whether the submission would result in the Proposed Development not achieving LEED® Gold Certification.

## **6.02 Consent or Approval Process**

Whenever the prior written or other consent or approval from a Party (the “**Consenting Party**”) is required or contemplated hereunder, the other Party (the “**Requesting Party**”) shall follow the following process:

- (a) the Requesting Party shall submit requests for consent in writing to the Consenting Party's representative for the Pan/Parapan American Games Athletes' Village, and where Waterfront Toronto is the Consenting Party, with copies to the Vice-President, West Don Lands and Vice-President, Legal; email will be an acceptable written form of communication for consent or approval requests.
- (b) the Consenting Party shall review the materials submitted and (i) confirm that the materials are adequate, (ii) request additional materials, or (iii) request a meeting to review materials and additional material required within five (5) Business Days after receipt. The Consenting Party shall review the materials submitted and any additional materials submitted at the Consenting Party's request and provide the Requesting Party with its decision on the requested consent or approval within five (5) Business Days (or, in the case of a site plan, minor variance or rezoning application, ten (10) Business Days) after receipt of the materials if such materials were adequate or after receipt of the last of such additional materials as may have been required. If the Consenting Party fails to provide its decision within such period, the Consenting Party shall be deemed to have given its consent or approval at the expiration of such five (5) (or, in the case of a site plan application, ten (10)) Business Day period;
- (c) the Requesting Party must comply with the Waterfront Design Review Panel's bylaws, policies and procedures, as revised from time to time (provided that such bylaws, policies and procedures are not materially more onerous than the bylaws, policies and practices in existence as of the date of execution of the Project Agreement and provided the same have been provided to the Requesting Party), and must coordinate its submissions with the secretary of the Waterfront Design Review Panel to ensure distribution of material to the panel members in advance of a scheduled panel meeting date. The Requesting Party shall present its materials at a scheduled panel meeting. Waterfront Toronto shall provide the

Development Partner with a schedule for meetings of the Waterfront Design Review Panel at the Development Partner's request; and

- (d) if the Consenting Party withholds its consent or approval, it shall provide its reasons in writing and the Requesting Party may re-submit materials to address any deficiencies.

If the Consenting Party withholds its consent and the Requesting Party disputes the Consenting Party's reasons, the Requesting Party may refer the issue for resolution pursuant to Article IX. Consent or approval by the Consenting Party does not relieve the Requesting Party from its obligation to comply with the terms of the Project Agreement or the requirements of any other Authority. Waterfront Toronto has consented pursuant to this Agreement.

### **6.03 Consultation, Reports and Assistance**

The Purchaser shall reasonably consult with Waterfront Toronto throughout the detailed design development and site planning process and shall consult with Waterfront Toronto when reasonably requested by Waterfront Toronto. Waterfront Toronto shall make reasonable efforts to consult with the Purchaser regarding matters that directly affect the Proposed Development and shall make available necessary staff resources and consultants to engage in consultations with the Purchaser's staff and consultants. Waterfront Toronto will assist the Purchaser with applications and approvals required in connection with the Proposed Development and shall support applications to which Waterfront Toronto has consented pursuant to this Agreement.

### **6.04 Periodic Reporting**

The Purchaser shall meet with Waterfront Toronto periodically commencing on the execution of this Agreement to report on the status of the Purchaser's work under this Agreement. Waterfront Toronto and the Purchaser shall establish a schedule for meetings. The Purchaser shall ensure that personnel or consultants retained by the Purchaser are available for any meeting to address the matters identified prior to such meeting by Waterfront Toronto or the Purchaser for discussion.

### **6.05 Public Consultation**

Waterfront Toronto shall provide the Purchaser with support for its site plan application by providing the feedback of the Waterfront Design Review Panel on the results of its review of the Purchaser's presentations. The Purchaser shall prepare and present to public gatherings and stakeholder groups designated by Waterfront Toronto, including the West Don Lands Committee at key milestones in the development process. The Purchaser will also participate as a member of the Construction Liaison Committee.

## **ARTICLE VII COVENANTS OF PURCHASER**

### **7.01 Waterfront Toronto Access**

The Purchaser shall allow Waterfront Toronto and its authorized contractors, agents and representatives access to the Project Co Stage 2 Lands from time to time and with appropriate notice as may be reasonably required by Waterfront Toronto to confirm the Purchaser's compliance with the terms of this Agreement, provided such access does not unreasonably interfere with or delay the progress of construction on the Project Co Stage 2 Lands. All such access shall be subject to the Purchaser's safety and security policies and at the sole risk of Waterfront Toronto or the contractor, agent or representative exercising such right.

## **7.02 Insurance**

- (a) The Purchaser shall obtain the necessary liability insurance coverage for occurrences taking place at any time in relation to this Agreement for such coverage limits as a reasonably prudent person carrying out the same or similar activities would obtain. Without limiting the generality of the foregoing, the Purchaser shall obtain at a minimum the insurance specifically prescribed by this Section 7.02, at no cost to Waterfront Toronto.
- (b) Notwithstanding Section 7.02(a), the Purchaser shall secure and maintain commercial general liability insurance providing for no less than a single combined limit of [REDACTED] (\$[REDACTED]) for bodily injury, death, and property damage. Waterfront Toronto, City of Toronto and any other person designated by Waterfront Toronto and having an insurable interest shall be added as an additional insured to such insurance policy. The Purchaser shall be responsible for the deductible amount.
- (c) The Purchaser shall insure all improvements and development from time to time located on the Project Co Stage 2 Lands in an amount not less than the amount carried by prudent owners of comparable property in the City of Toronto.
- (d) All policies of insurance shall:
  - (i) be issued by an insurance company licensed to conduct business in the Province of Ontario;
  - (ii) constitute primary coverage and not merely coverage in excess of, or co-coverage with, any insurance otherwise available to Waterfront Toronto;
  - (iii) contain cross-liability and severability of interest provisions; and
  - (iv) be endorsed to provide Waterfront Toronto with at least thirty (30) days prior written notice of any cancellation or adverse change in coverage.

## **7.03 Indemnity and Release**

- (a) The Purchaser hereby indemnifies Waterfront Toronto, HMQ and all of their directors, officers, employees, agents and representatives (the "**Indemnified Parties**") from and against all damages, loss, liability, harm, injury, costs,

expenses, actions, demands and claims that are suffered, sustained or incurred by an Indemnified Party as a result of, or in connection with the Purchaser's performance or non-performance of this Agreement (including any claims arising out of or in connection with any action by Waterfront Toronto or its agents in performing or attempting to perform the obligations of the Purchaser after default by the Purchaser hereunder) or any of the activities of the Purchaser or its agents or contractors on or about the Project Co Stage 2 Lands or any incident on or about the Project Co Stage 2 Lands, except to the extent directly attributable to any negligent act or unlawful conduct of the Indemnified Parties.

- (b) The Purchaser hereby indemnifies the Indemnified Parties from and against all damages, loss, liability, harm, injury, costs, expenses, actions, demands and claims that are suffered, sustained or incurred as a result of or in connection with any breach of or non-compliance with any Environmental Laws by the Purchaser or its agents or contractors on or about the Project Co Stage 2 Lands, including any non-compliance with the terms of any RA/RM Plan, Certificate of Property Use or Record of Site Condition, except to the extent directly attributable to any negligent or unlawful conduct of the Indemnified Parties.
- (c) The Purchaser acknowledges and agrees that all obligations and duties of Waterfront Toronto in connection with this Agreement, are the sole and exclusive obligations and duties of Waterfront Toronto, and no other Person (including any Order of Government) has any duty or obligation either for or on behalf of Waterfront Toronto.
- (d) Without prejudice to its rights under the Project Agreement or the Land Purchase Agreement, the Purchaser represents, warrants and covenants that it shall not make any claim or bring an action or demand in contract, tort, negligence, common law, equity or otherwise against any Order of Government (except in its capacity as an assignee of Waterfront Toronto's interest in this Agreement), and their respective officers, agents, and employees for damage, loss, liability, harm, cost, expense, or injury it may incur or suffer in connection with this Agreement, save and except in the event of gross negligence or wilful misconduct. The Purchaser irrevocably waives and surrenders all such rights, remedies and entitlements and agrees that the provisions of this Section 7.03 are fair and reasonable in the commercial circumstances of this Agreement and in the public policy circumstances of the Proposed Development.

#### **7.04 Maintenance of the Project Co Stage 2 Lands**

From and after the acquisition of ownership of the Project Co Stage 2 Lands, the Purchaser shall maintain the Project Co Stage 2 Lands in compliance with the Registered Agreements and Applicable Law and the Purchaser shall pay or cause to be paid all taxes or assessments as and when due and payable.

#### **7.05 Force Majeure**

If the Purchaser suffers a Force Majeure, the Purchaser shall notify Waterfront Toronto in writing forthwith following the event or events creating such Force Majeure. The Purchaser's written Notice shall set out in detail the circumstances that have caused the Force Majeure, the duration or anticipated duration of the Force Majeure, the measures that the Purchaser is taking to mitigate the impact of the Force Majeure, and a proposal for new Milestone Target Dates for Milestone Events that have not yet occurred. Waterfront Toronto may either accept the Purchaser's Notice or may dispute the claim of Force Majeure. If the Parties are unable to agree on the existence or duration of any Force Majeure, the Parties shall resolve their disagreement pursuant to Article IX. If Waterfront Toronto is satisfied that a Force Majeure has occurred the Purchaser shall be relieved from any consequences for failing to meet any Milestone Target Dates, to the extent any such dates have not yet occurred, resulting from such Force Majeure, and the Parties will work cooperatively and reasonably to set new Milestone Target Dates for Milestone Events that have not yet occurred and the Sunset Date will be similarly adjusted.

#### **7.06 No Corruption**

Neither the Purchaser nor, to the Purchaser's knowledge, any of its consultants, has (a) used any corporate or other funds for unlawful contributions, payments, gifts, or entertainment, or made any unlawful expenditures relating to political activity, (b) made any unlawful payment to foreign or domestic government officials or to foreign or domestic political parties or campaigns or violated any provisions of the *Corruption of Foreign Public Officials Act* (Canada) or (c) made any other unlawful payment.

### **ARTICLE VIII DEFAULT AND ENFORCEMENT**

#### **8.01 Purchaser Events of Default**

The occurrence of any of the following events or circumstances shall constitute an Event of Default by the Purchaser:

- (a) if the Purchaser defaults in the payment or performance of any monetary obligation under this Agreement on the date such obligation is due and such default continues for a period of five (5) Business Days after written Notice of default is given to the Purchaser by Waterfront Toronto;
- (b) if the Purchaser fails to achieve a Milestone Event by the applicable Milestone Target Date, unless (A) prior to the date of such failure the Purchaser has provided Waterfront Toronto with written Notice of its anticipated failure; (B) the Purchaser has provided Waterfront Toronto with an updated development schedule for the completion of the Proposed Development (the "**Development Schedule**") acceptable to Waterfront Toronto, acting reasonably; (C) the Purchaser has provided Waterfront Toronto with a feasible plan acceptable to Waterfront Toronto (the "**Schedule Remediation Plan**"), acting reasonably, for achieving the Milestone Event within the shortest reasonable period given then

current market conditions after the then current Milestone Target Date; and (D) the Purchaser is proceeding diligently, subject to any Force Majeure, in accordance with the updated Development Schedule and the Schedule Remediation Plan. In the event that a Milestone Target Date is postponed pursuant to a request of the Purchaser that is accepted by Waterfront Toronto, the provisions of this Section 8.01(b) shall not be applicable;

- (c) if the Purchaser defaults in the performance of any obligation or covenant under this Agreement other than as dealt with in paragraph (a), (b), (d), (e) or (f) and Waterfront Toronto gives the Purchaser Notice of such default and the Purchaser fails to either:
  - (i) remedy such default within a period of thirty (30) days after receipt of such written Notice of default from Waterfront Toronto; or
  - (ii) within a period of ten (10) days after receipt of such written Notice of default from Waterfront Toronto provide Waterfront Toronto with a plan for remediation (a "**Default Remediation Plan**") acceptable to Waterfront Toronto, acting reasonably, and to diligently pursue remediation in accordance with the Default Remediation Plan accepted by Waterfront Toronto, subject to any Force Majeure, to complete the remediation within a period of thirty (30) days after receipt of the written Notice of default from Waterfront Toronto or such longer period as is necessary in the circumstances;
- (d) if the Purchaser has provided a Schedule Remediation Plan or a Default Remediation Plan and fails to proceed diligently with such plan and such failure continues for a period of five (5) days after written Notice of such default under any such plan is given to the Purchaser by Waterfront Toronto;
- (e) if the Purchaser transfers, conveys, charges or encumbers all or any portion of its interest in the Project Co Stage 2 Lands other than as contemplated in Section 11.03 without the prior written consent of Waterfront Toronto;
- (f) if the Purchaser becomes insolvent or takes any step to dissolve, wind up or seek protection from its creditors under any legislation or if any creditor commences an action or proceeding to have the Purchaser found to be insolvent or to take the Purchaser's assets out of the Purchaser's control which action or proceeding has not been stayed within thirty (30) days after commencement; or
- (g) if any Construction Start Date has not occurred by the Sunset Date.

## **8.02 Waterfront Toronto Remedies**

- (a) On the occurrence of an Event of Default by the Purchaser, Waterfront Toronto shall have the right (but not the obligation) to terminate this Agreement without prejudice to Waterfront Toronto's right to claim damages from the Purchaser and may, at its option on not less than five (5) Business Days' notice to the Purchaser,

enter on to the Project Co Stage 2 Lands, either directly or through one or more authorized agents, consultants or contractors, and perform, or cause to be performed, any or all of the obligations of the Purchaser at the Purchaser's expense.

- (b) As additional security for the performance of the obligations of the Purchaser hereunder, the Purchaser shall deliver to Waterfront Toronto on the Closing and maintain a letter of credit (the "**Development Agreement Letter of Credit**") in the amount of [REDACTED] (\$[REDACTED]) per square foot of the Proposed Development. The Development Agreement Letter of Credit shall:
- (i) be issued by a financial institution acceptable to Waterfront Toronto (acting reasonably);
  - (ii) be in a form satisfactory to Waterfront Toronto (acting reasonably);
  - (iii) be provided to Waterfront Toronto no less than thirty (30) days before the Closing; and
  - (iv) permit Waterfront Toronto to draw on the Development Agreement Letter of Credit to fund:
    - (A) payments due from the Purchaser to Waterfront Toronto under this Agreement;
    - (B) expenses properly incurred by Waterfront Toronto in performing the obligations of the Purchaser hereunder;
    - (C) direct damages incurred by Waterfront Toronto as a result of the Purchaser's default hereunder; or
    - (D) expenses incurred otherwise in enforcing this Agreement.

The Development Agreement Letter of Credit shall be maintained until the final Completion. If no Event of Default has occurred under this Agreement that remains unremedied, no event has occurred that, with the giving of notice or passage of time, or both, would result in a the Purchaser Event of Default, Waterfront Toronto shall release the Development Agreement Letter of Credit on the final Completion.

- (c) If any amount is drawn by Waterfront Toronto under the Development Agreement Letter of Credit the Purchaser shall replace the Development Agreement Letter of Credit with a new Development Agreement Letter of Credit in the full face amount required hereunder within five (5) Business Days after receipt of notice that Waterfront Toronto has drawn down under the Development Agreement Letter of Credit. If this Agreement is terminated for any reason other than the default of the Purchaser the Development Agreement Letter of Credit shall be returned to the Purchaser. If Waterfront Toronto terminates this Agreement as a

result of an unremedied Purchaser Event of Default, Waterfront Toronto may draw the full amount of the Development Agreement Letter of Credit to hold as cash collateral security for any claim for damages that may be suffered by Waterfront Toronto as a result of the Purchaser's Events of Default and Waterfront Toronto shall pay any balance left in the Development Agreement Letter of Credit to the Purchaser once all claims for damages have been satisfied.

- (d) The Purchaser may, at its option, provide to Waterfront Toronto in lieu of the Development Agreement Letter of Credit, a first ranking demand charge (the "**Development Agreement Charge**") on the Project Co Stage 2 Lands in form and content satisfactory to Waterfront Toronto, securing an amount equal to the Development Agreement Letter of Credit otherwise required. Waterfront Toronto may make demand under the Development Agreement Charge in all of the same circumstances in which Waterfront Toronto would be entitled to draw on the Development Agreement Letter of Credit. The Purchaser may replace the Development Agreement Charge with a Development Agreement Letter of Credit at any time.
- (e) The Purchaser and Waterfront Toronto acknowledge that the damages that would be suffered by Waterfront Toronto if the Purchaser fails to achieve LEED® Gold Certification would be difficult to quantify. If the Purchaser fails to achieve LEED® Gold Certification for any reason, the Purchaser will pay to or will cause to be paid to Waterfront Toronto [REDACTED] (\$[REDACTED]) per square foot of the gross floor area of the Proposed Development. This amount is a genuine pre-estimate of the damages that would be suffered by Waterfront Toronto and are not a penalty or forfeiture.
- (f) The Purchaser agrees and confirms that an occurrence of an Event of Default by the Purchaser shall cause immediate and irreparable harm to Waterfront Toronto for which damages alone cannot fully or adequately remedy such Event of Default or compensate Waterfront Toronto, and the Purchaser agrees that notwithstanding Section 9.01, Waterfront Toronto may bring an action in court and the Purchaser shall not (and hereby irrevocably waives its rights to) interfere with or otherwise oppose, on the basis that an equitable remedy is not appropriate, any action by Waterfront Toronto for equitable relief in the form of an injunction to which Waterfront Toronto may be entitled. Nothing herein shall limit or impair the right of the Purchaser to seek compensation for any improper exercise of an equitable remedy by Waterfront Toronto. The Purchaser agrees and confirms that the provisions of this Section 8.02 are fair and reasonable in the commercial circumstances of this Agreement. Waterfront Toronto may seek equitable relief pursuant to this Section 8.02 notwithstanding any procedures underway or proposed pursuant to Section 9.01.

All remedies, compensation and rights provided to Waterfront Toronto in this Section 8.02 shall not be exhaustive, and this Section 8.02 shall not exclude, limit, restrict or otherwise diminish any right or remedy that is available to Waterfront Toronto, whether at common law, equity, or otherwise.



### **8.03 Flexibility**

The Purchaser and Waterfront Toronto will work together to evolve the plan and schedule for the Proposed Development to provide flexibility in response to changes in the market and the built environment. The Purchaser shall use reasonable commercial efforts to keep true to the development objectives of Waterfront Toronto as at the execution of this Agreement; provided, however, that notwithstanding anything herein contained, to the extent that changes in uses and changes in the timing and sequencing of sites are appropriate or required due to changes in market conditions or in the built environment, this Agreement shall be amended accordingly. Notwithstanding any change in schedule, if the Purchaser has not started Construction on any Block comprising part of the Project Co Stage 2 Lands by the Sunset Date, all of the Purchaser's rights in respect of the Project Co Stage 2 Lands shall end as at the Sunset Date in respect of such Block.

### **8.04 No Consequential Damages**

Neither Waterfront Toronto nor the Purchaser shall be liable for indirect, incidental or consequential damages suffered by the other, or for punitive damages, with respect to any term or the subject matter of this Agreement, even if informed of the possibility thereof in advance. This limitation applies to all causes of action, including, without limitation, breach of contract, breach of warranty, negligence, strict liability, fraud, misrepresentation and other torts.

## **ARTICLE IX DISPUTE RESOLUTION**

### **9.01 Internal Dispute Resolution**

- (a) Waterfront Toronto and the Purchaser shall, in good faith, use their reasonable efforts to co-operate and work together to preserve the intentions and mutual benefits contemplated by this Agreement, and to ensure the effective and efficient performance of this Agreement's terms and conditions.
- (b) Any dispute, controversy or claim between Waterfront Toronto and the Purchaser relating to this Agreement or the matters contemplated hereunder or relating to matters that the Vendor and the Purchaser have agreed may be subject to arbitration between Waterfront Toronto and the Purchaser under this Agreement (a "**Dispute**") shall be resolved in accordance with the provisions of this Article IX.
- (c) All Disputes shall initially be referred by either Party to the other Party for review, consideration and resolution. Such referrals shall include reasonable information that is accurate, complete and current concerning the Dispute. If the Parties are unable to resolve the Dispute within ten (10) Business Days after referral of the Dispute to them, the Parties shall then submit the Dispute to the senior executives of the Parties identified in paragraph (d) ("**Settlement Nominees**") for resolution. Either Party may, in its sole and unfettered discretion,

elect to submit the Dispute to the Settlement Nominees at any time more than ten (10) days after the referral.

- (d) In the event that a Dispute cannot be resolved pursuant to paragraph (c), the Dispute shall be referred to each of the chief executive officer of the Purchaser and to the chief executive officer of Waterfront Toronto, for their review, consideration and resolution. Such referral shall include an executive summary of each Party's assessment of the Dispute and the differences between the Parties that have prevented the resolution of the Dispute to that stage of the proceedings. If such individuals are unable to resolve the Dispute within ten (10) Business Days after referral of the Dispute to them ("**Period of Discussion**"), either Party, in its sole and unfettered discretion, shall then have the right to proceed to arbitration of the Dispute pursuant to Section 9.02 hereof.

## **9.02 Arbitration**

In the event that either Party submits the Dispute to binding arbitration, the arbitration shall be before one (1) arbitrator ("**Designated Arbitrator**") in Toronto, Ontario pursuant to the *Arbitration Act, 1991* (Ontario), except as modified below:

- (a) such arbitration shall be the exclusive dispute settlement procedure between the Parties, and the decision of the Designated Arbitrator shall be binding on each of the Parties, subject only to the exclusive right of each Party to only appeal a decision that is contrary to law;
- (b) such arbitration shall be conducted by the Designated Arbitrator stipulated in Section 9.03 hereof;
- (c) in the event that the Designated Arbitrator, at the time of such arbitration, is not available (due to injury, health, death or otherwise in accordance with the terms of the Arbitrator Retainer Agreement) then either Party may, by written notice to the other Party, submit a request to a court of competent jurisdiction in the Province of Ontario to promptly appoint an arbitrator, as applicable, and to notify each Party of such appointment;
- (d) the Parties shall agree in advance as to the manner in which the Designated Arbitrator shall promptly hear witnesses and arguments, review documents and otherwise conduct the arbitration procedures and failing agreement within five (5) Business Days from the date of the formal deployment of the Designated Arbitrator, the Designated Arbitrator shall formulate his/her own procedural rules and promptly commence and expeditiously conduct the arbitration proceedings;
- (e) each Party shall propose a draft decision for the Designated Arbitrator. The Designated Arbitrator shall be requested to select one of the two draft decisions as may most closely reflect the Designated Arbitrators' views, and not to alter the draft decision;

- (f) the Designated Arbitrator shall conduct the arbitration and issue his/her decision in writing within twenty (20) Business Days from the date the Designated Arbitrator was formally deployed;
- (g) as part of any arbitration, the Designated Arbitrator may elect to become advised by a technical referee on a matter which is not a matter of legal or business interpretation, but a technical one requiring industry experience. In such circumstances, the Designated Arbitrator may appoint an expert in a technical field that is directly related to the Dispute (a "**Technical Referee**") who has expertise and experience in construction contracts or transactions that are relevant to the Dispute. The Parties agree that the Technical Referee will only be authorized to advise the Designated Arbitrator in respect of a technical matter requiring such industry expertise and experience;
- (h) nothing in this Section 9.02 shall prevent either Party from applying to a court of competent jurisdiction in the Province of Ontario for any equitable relief pending final disposition of the arbitration proceeding;
- (i) the Designated Arbitrator shall not limit, expand or modify the terms of this Agreement nor award damages in excess of compensatory damages permitted under this Agreement, and each Party waives any claim to such excess damages. The Designated Arbitrator shall not have the right to award any damages in excess of damages that could lawfully be awarded by a court of competent jurisdiction inclusive of interest in accordance with the *Courts of Justice Act, 1990* (Ontario);
- (j) without limiting the twenty (20) Business Day period in paragraph (e) hereof, the entire arbitration shall be completed as expeditiously as possible from the date on which notice of the arbitration is delivered, unless otherwise agreed to by the Parties. The Designated Arbitrator shall issue a written decision containing findings and conclusions on all significant issues. The costs of the arbitration shall be in the discretion of the Designated Arbitrator. Each Party shall bear its own expenses of the arbitration. The venue for the arbitration shall be in the Greater Toronto Area unless otherwise agreed to by the Parties in writing. The arbitration shall be in private and shall be conducted in English;
- (k) the arbitration award shall be given in writing and shall be final and binding on the Parties, shall be only subject to appeal on grounds of legal error, and shall deal with the question of costs of arbitration and all matters related thereto; and
- (l) judgment upon the award rendered may be entered in any court having jurisdiction, or, application may be made to such court for a judicial recognition of the award or an order of enforcement thereof, as the case may be.

### **9.03 Appointment of Designated Arbitrator**

Waterfront Toronto and the Purchaser agree to appoint within six (6) months after execution of this Agreement the Designated Arbitrator pursuant to the terms and

conditions of an arbitrator appointment agreement to be entered into between each of Waterfront Toronto, the Purchaser and the Designated Arbitrator, containing reasonable terms and conditions that are acceptable to all such parties ("**Arbitrator Retainer Agreement**"). Each of Waterfront Toronto and the Purchaser agrees not to enter into any agreement or arrangement, or to permit any Person controlled by or under common control with it, to enter into any commercial transaction, agreement or other arrangement with the Designated Arbitrator that would influence or create a perception that it might influence the decisions of the Designated Arbitrator. If Waterfront Toronto and the Purchaser have not agreed on the Designated Arbitrator within six (6) months either party may apply to a judge of the Ontario Superior Court of Justice to request appointment of a Designated Arbitrator.

#### **9.04 Proceedings Confidential**

All dispute resolution and arbitration proceedings (including all related information, communications, documents, materials, and evidence) shall be strictly confidential, and each Party shall have a fiduciary obligation to the other Party to protect, preserve and maintain the integrity of such confidentiality.

### **ARTICLE X ADMINISTRATION**

#### **10.01 Notices to Parties**

All notices, requests, demands, instructions, certificates, consents and other communications (each being a "**Notice**") required or permitted under this Agreement shall be served by sending the same by facsimile or by hand (including courier), as follows in writing and shall be:

**If to Waterfront Toronto:**      **Toronto Waterfront Revitalization Corporation**  
[REDACTED]

Attention:      [REDACTED]  
Telephone:      [REDACTED]  
Facsimile:      [REDACTED]

**with a copy to:**      **Toronto Waterfront Revitalization Corporation**  
[REDACTED]

Attention:      [REDACTED]  
Telephone:      [REDACTED]  
Facsimile:      [REDACTED]

**and with a copy to:**      **McCarthy Tétrault LLP**  
[REDACTED]

Attention:      [REDACTED]

**Amended and Restated Project Agreement – Schedule 38**  
**2015 Pan/Parapan American Games Athletes' Village Project** **Execution Version**

Telephone: [REDACTED]

Facsimile: [REDACTED]

**If to the Purchaser:** **[REDACTED]**  
Attention: **[REDACTED]**  
Telephone: **[REDACTED]**  
Facsimile: **[REDACTED]**

**And to:** **[REDACTED]**  
Attention: **[REDACTED]**  
  
Telephone: **[REDACTED]**  
Facsimile: **[REDACTED]**

**and to the Purchaser's** **Goodmans LLP**  
**solicitor at:** **[REDACTED]**  
Attention: **[REDACTED]**  
Telephone: **[REDACTED]**  
Facsimile: **[REDACTED]**

## **10.02 Change of Address**

Either Party may, from time to time, change any of its contact information set forth in Section 10.01 by prior Notice to the other party, and such change shall be effective on the Business Day that next follows the recipient Party's receipt of such Notice unless a later effective date is given in such Notice.

## **10.03 Deemed Receipt of Notices**

A Notice given by hand delivery shall be deemed to have been received on the day it is delivered. Subject to Sections 10.03(a) and 10.03(b), a Notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.

- (a) If any Notice delivered by hand or transmitted by facsimile is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such Notice shall be deemed to have been received by such recipient on the next Business Day.
- (b) A Notice given by facsimile shall be deemed to have been received by the recipient on the day it is transmitted only if a facsimile transmission report (maintained by the sender) indicates that the transmission of such Notice was successful, provided that, subject to Section 10.03(c), if the intended recipient of such Notice notifies, by telephonic communication (leaving a voicemail message, if necessary) the person responsible hereunder for giving such Notice that the Notice has not been received in its totality or in legible form, then such Notice shall be deemed to be ineffective for the purposes of this Agreement.

- (c) If the recipient of the Notice referred to in Section 10.03(b) does not:
- (i) within two (2) hours after the time such facsimile was transmitted, if sent on a Business Day between the hours of 9 a.m. and 4 p.m.; or
  - (ii) by 11 a.m. on the next following Business Day, if such Notice was transmitted after 4 p.m. on a Business Day but before 9 a.m. on that next following Business Day,

in accordance with Section 10.03(b)), notify the person responsible hereunder for giving such Notice that the Notice was not received in its totality or in legible form and confirm in writing such occurrence within one Business Day of such telephonic communication, then the Notice referred to in Section 10.03(b) shall not, by reason only of the fact that it was not received in its totality or in legible form, be deemed hereunder to be ineffective.

#### **10.04 Status Statement, Non-Disturbance Agreements and Development Rights**

Waterfront Toronto shall provide to any Person that proposes to buy or take an interest in any portion of the Project Co Stage 2 Lands or any proposed mortgagee of the Project Co Stage 2 Lands or any part thereof a status statement confirming that this Agreement has been complied with by the Purchaser, or, if not complied with, confirming the nature and extent of any non-compliance of which Waterfront Toronto is aware. A request for a status statement must be delivered to Waterfront Toronto at the then registered office of Waterfront Toronto. Waterfront Toronto will respond to any request for a status statement within ten (10) Business Days. Waterfront Toronto may charge a fee for providing a status statement of an amount sufficient to cover Waterfront Toronto's reasonable costs of response, as established by Waterfront Toronto from time to time. Waterfront Toronto shall, upon request made by the Purchaser to Waterfront Toronto, enter into a non-disturbance agreement with any retail or commercial lessee of any part of the Project Co Stage 2 Lands. Also, Waterfront Toronto shall:

- (a) At no cost to and at the request of the Purchaser, the Purchaser may obtain partial discharges of this Agreement for any portion or portions of the Proposed Development reasonably required to be conveyed to any Authority in connection with the servicing, subdivision, condominium registration and/or development of the Proposed Development;
- (b) At no cost to and at the request of the Purchaser, Waterfront Toronto shall consent to and postpone this Agreement to easements reasonably required to be given by the Purchaser to any Authority or utility in connection with the operation, servicing, condominium registration and/or development of the Proposed Development, and shall postpone and subordinate this Agreement to any site plan agreement, subdivision agreement or agreement pursuant to section 37 of the *Planning Act* (Ontario) as may be required by the Purchaser so long as Waterfront Toronto incurs no liability thereunder;

- (c) The Purchaser may apply to bring the Proposed Development under the *Condominium Act, 1998* (Ontario) and at no cost and at the request of the Purchaser, Waterfront Toronto will consent to such applications in respect thereto.

#### **10.05 Releases**

Waterfront Toronto may release this Agreement or certain provision of this Agreement in whole or in part in registrable form in respect of all or any part of the Project Co Stage 2 Lands at any time at the request of the Purchaser or any successor in title. Any release prior to the final release shall be in the sole and unfettered discretion of Waterfront Toronto.

#### **10.06 Restatement**

If requested by the Purchaser, Waterfront Toronto shall enter into a restatement of this Agreement that omits those provisions that have at that time been completely performed, released or otherwise been superseded. Such restatement shall be at the Purchaser's sole cost.

### **ARTICLE XI GENERAL**

#### **11.01 Successors and Assigns**

This Agreement shall be binding upon the Purchaser and, subject to this Article XI, each and every successor in title to all or any portion of the Project Co Stage 2 Lands.

#### **11.02 Registration of this Agreement**

Waterfront Toronto and the Purchaser consent to the registration of this Agreement against the title to the Project Co Stage 2 Lands. Waterfront Toronto, at the Purchaser's expense, will register this Agreement against the title to the Project Co Stage 2 Lands forthwith after the Closing, as a first charge against the Project Co Stage 2 Lands, subject to the Permitted Encumbrances and any other encumbrances acceptable to Waterfront Toronto, acting reasonably.

#### **11.03 Assignment by the Purchaser**

- (a) Save as permitted pursuant to Section 11.03(f), Section 11.03(g) or Section 11.03(h), the Purchaser shall not assign, transfer, charge, subcontract, sub-participate or otherwise dispose of or otherwise alienate or agree to in any way alienate any interest in the Project Co Stage 2 Lands or in this Agreement, legally or beneficially, without the prior consent of Waterfront Toronto, which consent shall not be unreasonably withheld, delayed or conditioned. Any transfer or assignment of any shares in the capital of the Purchaser, any issue or redemption of such shares or any other transaction that results in any change in control of the Purchaser (other than a transaction in publicly traded securities on a recognized stock exchange) shall be deemed to constitute an assignment of this Agreement



requiring the prior written consent of Waterfront Toronto; provided, however, that any transfer or assignment of interests among the current controlling parties of the Purchaser and any issue or redemption of shares to the current controlling parties of the Purchaser or any other transaction that results in a change in the percentage of the interest owned by the current controlling parties of the Purchaser that does not result in control being acquired by any other person shall not be deemed to constitute an assignment of the Project Co Stage 2 Lands or this Agreement requiring the prior written consent of Waterfront Toronto. The Purchaser shall provide to Waterfront Toronto certified copies of its share registers and other documentation requested by Waterfront Toronto and relevant to a determination of the identity of the controlling parties of the Purchaser as and when requested by Waterfront Toronto to verify compliance with this provision. For purposes of the foregoing, "control" and any derivation thereof means the control by one person of another person in accordance with the following: a person ("A") controls another person ("B") where A has the power to determine the management and policies of B by contract or status (for example the status of A being the general partner of B) or by virtue of beneficial ownership of a majority of the voting interests in B; and for certainty and without limitation, if A owns shares to which are attached more than 50% of the votes permitted to be cast in the election of directors (or other persons performing a similar role) of B, then A controls B for this purpose.

- (b) Waterfront Toronto may withhold its consent to any assignment where:
  - (i) Waterfront Toronto reasonably believes the assignee will not have the capacity to complete the Proposed Development; or
  - (ii) The proposed assignee has not entered into an agreement with Waterfront Toronto agreeing to perform all of the obligations of the Purchaser hereunder in respect of the portion of the Project Co Stage 2 Lands or interest to be transferred.
- (c) The Purchaser represents to Waterfront Toronto that the shares, units or other equity ownership interests in the Purchaser that carry voting rights, that individually or in aggregate control the Purchaser are legally and beneficially owned and controlled by the controlling parties as disclosed to Waterfront Toronto prior to execution of this Agreement.
- (d) **Intentionally Deleted.**
- (e) On Closing, the Purchaser shall register a restriction on transfer pursuant to section 118 of the *Land Titles Act* (Ontario) on title to the Project Co Stage 2 Lands to restrict any transfer or encumbrance of any part of the Project Co Stage 2 Lands without the consent of Waterfront Toronto. While the Purchaser is not in default, Waterfront Toronto shall provide its consent to any transaction entered into in compliance with this Agreement.

- (f) The Purchaser may convey condominium units and freehold or leasehold retail or commercial parcels created on the Project Co Stage 2 Lands by registration of a condominium plan approved by Waterfront Toronto pursuant to Section 6.01 to purchasers and lessees in the normal course consistent with the practice of other builders of comparable projects without the consent of Waterfront Toronto and, notwithstanding anything to the contrary contained herein, no such purchaser or lessee (or any of his/her or its mortgagees or chargees) shall be liable or responsible for any of the Purchaser's covenants, agreements or obligations under this Agreement or be required to enter into any assumption agreement or Chargee Agreement, as the case may be.
- (g) The Purchaser shall not mortgage, charge, encumber or create a security interest in any interest in the Project Co Stage 2 Lands unless the proposed chargee or encumbrancer (the "**Chargee**") enters into an agreement with Waterfront Toronto that contains all of the terms and conditions described in Schedule "D" (a "**Chargee Agreement**"), subject to such amendment or additional provisions as may be required by the Chargee, acting reasonably. Waterfront Toronto shall enter into the agreements contemplated by Schedule "D" as and when requested by the Purchaser.
- (h) Pursuant to Section 12.2 of the Land Purchase Agreement, if (i) the Purchaser directs title in respect to any portion of the Project Co Stage 2 Lands to a direct or indirect wholly owned subsidiary of the Purchaser or to a bare trustee on behalf of such a subsidiary or (ii) the Lenders' Agent directs title to an Appointed Representative, the Purchaser or the Lenders' Agent, as the case may be, shall contemporaneously assign this Agreement to such subsidiary, bare trustee or Appointed Representative and such entity shall further agree with Waterfront Toronto to perform all of the obligations of the Purchaser hereunder in respect of the applicable portion of the Project Co Stage 2 Lands to be transferred.

#### **11.04 Purchaser to Require Compliance**

The Purchaser shall require any agent, contractor, licensee or invitee on the Project Co Stage 2 Lands to comply with the terms of this Agreement and shall take all such action as may be necessary to enforce such compliance.

#### **11.05 Assignment by Waterfront Toronto**

Waterfront Toronto may at any time upon the delivery of written Notice to the Purchaser and without consent of the Purchaser assign this Agreement to (i) a subsidiary, an affiliate or any successor entity who has the capacity, power and authority to become a party to and perform the obligations of Waterfront Toronto under this Agreement and confirms in writing to the Purchaser that it will perform all of the obligations of Waterfront Toronto hereunder; (ii) Her Majesty the Queen in Right of Canada or any agent of Her Majesty the Queen in Right of Canada; (iii) Her Majesty the Queen in Right of Ontario or any agent of Her Majesty the Queen in Right of Ontario; or (iv) the City or any agent of the City. Waterfront Toronto shall not otherwise assign, transfer or convey

any interest in this Agreement without the prior consent of the Purchaser, which consent shall not be unreasonably withheld or delayed.

#### **11.06 Waiver**

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

#### **11.07 Entire Agreement**

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

#### **11.08 Severability**

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

#### **11.09 Enurement**

This Agreement and any other agreement entered into in connection with the Proposed Development to which both Waterfront Toronto and the Purchaser are parties shall enure to the benefit of, and be binding on, Waterfront Toronto and the Purchaser and their respective successors and permitted transferees and assigns.

#### **11.10 Relationship of the Parties**

Waterfront Toronto and the Purchaser shall be, and are hereby, independent contractors, and nothing herein shall create (nor is this Agreement intended to create) any partnership, agency, employment, or joint venture relationship whatsoever. No party shall act or have the authority or power to act for the other party or to make any commitment, obligation, representation or warranty on behalf of the other party as its agent or otherwise.

#### **11.11 Survival**

The provisions of Sections 4.07, 4.16, 4.17, 7.03, 7.04, 7.06, 8.02, 8.04, 9.01, 9.02 and 9.04 shall remain in effect after the termination of this Agreement, until such time as the parties mutually agree to the release of the obligations contained therein. No termination of this Agreement by any party shall affect the continuation of such rights and obligations of any party which have accrued as of the date of such termination.

#### **11.12 Good Faith and Acting Reasonably**

Unless otherwise provided herein, each of the Purchaser and Waterfront Toronto shall act expeditiously, reasonably and in good faith in carrying out their respective obligations or exercising their discretions under this Agreement.

#### **11.13 Construction**

Without limiting Section 1.04, the parties agree that this Agreement is the product of negotiation between sophisticated parties, each of whom were or have been given the opportunity to be represented by counsel, and each of whom had an opportunity to participate in, and did participate in, negotiation of the terms hereof. Accordingly, the parties acknowledge that ambiguities in this Agreement, if any, shall not be construed strictly or in favour of or against either party, but rather shall be given a fair and reasonable construction.

#### **11.14 Counterpart and Facsimile**

This Agreement may be executed in counterparts, each of which shall be deemed an original and which, taken together, shall constitute one and the same instrument. This Agreement may be delivered by facsimile transmission and the parties adopt any signature received by a receiving fax machine as original signatures of the parties. In the case of facsimile transmission, the transmitting party shall forthwith deliver an originally executed copy of this Agreement to the other parties.

***Remainder of this page intentionally left blank***

**IN WITNESS WHEREOF** this Agreement has been executed by the parties as of the date first above written.

**TORONTO WATERFRONT  
REVITALIZATION CORPORATION**

**[REDACTED]**

**DUNDEE KILMER DEVELOPMENTS L.P.**

**[REDACTED]**

**SCHEDULE "A"**

**LEGAL DESCRIPTION OF THE PROJECT CO STAGE 2 LANDS**

**1.     BLOCK 12:**

**PIN 21077-0308**

Block 12 on Plan 66M2488, subject to an easement as in AT2824753 in the City of Toronto.

**2.     BLOCK 13:**

**PIN 21077-0309**

Block 13 on Plan 66M2488, subject to an easement as in AT2824753 in the City of Toronto.

**3.     BLOCK 16:**

**PIN 21077-0312**

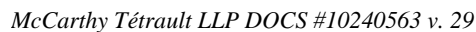
Block 16 on Plan 66M2488, subject to an easement as in AT2824753 in the City of Toronto.

**SCHEDULE "B"**

**PLAN OF SUBDIVISION**

**[The Plan of Subdivision is attached to the following page]**

**Amended and Restated Project Agreement – Schedule 38**  
**Execution Version**





**SCHEDULE "C"**

**DESCRIPTION OF THE PROPOSED DEVELOPMENT**

**1. The Description of the Proposed Development comprises:**

- (a) those portions of the Purchaser's RFP Submission (redacted as applicable and attached hereto as Appendix "1" – Redacted Proposal) identified in the table in Section 2 of this Schedule C, as modified in accordance with:
  - (i) comments applicable to the Project Co Stage 2 Lands development identified in the EllisDon-Ledcor Meeting Minutes summarized in the table in Section 3 of this Schedule "C" and attached hereto as Appendix "2" – Ellis Don-Ledcor Meeting Minutes;
  - (ii) (A) Section 1.3.2 (Sustainability) of Part 1 of Schedule 15 – Output Specifications to the Project Agreement attached to this Agreement as Schedule "E" and (B) Section 1.3.1 of Part 1 (Design Excellence) of the Output Specifications (attached to this Schedule "C" as Appendix "3" – Output Specifications for Design Excellence); and;
  - (iii) the process of design development, with consideration of the input of the Waterfront Design Review Panel in accordance with Sections 4.06, 6.02(c) and 6.05 of this Agreement; and
  - (iv) Article IV, Article V and Article VI of this Agreement; and
- (b) the Design Team set out in Section 4 of this Schedule "C"

((a) and (b) above are, collectively, the "**Description of the Proposed Development**").

**2. Applicable Portions of the Redacted Proposal**

<b>Part</b>	<b>RFP Proposal Section</b>	<b>Description</b>
<b>Package B – Technical Submission Requirements Section B. Project Development, Construction and Environmental</b>	1.0(c) – Design Quality Plan-FINAL Neighbourhood Character, Street Character, Built Form, Courtyards, Building Materials, Approach to Achieving Design Excellence, Approach to Maintaining	Redacted version of the Purchaser's description of the procedures for design development and review, how the Proposal meets or exceeds the minimum design requirements, and internal quality assurance processes.

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<b>Part</b>	<b>RFP Proposal Section</b>	<b>Description</b>
<b>Submission Requirements</b>	Design Vision through the Project Development, and Internal Process for Quality Assurance	
<b>Package B – Technical Submission Requirements</b> <b>Section C. Design Submission Requirements</b>	1.0(a) – Response to Project Vision and Concept-FINAL	Redacted version of the Purchaser’s description of how key features and characteristics of the Proposal will advance and enhance the implementation of the vision for the West Don Lands.
<b>Package B – Technical Submission Requirements</b> <b>Section C. Design Submission Requirements</b>	12.0 – Response to Sustainability Requirements (as adjusted by the Post-Tender Cost Reduction Submission)	Purchaser’s description of how the proposed design reflects the Project’s sustainability goals and targets, while also integrating sustainable features into the overall design
<b>Package B – Technical Submission Requirements</b> <b>Section C. Design Submission Requirements</b>	13.0 – Retail Strategy	Description of the Purchaser’s approach to retail, non-residential uses, live-work and Ground Floor Animation
<b>Package B – Technical Submission Requirements</b> <b>Section C. Design Submission Requirements</b>	4.0(a) – Architectural Drawings, Blocks 12, 13 and 16	B12_A0.00 COVER COLOUR B12_A0.01 PROJECT STATISTICS _ SCHEDULES _ TYPICAL DETAILS B12_A2.01 PARKING -1 & GROUND FLOOR PLANS_LEGACY B12_A2.02 MEZZANINE & 2ND FLOOR PLANS_LEGACY B12_A2.03 3rd & 4th FLOOR PLANS_LEGACY B12_A2.04 5th & 6th FLOOR PLANS_LEGACY B12_A2.05 7th & 8th FLOOR PLANS_LEGACY B12_A2.06 9th, 10th, 11th, & MECHANICAL PENTHOUSE FLOOR PLANS_LEGACY B12_A2.07 ROOF PLAN B12_A2.08 ENLARGED RESIDENTIAL

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Part	RFP Proposal Section	Description
		<p>ENTRY PLANS</p> <p>B12_A4.01 ELEVATIONS COLOUR</p> <p>B12_A4.02 ELEVATIONS COLOUR</p> <p>B12_A4.03 ELEVATIONS COLOUR</p> <p>B12_A4.04 ELEVATIONS COLOUR</p> <p>B12_A4.05 ELEVATIONS COLOUR</p> <p>B12_A4.06 ELEVATIONS COLOUR</p> <p>B12_A5.01 SECTIONS</p> <p>B12_A6.01 WALL SECTIONS COLOUR</p> <p>B12_A6.02 WALL SECTIONS COLOUR</p> <p>B12_A6.03 WALL SECTIONS COLOUR</p> <p>B12_A6.04 WALL SECTIONS COLOUR</p> <p>B12_A6.05 WALL SECTIONS COLOUR</p> <p>B13_A0.00_COLOR_R3</p> <p>B13_A1.01_R3</p> <p>B13_A2.01 PUBLICREALM_R4</p> <p>B13_A2.02 PUBLICREALM_R4</p> <p>B13_A4.01_COLOR</p> <p>B13_A4.02_COLOR</p> <p>B13_A4.03_COLOR</p> <p>B13_A4.04_COLOR</p> <p>B13_A4.10_COLOR</p> <p>B13_A5.01_R1</p> <p>B13_A6.01</p> <p>B13_A7.01_COLOR</p> <p>B13_A7.02_COLOR_R3</p> <p>B16_A0.00_COLOR_R1</p> <p>B16_A1.01_R3</p> <p>B16_A2.01_R4</p> <p>B16_A2.02_R4</p> <p>B16_A2.03_COLOR_R1</p> <p>B16_A2.04_COLOR_R4</p> <p>B16_A3.01_COLOR_R4</p> <p>B16_A3.02_COLOR_R4</p> <p>B16_A3.03_COLOR_R4</p> <p>B16_A3.04_COLOR_R4</p> <p>B16_A4.01_COLOR_R4</p> <p>B16_A4.10_COLOR_R3</p> <p>B16_A4.11_COLOR_R3</p> <p>B16_A4.20_COLOR_R1</p> <p>B16_A4.30_COLOR</p> <p>B16_A4.31_COLOR_R4</p>

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Part	RFP Proposal Section	Description
		B16_A5.01 B16_A6.01_R1 B16_A6.02 B16_A6.03 B16_A6.04 B16_A6.05_R4 B16_A7.01_COLOR
<b>Post Tender Addendum Cost Reduction Submission, Package B – Technical Submission</b>	Item I.1 LEED Gold Rating Without Mandatory Credits Item I.2 Reduction in Waterfront Toronto's Green Building Requirements	Description of the adjustments to the original Sustainability Proposal as amended by the Post-Tender Cost Reduction Submission.

### 3. Summary of EllisDon-Ledcor Meeting Minutes

No.	Name of Document	Summary of Comments
1.	<b>Meeting Minutes</b>  <b>EllisDon-Ledcor 4660 Pan Am Athletes Village Proposal - Toronto</b>  <b>Design Development User Group Workshop #3</b>  <b>2011-Sep-15, 1:00pm – 5:00pm</b>  <b>Paragraph 3.2.1</b>  <b>HMQ/Waterfront Toronto Design Review and</b>	<p>HMQ noted the following items highlighted during evaluation of the Dundee Kilmer design:</p> <ul style="list-style-type: none"> <li>Design has a predominant amount of glass/window wall system - greater diversity is desired. Dundee Kilmer noted that this concern would be least for the Blocks comprising the Project Co Stage 1 Lands ... the Project Co Stage 2 Lands have more dominant glass elements. The Project Co Stage 2 Lands are subject to further design development to address changes in the Project (Block 16 from affordable rental to market, potential zoning variances on all three blocks) and therefore there is an opportunity to address this concern.</li> <li>No balconies provided on Block 16. Dundee Kilmer noted that this was dictated by affordable rental use of this block in the RFP Submission but that post tender changes revising this Block to market would result in balconies on this Block.</li> <li>HMQ/Waterfront Toronto not clear whether courtyards are public or private - Dundee Kilmer noted that courtyards are</li> </ul>

No.	Name of Document	Summary of Comments
	<b>Evaluation</b>	<p>addressed differently in each of the Blocks. The intention is for Block 13 to be semi-private, Block 12 to be semi-public, Block 11 to be private.</p> <ul style="list-style-type: none"> <li>• Concern that landscaping on the Blocks did not achieve the same standard as the public realm. Dundee Kilmer noted that landscaping will be developed in more detail and the intention is to carry same materials into the Blocks.</li> <li>• Concern that retail is set back from the front street boulevard. Dundee Kilmer noted that this condition was only at Block 16 and that it would be revised in reworking this block for market housing. Dundee Kilmer noted that the desire would be to allow retail to spill out into the front street public realm with patios etc. Waterfront Toronto confirmed this was their intention as well but that approval for this approach involved City of Toronto.</li> <li>• Concern about uniqueness of the retail strategy for the Project (is it intended as an extension of the distillery district). Dundee Kilmer confirmed that it is intended to be distinct from the distillery district but complimentary to it.</li> <li>• Waterfront Toronto also noted desire for the retail face to be more diverse (current store front design is not animated). Dundee Kilmer confirmed that retail design will be developed in more detail.</li> <li>• Questions about use of heritage buildings during the Pan/Parapan Am Games and legacy period. Dundee Kilmer noted that CNR would be used for sports viewing and sports information games program elements. Canary building is not used during the games. CNR will provide retail space after the Pan/Parapan Am Games. Final proposal left the CNR building intact but provided a glazed extension to the east.</li> </ul>
2.	<b>Meeting Minutes</b>  <b>EllisDon-Ledcor 4660 Pan Am Athletes Village Proposal -</b>	EDL noted previous response to concerns raised by Waterfront Toronto regarding the predominant amount of glass/window wall system - that this concern would be least for the Blocks comprising the Project Co Stage 1 Lands - Blocks 3 and 15 have solid frame elements, Block 1/14 has a significant masonry base, and Blocks 4 and 11 have significant masonry panel elements. Blocks 16, 12

No.	Name of Document	Summary of Comments
	<p><b>Toronto</b></p> <p><b>Design Development User Group Workshop #3</b></p> <p><b>2011-Sep-15, 1:00pm – 5:00pm</b></p> <p><b>Paragraph 3.2.1</b></p> <p><b>HMQ/Waterfront Toronto Design Review and Evaluation</b></p>	<p>and 13 comprising the Project Co Stage 2 Lands have more dominant glass elements. These Blocks are subject to further design development to address changes in the Project (Block 16 from affordable rental to market, potential zoning variances on all three blocks) and therefore there is an opportunity to address this concern. Waterfront Toronto to confirm that concern does not apply to Project Co Stage 1 Lands designs and that response to this item is not required.</p> <p>Waterfront Toronto also raised concern that landscaping on the blocks did not achieve the same standard as the public realm. Dundee Kilmer noted that landscaping will be developed in more detail and the intention is to carry same materials into the Blocks - Dundee Kilmer to provide information confirming this design approach.</p> <p>Waterfront Toronto also noted desire for the retail face to be more diverse (current store front design is not animated).</p> <p>Dundee Kilmer confirmed that retail design will be developed in more detail. Dundee Kilmer to develop design response to this concern for presentation to Waterfront Toronto.</p>

#### **4. Design Team**

- (a) ArchitectsAlliance
- (b) Daoust Lestage
- (c) KPMB Architects
- (d) Ten Arquitectos
- (e) MJMA Architects

**APPENDIX “1”**

**REDACTED PROPOSAL**

- Please see attached CD -

**APPENDIX “2”**

**ELLISDON-LEDCOR MEETING MINUTES**

- Please see attached document -



**APPENDIX “3”**

**OUTPUT SPECIFICATIONS FOR DESIGN EXCELLENCE**

- Please see attached document -

**SCHEDULE "D"**

**CHARGEЕ AGREEMENT TERMS**

Waterfront Toronto and the Purchaser will enter into an agreement (a "**Chargee Agreement**") with any lender or syndicate of lenders (collectively, a "**Chargee**") designated by the Purchaser that agrees to make available to the Purchaser financing or credit accommodations necessary for the financing of the construction of the Proposed Development and for that purpose proposes to take a security interest (a "**Charge**") in the Project Co Stage 2 Lands.

**5. Construction Lender**

If the Chargee is an institutional lender or a syndicate of institutional lenders acting together under a single loan agreement or commitment (the "**Construction Loan Commitment**") and (i) is experienced in lending to residential condominium projects in the greater Toronto area; and (ii) has committed to the Purchaser to fund a loan sufficient that, when aggregated with the Purchaser's equity, committed subordinate financing, purchaser's deposits available for construction funding and all other sources of financing available to the Purchaser is sufficient to complete the Proposed Development, then the Chargee shall be designated as the "**Construction Lender**".

The Chargee Agreement with the Construction Lender may be registered on title to the Project Co Stage 2 Lands at the option of the Construction Lender. The Chargee Agreement with the Construction Lender will contain (a) all of the terms and conditions described in Part II below; and (b) such other provisions as Waterfront Toronto, the Purchaser and the Construction Lender, all acting reasonably, may agree.

The Construction Loan Commitment shall:

- (i) be on arm's length commercial terms;
- (ii) provide for periodic advances to fund costs of the Proposed Development as incurred on a cost-to-complete basis;
- (iii) provide for the appointment of a cost consultant of recognized stature to report on the Purchaser's proforma budget and progress draws;
- (iv) require a minimum pre-sales or pre-leasing requirement, minimum amounts of work contracted under fixed price contracts and, at the option of the Construction Lender, performance bonds from principal contractors; and
- (v) contain no provisions that are inconsistent with the terms of the Development Agreement.

The Construction Loan Commitment shall be on reasonable commercial terms and shall be provided to Waterfront Toronto for review together with the Purchaser's *proforma* statement of sources and uses of funds so as to demonstrate to the satisfaction of Waterfront Toronto that the Construction Loan Commitment meets the requirements of this Schedule "D". Waterfront Toronto shall keep the terms of the Construction Loan Commitment confidential.

Waterfront Toronto shall be entitled to receive copies of the cost consultant's reports to the Construction Lender from time to time upon request.

The Construction Lender will not assign any interest in the Construction Loan Commitment without requiring the assignee to agree to be bound by the terms of the Chargee Agreement and Notice to Waterfront Toronto. Before commencing any enforcement proceeding (whether court supervised or private) the Construction Lender will give Waterfront Toronto written notice and a period of at least ten (10) days to offer to purchase the Construction Lender's security. If Waterfront Toronto does not offer to purchase the Construction Lender's security for an amount equal to the Construction Lender's advances, interest and costs, the Construction Lender may proceed with its realization. The Construction Lender shall not transfer the Project Co Stage 2 Lands to any person (the "**Transferee**") without requiring the assignee to agree to be bound by the terms of the Development Agreement and to perform the obligations of the Purchaser thereunder, and entering into an assumption agreement. The Construction Lender will make available to Waterfront Toronto all of the information available to the Construction Lender regarding the identity, reputation, capacity and financial strength of any proposed Transferee (the "**Proposed Transferee**") and the terms of the proposed transaction.

## **6. All Chargees**

The Chargee Agreement between Waterfront Toronto, the Purchaser and each Chargee shall contain the following terms:

- (i) the Chargee's interest in the Project Co Stage 2 Lands shall be fully subordinated to and postponed to this Agreement;
- (ii) if requested by the Chargee, Waterfront Toronto shall provide a written acknowledgement of the obligations and undertakings of the Purchaser that are complete to the satisfaction of Waterfront Toronto as at the date of the Chargee Agreement;
- (iii) Waterfront Toronto will give notice to the Chargee of any Event of Default by the Purchaser if Waterfront Toronto proposes to take any action with respect to such Event of Default;
- (iv) the Chargee will give Waterfront Toronto notice of any default by the Purchaser under the Construction Loan Commitment;
- (v) Waterfront Toronto shall provide the Chargee with an opportunity to cure any Event of Default by the Purchaser (but the same shall not impose nor create any obligation on the Chargee to cure any such defaults), shall accept performance by the Chargee or its agent or receiver in the place and stead of the Purchaser and shall allow reasonable extensions of the Milestone Dates to allow the Chargee to take control of the applicable Project Co Stage 2 Lands through reasonable and diligent enforcement procedures;
- (vi) if there is an Event of Default by the Purchaser which is, by its nature, incurable (including, without limitation, an Event of Default under Section 8.01(g)), Waterfront Toronto will not exercise any of its remedies in respect of the incurable Event of Default

provided that Waterfront Toronto reserves its right to act on any curable Event of Default that remains unremedied;

- (vii) the Chargee shall agree to be bound by the Development Agreement if the Chargee succeeds to the interest of the Purchaser or becomes a mortgagee-in-possession, directly or by the private or court ordered appointment of a receiver or receiver and manager of the Project Co Stage 2 Lands, and shall perform the obligations of the Purchaser under the Development Agreement for so long as the Chargee remains directly or indirectly in possession of the Project Co Stage 2 Lands;
- (viii) if the Chargee proposes to transfer the Project Co Stage 2 Lands to any other Person (the "**Transferee**") the Chargee will comply with the terms of Section 11.03(a) of the Agreement and require the Transferee to enter into an agreement with Waterfront Toronto agreeing to perform all of the obligations of the Purchaser hereunder, provided, however, that notwithstanding the above or any other provision herein, the Chargee shall not be liable to perform any obligation, act or omission of the Purchaser which predates the date upon which the Chargee succeeds to the interest of the Purchaser or becomes a mortgagee in possession, directly or by the private or court ordered appointment of a receiver or receiver and manager;
- (ix) Waterfront Toronto will act reasonably in considering any request for consent to transfer the Project Co Stage 2 Lands to a third party to complete the Proposed Development; and
- (x) if the Chargee elects to enforce its security the Chargee shall consult with Waterfront Toronto and provide Waterfront Toronto with reports on the status of its enforcement and anticipated schedule as and when requested by Waterfront Toronto.

**SCHEDULE "E"**

**SECTION 1.3.2 (SUSTAINABILITY) OF PART 1 TO THE OUTPUT SPECIFICATIONS**

- Please see attached document -

**SCHEDULE 39**

**ONTARIO NEW HOME WARRANTIES PLAN ACT COMPLIANCE AGREEMENT**

**THIS AGREEMENT** is made as of the \_\_\_\_ day of \_\_\_\_\_, 2011

**BETWEEN:**

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO** as represented by the Minister of Infrastructure, as represented by Ontario Infrastructure and Lands Corporation, a non-share capital corporation continued and amalgamated under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c. 9, Schedule 32, as amended

(“**HMQ**”)

- AND -

**TARION WARRANTY CORPORATION**, a non-share capital corporation established under the *Ontario New Home Warranties Plan Act*, R.S.O. 1990, Chapter 0.31, as amended

(“**Tarion**”)

- AND -

**DUNDEE KILMER DEVELOPMENTS L.P., [REDACTED]**

(“**Project Co**”)

- AND -

**ELLISDON LEDCOR PAAV INC.**, a corporation incorporated under the laws of Ontario

(“**Construction Contractor**”)

**WHEREAS:**

- A. HMQ and Project Co have entered into the Project Agreement.
- B. Under the Project Agreement, Project Co is responsible for the design, construction and finance of the Project in order to have the Pan/Parapan American Games Athletes' Village in operation for the Pan/Parapan American Games in 2015 (the “**Games**”).

- C. Under the Construction Contract, the Construction Contractor is responsible for the design and construction of the Project.
- D. The Project includes the Project Co Stage 1 Condominium Facilities which include condominium dwelling units including the common elements as those terms are used in the definition of “home” under the *Ontario New Home Warranties Plan Act* and any regulations made thereunder, as amended (the “**Act**”).
- E. The Parties have entered into this Ontario New Home Warranties Plan Act Compliance Agreement (the “**Warranty Compliance Agreement**”) for the purpose of acknowledging the application of the Act to the Project Co Residential Condominium Facilities and to confirm the agreement of Project Co to comply with the requirements of the Act and in particular to cause each Project Co Condominium Subsidiary (as defined herein) to register as a Vendor under the Act and to cause the Construction Contractor to register as a Builder under the Act and to proceed with the enrolment of the respective Project Co Residential Condominium Facilities under and in accordance with the requirements of the Act.
- F. With a view to ensuring that the Parties are able to properly and effectively discharge their duties, functions and responsibilities under the Act, the Parties commit to working collaboratively, responsibly and cooperatively with each other with a view to fulfilling the purposes of this Agreement.

**NOW THEREFORE** in consideration of the mutual covenants and agreements of the Parties hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

## **1. DEFINITIONS**

In this Warranty Compliance Agreement, including the recitals and appendices, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Warranty Compliance Agreement) shall have meanings given to them in the Project Agreement, and the following terms shall have the following meanings:

- (a) “**Act**” has the meaning given in Recital D.
- (b) “**Affiliate**” has the meaning given in the Project Agreement.
- (c) “**Builder**” means a “builder” as defined under the Act.
- (d) “**Business Day**” has the meaning given in the Project Agreement.
- (e) “**Construction Contract**” has the meaning given in the Project Agreement.
- (f) “**Construction Contractor**” means EllisDon Ledcor PAAV Inc.
- (g) “**Crown**” has the meaning given in the Project Agreement.

- (h) “**Games**” has the meaning given in Recital B.
- (i) “**Governmental Authority**” has the meaning given in the Project Agreement.
- (j) “**HMQ**” means Her Majesty the Queen in right of Ontario as represented by the Minister of Infrastructure, as represented by Ontario Infrastructure and Lands Corporation, a non-share capital corporation continued and amalgamated under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c. 9, Schedule 32, as amended.
- (k) “**Home**” means a condominium dwelling unit, including the common elements, comprising part of the Project Co Residential Condominium Facility, that was built and occupied temporarily for the Games and sold for occupancy after the termination of the Games to an Owner.
- (l) “**Owner**” means a person who first acquires a Home from the Vendor for occupancy, and the person’s successors in title.
- (m) “**Party**” means any of HMQ, Project Co, the Construction Contractor or Tarion, and “**Parties**” means all of HMQ, Project Co, the Construction Contractor and Tarion.
- (n) “**Plan**” means the “Plan” as defined under the Act.
- (o) “**Project**” has the meaning given in the Project Agreement.
- (p) “**Project Agreement**” means the project agreement made on or about the \_\_\_\_\_ day of \_\_\_\_\_, 2011 between HMQ and Project Co.
- (q) “**Project Co**” means Dundee Kilmer Developments L.P.
- (r) “**Project Co Condominium Subsidiary**” means the subsidiary of Project Co to which Project Co as Purchaser may direct title in respect to any portion of the Project Co Stage 1 Lands on which a Project Co Residential Condominium Facility has been or will be constructed under Section 13.2 of the Project Co Stage 1 Lands Agreement of Purchase and Sale.
- (s) “**Project Co Residential Condominium Facilities**” means the portions of the Project Co Stage 1 Condominium Facilities which are residential dwellings including their respective common elements and for clarity do not include any retail or commercial condominium units and their respective common elements, if any.
- (t) “**Project Co Stage 1 Lands Agreement of Purchase and Sale**” means the agreement of purchase and sale for the Project Co Stage 1 Lands on which the Project Co Residential Condominium Facilities will be constructed, the form of which is appended as Schedule 17 to the Project Agreement.



- (u) “**Province**” has the meaning given in the Project Agreement.
- (v) “**Registrar**” means the “Registrar” as defined under the Act.
- (w) “**Tarion**” means the corporation established under the Act and any successor thereof.
- (x) “**Vendor**” means a person who sells on his, her or its own behalf a Home.
- (y) “**Warranty**” means a “warranty” as defined under the Act.
- (z) “**Warranty Compliance Agreement**” means this Ontario New Home Warranties Plan Act Compliance Agreement.

## **2. INTERPRETATION**

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

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

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

### **3. CONFLICT OF DOCUMENTS**

In the event of any ambiguity, conflict or inconsistency between the provisions of this Warranty Compliance Agreement and the Project Agreement, the provisions of this Warranty Compliance Agreement shall prevail and govern to the extent of such ambiguity, conflict or inconsistency.

### **4. PROJECT CO AND CONSTRUCTION CONTRACTOR AGREEMENTS**

- (a) The Construction Contractor shall comply with the obligations applicable to a Builder under the Act, including:
  - (i) registering as a Builder under Section 6 of the Act;
  - (ii) maintaining the qualifications necessary for registration and renewal of registration under the Act in accordance with Section 7 and other applicable provisions of the Act; and
  - (iii) providing proper notice to Tarion of commencement of construction and paying the prescribed fees in accordance with Section 12 of the Act.
- (b) Project Co will cause the Project Co Condominium Subsidiaries to comply with all obligations applicable to a Vendor under the Act, including:
  - (i) registering as a Vendor under Section 6 of the Act;
  - (ii) maintaining the qualifications necessary for registration and renewal of registration under the Act in accordance with Section 7 and other applicable provisions of the Act;
  - (iii) in respect of a contract for the sale of a Home, delivering to the purchaser such documentation and notices as are prescribed by the Act;
  - (iv) ensuring that the warranties described in Section 13 of the Act are true;
  - (v) delivering the completion certificate described in Section 13(3) of the Act;
  - (vi) acknowledging its liability under Section 15.1; and
  - (vii) complying with the dispute resolution provisions of Section 17 of the Act.
- (c) The Construction Contractor in its capacity as a Builder shall comply, and Project Co will ensure compliance by the Project Co Condominium Subsidiaries each in their capacity as a Vendor, with all design and field review and reporting requirements to Tarion whether directly by the Construction Contractor or the Project Co Condominium Subsidiaries or by the Tarion-approved field review

consultants for the Project Co Residential Condominium Facilities, including, but not limited to the Tarion Builder Bulletin 19 requirements.

- (d) The Construction Contractor will arrange for inspections by the field review consultant for each Project Co Residential Condominium Facility in order to allow the field review consultant to perform its inspections and prepare reports for submission to Tarion as required in subsection (c) above.
- (e) Project Co shall assign to each Project Co Condominium Subsidiary the Construction Contract as it relates to the Project Co Residential Condominium Facility which will be transferred to such Project Co Condominium Subsidiary under the Project Co Lands Agreement of Purchase and Sale by way of separate assignment, and shall cause such Project Co Condominium Subsidiary to accept such assignment from Project Co.

**5. ACKNOWLEDGEMENT BY ALL PARTIES OF PAN/PARAPAN AM GAMES USE**

- (a) All Parties acknowledge that: (i) the Project Co Residential Condominium Facilities will be made available to Toronto 2015 during the Games for temporary occupation by Games athletes, coaches and officials; (ii) notwithstanding this temporary occupation, that the Project Co Residential Condominium Facilities qualify as Homes for the purpose of the Act and shall be entitled to warranties under the Act; (iii) the Project Co Residential Condominium Facilities will be “Designated Condominiums” within the meaning of and subject to the requirements of Tarion’s Builder Bulletin 19 (or any replacement or successor bulletin); (iv) the Construction Contractor will apply for registration as a Builder under the Act and upon such application and subject to the terms of the Act, shall be entitled to registration as a Builder; and (v) the entities that sell the “Homes” comprising the Project Co Residential Condominium Facilities who shall in all cases be Project Co Condominium Subsidiaries, will apply as a Vendor under the Act and upon such application and subject to the terms of the Act, each shall be entitled to registration as a Vendor.

**6. ACKNOWLEDGEMENT BY CONSTRUCTION CONTRACTOR AND PROJECT CO CONDOMINIUM SUBSIDIARY**

- (a) The Construction Contractor acknowledges that it is responsible for the construction of the Project Co Residential Condominium Facilities under the Construction Contract and agrees to perform the provisions of this Agreement which are intended to apply to the Construction Contractor and agrees to register as a Builder under the Act and to comply with all of the obligations of a Builder under the Act as they apply to such registration and construction of the Project Co Residential Condominium Facilities as “Designated Condominiums”.

- (b) Project Co agrees to cause the Project Co Condominium Subsidiaries, within 30 days of their being incorporated and established, to execute and deliver an acknowledgement and agreement document to the benefit of the Parties under this Agreement, agreeing to perform the provisions of this Agreement which are intended to apply to a Project Co Condominium Subsidiary including its agreement to register as a Vendor under the Act and to comply with all of the obligations of a Vendor under the Act as they apply to the registration and construction of a Project Co Residential Condominium Facilities as “Designated Condominiums”. The form of such acknowledgment agreement shall be as set out in Appendix 1 hereto.

## **7. ASSIGNMENT**

- (a) No Party to this Warranty Compliance Agreement may assign, transfer or otherwise dispose of any part of its rights or obligations under this Warranty Compliance Agreement save as provided in this Section 7.
- (b) Project Co may assign, transfer or otherwise dispose of the benefit of this Warranty Compliance Agreement to any person and provided it is the same person to whom Project Co is permitted to assign, transfer or otherwise dispose of its interest in the Project Agreement pursuant to Section 56.1 of the Project Agreement and shall provide written notice to HMQ and Tarion of such assignment, transfer or other disposition. The Construction Contractor may assign its interest under this Warranty Compliance Agreement to any person and provided it is the same person to whom the Construction Contractor is permitted to assign its interest in the Construction Contract and provided such assignee is registered as a Builder under the Act, and shall provide written notice of such assignment, transfer or other disposition to HMQ and Tarion. The assignee of Project Co and/or Construction Contractor, as a condition precedent to any such assignment, transfer or other disposition, shall assume the obligations and acquire the rights of Project Co or the Construction Contractor, as the case may be, under this Warranty Compliance Agreement, the statutory warranties under the Act and any obligations under agreements with Tarion relating to registration as a Vendor and/or a Builder, pursuant to an assumption agreement with, and in form and substance satisfactory to, HMQ and Tarion, each acting reasonably. HMQ and Tarion shall, at Project Co's cost and expense, in the case of a Project Co assignment, transfer or disposition, or at the Construction Contractor's cost and expense, in the case of a Construction Contractor assignment, transfer or disposition, do all things and execute all further documents as may be necessary in connection therewith.
- (c) Notwithstanding paragraph 7(b) above, Project Co and the Construction Contractor acknowledge that a registration of a person as a Builder or as a Vendor under the Act is not transferable under Section 7(3) of the Act. Any new registrant must apply for registration and maintain its registration in the normal course under the Act.

- (d) HMQ may assign, transfer or otherwise dispose of the whole or part of this Warranty Compliance Agreement to any person to whom HMQ assigns, transfers or otherwise disposes of its interest in the Project Agreement pursuant to Section 56.2 of the Project Agreement, and shall provide written notice to Project Co, Construction Contractor and Tarion of such assignment, transfer or other disposition.

## **8. NOTICES**

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

If to HMQ:

**Ontario Infrastructure and Lands Corporation**  
**[REDACTED]**

Fax: **[REDACTED]**

Attn.: **[REDACTED]**

If to Tarion:

**Tarion Warranty Corporation**  
**[REDACTED]**

Fax: **[REDACTED]**

Attn.: **[REDACTED]**

If to Project Co:

**[REDACTED]**

Fax: **[REDACTED]**

Attn.: **[REDACTED]**

With a copy to:

**[REDACTED]**

Fax: **[REDACTED]**

Attn.: **[REDACTED]**

If to Construction Contractor:

**EllisDon Corporation**  
**[REDACTED]**

Fax: **[REDACTED]**

Attn.: **[REDACTED]**

And to:

**Ledcor Design-Build (Ontario) Inc.**  
**[REDACTED]**

Fax: **[REDACTED]**

Attn.: **[REDACTED]**

- (b) Any Party to this Warranty Compliance Agreement may, from time to time, change any of its contact information set forth in Section 8(a) by prior notice to the other Parties, and such change shall be effective on the Business Day that next follows the recipient Party's receipt of such notice unless a later effective date is given in such notice.
- (c) Subject to Sections 8(d) and 8(e):
  - (i) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing; and
  - (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered.
- (d) If the Party giving the notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such notice shall not be mailed but shall be made by personal delivery in accordance with this Section 8.
- (e) If any notice delivered by hand is so delivered either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such notice shall be deemed to have been received by such recipient on the next following Business Day.

## **9. AMENDMENTS**

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

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**10. WAIVER**

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

**11. RELATIONSHIP BETWEEN THE PARTIES**

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

**12. ENTIRE AGREEMENT**

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

**13. SEVERABILITY**

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



**14. ENUREMENT**

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

**15. GOVERNING LAW AND JURISDICTION**

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

**16. DISPUTE RESOLUTION PROCEDURE**

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

**17. FURTHER ASSURANCE**

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

**18. LANGUAGE OF AGREEMENT**

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

**19. COUNTERPARTS**

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

**20. HMQ DESIGNATE**

At any time and from time to time, the Crown may designate any ministry, branch, agency, division, department or office of the Government of Ontario to carry out administrative responsibility for the rights and obligations of HMQ under this Warranty Compliance Agreement and Project Co, the Construction Contractor and Tarion may deal exclusively with the designated person in respect of all such matters and is entitled to rely on the actions, directions, requests, notices, consents, approvals, waivers, comments relating to the review of documentation and other administrative matters and decisions determined by such designated person from time to time, until the Crown has notified Project Co and Tarion in writing that such designated person is no longer the person designated by HMQ hereunder and such notice shall have effect on the later of the date of delivery of such notice and the date specified in the written notice. The Crown shall advise Project Co, the Construction Contractor and Tarion in writing of any designation hereunder. The rights and obligations of the parties to this Warranty Compliance Agreement shall be in no way affected by reason of any such designation. Project Co, the Construction Contractor and Tarion acknowledge the right of the Crown to delegate administrative responsibilities hereunder as set forth in this Section 20.

*Remainder of this page intentionally left blank*

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

**HER MAJESTY THE QUEEN IN RIGHT  
OF ONTARIO** as represented by the  
**Minister of Infrastructure, as represented by  
Ontario Infrastructure and Lands  
Corporation**  
**[REDACTED]**

**TARION WARRANTY CORPORATION**  
**[REDACTED]**

**DUNDEE KILMER DEVELOPMENTS L.P.**  
**[REDACTED]**

**ELLISDON LEDCOR PAAV INC.**  
**[REDACTED]**

**APPENDIX 1**

**ACKNOWLEDGMENT AGREEMENT**

**TO: HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as represented by the Minister of Infrastructure, as represented by Ontario Infrastructure and Lands Corporation  
TARION WARRANTY CORPORATION  
DUNDEE KILMER DEVELOPMENTS L.P.  
ELLISDON LEDCOR PAAV INC.**

**(“THE AGREEMENT PARTIES”)**

**FROM: [PROJECT CO CONDOMINIUM SUBSIDIARIES]**

**(“ACKNOWLEDGING PARTY”)**

**WHEREAS**

- A. The Agreement Parties entered into an Ontario New Home Warranties Plan Act Compliance Agreement dated the [●] day of [●], 2011 (the “**Warranty Compliance Agreement**”);
- B. The Warranty Compliance Agreement imposes certain obligations on the Acknowledging Party including as set out in Section 6(b) of the Warranty Compliance Agreement the obligation to enter into this Acknowledgment Agreement; and
- C. The Acknowledging Party has entered into an agreement of purchase and sale to acquire the Project Co Residential Condominium Facility described on Schedule A hereto from HMQ.

**NOW THEREFORE** in consideration of the mutual covenants and agreements of the Parties hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Acknowledging Party covenants and agrees with the Agreement Parties as follows:

**1. DEFINITIONS**

In this Acknowledgment Agreement, including the recitals and appendices, unless the context indicates a contrary intention, terms which are defined in the Warranty Compliance Agreement shall have meanings given to them in the Warranty Compliance Agreement, and for clarity that includes terms which are defined in the Project Agreement.

**2. AGREEMENTS**

- (a) The Acknowledging Party acknowledges and agrees to perform the provisions of the Warranty Compliance Agreement which are intended to apply to a Project Co

Condominium Subsidiary including to register as a Vendor and maintain its registration under the Act and to comply with all of the obligations of a Vendor under the Act as they apply to such registration and construction of the Project Co Residential Condominium Facilities as “Designated Condominiums”.

**3. PROVISIONS OF COMPLIANCE AGREEMENT**

- (a) The following sections of the Warranty Compliance Agreement shall apply *mutatis mutandis* to this Acknowledgment Agreement:

2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20.

**IN WITNESS WHEREOF** the Acknowledging Party has executed this Acknowledgment Agreement as of the date first above written.

**[PROJECT CO CONDOMINIUM  
SUBSIDIARY]**

Per: \_\_\_\_\_

Name:

Title:

Per: \_\_\_\_\_

Name:

Title:

I/We have authority to bind the corporation as in the execution in the Compliance Agreement.

**Schedule A**

**Description of Project Co Residential Condominium Facility**

**[Note: Insert appropriate description of Facility.]**

**SCHEDULE 40**

**WTEI, DIVERSITY AND SMOKE FREE WORKPLACE PLANS**

**1. OUTLINE WATERFRONT TORONTO EMPLOYMENT INITIATIVE PLAN**

– Please see the following page –



PACKAGE B – TECHNICAL SUBMISSION REQUIREMENTS

B. PROJECT DEVELOPMENT, CONSTRUCTION AND  
ENVIRONMENTAL SUBMISSION REQUIREMENTS

1.0 PROJECT MANAGEMENT AND CONSTRUCTION PLAN

## (I) Waterfront Toronto Employment Initiative Plan

Provide an employment initiative strategy that meets the Proponent's needs for employment and which delivers upon the objectives of the Waterfront Toronto Employment Initiative (WTEI) by providing employment and career training opportunities throughout the planning and construction of the 2015 Pan Am Games Athletes' Village Project.

The Pan/Parapan American Games Athletes' Village Project (the Project or the Village) is a significant catalyst in the revitalization effort of the Toronto Waterfront communities, and the West Don Lands in particular. Long-term revitalization plans include the future development of the Lower Don Lands and the Portlands, south of the West Don Lands development. Achieving these long-term development goals successfully will depend, to a large extent, on the success of the Village, in attracting both residents and businesses to this new, socially diverse and economically vibrant community.

Toronto Waterfront Revitalization effort is not merely focused on the physical construction of this new neighbourhood. Through the Waterfront Toronto Employment Initiative (WTEI), it also seeks to engage unemployed and under-employed Torontonians to actively participate in creating the Village, both for the Games and the legacy use. The Initiative targets youth, Aboriginal people and newcomers by supporting employment and training opportunities during the Project's implementation phases.

Dundee Kilmer Developments Limited (Dundee Kilmer) has organized a Design Build Joint Venture comprised of EllisDon Corporation (EllisDon) and Ledor Design Build (Ontario) Inc. (Ledor), collectively known as EDL. Both of Dundee Kilmer's Design-Build Contractors, EllisDon and Ledor, have extensive experience with workforce and employment initiatives across Canada, and in providing training and employment opportunities to Aboriginal people, new immigrants and others—opportunities that can often assist them in developing sustainable careers.

On EllisDon's Sioux Lookout Meno-Ya-Win Health Centre project, for example, the client was not just the hospital board, but also the people of Sioux Lookout and the surrounding region, including the Nishnawbe-Aski Community, the Lac Seul First Nation and the Residents of Pickle Lake and Savant Lake. The residents clearly communicated their desire not just to have a new Health Centre built for them, but also their intention to play an active role in the building process. Prior to construction, EllisDon had been acting as the Project Manager on this project for two years. During this period, the company became involved with the Sioux Lookout Regional Centre for Aboriginal Apprenticeship Research (CAAR), through the Project Manager who worked closely with the CAAR team members to help establish a program to facilitate the matching of qualified workers with the roles that needed to be filled on the site. This program was highly successful in producing certified journeyman trades people.

The Meno-Ya-Win project also allowed EllisDon to better appreciate the cultural and linguistic challenges that arise from working in a community comprised of many different cultures. During the project, EllisDon hired Jonathan Gregg, a native of the Lac Seul community. As part of his responsibilities, Jonathan helped the EllisDon team to understand the unique facets of a multilingual First Nations Community such as Sioux Lookout. He also performed the many other responsibilities of a typical Assistant Project Manager on an EllisDon Project—including processing subcontracts, shop drawings and site instructions. The local First Nations crews ended up being some of the most productive workers on the project.

The Ledor Group of Companies makes it a priority to respond to social and economic realities with the diverse communities and seeks to re-invest in local communities in which they work. Ledor's commitment to involving diverse local community interests includes identifying subcontractor opportunities, aboriginal and other community groups, in the delivery of their projects. Ledor has effectively worked to establish an innovative project approach that cultivates long-term relationships with the communities, companies, and subcontractors through joint ventures for training, community development, and advocacy such as, Trades in Motion, local apprenticeship programs and community colleges.

**DUNDEEKILMER**  
Developments Limited

Design, Build and Finance | No. OIPC-11-00-1024  
West Don Lands Pan/Parapan American Games | Athletes' Village

# **Amended and Restated Project Agreement – Schedule 40**

## **2015 Pan/Parapan American Games Athletes' Village Project**

### **Execution Version**

#### **1.0 PROJECT MANAGEMENT AND CONSTRUCTION PLAN**

##### **(L) WATERFRONT TORONTO EMPLOYMENT INITIATIVE PLAN**

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Through their Community Alliance Teams, Ledcor provide support services in managing community relationships including advising on aboriginal policies and business relationships. Ledcor's Community Support Teams establish and cultivate relationships with local partners by establishing contact with aboriginal groups through organized information sessions which identify employment and training opportunities available to local populations. Further, Ledcor is committed to increasing aboriginal employment through the company's implemented Aboriginal Self-Identification Program, which is utilized to measure performance in aboriginal employment. Ledcor is also committed to ensuring continued employment opportunities in diverse roles such as, site management and supervision, equipment operators, trades, and labourers, by promoting Aboriginal employees from within projects by reviewing and rewarding individual progress.

Ledcor has also implemented diverse company-wide training programs including Aboriginal Awareness Training and Aboriginal Cultural Training. These programs are designed to provide general information about Aboriginal history and potential employee issues in order to promote mutually beneficial relationships with local people and incoming aboriginal employees. In addition, to formal training sessions, on projects with a high proportion of Aboriginal employees, such as River Cree Casino (20% aboriginal participation) and Government of Northwest Territories - Highway 3 Design/Build Partnership (50% aboriginal participation), Ledcor conducts an Aboriginal Employee Orientation in combination with the overall new hire employee orientation. This orientation may include a discussion of general aboriginal issues including attitudinal barriers, cultural barriers, informational barriers, and community partnerships. The Aboriginal Employee Orientation provides guidelines that are designed as practical considerations that the Community Alliance Team can use to familiarize aboriginal employees to project work. This process seeks to open lines of communication, with the goals of improving the workplace environment and increasing the recruitment and retention rates of aboriginal workers.

EllisDon is also active in supporting the integration of foreign-trained professionals into the construction industry. While foreign-trained workers represent minorities within our communities, when they are included in a project's implementation they often bring a wealth of knowledge and diversified experience to the construction environment. Through EllisDon's VP Leadership & Entrepreneurial Development, Janine Szczepanowski, the company has worked directly with local community colleges to teach foreign-trained professionals about the Canadian construction industry, and to make them aware of career opportunities. One of the main goals is to help people obtain work and integrate into the industry. In addition, EllisDon also works with local agencies across the country to provide opportunities for foreign-trained professionals through co-operative placements.

In continuation of our team's established and ongoing efforts in the area of diverse employment, Dundee Kilmer is committed to working collaboratively with WTEI's partner, the Consortium of Agencies Serving Immigrant Professionals (CASIP), to promote opportunities for youth, Aboriginal peoples and foreign-trained professionals as we work to implement the Project. EDL has delivered on similar commitments to our clients' priorities on numerous projects in the past, such as those described above. EDL's outstanding reputation and successful track record helps to ensure that the suppliers, unions, trade contractors, the design and engineering consultants and others helping to create the new Village will appreciate the importance of employment initiatives that not only aim to provide employment opportunities that lead to sustainable careers, but also embrace diversity and inclusiveness.

EDL will prequalify all the major trades, subcontractors and other suppliers that will be bidding on the Project. Where projects have special employment and/or diversity requirements, EllisDon's normal practice is to incorporate strong wording on client-specific requirements into the tender documents. The wording generally requires bidders not only to commit to meeting these requirements, but also to describe how they have achieved these goals in the past, to ensure that the target groups receive the same opportunities.

While EDL cannot force any supplier, contractor or services provider to implement specific employment and/or diversity action plans, our team's collective influence and reputations—locally nationally and internationally—within the construction industry puts us in a position to be very active and persuasive in this regard. Our constant aim is to provide our clients with not only the best resources for the project, but also to achieve other, broader, non-project-specific goals whenever and wherever possible. EDL is committed to working collaboratively with WTEI to promote awareness of employment opportunities for unemployed and underemployed individuals—including youth, Aboriginal people and newcomers—and to helping these people gain valuable trade skills through access to pre-apprenticeship and apprenticeship placements.

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1.0 RESPONSE TO THE WHOLE DEVELOPMENT STATEMENT  
(L) WATERFRONT TORONTO EMPLOYMENT INITIATIVE PLAN

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Identification of the range of employment opportunities, and sectors/types of employment, that will be involved in the Project as a whole (for example: sectors may include everything from design to construction. Opportunities may include everything from office assistance to specific skilled trades).

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Dundee Kilmer has identified employment opportunities, which exist in the Design and Construction sectors. This includes positions in administration, support and construction. Dundee Kilmer will work directly with the WTEI Steering Committee to advise the WTEI of requirements for office and non-union positions.

Dundee Kilmer will review with the design and other professional groups, the specific WTEI program resources available (as advised by the WTEI Steering Committee) to further encourage identification of employment opportunities to the WTEI as they become available. EDL will include the WTEI program in the sub-contract pre-award documents noting that the Trade must use best efforts to adopt the WTEI, and after award, EDL will work with the Trade to implement the WTEI.

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Identification of targets (number and/or percentage of positions) in each sector for each type of opportunity to be filled through the WTEI program: Targets are not requirements and are intended to be ambitious goals for the project, to help ensure opportunities are promoted for un/underemployed Torontonians in a range of areas and not just one sector or type of employment. Targets, and progress towards targets, will not be publicized or shared (beyond WT, IO and the WTEI steering committee) without the consent of DK.

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In order to include the hiring of the unemployed and/or the under employed into the trade union work on the Project, EllisDon-Ledcor has met with the Central Ontario Building Trades and has committed to hiring one graduate from the Hammer Heads Program, and requiring the best efforts from other union companies working on the Project to hiring from the Hammer Heads Program. We have set a goal of having at least 10 employed on the Project from the Hammer Heads Program. At the present time, there are no available graduates for hire.

Dundee Kilmer/EDL Targets:

Administration:	2
Hammer Heads:	1
Trades Administration:	4
Hammer Heads:	9
Professionals:	2

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Identification of the general timing of anticipated periods/phases of significant recruitment, or shifts in the types of employment opportunities that are likely to be available, over the life of the Project, simply to inform WTEI planning process at a conceptual level.

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Dundee Kilmer and EDL will, within 2 weeks of Financial Close, advise WTEI of employment opportunities that need to be filled over the next 3 months. Every 3 months thereafter, Dundee Kilmer and EDL will provide WTEI with an updated forecast of employment opportunities for the Project. Opportunities for Trades and Professionals will ramp up through 2012 and 2013 and level out through 2014. After the games in September 2015, there will be limited opportunities through early 2016.

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Identification of public policy objectives and/or other DK objectives to be advanced through WTEI, so the WTEI steering committee can connect with its broader network and make recommendations with these goals in mind (for example, particular interest in providing opportunities for underemployed new Canadians, women, people with disabilities, etc.).

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Due to the dynamic nature of a construction site, especially with respect to safety and communication, there are limitations on new hires. There are both physical and mental demands that must be met. Any new employment posting will take this into account.

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Preliminary face-to-face meeting with the WTEI steering committee in order to:

- better understand the opportunities and resources available through WTEI;
  - discuss the abovementioned types of opportunities, timing of anticipated opportunities, and targets;
  - better understand the timelines and type of dialogue that will be necessary to effectively leverage the recruitment assistance that is available to employers through WTEI;
  - discuss appropriate tracking and reporting framework
-



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**1.0 PROJECT MANAGEMENT AND CONSTRUCTION PLAN**  
**(L) WATERFRONT TORONTO EMPLOYMENT INITIATIVE PLAN**

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Dundee Kilmer and EDL will work with the WTEI Steering Committee on the above items after financial close. Dundee Kilmer's representative to the WTEI Steering Committee is Timothy Dittmar, Construction Manager.

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Tracking and progress reporting schedule (to be refined based on what is agreed with the WTEI steering committee).

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Dundee Kilmer and EDL will work with the WTEI Steering Committee to finalize a tracking and progress reporting schedule after financial close.

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Identification of any areas in which customized training and/or apprenticeship programs would be ideal/desired, so the WTEI steering committee may make recommendations and plan accordingly.

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Dundee Kilmer will work with WTEI to identify opportunities and any specific training required. EDL notes that the Hammer Heads program will be utilized as a means of meeting WTEI expectations for union work. EllisDon-Ledcor will also identify any hires of the under employed or unemployed directly by sub-contractors, who have not recruited through WTEI, as additional contributions towards achieving the WTEI expectations.

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Commitment for all members of the DK team, and all subcontractors in contract arrangements with DK to participate in WTEI as follows:

- where possible, provide advance notice to the WTEI steering committee about significant recruitment efforts (i.e. recruitment for a number of employees instead of just one or two, or for any significant positions) that would benefit from a customized recruitment and/or training plan, so that the WTEI steering committee can design and present a recommended plan to support the employer's recruitment needs, and possibly to provide training support. DK should utilize the preliminary meeting with the WTEI steering committee to learn about what types of timelines are involved in the preparation and refinement of customized employment plans, so that these timelines can be considered and incorporated throughout the project, for the mutual benefit of employers and job candidates.
- make best efforts to share all employment opportunities (job postings) with the WTEI steering committee (in advance of general posting, where possible/appropriate), and identify a desired number of pre-screened candidates (as well as any desired selection criteria) for each position, so that the steering committee may recommend pre-screened, qualified candidates (who can be considered together with any other candidates who are not referred through the WTEI program - no obligation to hire WTEI candidates if they are not appropriate potential hires)
- provide feedback on the quality of applications received, and, where candidates are hired, on the quality of the candidates post-employment. Process for coordination of feedback is to be determined through discussion with WTEI steering committee.
- from time to time, and as appropriate, participate in communications and marketing efforts to promote the goals and successes of WTEI or report on its progress (for example, features on WT's website, updates to the West Don Lands Committee or other local stakeholders)

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Dundee Kilmer and EDL will work with the WTEI towards the goals stated above.

**2. OUTLINE DIVERSITY PLAN**

– Please see the following page –

## 6.0 Aboriginal and Diversity Plan

The Dundee Kilmer Project Team is strongly committed to workplace diversity—a fact reflected by the healthy ethnic, gender and religious mix of our team members. All of the Dundee Kilmer team members are committed to providing equal employment opportunities, and to providing an environment of inclusiveness and tolerance in the workplace. Moreover, we recognize and support the Toronto 2015 Diversity Policy, which is designed to ensure that the economic benefits of the Pan/Parapan American Games are shared among diverse communities and businesses in Toronto.

The world-class firms that comprise the Project Team all have an outstanding track record of delivering excellence in major projects, by bringing them in on time and on budget. To do this, our focus has been, and will continue to be on finding the right people with the right skills and experience. Over the years, our Project Team members have established a strong network of contractors, subcontractors and suppliers—people and businesses that have not only played a significant role in our past success, but who will also play a similar role in helping us to achieve the Sponsors' vision for the Village.

The importance of the support provided by such individuals, contractors and subcontractors is difficult to overestimate, and all of our Project Team members are constantly looking to identify and qualify additional sources of support. Accordingly, and to demonstrate our support for Toronto 2015's Diversity Policy, we welcome the opportunity to work with the Sponsors, the Waterfront Toronto Employment Initiative (WTEI), the Diversified Business Network (DBN), the Central Ontario Building Trades and other Project stakeholders to explore potential opportunities for Aboriginal people, members of designated groups—such as persons with disabilities, members of visible minorities and women in non-traditional or under-represented roles—as well as opportunities for qualified businesses that are owned, operated by or employing members of these designated groups.

An outline of the key elements of our proposed Aboriginal and Diversity Plan is provided below.

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- (i) Indicate how the Proponent intends to include Aboriginal Peoples in its proposed Aboriginal and Diversity Plan. For the purpose of this Part 3 of Schedule 3 to the RFP, "Aboriginal Peoples" has the meaning given to it in the Employment Equity Act (Canada), S.C. 1995, c. 44 (the "Employment Equity Act").
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Our Design Build Joint Venture team members comprised of EllisDon Corporation (EllisDon) and Ledcor Design Build (Ontario) Inc. (Ledcor) (collectively EDL) have a proven history of successfully establishing and cultivating employment and business relationships with Aboriginal Peoples. Dundee Kilmer proposes to include Aboriginal Peoples (as defined in the federal *Employment Equity Act*) in our proposed Aboriginal and Diversity Plan by utilizing several different approaches in order to maximize our reach. First, Dundee Kilmer will include wording to encourage Aboriginal People to apply for any employment opportunities that are advertised in relation to the services to be provided under the Project Co Services Agreement for the Project. EDL has also met with and committed to employing unemployed and/or under employed graduate(s) from the Central Ontario Building Trades Hammer Heads program. Finally, Dundee Kilmer and EDL will also work with Diversified Business Network (DBN). The DBN will provide names of companies with which EDL is familiar, and on this basis, EDL will make a best effort to commit to diversity in the supply chain and DBN will work with EDL to that end.

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- (ii) Indicate the designated group-owned businesses that the Proponent intends to include in its proposed Aboriginal and Diversity Plan.
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In addition to our commitment on making best efforts to include Aboriginal people and businesses in our contractor and supply chain, Dundee Kilmer will make similar efforts with respect to other designated group-owned businesses, as part of our proposed Aboriginal and Diversity Plan. These other groups include persons with disabilities (as defined in the federal

6.0 ABORIGINAL AND DIVERSITY PLAN

*Employment Equity Act*); members of visible minorities (as defined in the federal *Employment Equity Act*); and women in non-traditional or under-represented roles (i.e., women employed in a position (managerial or otherwise) within an employer's labour force where the total number of women generally in the Ontario labour market who hold the same or similar position in the same or similar role, occupation or industry is less than 45 per cent of the total number of positions). We will extend similar efforts to firms that are owned, operated by or employ members of these designated minorities that are defined as small businesses (i.e., businesses with fewer than 50 employees and gross annual revenues of less than \$5 million) and medium businesses (i.e., businesses with between 51 and 500 employees, or with gross annual revenues of between \$5 million and \$25 million). Dundee Kilmer and EDL will work with Waterfront Toronto, Central Ontario Building Trades, and Diversified Business Network in order to identify designated group-owned businesses.

(iii) Indicate tactics and strategies to be employed to maximize meaningful participation from designated group-owned businesses (indicate and describe all that apply from below):

**A. OUTREACH PROGRAMS TO INCREASE DESIGNATED GROUPS' AWARENESS OF OPPORTUNITIES**

Dundee Kilmer Project Team members will reach out to members of designated group-owned businesses by including language in employment advertising placed in relation to the Project similar to the following: "Dundee Kilmer is an equal opportunity employer, and in particular, we encourage applications from qualified Aboriginal People and members of employment-equity-designated groups, such as persons with disabilities, members of visible minorities and women in non-traditional or under-represented roles." Drawing upon the the Project Team's experience in engaging Aboriginal People and minorities, we will support a project-specific community liaison and also utilize, where appropriate, cost-effective advertising in media outlets that have the broadest possible reach, to maximize the number of designated people and groups who are made aware of these opportunities. The Central Ontario Building Trades and DBN will also be instrumental in providing awareness opportunities throughout their networks.

**B. DIRECT CONTRACTING OR SUBCONTRACTING**

Expertise, experience, qualifications and proven ability will continue to be the key qualities we require in our suppliers, contractors and subcontractors. Using that criterion, Dundee Kilmer Project Team members, working with the Diversified Business Network, will work towards identifying, pre-qualifying and contracting project-related work where appropriate to qualified companies that employ Aboriginal people and/or members of designated groups, such as persons with disabilities, members of visible minorities and women in non-traditional or under-represented roles.

**C. NOT APPLICABLE**

**D. TECHNICAL ASSISTANCE AND WORKFORCE TRAINING OPPORTUNITIES**

Dundee Kilmer Project Team will work with the Central Ontario Building Trades' Hammer Heads program to identify technical assistance and workforce training opportunities. Where we hire contractors and subcontractors to carry out work related to the Project, we will encourage our contractors and subcontractors who employ apprentices or new hires on the Project to consider giving priority to hiring qualified Aboriginal people and members of the employment equity-designated groups identified above, where appropriate.

**E. Not Applicable**

**F. SUBCONTRACT SCOPE PACKAGING AND TARGET GROUP PROCUREMENT OPPORTUNITIES**

We are committed to managing the scope of all procurement packaging in a cost-effective manner that ensures a successful Project. As part of this work, we will make best efforts to provide appropriate opportunities for qualified small- and medium-sized businesses, including those that are owned, operated by or employ members of the designated groups identified above. Dundee Kilmer and EDL will work with DBN who will find and provide companies with whom EDL is already familiar. DBN will work along with Dundee Kilmer to make a best efforts commitment to diversity in the supply chain. This will address risk issues, create success stories and help to build capacity for the diverse companies. Throughout the project, DBN will continue to look at parts of the work, suggested by EDL, to find direct opportunities for diverse companies. This provides the framework to build a working relationship designed for long term success between Dundee Kilmer, EDL and DBN.

**G. OTHER**

After the plan has been refined and implemented, we will monitor its effectiveness, and report to Toronto 2015 and other key stakeholders on the Plan's results. The frequency of these reports, along with the specific goals and objectives of the Plan itself, will be discussed with the Sponsors.

As noted earlier in this section, the Project Team—a diverse group of individuals and companies in its own right—is strongly committed to diversity in the workplace. Accordingly, we look forward to working with Toronto 2015 and other Sponsors and stakeholders to achieve the strategic objective of the Toronto 2015 Diversity Policy, which is to ensure that Aboriginal peoples and members of designated diversity groups have appropriate opportunities to participate meaningfully in the business opportunities related to the Project.



**3. OUTLINE SMOKE FREE WORKPLACE PLAN**

– Please see the following page –

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EllisDon Ledcor PAAV Inc.

November 23, 2011

Rev. 0

**SMOKE FREE PLAN**

EllisDon Ledcor PAAV Inc. (EDL) will comply with and enforce the Smoke-Free Ontario Act (2006) as it applies to the PAAV Project. The Smoke-Free Ontario Act prohibits smoking in enclosed workplaces and public places, to protect workers and the public from the hazards of second-hand smoke.

**Environmental Policy Statement**

The maintenance of indoor air quality during construction for the benefit of workers during construction and future building occupants is enforced on an individual site basis. The PAAV Project does not allow smoking inside of buildings, on the balconies and/or on roofs.

It is acknowledged that smoking is a habit that could, if not allowed, lead to significant social disruption. Hence, smoking will be allowed under controlled and monitored conditions. Smoking will be allowed outside of buildings on the ground floor level. Those smoking will be required to be at least 3m outside the main entrance to allow non-smokers passage in/out of the building through a smoke free environment.

The ban on smoking in an enclosed workplace is in effect at all times, even during off-hours when people are not working.

EDL will:

- Ensure that employees are aware that smoking is prohibited in enclosed workplaces.
- Remove ashtrays and any objects that serve as one.
- Ensure that no one smokes in the workplace.
- Ensure a person who does not comply does not remain in the enclosed workplace.
- Post *No Smoking* signs at entrances, exits, washrooms and other appropriate locations.

EDL will not dismiss, threaten to dismiss, discipline, suspend, penalize, intimidate or coerce an employee who obeys or seeks compliance with the Act. Should an employee experience any of the above-noted actions by his or her employer, the employee may direct complaints to the Ontario Labour Relations Board.

Enforcement will be the responsibility of each and every EDL Management and Supervisory person on the site.

Penalties will be as per the EllisDon Safety Policy with respect to policy violations, which could lead to ultimate dismissal from the Project. EDL will follow a verbal – written – suspension (temporary or permanent) program.

EDL is following the EllisDon Safety Policy on the PAAV Project, which contains various references to Smoking, its limitations and control. Various parts of the program are referenced below:

**ED Safety Orientation Booklet**

Under Personal Safety Rules during orientation, workers are notified that:  
Smoking is prohibited as per Provincial Regulations.

During orientation, the Environmental Policy Statement will be reviewed.

**Safety Manual**

Under the Subcontractor Safety Guidelines the following is noted:

Smoking – In accordance with the law, smoking is prohibited in workplaces. The application of this on the project is simple, if you need to smoke, go outside the building. A floor with a roof overhead is considered “inside” the building, whether there are walls or not. If you are found smoking within the building, you will be sent home for the balance of the day on which you are caught for a first offence. A second offence will result in your permanent removal from the project.

Under General Rules the following is noted:  
Smoking is prohibited as per provincial regulations.

**Safe Work Place & Procedures Manual**

Under the Housekeeping Section, the following is noted:  
Strict adherence must be paid to “NO SMOKING” regulations.

Under Controls Section, the following is noted:

Cigarette smoking, a cause of lung cancer, multiplies the risk of lung cancer in people exposed to asbestos dust.

Do not smoke near propane tanks and equipment. If fuel were to leak from the unit, smoking could provide ignition and cause a fire or explosion.

Under the Welding, Cutting and Open Flame Section, the following is noted:

Do not smoke near welding equipment. If fuel were to leak from the unit, smoking could provide ignition and cause a fire or an explosion.

Under the Man/Material Hoist Section, the following is noted:

No smoking – Smoking is not permitted in the hoists.

**Signs**

**Smoke-Free Ontario Act – No Smoking sign** will be posted at the main entrance and exit of enclosed workplaces in appropriate locations and in sufficient numbers to ensure that employees are aware that no smoking is permitted in the enclosed workplace. This applies to buildings under construction, trailers, washroom facilities, and temporary man/material hoists.

**Smoke-Free Ontario Act – Smoking Area sign** will be posted in a location at least 3m outside the main entrance and exit of enclosed workplaces.

**End of Plan**

**SCHEDULE 41**

**AGREEMENT AND DIRECTION RE COST TO COMPLETE CASH EQUITY**

**THIS AGREEMENT** is made as of the \_\_\_\_ day of \_\_\_\_\_, 2011.

**TO:** **DUNDEE KILMER DEVELOPMENTS L.P. (“Project Co”)**

**RE:** Project Agreement dated as of the \_\_\_\_ day of \_\_\_\_\_, 2011 between Project Co, and Her Majesty the Queen in Right of Ontario as represented by the Minister of Infrastructure, as represented by Ontario Infrastructure and Lands Corporation (“**HMQ**”) (as the same may be amended, renewed, replaced, extended, restated, supplemented or modified from time to time, the “**Project Agreement**”).

**AND RE:** Credit Agreement dated as of the \_\_\_\_ day of \_\_\_\_\_, 2011 between [REDACTED] (the “**Lenders’ Agent**”) for the lenders (the “**Lenders**”) and the hedge providers (the “**Hedge Providers**” and together with the Lenders, the “**Finance Parties**”) party thereto and others (as the same may be amended, renewed, replaced, extended, restated, supplemented or modified from time to time, the “**AFP Credit Agreement**”)

**WHEREAS** pursuant to Section 2.2B.1(a) of the Project Agreement, Project Co is required to (or cause the Equity Holder to) fully contribute in cash the Cost to Complete Cash Equity which shall be used for the exclusive purpose of funding a part of the direct or indirect costs of completing the Project;

**AND WHEREAS** Project Co wishes to fully contribute the Cost to Complete Cash Equity into the Proceeds Account (as defined in the AFP Credit Agreement);

**NOW THEREFORE** in consideration of the mutual covenants and agreements of the Parties hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

- 1.1 Each of HMQ and the Lenders’ Agent hereby agrees that the obligations of Project Co under Section 2.2B.1(a) of the Project Agreement shall be fully satisfied by the deposit of the full amount of the Cost to Complete Cash Equity into the Proceeds Account and each of HMQ and the Lenders’ Agent hereby authorizes and directs Project Co to deposit the full amount of the Cost to Complete Cash Equity into the Proceeds Account.
- 1.2 Each of the capitalized terms used herein and not otherwise defined have the meaning given thereto in the Project Agreement.

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

*[Remainder of this page intentionally left blank]*

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

**HER MAJESTY THE QUEEN IN RIGHT OF  
ONTARIO as represented by the Minister of  
Infrastructure, as represented by Ontario  
Infrastructure and Lands Corporation**

**[REDACTED]**

**[REDACTED], as LENDERS' AGENT**

**[REDACTED]**