

**SCHEDULE 3**

**LENDER’S DIRECT AGREEMENT**

**THIS LENDER’S DIRECT AGREEMENT** is made as of the 12<sup>th</sup> day of June, 2007

**BETWEEN:**

**SUNNYBROOK HEALTH SCIENCES CENTRE, a non-share capital corporation  
incorporated under the laws of the Province of Ontario**

**(“Hospital”)**

**AND:**

**STONEBRIDGE FINANCIAL CORPORATION, acting as agent for and on behalf  
of Lender**

**(“Agent”)**

**AND:**

**VANBROOK CONSTRUCTION CORPORATION, a corporation incorporated  
under the laws of the Province of Ontario**

**(“Project Co”)**

**AND:**

**VANBOTS CONSTRUCTION CORPORATION, a corporation incorporated  
under the laws of the Province of Ontario**

**(“Contractor”).**

**WHEREAS:**

- A. Hospital, Project Co and Contractor have entered into the Project Agreement.
- B. Project Co has entered into the Construction Contract in the capacity of “Owner” with Contractor with respect to the Project.
- C. Project Co has under the Limited Assignment of Construction Contract assigned its rights and obligations as “Owner” under the Construction Contract to Hospital, save and except in respect to the obligation to pay any of the Base Progress Payments (the **“Retained Payment Obligation”**).
- D. Under the Limited Assignment of Construction Contract, Hospital has acknowledged the right of Agent as against Contractor to enforce or to terminate the Construction Contract under PART 7 – DEFAULT NOTICE (the **“Enforcement Rights”**).

- E. Under the Lending Agreements, the Financing is to be provided to Project Co by Lender to finance the payment of the Base Progress Payments to Contractor under the Construction Contract, conditional, among other things, on Contractor and Project Co executing and delivering the Lending Agreements.
- F. Agent has agreed to enter into this Lender’s Direct Agreement with Hospital, Project Co and Contractor in relation to the Lending Agreements, the exercise of its rights under the Lending Agreements and the remedying of breaches by Project Co under the Project Agreement and by Contractor under the Construction Contract.
- G. Contractor, Project Co and Agent recognize and understand that Hospital is a public hospital under the *Public Hospitals Act* (Ontario) and is therefore subject to a highly regulated legal and operational environment.
- H. Hospital has been authorized to execute this Lender’s Direct Agreement by the MOHLTC (it being acknowledged by the parties to this Lender’s Direct Agreement that such authorization in no way obligates the Government of Ontario or the Province under this Lender’s Direct Agreement or otherwise in respect of the Project).

**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:

#### **ARTICLE 1 – DEFINITIONS AND INTERPRETATION**

- 1.1** In this Lender’s Direct Agreement, all capitalized terms not otherwise defined in this Lender’s Direct Agreement shall have the meanings ascribed to them in the Project Agreement and unless the context otherwise requires:

“**Additional Owner Payments**” has the meaning given to it in the Construction Contract.

“**Appointed Representative**” means any of the following to the extent so identified in an Appointed Representative Notice:

- (i) Agent, Lender or any Affiliate of either of them;
- (ii) a receiver or manager or any permutation thereof of Contractor and/or Project Co appointed under the Lending Agreements;
- (iii) a Person directly or indirectly owned or controlled by Agent or Lender; or
- (iv) any other Person approved by Hospital (such approval not to be unreasonably withheld or delayed).

“**Appointed Representative Notice**” has the meaning given to it in Section 7.2.

“**Article**” and “**Section**” mean and refer to the specified article and section or subsection of this Lender’s Direct Agreement.

“**Assignable Subcontract Agreement**” has the meaning given to it in the Construction Contract.

“**Assignment of Assignable Subcontracts**” means an agreement dated June 12, 2007 whereby Project Co assigned the Assignable Subcontract Agreements to the Hospital.

“**Base Progress Payments**” has the meaning given to it in the Construction Contract.

“**Certified Cost to Complete**” has the meaning given to it in the Limited Assignment of Construction Contract.

“**Compensation Payment**” has the meaning given to it in the Limited Assignment of Construction Contract.

“**Construction Contract**” means the Guaranteed Price Contract entered into between Project Co in the capacity of “Owner” and Contractor with respect to the Project as assigned to Hospital in accordance with the Limited Assignment of Construction Contract.

“**Construction Contract Assignment**” means an assignment of the Construction Contract by an Appointed Representative to a Replacement Contractor as contemplated in Section 7.3.

“**Construction Contract Directed Payments**” has the meaning given to it in Section 9.1.

“**Construction Default Notice**” has the meaning given to it in Section 6.1.

“**Construction Event of Default**” means the occurrence of an event under the Construction Contract that upon the expiry of any cure periods provided for therein would entitle Hospital to terminate the Construction Contract.

“**Construction Security**” means the insurance contemplated under GC 11.1 - INSURANCE of the Construction Contract and the performance bonds and labour and material payment bonds and the Subguard Policy as contemplated in GC 11.2 - BONDS of the Construction Contract.

“**Enforcement Action**” means any exercise by Agent of its rights and remedies under the Lending Agreements.

“**Enforcement Event**” means an event of default under the Lending Agreements or any event which permits an Enforcement Action.

“**Hospital Holdback**” has the meaning given to it in the Limited Assignment of Construction Contract.

“**Hospital Reimbursement Payment**” has the meaning given to it in the Limited Assignment of Construction Contract.

“**Joint Account**” means the account referred to in Section 4.8 of this Lender’s Direct Agreement.

“**LACC Directed Payments**” has the meaning given to it in Section 9.1 .

“**Legislative Holdback**” means the holdback to be maintained under the Construction Contract pursuant to Part IV of the *Construction Lien Act* (Ontario).

“**Lender**” means The Manufacturers Life Insurance Company, London Life Insurance Company, Industrial Alliance Insurance and Financial Services Inc., BCE Master Trust Fund and The Equitable Life Insurance Company of Canada and their successors and assigns under the Lending Agreements.

“**Lender Decision Period**” has the meaning given to it in Section 7.1.

“**Lender’s Consultant**” has the meaning given to it in the Construction Contract.

“**Lender’ Direct Agreement**” means this lender’s direct agreement.

“**Lending Agreements**” means any or all of the agreements or instruments to be entered into by Contractor or Project Co or any of their Affiliates relating to the financing of the Project by the Lender and includes but is not limited to: Credit Agreement; Guaranteed Price Contract; Limited Assignment of Construction Contract; General Security Agreement; Assignment of Accounts; Assignment of Material Project Documents; Limited Recourse Guarantee; Share Pledge Agreement; Limited Cost Overrun and Contingency Loan Guarantee; Consent and Acknowledgement Agreement re: Construction Contract; Assignable Subcontract Agreements; and Undertaking re: Assignable Subcontract Agreements.

“**Lien**” means the lien provided for under Section 14(1) of the *Construction Lien Act* (Ontario).

“**Limited Assignment of Construction Contract**” means the Limited Assignment of Construction Contract between Project Co, Hospital and Contractor made as of the date of Financial Close.

“**Longstop Date**” has the meaning given to it in the Construction Contract.

“**Notice Period**” means the period starting on the date of delivery of a Construction Default Notice and ending one hundred and twenty (120) days later.

“**Party**” means any of Hospital, Project Co, Contractor or Agent, and “**Parties**” means all of Hospital, Project Co, Contractor and Agent, but, for greater certainty, such definitions do not include Infrastructure Ontario or Her Majesty the Queen in Right of Ontario, as represented by either the Minister of Health and Long-Term Care or the Minister of Public Infrastructure Renewal.

“**Reimbursement Payment Date**” has the meaning given to it in the Construction Contract.

“**Replacement Construction Contract**” has the meaning given to it in Section 7.3.

“**Replacement Contractor**” means a replacement contractor under a Construction Contract Assignment or a Replacement Construction Contract entered into pursuant to Section 7.3 who must be a contractor that is capable of performing the obligations set out in the Contract and that is acceptable to Hospital, acting reasonably.

“**Step-In Date**” means the date on which Hospital receives a Step-In Notice from Agent.

“**Step-In Notice**” means the notice given by Agent to Hospital pursuant to Section 7.1 stating that Agent is exercising its step-in rights under Article 7 of this Lender’s Direct Agreement.

“**Step-In Period**” means the period from the Step-In Date up to and including the Step-Out Date.

“**Step-Out Date**” means the earlier to occur of (i) the expiry of the periods provided for in Sections 6.3(a) or 6.3(b), as the case may be, and (ii) the date on which Hospital receives a Step-Out Notice.

“**Step-Out Notice**” has the meaning given to it in Section 8.1.

“**Substantial Performance Date**” has the meaning given to it in the Construction Contract.

“**Substantial Performance Holdback**” has the meaning given to it in the Limited Assignment of Construction Contract.

“**Substantial Performance of the Work**” has the meaning given to it in the Construction Contract.

## 1.2 Interpretation

The provisions of Section 1.3(a) and (e)-(x), inclusive, of the Project Agreement are hereby incorporated in their entirety and all references in same to “Project Agreement” shall be read as “Lender’s Direct Agreement”.

## 1.3 Default Interest Rate

The Parties acknowledge and agree that if any party to the Construction Contract or Limited Assignment of Construction Contract fails to make payments as they become due, in accordance with the Construction Contract or the Limited Assignment of Construction Contract, paragraph 7.3 of Article A-7 of the Construction Contract shall apply.

## **ARTICLE 2 - CONFLICT IN DOCUMENTS**

- 2.1** In the event of ambiguities, conflicts or inconsistencies between or among this Lender’s Direct Agreement, the Project Agreement, the Construction Contract and the Limited Assignment of Construction Contract, this Lender’s Direct Agreement shall prevail. Notwithstanding the foregoing, if there is any right or remedy in favour of Hospital set out in this Lender’s Direct Agreement or any part thereof which is not set out or provided for in the Construction Contract, such additional right or remedy shall not constitute an ambiguity, conflict or inconsistency. No review by Hospital of the Lending Agreements shall constitute an acceptance in or acquiescence to any of the Lending Agreements or any term or condition thereof by Hospital and this Lender’s Direct Agreement, the Project Agreement and the Construction Contract shall not be subject to any of the terms and conditions of the Lending Agreements.

## **ARTICLE 3 - TERM**

- 3.1** This Lender’s Direct Agreement shall terminate automatically on the date on which all obligations that may be or become owing by Project Co to Agent or Lender under the Lending Agreements have been satisfied in full.
- 3.2** Promptly, and in no event more than thirty (30) days following its occurrence, Agent shall provide notice to Hospital of the date referred to in Section 3.1.
- 3.3** Hospital hereby provides to Lender, Agent and Project Co, and agrees to provide to Replacement Contractor, a non-exclusive license to have access to and to use the Place of the Work on the same terms and conditions as set out in GC 3.17.1 of the Construction Contract.

## **ARTICLE 4 - AGREEMENTS AND SECURITY**

- 4.1** Contractor, Project Co and Agent shall not amend or modify any Lending Agreements other than as expressly provided for under the terms of those agreements and so long as such amendment is consistent in all material respects with Schedule 5 to the Project Agreement and shall provide prompt notice to Hospital of any amendments or modifications accompanied by a copy thereof.
- 4.2** Contractor, Project Co and Hospital shall not amend or modify any Implementing Agreements (other than Change Orders or Change Directives contemplated by the Construction Contract) without the prior written consent of Agent, not to be unreasonably withheld or delayed, which consent shall not be withheld if the relevant amendment or modification does not (i) adversely affect the ability of Agent or Lender to exercise its rights under the Lending Agreements, (ii) adversely affect the security of the Lending Agreements, or (iii) increase the liability of Agent, Lender, Contractor or Project Co under the relevant agreement. Agent shall respond to any request for consent under this Section 4.2 within fifteen (15) days of receipt thereof, failing which Agent shall be deemed to have consented to the relevant amendment or modification.

- 4.3 Project Co and Contractor acknowledge and consent to the arrangements set out in this Lender’s Direct Agreement, and agree not to do or omit to do anything that may prevent any other Party from enforcing its rights under this Lender’s Direct Agreement.
- 4.4 Agent acknowledges having received a copy of each of the Implementing Agreements.
- 4.5 The Hospital acknowledges having received a copy of each of the Lending Agreements and consents to the granting of security by Project Co and Contractor over the Implementing Agreements contained in the Lending Agreements. The Hospital acknowledges and agrees that Agent shall be entitled, subject to and in accordance with this Lender’s Direct Agreement, to exercise all rights and enforce all of the covenants and obligations of the Contractor in accordance with the terms of the Construction Contract.
- 4.6 Contractor, Project Co and Agent acknowledge that none of Contractor, Project Co, Agent or Lender shall, under the Project Agreement or any of the Implementing Agreements acquire any interest in the Project Lands or the Project notwithstanding any provision therein to the contrary and that The Governing Council of the University of Toronto shall at all times retain the fee simple interest in and freehold title to the Project Lands and the Project to be constructed on the Project Lands under the Construction Contract. Contracting Parties, Agent and Lender shall have access to the Project Lands and the Project under and subject to the limited license created in the Construction Contract and Section 3.3 of this Lender’s Direct Agreement, as applicable.
- 4.7 Without limitation of any of their respective rights and remedies under this Lender’s Direct Agreement, Contractor, Project Co and Agent acknowledge that Hospital is a public hospital under the *Public Hospitals Act* (Ontario) and nothing in this Lender’s Direct Agreement or any of the Implementing Agreements including the Construction Contract shall limit or shall be construed as limiting any authority and responsibility of Hospital under the *Public Hospitals Act* (Ontario) or any directions to Hospital or to the Board of Directors of Hospital made by a Governmental Authority under Applicable Law or in compliance with all Applicable Law.
- 4.8 **Joint Account.** Hospital agrees with Project Co to establish a joint account (“Joint Account”) no later than 150 days after the Financial Close Target Date. Hospital acknowledges that any monies contributed by MOHLTC towards the costs of the Project shall be deposited by MOHLTC directly into the Joint Account. Hospital acknowledges that Project Co’s interest in the Joint Account will be assigned to the Agent as part of the security under the Lending Agreements.
- 4.9 **Insurance Trust Agreement.** The Parties to this Lenders Direct Agreement agree to the distribution of insurance proceeds in respect of GC 11.1.1.2.2 of the Construction Contract in accordance with Section 2.11 of the Project Agreement and to enter into

an Insurance Trustee Agreement, or agree to such alternative arrangements, all as contemplated in Section 2.11 of the Project Agreement.

**ARTICLE 5 - ENFORCEMENT OF SECURITY BY AGENT;  
LEGISLATIVE HOLDBACK**

- 5.1** Agent shall concurrently with notice to Project Co notify Hospital of any Enforcement Event, any notice of default delivered pursuant to the Lending Agreements, any Enforcement Action, any notice from Agent to Project Co to accelerate the maturity of any amounts owing by Project Co to Agent or Lender under the Lending Agreements or any notice from Agent to Project Co to demand repayment thereof.
- 5.2** Agent shall appoint Lender’s Consultant who shall be responsible to advise Agent and Lender with respect to the amount of any Legislative Holdback to be maintained in respect to all Base Progress Payments. Agent shall withhold the required Legislative Holdback amount to the intent that at any point in time up to and including the Substantial Performance Date there is under the Financing an unadvanced holdback amount representing the required Legislative Holdback amount in respect to the Base Progress Payments certified for payment under the Construction Contract and whether or not any such Base Progress Payment has in fact been paid to such point in time.
- 5.3** Hospital may conduct a subsearch of the Project Lands at any time and from time to time and notify Agent, Project Co and Contractor if any Lien that relates to the Project has been registered and if a Lien has been registered Contractor shall immediately take such steps, at its sole cost and expense, as are required to have the Lien vacated. Agent acknowledges and agrees with Hospital that neither Agent nor Lender shall be entitled to rely on Hospital to conduct a subsearch or on any subsearch result of Hospital and that the result of any such subsearch provided by Hospital is, subject to the obligations of Contractor, Project Co and Agent hereunder, for information only.
- 5.4** Agent agrees to conduct a subsearch of the Project Lands prior to the advance of any Financing and if a Lien has been registered that relates to the Project, save and except any liens in respect of work done by contractors directly engaged by Hospital for which Project Co has not assumed responsibility pursuant to an assignment under GC 3.8.3 of the Construction Contract (and provided in such case Project Co has not assumed responsibility for payment of such contractors), Agent shall direct Project Co to proceed to immediately take such steps, at its sole cost and expense, as are required to have the Lien vacated and doing so shall be a condition precedent to the making of any advance of the Financing.

**ARTICLE 6 - CONSTRUCTION EVENT OF DEFAULT**

- 6.1** Subject only to the rights expressly afforded to Agent in this Article 6, Hospital shall serve notice to Agent of a Construction Event of Default (the “**Construction Default**”

**Notice**”) contemporaneously with any notice delivered by Hospital to Contractor under the Construction Contract.

**6.2** At any time other than during the Step-In Period (with the restriction on termination during the Step-In Period set out in Section 6.3), Hospital shall not exercise any right it may have to terminate the Construction Contract or exercise any other rights or remedies for a Construction Event of Default unless:

- (a) Hospital delivers to Agent a Construction Default Notice setting out the nature of the alleged default in reasonable detail; and
- (b) the Notice Period has expired and Agent has not delivered a Step-In Notice.

**6.3** During the Step-In Period, Hospital shall not exercise any right it may have to terminate the Construction Contract or, except to the extent required to protect legal rights or comply with Applicable Law, exercise any other rights or remedies for a Construction Event of Default:

- (a) if, in the case of a Construction Event of Default which is capable of being cured, the Construction Event of Default has been cured by or on behalf of Appointed Representative or Appointed Representative is diligently proceeding to cure the breach in accordance with GC 7.1 of the Construction Contract within the time periods set forth in the Construction Contract together with an additional time period of thirty (30) days (and where appropriate, Hospital and Appointed Representative may agree to amend the applicable time periods set out in GC 7.1 of the Construction Contract) provided that where the Appointed Representative is diligently proceeding to cure the breach beyond such period of thirty (30) days such breach is cured prior to the Longstop Date; or
- (b) if, in the case of a Construction Event of Default which is either (i) not capable of being cured (which, by way of example, would include an event described in GC 7.1.1 of the Construction Contract) or (ii) can only be cured in the determination of Agent (acting reasonably) by assigning the Construction Contract to a Replacement Contractor or entering into a Replacement Construction Contract as provided under Section 7.3, a Construction Contract Assignment or a Replacement Construction Contract with a Replacement Contractor has been entered into in accordance with Section 7.3 within one hundred and twenty (120) days of the delivery of the Construction Default Notice. Hospital and Appointed Representative may agree to extend such time period if Appointed Representative is proceeding diligently. In the case of either a Construction Contract Assignment or a Replacement Construction Contract having been entered into the Work thereunder is to be completed by the Longstop Date plus the period of time commencing on the date of delivery of the Construction Default Notice until the date that the Construction Contract Assignment or the Replacement Construction Contract has been entered into.

- 6.4 The Lender shall not take any action that would compromise the enforceability of the Construction Security.

#### ARTICLE 7 - LENDER’S STEP-IN RIGHTS

- 7.1 Subject to Section 7.2 and without prejudice to Agent’s rights to enforce the Lending Agreements against Project Co and Contractor, Agent may give Hospital a Step-In Notice at any time:

- (a) during which a Construction Event of Default is subsisting (whether or not a Construction Default Notice has been served);
- (b) during the Notice Period; or
- (c) during which an Enforcement Event is subsisting,

(which periods are jointly referred to herein as “**Lender Decision Period**”).

- 7.2 At the time Agent delivers a Step-In Notice, Agent shall deliver written notice (an “**Appointed Representative Notice**”) to Hospital of the identity of its proposed Appointed Representative.

- 7.3 Upon issuance of a Step-In Notice, Appointed Representative shall perform or cause to be performed all of Project Co’s rights and obligations to enforce the covenants and obligations of Contractor under the Construction Contract pursuant to the Enforcement Rights and cause Contractor to remedy the Construction Event of Default and shall have the right if it is permitted to do so under the Lending Agreements, subject to the prior approval of Hospital, acting reasonably, and subject to the terms and conditions of the Construction Security, to: (a) access the Construction Security and assign, pursuant to the Lending Agreements Contractor’s interest in the Construction Contract and the other Implementing Agreements to a Replacement Contractor (the “**Construction Contract Assignment**”) subject to the agreement by the Replacement Contractor to assume the terms and conditions of the Construction Contract; or (b) terminate the Construction Contract pursuant to the Enforcement Rights and enter into a replacement construction contract with a Replacement Contractor (the “**Replacement Construction Contract**”) on terms substantially similar to the Construction Contract, provided in either case the Replacement Contractor covenants in the Construction Contract Assignment or the Replacement Construction Contract, as applicable, to remedy any curable breach of Contractor under the Construction Contract whether in respect to payment or performance and whether arising prior to or during the Step-In Period and to vacate any Liens from the Project Lands in all cases whether arising prior to or during the Step-In Period. Further, the Replacement Contractor must provide replacement or otherwise ensure continued maintenance of the Construction Security under the Construction Contract in the event of a Construction Contract Assignment or under the Replacement Construction Contract in the event a Replacement Construction Contract is entered into.

- 7.4 At the time of a Construction Contract Assignment or the entering into of a Replacement Construction Contract under Section 7.3, unless Agent transfers the shares of Project Co to the Replacement Contractor pursuant to its rights under the Lending Agreements, the Replacement Contractor shall be required to form a substitute Project Co (the “**Substitute Project Co**”). If a Substitute Project Co is formed, then Agent shall assign the interests of Project Co under the Lending Agreements and the Implementing Agreements to Substitute Project Co or make such other arrangements under which Substitute Project Co stands in the place of Project Co under the Lending Agreements and the Implementing Agreements.
- 7.5 During the Step-In Period, Hospital shall deal with Appointed Representative instead of Project Co in connection with all matters related to the Construction Contract. Project Co agrees to be bound by all such dealings between Hospital and Appointed Representative to the same extent as if they had been between Hospital and Project Co.
- 7.6 The Hospital may provide a notice in writing (the “**Hospital Default Notice**”) to the Surety under this Lender’s Direct Agreement, stating that the Hospital is thereby entitled to exercise all rights and to take all benefits of the Obligee, to the exclusion of Project Co and the Agent at any time that Hospital is, in accordance with Section 6.2, entitled to terminate the Construction Contract or exercise any other rights or remedies for a Construction Event of Default.
- 7.7 For greater certainty, Agent acknowledges and agrees that its rights as Obligee under the performance bond (being a component of the Construction Security) shall be limited to the enforcement (for the purpose of completing or arranging for the completion of the unperformed obligations of the Contractor under the Construction Contract) of the obligations of the Surety as more particularly described in the performance bond and are subject to the Agent’s obligation as an Obligee to pay the balance of the Contract price (“**Obligee**”, “**Surety**”, “**Principal**” and “**balance of the Contract price**” having the meanings given to them under the performance bond). If the Agent receives any benefit from the Surety under the performance bond or from the insurer under the Subguard Policy (being a component of the Construction Security) that is not applied to the Work and fails to complete or cause to have completed the obligations of the Contractor under the Construction Contract the Agent shall pay to the Owner an amount equal to the lesser of (a) the amount of the benefit obtained by the Agent from the Surety or from the insurer under the Subguard Policy and not applied to the Work and (b) the Owner’s costs of obtaining the completion of the unperformed obligations of the Contractor under the Construction Contract.

## ARTICLE 8 - STEP-OUT RIGHTS

- 8.1 Appointed Representative may, at any time during the Step-In Period, deliver written notice (a “**Step-Out Notice**”) to Hospital to terminate the Step-In Period on the Step-Out Date.

- 8.2** On expiry of the Step-In Period, where the Construction Contract has been assigned to the Replacement Contractor or a Replacement Construction Contract has been entered into as contemplated in Section 7.3, Hospital and Appointed Representative shall be released of any obligations to the other arising during the Step-In Period.
- 8.3** On expiry of the Step-In Period, if the Construction Contract has not been assigned to a Replacement Contractor or a Replacement Construction Contract has not been entered into or the Construction Event of Default has not been remedied by Appointed Representative, then:
- (a) any rights and obligations between Appointed Representative on the one hand and Hospital on the other hand, arising during the Step-In Period, shall be mutually released;
  - (b) for greater certainty, Hospital shall have no further obligation to Appointed Representative or Project Co to pay the Hospital Reimbursement Payment to Agent, Lender, Appointed Representative, Project Co or Contractor on the achievement of Substantial Performance of the Work under the Construction Contract other than the payment of the Default Termination Payment under Schedule B – Compensation on Termination to the Limited Assignment of Construction Contract; and
  - (c) subject to the Hospital making the payment required under Section 8.3(b), Agent shall permit Hospital to thereupon have the full benefit and entitlement to the Construction Contract and the Construction Security without regard to any interest therein of Agent, Lender or Project Co and Agent agrees that Hospital may thereafter proceed to enforce all of its rights under the Construction Contract against Contractor without regard to any rights in favour of Agent, Lender or Project Co including the Enforcement Rights.
- 8.4** In the event that Hospital has, following the expiry of the Step-In Period, exercised the enforcement of its rights under the Construction Contract and the Construction Security in respect of a Construction Event of Default which is capable of being cured, and has caused the Construction Event of Default to be cured or has caused the Contractor to diligently proceed to cure the breach in accordance with GC 7.1 of the Construction Contract, then the provisions of Section 8.3(b) shall not apply and provided the Construction Event of Default is remedied, Hospital shall pay the Hospital Reimbursement Payment on the achievement of Substantial Performance of the Work under the Construction Contract less Hospital’s costs and expenses including, without limitation, legal and consultant costs in enforcing all of its rights under the Construction Contract against the Contractor. Hospital shall have a period of one hundred and twenty (120) days from the expiry of the Step-In Period to either cause the Construction Event of Default to be cured or to be satisfied that the Contractor is diligently proceeding to cure the Construction Event of Default, provided if at any earlier point in time within the one hundred and twenty (120) day period Hospital reasonably determines that the Construction Event of Default is not

capable of being cured and gives notice of same to the other Parties, then the provisions of Section 8.3(b) shall apply.

- 8.5** There will not be more than one Step-In Period following the issuance by Hospital of any one Construction Default Notice.
- 8.6** Hospital acknowledges and agrees that if Hospital proceeds to exercise its rights as Obligee under the Construction Security, unless Hospital has arranged for a replacement Financing through the Replacement Contractor and/or Project Co or a Substitute Project Co then Hospital shall be obligated to make the Base Progress Payment subject to and in accordance with the requirements of the Construction Contract and such payments shall be deemed to be Additional Owner Payments.

## **ARTICLE 9 - PAYMENT DIRECTION OF LACC DIRECTED PAYMENTS AND CONSTRUCTION CONTRACT DIRECTED PAYMENTS**

- 9.1** Hospital acknowledges the assignment by Project Co of the Hospital Reimbursement Payment, Hospital Holdback, and any Compensation Payment (the “**LACC Directed Payments**”) to Agent under the security granted to Agent by Project Co under the Lending Agreements. Project Co and Contractor each hereby irrevocably direct Hospital to pay the LACC Directed Payments to Agent. Hospital acknowledges such direction and agrees to pay the LACC Directed Payments to Agent in accordance with such direction. Hospital further acknowledges the assignment by Project Co and Contractor of the Additional Owner Payments, Substantial Performance Holdback and Certified Cost to Complete (the “**Construction Contract Directed Payments**”) to Agent under the security granted pursuant to the Lending Agreements which assignment shall apply in the circumstances set out in the Limited Assignment of Construction Contract. Project Co and Contractor hereby irrevocably direct Hospital to pay any Construction Contract Directed Payments to Agent in the circumstances set out in the Limited Assignment of Construction Contract. Hospital acknowledges such direction and agrees to pay Construction Contract Directed Payments to Agent in accordance with such direction.
- 9.2**
- (a) Project Co and the Contractor acknowledge and agree that payment by the Hospital of the Construction Contract Directed Payments, in accordance with Section 9.1, to the Agent constitutes payment by the Hospital to Contractor in satisfaction of the Hospital’s obligation to make the Construction Contract Directed Payments to Contractor under the Construction Contract and satisfies the Hospital’s trust obligation in respect of such Construction Contract Directed Payments under Section 7 of the *Construction Lien Act* (Ontario) pursuant to Section 10 of the *Construction Lien Act* (Ontario).
- (b) Project Co and Contractor further acknowledge and agree that payment by the Hospital of the LACC Directed Payments, in accordance with Section 9.1, to the Agent constitutes

payment by the Hospital to Project Co of all LACC Directed Payments payable by Hospital in accordance with the provisions of the Limited Assignment of Construction Contract and the Contractor acknowledges and agrees that such payment satisfies the Hospital’s trust obligation in respect to such LACC Directed Payments under Section 7 of the *Construction Lien Act* (Ontario) pursuant to Section 10 of the *Construction Lien Act* (Ontario).

- (c) Project Co and Contractor further acknowledge and agree that any Construction Contract Directed Payments and LACC Directed Payments made by the Hospital to the Agent as aforesaid, shall to the extent such Construction Contract Directed Payments and LACC Directed Payments relate to amounts funded by the Lender under the Lending Agreements, be used by the Agent to repay said loans and such repayments shall not constitute a breach of any trust obligations to the Contractor under the *Construction Lien Act* (Ontario).
- (d) Until termination of this Lender’s Direct Agreement pursuant to Section 3.1, Hospital is irrevocably directed by Project Co and Contractor to pay the Construction Contract Directed Payments and the LACC Directed Payments to Agent as provided in Section 9.1; provided that and notwithstanding the provisions of Section 9.1, upon termination of this Lender’s Direct Agreement pursuant to Section 3.1, all unpaid Construction Contract Directed Payments and/or LACC Directed Payments shall be paid to Project Co.

#### **ARTICLE 10 - ASSIGNMENT**

- 10.1** Hospital may assign or otherwise dispose of the benefit of the whole or part of this Lender’s Direct Agreement to any Person to whom Hospital may assign or otherwise dispose of its interest in the Project Agreement pursuant to Section 6.2 of the Project Agreement, and shall provide written notice to Project Co and Agent of such assignment or disposition. Such assignee shall assume the obligations and acquire the rights of Hospital under this Lender’s Direct Agreement. Upon any such assignment or disposition, Hospital shall be released of all its obligations hereunder. Project Co and Agent shall, at Hospital’s cost and expense, do all things and execute all further documents as may be necessary in connection therewith.
- 10.2** Agent may only assign or otherwise dispose of any interest in this Lender’s Direct Agreement as permitted by the Lending Agreements, and with the prior written consent of Hospital, such consent not to be unreasonably withheld or delayed. Agent shall cause the assignee to enter into an assumption agreement of this Lender’s Direct Agreement in form and substance reasonably satisfactory to Hospital with Project Co, Contractor and Hospital. Project Co, Contractor and Hospital shall, at Agent’s cost and expense, do all things and execute all further documents as may be necessary in connection therewith.

## ARTICLE 11 - NOTICES

### 11.1 Notices to Parties

All notices, requests, demands, instructions, certificates, consents and other communications (each being a “**Notice**”) required or permitted under this Lender’s Direct Agreement shall be served by sending the same by facsimile or by hand, as follows:

If to Contractor: Vanbots Construction Corporation  
50 Acadia Avenue  
Suite 200  
Markham, Ontario, Canada  
L3R 0B3

**[REDACTED]**

If to Project Co: Vanbrook Construction Corporation  
50 Acadia Avenue  
Suite 200  
Markham, Ontario, Canada  
L3R 0B3

**[REDACTED]**

If to Hospital: Sunnybrook Health Sciences Centre  
2075 Bayview Avenue  
Toronto, Ontario, Canada  
M4N 3M5

**[REDACTED]**

with a copy to  
Infrastructure Ontario: 777 Bay Street, 9<sup>th</sup> Floor  
Toronto, Ontario, M5G 2C8

**[REDACTED]**

If to Agent: Stonebridge Financial Corporation  
20 Adelaide Street East, Suite 1201  
Toronto, Ontario  
M5C 2T6

**[REDACTED]**

## **11.2 Facsimile**

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. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a Party’s failure to provide an original of the Notice in compliance with this Section 11.2.

## **11.3 Change of Address**

Any Party to this Lender’s Direct Agreement may, from time to time, change any of its contact information set forth in Section 11.1 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.

## **11.4 Deemed Receipt of Notices**

Subject to Section 11.4(i), a Notice given by hand delivery shall be deemed to have been received on the day it is delivered. Subject to Sections 11.4(i) and 11.4(ii), a Notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.

- (i) 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.
- (ii) 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.

## **ARTICLE 12 - GENERAL**

### **12.1 Amendments**

This Lender’s Direct Agreement may not be modified, 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 Lender’s Direct Agreement.

### **12.2 Waiver**

- (a) No waiver made or given by a Party under or in connection with this Lender’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 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 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.

### **12.3 Relationship Between the Parties**

The Parties are independent contractors. This Lender’s Direct Agreement is not intended to and does not create or establish between the Parties or between Infrastructure Ontario or the Contracting Parties any relationship as partners, joint venturers, employer and employee, master and servant, or of principal and agent, and does not create or establish any relationship whatsoever between Hospital and any Affiliate, representative or employee of Contracting Parties or Agent.

### **12.4 Entire Agreement**

Except where provided otherwise in this Lender’s Direct Agreement, this Lender’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 Lender’s Direct Agreement.

### **12.5 No Reliance**

Each of the Parties acknowledge that:

- (a) it has not entered into this Lender’s Direct 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 Lender’s Direct Agreement or not, except those expressly made, given or repeated in this Lender’s Direct 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 Lender’s Direct Agreement; and
- (b) this Section 12.5 shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Lender’s Direct Agreement which was induced by fraud, for which the remedies available shall be all those available under the law governing this Lender’s Direct Agreement.

### **12.6 Severability**

If any provision of this Lender’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 Lender’s Direct

Agreement. If any such provision of this Lender’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 Lender’s Direct Agreement as near as possible to its original intent and effect.

### **12.7 Enurement**

This Lender’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.

### **12.8 Governing Law and Jurisdiction**

- (a) This Lender’s Direct Agreement shall be governed by and construed in accordance with the laws of the Province 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 hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom.

### **12.9 Cumulative Remedies**

Except as otherwise set forth in this Lender’s Direct Agreement, the rights, powers and remedies of each Party set forth in this Lender’s Direct 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 Lender’s Direct Agreement.

### **12.10 Further Assurance**

Each Party shall do all things, from time to time, and execute all further instruments, agreements and documents necessary to give full effect to this Lender’s Direct Agreement.

### **12.11 Costs**

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 Lender’s Direct Agreement.

### **12.12 Counterparts**

This Lender’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, faxed or other electronic form provided that any Party providing its signature in faxed or other electronic form shall promptly forward to such Party an original signed copy of this Lender’s Direct Agreement which was so transmitted.

### **12.13 Language of Agreement**

Each Party acknowledges having requested and being satisfied that this Lender’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 anglaise et s’en declare satisfaite.*

### **12.14 Confidentiality**

Agent shall comply with the obligations on the part of the Contracting Parties contained in Article 5 of the Project Agreement and this obligation shall survive the termination of this Lender’s Direct Agreement.

**[SIGNATURE PAGES IMMEDIATELY FOLLOW]**

**IN WITNESS WHEREOF** the Parties have executed this Lender’s Direct Agreement as of the date first above written.

**SUNNYBROOK HEALTH SCIENCES  
CENTRE**

Per: \_\_\_\_\_  
[REDACTED]

Per: \_\_\_\_\_  
[REDACTED]

I/We have authority to bind the corporation.

**STONEBRIDGE FINANCIAL  
CORPORATION**

Per: \_\_\_\_\_  
[REDACTED]

I/We have authority to bind the corporation.

**VANBROOK CONSTRUCTION  
CORPORATION**

Per: \_\_\_\_\_  
[REDACTED]

I/We have authority to bind the corporation.

**VANBOTS CONSTRUCTION  
CORPORATION**

Per: \_\_\_\_\_  
[REDACTED]

I/We have authority to bind the corporation.