

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

BETWEEN

**BRIDGING FINANCE INC., as agent for
2665405 ONTARIO INC.**

Applicant

-and-

1033803 ONTARIO INC. and 1087507 ONTARIO LIMITED

Respondents

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

**BOOK OF TRANSCRIPTS OF THE MOVING PARTY
(Motion Returnable November 4, 2022)**

October 19, 2022

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- A Exhibit “A” to the Cross-examination of Aidan Ball – CCDC 17 – Stipulated Price Contract between Owner and Trade Contractor for Construction Management Projects 2010
- 2 Transcript of the Cross-examination of Steven Aquino conducted on October 7, 2022



TAB1

1 Court File No. CV-18-608978-00CL

2 ONTARIO

3 SUPERIOR COURT OF JUSTICE

4 (Commercial List)

5
6 B E T W E E N:

7 BRIDGING FINANCE INC.; as agent for

8 2665405 ONTARIO INC.

9 Applicant

10 - and -

11
12 1033803 ONTARIO INC. and 1087507 ONTARIO LIMITED

13 Respondents

14
15 IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF THE
16 BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED;

17 AND SECTION 101 OF THE COURTS OF JUSTICE ACT,

18 R.S.O. 1990, c. C.43, AS AMENDED

19 -----

20 --- This is the Cross-examination of AIDAN BALL,
21 upon his affidavit dated September 16, 2022, taken
22 via Neesons, a Veritext Company's virtual platform,
23 on the 6th day of October, 2022.

24 -----

25 Job No. ON5504935

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A P P E A R A N C E S:

(All via virtual platform)

Michael Farace, Esq., for MOD Developments.

Jeremy Opolsky, Esq.,

Jake Babad, Esq., for KSV Kofman Inc.,

in its capacity as

Court-appointed Receiver for

1033803 Ontario Inc. and

1087507 Ontario.

ALSO PRESENT: Noah Goldstein, KSV

REPORTED BY: Joanne A. Lawrence, RPR, CSR

REGISTERED PROFESSIONAL REPORTER

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I N D E X

WITNESS: AIDAN BALL

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**The following list of undertakings, advisements
and refusals is meant as a guide only for the
assistance of counsel and no other purpose**

INDEX OF UNDERTAKINGS

(None marked.)

INDEX OF ADVISEMENTS

(None marked.)

INDEX OF REFUSALS

(None marked.)

INDEX OF EXHIBITS

NUMBER/DESCRIPTION

PAGE

A CCDC 17

8

1 -- Upon commencing at 10:00 a.m.

2 AIDAN BALL: AFFIRMED.

3 CROSS-EXAMINATION BY MR. OPOLSKY:

4 1 Q. Good morning, Mr. Ball. My name
5 is Jeremy Opolsky. I am counsel to KSV as receiver
6 of Forma-Con. This morning, you're being
7 cross-examined on your affidavit dated September
8 16th, 2022; is that correct?

9 A. That's correct.

10 2 Q. And do you have a copy of your
11 affidavit with you?

12 A. I do.

13 3 Q. Mr. Ball, is there anyone else in
14 the room with you currently?

15 A. No, there's not.

16 4 Q. And do you have any windows opened
17 up on your computer?

18 A. Just my affidavits.

19 5 Q. All right. Mr. Ball, I will
20 attempt as we go through the various documents to
21 have my associate, Mr. Babad, call up the documents
22 through screen sharing to assist you and me in
23 referencing the documents. If, in referring to a
24 document or a section, you don't hear me or
25 understand, I would urge you to ask me to clarify

1 or repeat any reference. I will try to refer, as I
2 go through the documents, both to the page numbers
3 in the motion record, which can generally be found
4 on the top right corner of a page. I will also try
5 to refer to the PDF number, which will be the PDF
6 page number. They are often different -- they are
7 different in both records. If, in any event, I
8 forget to refer to one reference or the other and
9 you have difficulty finding something and it's not
10 on the screen, please don't be shy and ask, and I'm
11 happy to put that on the record.

12 A. Okay.

13 6 Q. Okay. Let's get started.

14 Mr. Ball, what is your current position?

15 A. I'm the director of construction
16 for MOD Developments Inc.

17 7 Q. And how long have you held that
18 position?

19 A. 8 years.

20 8 Q. And what was your employment
21 before that?

22 A. I was a project manager for
23 another development firm in Toronto.

24 9 Q. And your professional
25 qualifications is that you're a civil engineer?

1 A. I have a bachelor's degree in
2 civil engineering.

3 10 Q. And are you a professional
4 engineer?

5 A. I am not.

6 11 Q. So it's fair to say you've been in
7 development since about 2007, if I have my math
8 right?

9 A. That is correct, yep.

10 12 Q. And MOD Developments develops
11 residential condominiums?

12 A. That's correct.

13 13 Q. How many projects have you worked
14 on while at MOD?

15 A. Three.

16 14 Q. And did you work at any
17 residential developments in your previous
18 employment before MOD?

19 A. I did, yes.

20 15 Q. How many development projects did
21 you work on there?

22 A. About four.

23 16 Q. It's fair to say that you're
24 experienced, then, in condominium development?

25 A. Correct.

1 17 Q. Or, more specifically, the
2 construction of residential condominiums?

3 A. Correct.

4 18 Q. And during your time as director
5 of construction at MOD, you've worked with many
6 subcontractors?

7 A. That's correct.

8 19 Q. Many trade subcontractors.

9 A. That's correct.

10 20 Q. Sir, I'm happy to take you there,
11 but I don't think I'll need to. The contract that
12 we're going to talk about is a form contract known
13 as CCDC 17. You're familiar with this contract?

14 A. Yes, I am.

15 21 Q. Sir, this morning, I believe, your
16 counsel provided to us a full version of the
17 contract at issue in this case. Do you have a copy
18 of that contract?

19 A. I do, yes.

20 MR. OPOLSKY: Counsel, I'd like to mark
21 that contract as Exhibit A to this
22 cross-examination, as we discussed.

23 MR. FARACE: That's fine, sir. Please
24 proceed.

25 MR. OPOLSKY: Thank you. Madam

1 reporter, we'll provide that contract to you, in
2 addition to any other exhibits that we refer to in
3 this examination.

4 EXHIBIT A: CCDC 17

5 BY MR. OPOLSKY:

6 22 Q. So, sir, I'd like to talk about
7 Massey Towers for a moment. The project at issue
8 in this dispute is a residential condominium known
9 as Massey Towers; is that correct?

10 A. That is correct, yep.

11 23 Q. It has 60 storeys?

12 A. Correct.

13 24 Q. And it's a residential
14 condominium; correct?

15 A. Correct.

16 25 Q. Give or take, about 700 units?

17 A. 697, but yeah, correct.

18 26 Q. Is it fair to say that quality is
19 important for MOD's developments?

20 A. Yes, correct.

21 27 Q. You need the work to be done
22 right?

23 A. Correct.

24 28 Q. In accordance with laws and
25 regulations?

1 A. Correct.

2 29 Q. And you need to ensure that you
3 follow the relevant regulations?

4 A. Correct.

5 30 Q. Including regulations under
6 various workers' compensation legislation?

7 A. Correct.

8 31 Q. Sir, let's move to the contract
9 with Forma-Con in this case. And to assist you,
10 why don't we go to the contract and the payment
11 terms in Section A-4 of the contract, which I
12 believe can be found on page 5 of Exhibit A. So
13 this is a fixed-fee contract; is that right?

14 A. That's correct.

15 32 Q. And the contract price, which
16 excludes value-added tax, is \$20,429,000; correct?

17 A. Correct.

18 33 Q. And then if you add value-added
19 tax, which I believe to be HST, you get a sum of
20 \$23,084,770?

21 A. Correct.

22 34 Q. And this was an all-in contract;
23 right?

24 A. That's correct.

25 35 Q. So if a subcontractor to Forma-Con

1 came to it and said, We're going to charge you an
2 extra \$10,000, Forma-Con still gets paid the same
3 amount from you, MOD, at the end of the day; right?

4 A. Not exactly sure what you're
5 asking.

6 36 Q. Let me rephrase, sir. The input
7 cost to Forma-Con from materials and labour are at
8 its risk, not at your risk.

9 A. Yes.

10 37 Q. So if a subcontractor of Forma-Con
11 charges Forma-Con more, that's out of their pocket,
12 not out of your pocket.

13 A. That's correct, yes.

14 38 Q. You pay Forma-Con the same amount.

15 A. Correct.

16 39 Q. And Forma-Con only gets more if
17 there is a change order?

18 A. That's correct.

19 40 Q. Sir, I'll direct you to the next
20 article, Article A-5. You'll see there that it
21 references a holdback amount? Do you see that? A

22 10 --

23 A. Yes.

24 41 Q. -- percent holdback amount?

25 A. Correct.

1 42 Q. I'm sorry. I talked over you a
2 little bit there. I'll repeat. A 10-percent
3 holdback amount.

4 A. That's correct.

5 43 Q. And a holdback means that in each
6 progress payment, MOD keeps 10 percent of the
7 billings for the time being; is that right?

8 A. That's correct.

9 44 Q. And it pays that holdback only at
10 the end of the contract.

11 A. That's correct.

12 45 Q. And that's designed to make sure
13 that there are no additional liens that are charged
14 against MOD?

15 A. We follow the requirements of the
16 Construction Lien Act, which, yes, part of that is
17 to ensure that all the subcontractors of -- of the
18 trade that's applying for holdback are paid. But
19 in short, yes, you're correct.

20 46 Q. So the work in this contract
21 includes work for contract forming and falsework?

22 A. Correct.

23 47 Q. And void forming?

24 A. Correct.

25 48 Q. And concrete placing and

1 finishing?

2 A. Correct.

3 49 Q. And temporary shoring?

4 A. Correct.

5 50 Q. And hoisting?

6 A. Correct.

7 51 Q. And coordination and management of
8 rebar placement?

9 A. That's correct.

10 52 Q. And supply and insulation of
11 concrete accessories?

12 A. Correct.

13 53 Q. Forma-Con has now completed each
14 element of these various works; correct?

15 A. The project is complete. That
16 scope of work was completed by different entities
17 at the end of the project, after the receivership.

18 54 Q. Let's unpack that answer. Under
19 this contract and under the close-out agreement
20 signed by the receiver, all of these elements of
21 work have been completed; correct?

22 A. Correct.

23 55 Q. And they've all been completed by
24 entities known either as Forma-Con or, after the
25 receivership, under the stewardship of the

1 receiver; correct?

2 A. Not 100 percent correct. There
3 were additional items that were taken on outside of
4 the receiver's jurisdiction by other
5 subcontractors.

6 56 Q. And what was the amount of the
7 work that was done by those other subcontractors?

8 A. I don't have that information in
9 front of me. But it is all spelled out in a
10 separate document that I believe the receiver has.

11 57 Q. Sir, you -- MOD has paid to date
12 Forma-Con approximately \$20 and a half million?

13 A. I can't verify that 100 percent,
14 but I believe that's close to being accurate, yes.

15 58 Q. I'm not -- understood, sir. I'm
16 not asking you for the exact number. And that
17 \$20.5 million excludes the holdbacks that MOD has
18 kept in respect of the performance of this
19 contract.

20 A. It's -- I -- yes, I believe so.
21 It -- that question is really relevant to whether
22 you include HST in that overall calculation, but
23 yes, I believe you're correct.

24 59 Q. So, sir, it's your evidence, then,
25 that Forma-Con has completed the vast majority of

1 the work under this contract; is that correct?

2 A. Correct.

3 60 Q. And of Forma-Con's work, with the
4 exception of the close-out work done by the
5 receiver and these other subcontractors, Forma-Con
6 completed all the tasks that it was intended --
7 that it was contracted to do; is that correct?

8 A. Correct.

9 61 Q. And as you noted earlier, the
10 building is complete?

11 A. Correct.

12 62 Q. And all the concrete forming work
13 required to put up the building is now complete.

14 A. Correct.

15 63 Q. This dispute, then, is about,
16 effectively, the remaining 10-percent holdback; is
17 that right?

18 MR. FARACE: Counsel, when you're
19 saying "this dispute," what dispute are you
20 referring to? Are you referring to the
21 construction lien dispute?

22 MR. OPOLSKY: Thank you for clarifying,
23 counsel. I'm referring only to the dispute in the
24 commercial list regarding the jurisdiction of the
25 claim.

1 MR. FARACE: I think you're asking this
2 witness a legal question with respect to the matter
3 that's before the commercial court.

4 MR. OPOLSKY: I'll withdraw my
5 question, counsel.

6 MR. FARACE: Thank you.

7 BY MR. OPOLSKY:

8 64 Q. Sir, are you familiar with a
9 company known as Tucker HiRise Construction?

10 A. I am, yes.

11 65 Q. And under the form contract CCDC
12 17, there's a reference to an entity called a
13 construction manager; is that correct?

14 A. That's correct.

15 66 Q. And in this contract, Tucker
16 HiRise Construction was the construction manager.

17 A. That's correct.

18 67 Q. Sir, I'm going to refer to Tucker
19 HiRise Construction as Tucker, and I assume you'll
20 understand what I refer to when I refer to Tucker.

21 A. Yes, correct.

22 68 Q. The role of a construction manager
23 is to communicate with and instruct trade
24 contractors?

25 A. Correct.

1 69 Q. They deal with payment and
2 invoices?

3 A. Correct.

4 70 Q. If the construction -- if the
5 trade contractors had questions, they were supposed
6 to go to Tucker; is that right?

7 A. Correct.

8 71 Q. And all communications between the
9 trade contractors, like Forma-Con, and the owner,
10 which are MOD, are supposed to be between Forma-Con
11 and Tucker, with a few exceptions; is that right?

12 A. Correct.

13 72 Q. Was Tucker's role here to act on
14 MOD's behalf?

15 A. As it relates to administering
16 trade contracts, yes.

17 73 Q. Tucker was effectively MOD's boots
18 on the ground?

19 MR. FARACE: What do you mean by "boots
20 on the ground," counsel?

21 MR. OPOLSKY: Well, Tucker -- exactly
22 what I just asked. Tucker was the entity that the
23 trade contractors like Forma-Con were intended to
24 go to. They weren't intended to go to MOD.

25 THE WITNESS: As it relates -- as it

1 relates to construction work on site, logistics,
2 certification of progress on site, yes. As it
3 relates to contract issues, as Tucker's not a party
4 to the contract, they would have to advise the
5 project entity that's named on the contract.

6 BY MR. OPOLSKY:

7 74 Q. And the project entity that's
8 named on the contract is MOD.

9 A. MOD Developments (197 Yonge) LP.

10 75 Q. And, sir, you're employed by that
11 legal entity you just mentioned, or --

12 A. I'm employed by MOD Developments
13 Inc., acting as development managers on behalf of
14 the project entity, being the LP.

15 76 Q. But, sir, you can act on behalf of
16 the LP.

17 A. That's correct.

18 77 Q. But just going back to your
19 previous answer regarding Tucker going to the
20 project entity, if Tucker had any issues or
21 concerns with Forma-Con, they would have told you;
22 correct?

23 A. Yes, correct.

24 78 Q. In fact, it was their
25 responsibility to tell you.

1 A. Correct.

2 79 Q. In your affidavit, you don't
3 mention any concerns or issues that Tucker raised
4 to you about Forma-Con?

5 A. In the -- in the affidavit
6 specific to this issue, that's correct.

7 80 Q. And in your affidavit, you don't
8 include any correspondence between you and Tucker
9 at all; is that correct?

10 A. That's correct.

11 81 Q. In your affidavit, you don't
12 include any correspondence between anyone at MOD
13 and Tucker at all; correct?

14 A. That is correct.

15 82 Q. So, sir, let's go back to the
16 contract itself, and let's talk about how it's
17 structured so we're all on the same page. The
18 contract has a series of general conditions; is
19 that correct?

20 A. I just want to clarify: The
21 contract with Forma-Con?

22 83 Q. Yes. I'm talking about Exhibit A
23 to this cross-examination --

24 A. Yeah.

25 84 Q. -- which is the contract with

1 Forma-Con.

2 A. Correct.

3 85 Q. And those general conditions are
4 standard conditions; is that right?

5 A. That's correct.

6 86 Q. And then added to the general
7 conditions are a series of -- I believe they're
8 called supplementary conditions; is that right?

9 A. That's correct.

10 87 Q. And those supplementary conditions
11 amend the general conditions of the contract.

12 A. That's correct.

13 88 Q. And they're negotiated for the
14 purpose of this contract.

15 A. That's correct.

16 89 Q. So, sir, I may take you to various
17 provisions in the contract, and I will refer to
18 them as GC for a general condition section and SC
19 for a supplementary condition section. Is that
20 okay with you?

21 A. Yes.

22 90 Q. So let's begin, sir, with Part 5
23 in the general conditions, which is I believe at
24 page 18 in the contract. Do you see that on your
25 screen?

1 A. I do, yeah.

2 91 Q. And Part 5 addresses how a trade
3 contractor - and, in this case, Forma-Con - was to
4 be paid; right?

5 A. Correct.

6 92 Q. And under this contract, Forma-Con
7 is paid on an interim basis through something
8 called progress payments. Do you see that in GC
9 5.3?

10 A. Yes, I see that.

11 93 Q. And these are modified by the
12 supplementary conditions. No need for you to
13 answer. I'm going to take you there. I just want
14 you to look at this page and see 5.3.1 is the
15 progress payment provision. Do you see that?

16 A. Yeah, I see that, yep.

17 94 Q. So let's go to page 41 of this
18 document, which are the supplementary conditions
19 7.11. 7.11 reads "delete paragraph 5.3.1 in its
20 entirety." Do you see that?

21 A. I see that, yes.

22 95 Q. So with the supplementary
23 conditions, what they do is they effectively
24 rewrite that provision. Is that fair?

25 A. That's correct.

1 96 Q. And that begins in supplementary
2 condition 7.12, "add new paragraph 5.3.1."

3 A. Correct.

4 97 Q. And 5.3.1 says -- and I'm
5 summarizing here -- that a trade contractor - in
6 this case, Forma-Con - must submit an application
7 for a payment to the construction manager.

8 A. Correct.

9 98 Q. And then in the new 5.3.2 -- let's
10 scroll to the page over:

11 "The Construction Manager will
12 review and accept the values being
13 claimed in the application for
14 payment."

15 Do you see that?

16 A. I see that, yes.

17 99 Q. So what that means is Tucker
18 receives the applications at first instance, and
19 then it reviews them and accepts or rejects them.
20 Is that your understanding?

21 A. That's correct.

22 100 Q. And then the new 5.3.3 says:

23 The Owner's approval will then
24 be complete by the 15th of the first
25 month following the application for

1 payment being submitted as noted in
2 5.3.1. Should adjustments be
3 required, the Trade Contractor will
4 be notified."

5 Do you see that, sir?

6 A. I do, yeah.

7 101 Q. So when it refers to "owner" here,
8 it's referring to the MOD Development entity, the
9 MOD LP; is that correct?

10 A. That's correct.

11 102 Q. So what this paragraph is saying
12 is that MOD's approval is completed by the 15th of
13 the month following the application?

14 A. Correct.

15 103 Q. And if MOD has any adjustments to
16 the payment application, it must notify the trade
17 contractor; correct?

18 A. Correct.

19 104 Q. And in practice, would you notify
20 the trade contractor, or would you have Tucker
21 notify the trade contractor?

22 A. We would typically notify Tucker
23 to then notify the trade.

24 105 Q. And, sir, MOD only gets the
25 application if Tucker previously approved them;

1 correct?

2 A. That's correct. Unless -- unless
3 there's an accrual required as we go through a draw
4 process, the funds can be procured and set in place
5 while a dispute may be still going on on an
6 invoice, if that makes sense.

7 106 Q. In that event, a trade contractor
8 would be notified that there was a dispute;
9 correct?

10 A. That's correct. That's correct,
11 yes.

12 107 Q. And Tucker would approve the
13 invoice subject to that dispute.

14 A. That's correct.

15 108 Q. And if Tucker rejected the invoice
16 at first instance, it would notify the trade
17 contractor?

18 A. Correct.

19 109 Q. And if MOD rejected the invoice
20 after it had reviewed it, it would notify the trade
21 contractor through Tucker?

22 A. Correct.

23 110 Q. So to receive payment on a
24 progress payment, the trade contractor's payment
25 application had to be approved by Tucker first and

1 then MOD second; right?

2 A. That's correct.

3 111 Q. Sir, I want to talk briefly about
4 insurance, and I'll begin with workers'
5 compensation. Every trade contractor on this
6 project was required to pay for workers' comp; is
7 that correct?

8 A. That's correct.

9 112 Q. And they needed to provide --

10 A. But can you clar -- you're -- I'm
11 assuming you're referring to WSIB?

12 113 Q. I'm referring to WSIB. And I'm
13 happy to refer to WSIB through the line of my
14 questions if you'll understand what WSIB is.

15 A. Correct.

16 114 Q. So let me rephrase that. Every
17 trade contractor was required to pay for WSIB;
18 correct?

19 A. Correct.

20 115 Q. And it needed to provide evidence
21 of WSIB payment every progress payment they
22 submitted; right?

23 A. That's correct.

24 116 Q. Now, it's very important for MOD
25 that all of its subcontractors maintained current

1 WSIB; right?

2 A. Yes.

3 117 Q. WSIB, in fact, or the act that
4 creates WSIB, makes MOD responsible for ensuring
5 that WSIB is paid by its contractors. Do you know
6 that?

7 A. I don't know that 100 percent, but
8 I believe that statement to be accurate.

9 118 Q. And if, sir, are you aware that
10 subcontractors aren't current on their WSIB, WSIB
11 could then hold MOD liable?

12 A. I believe that's correct.

13 119 Q. And make MOD liable for unpaid
14 WSIB premiums?

15 A. I believe that's correct.

16 120 Q. Now, sir, if you get a WSIB
17 clearance certificate from a trade contractor, that
18 protects MOD; right?

19 A. That's correct.

20 121 Q. But it has to be from the right
21 trade contractor; right?

22 A. It has to be -- it has to be
23 compliant with the trade that we're certifying work
24 for. Correct.

25 122 Q. Otherwise, MOD is open to

1 liability?

2 A. I believe that's correct.

3 123 Q. Sir, I want to talk about general
4 liability insurance now. So under this contract,
5 the trade contractor - here, Forma-Con - was
6 required to provide, maintain, and pay for
7 insurance; right?

8 A. Yes.

9 124 Q. Now, you expect the trade
10 contractor to provide you with proof of insurance
11 before their work starts; right?

12 A. That's correct.

13 125 Q. In fact, that's in the scope of
14 the work of this project; right?

15 A. Yes, correct.

16 126 Q. Now, you also require the trade
17 contractor to provide you with proof of insurance
18 if the policy changes?

19 A. I believe that's correct, yes.

20 127 Q. And upon renewal of that
21 insurance; right?

22 A. Correct.

23 128 Q. In fact, if the name of the
24 insured changed, you'd want new proof of insurance;
25 right?

1 A. Correct.

2 129 Q. And if the legal entity that was
3 performing the subcontract changed, you'd also want
4 proof of new insurance.

5 A. Correct.

6 130 Q. Can we go to Appendix T of the
7 receiver's motion record. And, sir, I'll bring
8 this up on the screen so you don't have to find it.
9 I'm going to motion record page 463, PDF 469. And,
10 sir, you see this memo on your screen, correct,
11 dated November 17th, 2016?

12 A. Correct. Can you scroll up to the
13 top, please?

14 131 Q. Of course.

15 A. So, sorry, is the letterhead
16 redacted from this?

17 132 Q. Sir, it is not redacted. This is
18 all I have in Forma-Con's file.

19 A. Okay.

20 133 Q. Would you recognize this memo or a
21 memo like this?

22 A. Do you mind scrolling to the
23 bottom of the page before I answer that question,
24 please?

25 134 Q. Of course.

1 A. Okay. So this looks like a
2 document that was issued by Tucker HiRise on our
3 behalf.

4 135 Q. Sir, I just wanted to ask you one
5 brief question about this, and it's -- thank you,
6 Mr. Babad. Do you see the first line of this,
7 which says: (As read)

8 "Invoices for MOD Developments
9 (197 Yonge) LP are due on or before
10 the 20th day of the month"?

11 A. Yes.

12 136 Q. And it lists what are required in
13 five enumerated items?

14 A. Yes, I see that, yeah.

15 137 Q. And the third item is "updated
16 WSIB"?

17 A. Yes.

18 138 Q. And the fifth item is "GL
19 insurance."

20 A. That's correct.

21 139 Q. And "GL insurance" stands for
22 general liability insurance?

23 A. Yes.

24 140 Q. And this memo is just reflective
25 of the fact that you expected to get regular

1 updates on GL insurance; right?

2 A. This memo is to satisfy all five
3 points equal -- because they're all equally
4 important as part of our process, including number
5 4, which is the statutory declaration.

6 141 Q. Absolutely. Including all five,
7 which are equally important to get payment; right?

8 A. Correct.

9 142 Q. And without any of the five, a
10 trade contractor would be asked to rectify their
11 payment application before being paid; right?

12 A. That's correct.

13 143 Q. We can move off this document.
14 Sir, I understand that MOD's position is that it
15 has paid Forma-Con and KSV as receiver all amounts
16 owing under the contract and closeout agreements
17 except for holdback and alleged setoff; is that
18 right?

19 A. That's the -- sorry. Do you mind
20 pulling up the closeout agreement?

21 144 Q. I'm happy to pull up the closeout
22 agreement.

23 A. I don't believe there's an exact
24 value associated with the closeout agreement.
25 There was a schedule of values that related to

1 scope of work that was required to complete
2 Forma-Con's obligation. I don't believe that all
3 of that work was completed by the receiver. So I'm
4 reluctant to answer that question or agree to that
5 question.

6 145 Q. Sir, you have the closeout
7 agreement in front of you. Is there somewhere
8 specific you'd like to look?

9 A. Schedule A, I believe, is the...
10 That's the scope of work, yeah. Maybe keep
11 scrolling, please. Keep scrolling. Can you scroll
12 to the next page, please. Okay.

13 146 Q. That's it, sir.

14 A. So the work that was requested of
15 the receiver was paid prior to the work completing,
16 in accordance with the closeout agreement.

17 147 Q. And, sir, to repeat the gravamen
18 of my previous question, in addition to all the
19 work being paid under the closeout agreement,
20 you'll agree with me that all of the progress
21 billings except the holdback have been paid
22 to [sic] MOD to date; right?

23 A. Had been paid by MOD to date,
24 correct.

25 148 Q. MOD had issued cheques for the

1 progress billings?

2 A. Yes, it did.

3 149 Q. And Tucker had approved each of
4 the progress billings?

5 A. Correct.

6 150 Q. And MOD had then approved each of
7 the progress billings.

8 A. Correct.

9 151 Q. I'm just going to take you to some
10 examples of those approvals.

11 A. Okay.

12 152 Q. So I'm in Exhibit S, for the
13 record, of the receiver's report, or more
14 specifically Appendix S to the receiver's report.
15 I'd like to take you to an October 2015 application
16 for payment, which is at motion record page 200,
17 page 206 of the PDF. Do you see that on the screen
18 in front of you?

19 A. I do, yes.

20 153 Q. And you'll see that the
21 letterhead, the entity for the trade contractor is
22 identified as a division of 1248508 Ontario
23 Limited?

24 A. I do, yes.

25 154 Q. Sir, just to talk about

1 nomenclature for a little bit because there various
2 numbered companies involved in this claim, I'm
3 going to refer to the numbered companies by the
4 last three digits of the company. So I will refer
5 to 1428508 as 508. If that would cause any
6 confusion, I'm happy to refer to it by its full
7 name, but I think it streamlines things by using
8 the last three numbers. Is that okay?

9 A. I'm fine with that, yes.

10 155 Q. If at any time you don't know
11 which numbered company I'm referring to when I
12 refer to the last three digits, please do stop me,
13 and I'm happy to clarify or state the whole
14 numbered company.

15 A. Okay.

16 156 Q. Do you see on this October
17 application -- let's scroll down a little bit.
18 This looks like the first application. The total
19 amount payable was \$1,296,675?

20 A. Correct.

21 157 Q. And that's excluding a holdback
22 identified above; correct?

23 A. Correct.

24 158 Q. So let's continue throughout this
25 application. Motion record 197, PDF 203. Do you

1 see this is a certificate of insurance?

2 A. Yes, I see it.

3 159 Q. And this is what that previous

4 memo I took you to referred to as GL insurance?

5 A. That's correct.

6 160 Q. And the certificate of insurance

7 is issued to Forma-Con Construction, a division of

8 1428508 Ontario Limited; right?

9 A. That's correct.

10 161 Q. And there's no other Forma-Con

11 entity identified on this page; right?

12 A. That's correct.

13 162 Q. In particular, there's no

14 reference on this page to 1428502; right?

15 A. That's correct.

16 163 Q. Now, this insurance certificate

17 was not required or requested to be adjusted by

18 Tucker?

19 A. No, it was not.

20 164 Q. There's no allegations by Tucker

21 or MOD of noncompliance?

22 A. I don't believe so, no.

23 165 Q. And Tucker didn't ask for a new

24 certificate of insurance; right?

25 A. I do not believe so.

1 166 Q. In fact, Tucker accepted this
2 certificate of insurance?

3 A. Based on the fact that it was
4 paid, yes, I would agree with that.

5 167 Q. And MOD accepted this certificate
6 of insurance on the same basis.

7 A. Correct.

8 168 Q. Let's go to motion record 172, PDF
9 178. Now, sir, this is a WSIB clearance
10 certificate?

11 A. Yes.

12 169 Q. And it covers... I'm sorry. I'm
13 having a technical issue, sir.

14 Can I take a 5-minute break, counsel,
15 to address my technical issue, and perhaps we can
16 convene in 5 minutes?

17 MR. FARACE: Sounds good.

18 MR. OPOLSKY: Mr. Ball, is that okay
19 for you?

20 THE WITNESS: Yes, that works.

21 MR. OPOLSKY: Thank you.

22 -- RECESS AT 10:43 --

23 -- UPON RESUMING AT 10:49 --

24 BY MR. OPOLSKY:

25 170 Q. So, Mr. Ball, I had taken you to

1 inadvertently the wrong document with the wrong
2 date. I'd like to take you to motion record 208 of
3 the receiver's motion record, which is the right
4 date. You'll see that this is a WSIB clearance
5 certificate; correct?

6 A. Yes. Was the last one not also a
7 WSIB certificate?

8 171 Q. It certainly was, but this one is
9 from October 29th, 2015, to November 19th, 2015.
10 Do you see that date?

11 A. Yes.

12 172 Q. And since we are discussing the
13 October 30th, 2015, payment application, this is
14 the WSIB clearance certificate that covers that
15 payment application; right?

16 A. I believe so, yes.

17 173 Q. So you'll see that this clearance
18 certificate was issued to an entity known as
19 1428508 Ontario Limited. Do you see that?

20 A. I do see that, yes.

21 174 Q. And then it's slash Forma-Con
22 Construction; right?

23 A. Correct.

24 175 Q. And there's no WSIB clearance
25 certificate for an entity that ends in 502?

1 A. No.

2 176 Q. And Tucker didn't require this
3 payment application to be adjusted to get a new
4 clearance certificate?

5 A. I don't believe so, no.

6 177 Q. And there were no allegations of
7 noncompliance here?

8 A. I don't believe so.

9 178 Q. And neither Tucker nor MOD asked
10 for a new WSIB certificate?

11 A. Not that I'm aware of.

12 179 Q. And Tucker accepted the WSIB
13 certificate?

14 A. Yes.

15 180 Q. And MOD accepted the WSIB
16 certificate?

17 A. Yes.

18 181 Q. And if we go to motion record 199,
19 PDF 205, you'll see that the MOD LP entity issued a
20 cheque to Forma-Con for payment of the fee
21 application.

22 A. Correct.

23 182 Q. And it's in the amount of
24 \$1,296,675.

25 A. Correct.

1 183 Q. And that was indeed the full
2 amount of the payment application.

3 A. I believe so, yes.

4 184 Q. The payment of this application
5 shows that Tucker accepted the payment application
6 in full?

7 A. Correct.

8 185 Q. And the payment of this payment
9 application shows that MOD accepted the payment
10 application.

11 A. Correct.

12 186 Q. Now, sir, if you look at the
13 cheque itself, you'll see that it's addressed to
14 Forma-Con Construction? Do you see that?

15 A. Yes, I do.

16 187 Q. MOD LP did not include a numbered
17 company here?

18 A. Correct.

19 188 Q. It made the cheque out to the
20 trade name of the company.

21 A. That's correct.

22 189 Q. Now, sir, I'm going to take you to
23 Exhibit -- Appendix S, which is where we are right
24 now, to motion record page 218, PDF page 224. And
25 do you see this an email of October 29th, 2015,

1 from someone named Erwin Thompson?

2 A. Yes.

3 190 Q. And Erwin Thompson is an employee
4 of Tucker HiRise?

5 A. He was an employee. I'm not -- I
6 can't confirm if he's still there or not.

7 191 Q. That's fair, sir. At this time,
8 in 2015, Erwin Thompson was writing on behalf of
9 Tucker HiRise.

10 A. Correct.

11 192 Q. And he writes "please note billing
12 should be as follows" and then lays out MOD
13 Developments (197 Yonge) LP, care of Tucker HiRise.
14 Do you see that?

15 A. I see that, yes.

16 193 Q. Tucker was insisting in this email
17 that all payment applications be to the correct
18 legal entity; is that right?

19 A. It should be addressed to the
20 correct legal entity for MOD Developments for the
21 project. Correct.

22 194 Q. Because it's important to you --
23 and you've already corrected me in this
24 cross-examination that MOD Developments here was
25 not the owner, but MOD Developments (197 Yonge) LP

1 was the owner; right?

2 A. That's correct.

3 195 Q. The legal entity was important to

4 MOD --

5 A. That's correct.

6 196 Q. -- in the payment applications.

7 And if we go down further in the email, you'll see

8 updated WSIB, principal name: MOD Developments

9 (197 Yonge) LP. Do you see that?

10 A. That's correct.

11 197 Q. And principal address, 8 Price

12 Street, Toronto, Ontario, and then the postal code;

13 right?

14 A. Correct.

15 198 Q. And that 8 Price Street address

16 was the address or the legal address of the LP

17 entity?

18 A. I believe so, yes.

19 199 Q. And it was important for MOD and

20 MOD LP that MOD LP was identified on the clearance

21 certificates; right?

22 A. That's correct.

23 200 Q. Not MOD Developments; right?

24 A. Correct.

25 201 Q. Sir, do you have any memory of

1 whether you or anyone else at MOD asked Tucker to
2 send this email or emails like it?

3 A. No, I don't recall. But pursuant
4 to the page that was issued as part of the
5 contract, this is to -- to comply with the contract
6 documents.

7 202 Q. We can take this page down.

8 Sir, there's nothing in your evidence
9 or any evidence that you've reviewed in the
10 receiver's application of Tucker ever asking
11 Forma-Con to correct the name of the trade
12 contractor as 508; right?

13 A. Specifically to 502?

14 203 Q. Yes.

15 A. Correct.

16 204 Q. There's never any evidence in a
17 payment application?

18 A. Not that I'm aware of, no.

19 205 Q. In the context of a WSIB
20 certificate?

21 A. Not that I'm aware of.

22 206 Q. In the context of an insurance
23 certificate; right?

24 A. Correct, not that I'm aware of.

25 MR. OPOLSKY: Sir, I'm going to move on

1 to another document in a second, but could we go
2 off the record for 30 seconds?

3 -- OFF THE RECORD DISCUSSION --

4 BY MR. OPOLSKY:

5 207 Q. Welcome back, everybody. We're
6 going to move on to Exhibit T or Appendix T of the
7 receiver's application. I'd like to look at a
8 March 2017 application for payment which can be
9 found at motion record page 418 and PDF 424. Sir,
10 do you see this is another payment application?

11 A. Yes, I do.

12 208 Q. And it's dated March 20th, 2017?

13 A. Correct.

14 209 Q. And it says, if we scroll down,
15 total amount payable with taxes is \$732,000 --
16 \$732,240; is that correct?

17 A. Correct.

18 210 Q. Let me just repeat that for madam
19 reporter because I've stumbled on the number a few
20 times. \$732,240.

21 A. Correct.

22 211 Q. And if we go to the top of the
23 page, you'll see that this is now issued by
24 Forma-Con Construction, a division of 1033803
25 Ontario Inc. Do you see that?

1 A. I see that, yes.

2 212 Q. I'm going to refer to this
3 numbered company as 803. Is that okay, sir?

4 A. Yes, it is.

5 213 Q. Now, if we go just a few pages
6 down in the motion record to motion record 426, PDF
7 432, you'll see a WSIB certificate. Do you see the
8 WSIB certificate, sir?

9 A. I do, yes.

10 214 Q. And you'll see that it's for the
11 period of February 2017 to May 2017?

12 A. Yes.

13 215 Q. And it's issued to 1033803 Ontario
14 Inc.; right?

15 A. Yes.

16 216 Q. And the trade names after that are
17 Forma-Con Construction and Forma Finishing; right?

18 A. Correct.

19 217 Q. And this is the WSIB clearance
20 certificate that was accepted for the payment
21 application; right?

22 A. Correct.

23 218 Q. No WSIB clearance certificate was
24 submitted for either 502 or 508?

25 A. That's correct.

1 219 Q. And neither Tucker nor MOD asked
2 Forma-Con to adjust or get a new clearance
3 certificate?

4 A. That's correct.

5 220 Q. And neither Tucker nor MOD made
6 allegations of noncompliance of Forma-Con's
7 contractual obligations; right?

8 A. That's correct.

9 221 Q. Tucker accepted the WSIB
10 certificate?

11 A. Correct.

12 222 Q. MOD accepted the WSIB certificate?

13 A. Correct.

14 223 Q. In fact, if we go down to the next
15 page, I believe, motion record 427, you'll see an
16 email from a Matthew Henderson dated March 19th,
17 2017? Do you see that?

18 A. I see that, yes.

19 224 Q. And Matthew Henderson at the time
20 was employed by Tucker HiRise Construction?

21 A. That's correct.

22 225 Q. And --

23 A. Just to -- just to clarify, I
24 believe this level of approval at this stage of the
25 process is based on progress completed on site, not

1 the actual approval of all five documents.

2 226 Q. Well, sir, let's unpack that.

3 Before I do, you'll see that Matthew Henderson
4 writes in this email he approved the package;
5 correct?

6 A. I see that there's an email that
7 says "approved." I don't see what's below it.

8 227 Q. Sure. Well, let's go below it.

9 A. Sure.

10 228 Q. It's an email from Gordon Graham
11 on March 19th, 2017, and it says "please review and
12 approve at your earliest convenience."

13 A. Yeah.

14 229 Q. And then Matthew Henderson's email
15 is in response to that. Do you see that?

16 A. Yes, I see that, yeah.

17 230 Q. So, sir, earlier we went over the
18 reason why it was important to MOD at all times to
19 have an updated WSIB clearance certificate;
20 correct?

21 A. That's correct.

22 231 Q. And a clearance certificate had to
23 be submitted with each payment application?

24 A. Yes.

25 232 Q. And we reviewed the memo that

1 required all five documents to be submitted?

2 A. Yeah.

3 233 Q. And your evidence was that each
4 one of those steps was equally important?

5 A. That's correct.

6 234 Q. Indeed, MOD could bear liability
7 if it didn't have the appropriate WSIB clearance
8 certificate?

9 A. Correct.

10 235 Q. So when Forma-Con submitted this
11 clearance certificate at this point, it was
12 important for Tucker that there was an accurate
13 clearance certificate submitted with each payment
14 application; right?

15 A. Correct.

16 236 Q. And if Tucker had had concerns
17 with the WSIB clearance certificate or its absence,
18 it was in its authority to ask Forma-Con to get a
19 new one or adjust the one it received; right?

20 A. Correct.

21 237 Q. So let's go to motion record 429,
22 PDF 435. You'll see that this payment application
23 was paid?

24 A. Correct.

25 238 Q. In front of you, this is a cheque

1 from MOD Developments (197 Yonge) LP?

2 A. Correct.

3 239 Q. And it's made out to Forma-Con
4 Construction?

5 A. Yes, correct.

6 240 Q. And on this cheque, MOD did not
7 specify the numbered company --

8 A. That's correct.

9 241 Q. -- for Forma-Con? It just
10 specified the trade name of Forma-Con; right?

11 A. That's correct.

12 242 Q. And this cheque shows that Tucker
13 had accepted the payment application?

14 A. By virtue of us issuing payment,
15 yes.

16 243 Q. And that MOD had accepted the
17 payment application by virtue of issuing payment;
18 right?

19 A. Correct. Correct.

20 244 Q. Let's keep on going down to motion
21 record 455, please. It can be found at PDF 461.
22 And you'll see this is a payment application for
23 May of 2017. Do you see that, sir?

24 A. I do see, yep.

25 245 Q. And we'll scroll down about 10

1 pages to PDF 471, motion record 465. And you'll
2 see this is a WSIB clearance certificate; right?

3 A. Yes.

4 246 Q. And it's issued, again, to 1033803
5 Ontario Inc.?

6 A. Yeah.

7 247 Q. And let's go to the next page,
8 motion record 466, and you'll see this is a
9 certificate of insurance, sir.

10 Mr. Babad, can we zoom in a little bit
11 so that Mr. Ball can read that? Thank you.

12 Do you see that the insured here is
13 Forma-Con Construction, a division of 1033803
14 Ontario Inc.?

15 A. Yes.

16 248 Q. There's no insurance certificate
17 now provided for 508?

18 A. Correct.

19 249 Q. And this is for the period January
20 1, 2017, to January 1, 2018?

21 A. Correct.

22 250 Q. And, sir, there's nothing in the
23 record that would indicate or your knowledge that
24 Tucker rejected this insurance certificate?

25 A. Not to my knowledge, no.

1 251 Q. That Tucker asked for a new
2 insurance certificate?

3 A. Not to my knowledge.

4 252 Q. That MOD rejected this insurance
5 certificate?

6 A. Not to my knowledge.

7 253 Q. Or that MOD asked for a new
8 insurance certificate.

9 A. Not to my knowledge.

10 254 Q. And if we go down to motion record
11 468, PDF 474, you'll see that this is a cheque for
12 this payment application? Do you see that, sir?

13 A. Yes, I see.

14 255 Q. And as we've discussed previously,
15 this signifies that both Tucker and MOD had
16 approved this payment application; right?

17 A. Correct.

18 256 Q. Now, sir, I'm happy to take you to
19 the instances if -- and please ask me if you'd like
20 to, but I'm going to put to you that Forma-Con
21 repeatedly submitted the same insurance certificate
22 with the name of 803 on it, and at no point did
23 Tucker or MOD ask for a new or different insurance
24 certificate; is that right?

25 A. I believe that to be correct.

1 257 Q. Sir, to summarize, there's nothing
2 in the evidence of either MOD or the receiver in
3 this case of Tucker asking Forma-Con to correct the
4 name of the trade contractor as 803; is that right?

5 A. I believe that to be correct, yes.

6 258 Q. There's nothing asking them to
7 correct the name of the trade contractor as 803 in
8 a WSIB certificate?

9 A. Correct.

10 259 Q. Sir, you understand that under the
11 contract, which is Exhibit A to this proceeding,
12 MOD as owner was entitled to issue a notice in
13 writing to Forma-Con if it was noncompliant with
14 the contract? Do you know that?

15 A. Correct.

16 260 Q. And MOD never issued a notice in
17 writing that Forma-Con was noncompliant because it
18 was operating as 803; is that right?

19 A. Well, can you please reference
20 what you're referring to in the construction
21 contract so that I can pull that up.

22 261 Q. I'm referring to Section 7.1.2,
23 and let's pull it up here on the screen so we can
24 all look at it together. It reads:

25 "If the Trade Contractor

1 neglects to prosecute the Work
2 properly or otherwise fails to
3 comply with the requirements of the
4 Contract to a substantial degree and
5 if the Construction Manager has
6 given a written statement to the
7 Owner and Trade Contractor that
8 sufficient cause exists to justify
9 such action, the Owner may, without
10 prejudice to any other right or
11 remedy the Owner may have, give the
12 Trade Contractor Notice in Writing
13 with a copy to the Construction
14 Manager that the Trade Contractor is
15 in default."

16 And my question to you --

17 A. I see that, yes.

18 262 Q. -- sir, was notice in writing ever
19 given to Forma-Con?

20 A. As it relates to WSIB and
21 letterhead adjustments, I do not believe so.
22 Notice was given for other things as it relates to
23 their obligations under the contract.

24 263 Q. Thank you, sir. Sir, at all
25 times, given the evidence we just reviewed, Tucker

1 acted as if either 508 or later 803 was the trade
2 contractor. Isn't that right?

3 A. I can't speak on their behalf.

4 264 Q. Well, sir, then let me move to
5 MOD. At all times, MOD and MOD LP acted as if
6 either 508 or later 803 was the trade contractor;
7 right?

8 A. We believed Forma-Con was the
9 trade contractor.

10 265 Q. Thank you. Sir, you -- to my
11 previous answer [sic], you said you can't speak on
12 Tucker's behalf. Sir, MOD submitted in this
13 dispute no affidavit on behalf of Tucker; is that
14 right?

15 A. That's correct.

16 266 Q. And you've submitted no evidence
17 of any discussions or opinions of Tucker in your
18 affidavit; is that right?

19 A. That's correct.

20 267 Q. Sir, I want to talk briefly about
21 a numbered company known as 502. 502 was the named
22 trade contractor in the contract; is that right?

23 A. That's correct.

24 268 Q. When the contract was signed in
25 December 2014, it listed the trade contractor as

1 502?

2 A. Correct.

3 269 Q. Now, sir, I'm going to reference
4 parts of your affidavit. If you'd like us to call
5 them up on the screen, please let me know if you'd
6 like to look at them yourself. That's fine as
7 well.

8 A. Sorry, sir, can I actually modify
9 my answer as it relates to a reference of Tucker in
10 my affidavit?

11 270 Q. Of course, sir.

12 A. Because there is reference which
13 is disputing allegations of their acknowledgement
14 of assignment in the contract, and therefore we did
15 have some acknowledgement of Tucker in my
16 affidavit, specifically paragraph 41.

17 271 Q. Sir, give me a moment to call up
18 paragraph 41 and I will --

19 A. And paragraph 40.

20 272 Q. Sir, I understand that you're
21 disputing in these paragraphs what Tucker did or
22 did not acknowledge. My question was slightly
23 different - and I'm happy to rephrase it - which is
24 there is no evidence in your affidavit that you
25 have spoken to Tucker and are giving Tucker's

1 evidence through your affidavit; is that right?

2 A. That's correct.

3 273 Q. I did not mean to imply -- and I
4 have your answer that Tucker was mentioned in your
5 affidavit. I understand that, sir.

6 A. Okay.

7 274 Q. Sir, since you have your affidavit
8 in front of you -- that's very helpful to me --
9 let's go to paragraph 19 and paragraph 20 of your
10 affidavit.

11 A. Okay.

12 275 Q. We were -- before the reference to
13 paragraph 40, we were talking about 502; we were
14 talking about paragraph 19. Paragraph 19 says that
15 you searched for records related to 502 and got a
16 no-match certificate. Do you see that?

17 A. Yes, I see that.

18 276 Q. And paragraph 20 says you did a
19 corporate profile for that numbered company that
20 ends in 502 and were directed to Second Floor
21 Limited; right?

22 A. That's correct, yes.

23 277 Q. Now, sir, Second Floor is not
24 Forma-Con; right?

25 A. That's correct.

1 278 Q. Now, paragraph 27 of your
2 affidavit, it says:

3 "Based on what is set out in
4 paragraphs 2, 3, 7, 8, 12, 13, 15,
5 18, 19, and 20" --

6 That's a lot of paragraphs:

7 -- "it appears that 1428502 due
8 to an error was not properly named
9 in the Contract and should have been
10 named as 1428508."

11 Do you see that?

12 A. Yes, I do.

13 279 Q. So, sir, is it MOD's position now
14 in this litigation that the entity that should have
15 been named in 2014 was 508?

16 A. Based on what's been uncovered to
17 date, yes.

18 280 Q. And it was effectively a typo that
19 it was named as 502 in 2014; right?

20 A. I believe so.

21 281 Q. Indeed, in 2014, you knew the
22 trade contractor by its trade name, Forma-Con;
23 right?

24 A. That's correct.

25 282 Q. And what was important to MOD was

1 that it contracted with Forma-Con; right?

2 A. That's correct.

3 283 Q. You wanted Forma-Con's expertise
4 with forming?

5 A. Yes.

6 284 Q. Concrete forming?

7 A. Yes.

8 285 Q. You wanted access to Forma-Con's
9 labour?

10 A. Correct.

11 286 Q. You wanted access to Forma-Con's
12 equipment?

13 A. Correct.

14 287 Q. And it didn't matter to MOD the
15 exact number of the numbered company if you got
16 Forma-Con; right?

17 A. That's a relatively broad question
18 to answer with one answer. The Forma-Con that we
19 knew, yes, correct, at the time.

20 288 Q. You wanted a Forma-Con that had
21 the appropriate financial strength to do a
22 \$20 million contract?

23 A. Correct. Correct.

24 289 Q. And you trusted that Forma-Con
25 could do the job.

1 A. Correct.

2 290 Q. And you didn't actually do any
3 diligence at the time of whether 502 was the right
4 numbered company.

5 A. I don't believe so.

6 291 Q. Because, sir, I put it to you that
7 it didn't matter as long as it was the Forma-Con
8 entity that was doing the work.

9 A. Correct.

10 292 Q. And what was important was that
11 Forma-Con was contractually obligated to do the job
12 that it agreed to do; right?

13 A. Correct.

14 293 Q. And that Forma-Con would do the
15 work.

16 A. Correct.

17 294 Q. With the management you knew at
18 Forma-Con.

19 A. Correct.

20 295 Q. And with the expertise you knew
21 that Forma-Con had.

22 A. Correct.

23 296 Q. And that's what mattered, no
24 matter what numbered company was listed; right?

25 A. Correct.

1 297 Q. Sir, in your affidavit, you refer
2 to a transfer at undervalue claim that was made by
3 Forma-Con. Are you familiar with the idea of a
4 transfer at undervalue?

5 A. Which paragraph are you referring
6 to, sorry?

7 298 Q. I'm referring to your paragraph --
8 well, it begins at paragraph 31, but in particular,
9 I'm referring to paragraph 37.

10 A. Okay. One second.

11 299 Q. Please take the time to read
12 paragraph 37, if that helps refresh your memory.

13 A. Okay. Yes, I've read the
14 paragraph.

15 300 Q. And it refers to a decision of the
16 Ontario Superior Court of Justice. Do you see
17 that?

18 A. Correct, yes.

19 301 Q. Have you read the decision?

20 A. In part.

21 302 Q. And you're familiar with the
22 allegations that are made by the trustee in that
23 case?

24 A. Correct.

25 303 Q. That there was a false invoicing

1 scheme?

2 A. Correct.

3 304 Q. In fact, you refer to false
4 invoicing schemes in your paragraph 37.

5 A. Correct.

6 305 Q. And the scheme, in effect, was
7 that Forma-Con would have coconspirators issue
8 invoices from sham companies for work that was not
9 done; right?

10 A. Correct.

11 306 Q. And then Forma-Con would then pay
12 those coconspirators for these fake invoices;
13 right?

14 A. Correct.

15 307 Q. And the invoices represented fake
16 services, none of which were done at all.

17 A. As far as I am aware, correct.

18 308 Q. Now, sir, nowhere in your
19 affidavit do you allege that Forma-Con did not
20 provide the services that Forma-Con billed MOD LP
21 for; right?

22 A. Correct.

23 309 Q. There's no allegation in your
24 affidavit of fake services whatsoever.

25 A. Correct.

1 310 Q. Forma-Con performed the services
2 they issued payment applications for; right?

3 A. Correct.

4 311 Q. In fact, we know that they
5 performed the services because Massey Towers is
6 standing today; right?

7 A. That's correct.

8 312 Q. And Massey Towers quite literally
9 stands on the formation or foundation that
10 Forma-Con helped create; right?

11 A. Correct.

12 313 Q. Now, sir, MOD has issued a
13 counterclaim against Forma-Con in various lien
14 disputes. Do you know that?

15 A. That's correct, yes.

16 314 Q. And in none of those counterclaims
17 has MOD ever alleged fraudulent or fake invoices;
18 is that right?

19 A. I can't answer that. I don't have
20 the document in front of me.

21 315 Q. Let's go to the document. Let's
22 go to your Exhibit 5, which is the amended
23 Statement of Defence that can be found at the
24 responding motion record page 162 and PDF 167. So
25 this is the counterclaim?

1 A. Yeah.

2 316 Q. Sir, I'm happy to take you through
3 it, but I would -- I can summarize it, that it
4 makes allegations for delay, crane downtime,
5 warranty work, and teardown and delayed closing
6 costs. And --

7 A. Correct.

8 317 Q. -- to the extent -- and nowhere in
9 this counterclaim does it allege fraudulent or fake
10 invoices.

11 A. Not in this document, no.

12 318 Q. Okay. Well, sir, let's go to the
13 receiver's motion record, Appendix VV, motion
14 record page number 856, PDF 862. So, sir, this is
15 a Statement of Defence and Counterclaim issued in
16 July of 2022. Do you recognize this document?

17 A. Yes, I do.

18 319 Q. Let's scroll down to the
19 counterclaim. And, sir, I'd ask you to confirm
20 that nowhere in this document do you make
21 allegations of fake or fraudulent invoices.

22 A. Correct.

23 320 Q. And, sir, I just want to clarify
24 that nowhere in the lien action and in this
25 commercial list action has MOD ever alleged any

1 fraud by Forma-Con or its employees in relation to
2 MOD; is that right?

3 A. Not in these documents, but I
4 think it's important to state that there's a larger
5 story where evidence has been provided prior to the
6 receivership where liens were placed on our
7 projects by Forma-Con subcontracts -- contractors
8 as a result of non-issuance of payment for them,
9 and as such, we put them on notice for issuing
10 fraudulent statutory declarations, to which we then
11 got direction from Forma-Con to pay their
12 subcontractors direct.

13 321 Q. Sir, there was a lot of answer in
14 that last question, so let me repeat my question,
15 which was nowhere in the lien actions or in this
16 action is there any allegation of false invoices or
17 fraudulent invoicing to MOD.

18 A. Correct.

19 322 Q. And as we went over, all the
20 progress billings or progress payment applications
21 were approved by Tucker and approved by MOD.

22 A. Correct.

23 323 Q. So, sir, you've agreed in this
24 cross-examination, at the beginning, that Forma-Con
25 did concrete forming and falsework; is that right?

1 A. That's correct.

2 324 Q. They did void forming?

3 A. Correct.

4 325 Q. They did concrete placing and
5 finishing?

6 A. Correct.

7 326 Q. They did temporary shoring?

8 A. Correct.

9 327 Q. They did hoisting?

10 A. Correct.

11 328 Q. They did coordination and
12 management of rebar placement?

13 A. Yes.

14 329 Q. And I believe they did something
15 called supply and insulation of concrete
16 accessories.

17 A. Correct.

18 330 Q. And as we discussed, every time
19 MOD paid a progress billing to either 508 or 803,
20 MOD withheld a 10-percent holdback; is that right?

21 A. That's correct.

22 331 Q. So you've effectively paid
23 Forma-Con for 90 percent of their work.

24 A. Correct.

25 332 Q. Now, you've also told us in this

1 cross-examination that 502 was on the contract
2 because of a typographical mistake; right?

3 A. That's correct.

4 333 Q. It should have been 508?

5 A. Correct.

6 334 Q. So is it MOD's position that 508
7 was not eligible to receive the 10-percent holdback
8 because it was 502 listed on the contract?

9 A. Sorry, can you repeat that?

10 335 Q. Of course. Is it MOD's position
11 that 508 was not eligible to receive the 10-percent
12 holdback because 502 was listed on the contract?

13 MR. FARACE: Counsel, that's a legal
14 question, and this witness is not here to provide
15 answers to legal questions.

16 MR. OPOLSKY: Well, counsel, Mr. Ball
17 is a representative of MOD and makes several
18 statements in his affidavit about MOD's various
19 legal positions. So I'm trying to clarify MOD's
20 legal position.

21 MR. FARACE: Where do you say in his
22 affidavit he makes statements about legal positions
23 or statements regarding the law in his affidavit?

24 MR. OPOLSKY: Well, let's begin at
25 paragraph 12 and then paragraph 13, talking about

1 who is and isn't a party to the contracts.

2 MR. FARACE: Correct. Well, you can
3 garner that, counsel, by reading the documents
4 saying the names of the parties.

5 MR. OPOLSKY: Well, counsel, I'm
6 entitled to ask about the counterparty's position
7 in this claim. If you want to object to the
8 question, that's fine, but my question stands.

9 MR. FARACE: Yeah. Well, with respect
10 to that question, counsel, your answer -- the
11 answer to those questions are in the pleadings that
12 have been provided that are attached and form part
13 of this record that's before the Court. You have
14 MOD's position regarding the question you've just
15 asked.

16 MR. OPOLSKY: Well, I don't believe I
17 do, sir, but my question stands. Is that -- if
18 there's an objection, there's an objection, but my
19 question stands.

20 MR. FARACE: Restate your question,
21 please.

22 BY MR. OPOLSKY:

23 336 Q. Is it MOD's position that 508 was
24 not eligible to receive the 10-percent holdback
25 because it was 502 that was listed on the contract?

1 MR. FARACE: I'm going to let Mr. Ball
2 consider that question and provide an answer if
3 he's capable of doing so.

4 BY MR. OPOLSKY:

5 337 Q. Mr. Ball?

6 A. I'd prefer not to answer that
7 question at this time.

8 338 Q. Mr. Ball, that's actually not how
9 this works. Your counsel can object to the
10 question on legal grounds, but he is not objecting,
11 and you're required to answer the question. Please
12 answer the question.

13 A. Can you repeat the question one
14 more time, please.

15 339 Q. Is it MOD's position that 508 was
16 not eligible to receive the 10-percent holdback
17 because it was 502 that was listed on the contract?

18 A. That is not MOD's position
19 entirely. The release of holdback to the 08
20 entity -- 508 entity was subject to the offsetting
21 amounts in our counterclaim.

22 340 Q. Sir, I had -- I understand there
23 are counterclaims regarding setoffs or offsets, but
24 subject to those setoffs or offsets, is it MOD's
25 position that 508 was not eligible to receive the

1 10-percent holdback because it was 502 listed on
2 the contract?

3 A. It is not our position.

4 341 Q. So after 2017, sir, MOD issued
5 cheques to Forma-Con that you now understand were
6 cashed by 803; is that right?

7 A. I don't think I can confirm that
8 because the cheques were made out to Forma-Con
9 Construction and not a numbered company.

10 342 Q. Well, sir, you understand from
11 this proceeding that 508 was dissolved; right?

12 A. Correct.

13 343 Q. And after it was dissolved, its
14 business was carried out by 803; right?

15 A. That's my understanding, yes.

16 344 Q. So MOD continued to pay 803
17 80 percent of -- let me take that back --
18 90 percent of the contract; right?

19 A. Again, we paid Forma-Con
20 Construction, not the numbered company.

21 345 Q. So MOD continued to pay Forma-Con
22 90 percent of the contract after 2017; right?

23 A. Correct.

24 346 Q. And you understand that that work
25 was conducted -- you now understand that that work

1 was conducted by 803; right?

2 A. Correct.

3 347 Q. So is it MOD's position that 803
4 cannot get the remaining 10-percent holdback
5 because it is not listed on the contract?

6 A. Correct.

7 348 Q. And is it MOD's position, then,
8 that it should get to keep the 10-percent holdback?

9 A. Subject to the pending litigation,
10 correct.

11 349 Q. And therefore, sir, is it MOD's
12 position that, subject to the various setoffs and
13 litigation, that it should get to pay 90 percent
14 for 100 percent of the work?

15 A. Sorry, can you repeat that
16 question?

17 350 Q. Subject to the various setoffs and
18 litigation, is it MOD's position that it should get
19 to keep 90 percent -- sorry. Subject to the
20 various setoffs and litigation, is it MOD's
21 position that it should have to only pay 90 percent
22 of the contract value for 100 percent of the
23 contract work?

24 A. Correct.

25 MR. OPOLSKY: Thank you. Counsel, I'm

1 going to suggest a 10-minute break for me to look
2 over the balance of my questions. It is possible
3 that I have another 5 minutes of questions. It is
4 also possible that I have no more questions, in
5 which case we can all get home before noon. Is
6 that okay with you?

7 MR. FARACE: That's fine. Thank you,
8 counsel.

9 MR. OPOLSKY: So back at 11:50? 10 to
10 noon?

11 MR. FARACE: Yes.

12 MR. OPOLSKY: Thank you.

13 -- RECESS AT 11:38 --

14 -- UPON RESUMING AT 11:50 --

15 MR. OPOLSKY: Mr. Ball, I'd like to
16 confirm that I have no further questions. I'd like
17 to thank you for your time this morning, and --
18 thank you.

19 THE WITNESS: Thank you.

20 -- Whereupon the cross-examination concluded at
21 11:50 a.m.

22

23

24

25

1 REPORTER'S CERTIFICATE

2
3 I, JOANNE A. LAWRENCE, Registered
4 Professional Reporter, certify;

5 That the foregoing proceedings were
6 taken before me at the time and place therein set
7 forth, at which time the witness was put under oath
8 by me;

9 That the testimony of the witness
10 and all objections made at the time of the
11 examination were recorded stenographically by me
12 and were thereafter transcribed;

13 That the foregoing is a true and
14 correct transcript of my shorthand notes so taken.

15
16 Dated this 11th day of October, 2022.

17
18
19 

20 NEESONS, A VERITEXT COMPANY

21 PER: JOANNE LAWRENCE, RPR, CSR

22 COURT REPORTER
23
24
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TAB A

CCDC 17

Stipulated Price Contract between
Owner and Trade Contractor
for Construction Management Projects

2010

Massey Tower

Forma-Con

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CCDC 17 and CCDC 5A "Construction Management Contract-For Services" are complimentary documents. CCDC 17 is the product of a consensus-building process aimed at balancing the interests of all parties on the construction project. It reflects recommended industry practices. CCDC 17 can have important consequences. The CCDC and its constituent member organizations do not accept any responsibility or liability for loss or damage which may be suffered as a result of the use or interpretation of CCDC 17.

AGREEMENT BETWEEN OWNER AND TRADE CONTRACTOR FOR CONSTRUCTION MANAGEMENT PROJECTS

This Agreement made on the 19 day of December in the year 2014 .

by and between the parties

MOD Developments (197 Yonge) Limited Partnership

hereinafter called the *Owner*

and

Forma-Con Construction (A DIVISION OF 1428502 ONTARIO LIMITED)

hereinafter called the *Trade Contractor*

The *Owner* and the *Trade Contractor* agree as follows:

ARTICLE A-1 THE WORK

The *Trade Contractor* shall:

1.1 perform the *Work* required by the *Contract Documents* for

Concrete forming and falsework, void forming, concrete placing and finishing, temporary shoring, re-shoring, hoisting, and placing of all reinforcing steel and concrete accessories

insert above the description of the Work

for the *Project*

Massey Tower

Forma-Con

insert above the title of the Project

located at

197 Yonge Street, Toronto, Ontario Canada

insert above the Place of the Project

for which the Agreement has been signed by the parties, and for which

Tucker HIRise Construction Inc.

insert above the name of the Construction Manager

is acting as and is hereinafter called the *Construction Manager*, and for which

Hariri Pontarini Architects

insert above the name of the Consultant

is acting as and is hereinafter called the *Consultant*, and for which

the *Construction Manager** / *Consultant** is acting as the *Payment Certifier*, and (* Strike out inapplicable term.)

CCDC 17-2010

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- 1.2 do and fulfill everything indicated by the *Contract Documents*, and
- 1.3 perform the *Work*:
 - .1 in accordance with a schedule provided by the *Owner* at the time of signing the *Contract*, or
 - .2 in accordance with a schedule mutually agreed upon if provided by the *Owner* after the signing of the *Contract*; or
 - .3 if no schedule is provided by the *Owner*, commence the *Work* by the day of in the year and, subject to adjustment in *Contract Time* as provided for in the *Contract Documents*, attain *Substantial Performance of the Work*, by the day of in the year .

ARTICLE A-2 AGREEMENTS AND AMENDMENTS

- 2.1 The *Contract* supersedes all prior negotiations, representations or agreements, either written or oral, relating in any manner to the *Work*, including the bidding documents that are not expressly listed in Article A-3 of the Agreement – CONTRACT DOCUMENTS.
- 2.2 The *Contract* may be amended only as provided in the *Contract Documents*.

ARTICLE A-3 CONTRACT DOCUMENTS

- 3.1 The following are the *Contract Documents* referred to in Article A-1 of the Agreement – THE WORK:
 - Agreement Between *Owner* and *Trade Contractor*
 - Definitions
 - The General Conditions of the *Contract*

The additional documents listed on Appendix C of this Agreement are part of the Contract Documents.

* (insert here, attaching additional pages if required, a list identifying all other *Contract Documents* e.g. supplementary conditions; information documents; specifications, giving a list of contents with section numbers and titles, number of pages, and date; material finishing schedules; drawings, giving drawing number, title, date, revision date or mark; addenda, giving title, number, date; schedule)

2 CCDC 17 – 2010
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ARTICLE A-4 CONTRACT PRICE

4.1 The *Contract Price*, which excludes *Value Added Taxes*, is:

Twenty Million Four Hundred Twenty-Nine Thousand Dollars /100 dollars \$ 20,429,000.00

4.2 *Value Added Taxes* (at 13 %) payable by the *Owner* to the *Trade Contractor* are:

Two Million Six Hundred Fifty-Five Thousand Seven Hundred & Seventy Dollars /100 dollars \$ 2,655,770.00

4.3 Total amount payable by the *Owner* to the *Trade Contractor* for the *Work* is:

Twenty-Three Million Eighty-Four Thousand Seven Hundred & Seventy Dollars /100 dollars \$ 23,084,770.00

4.4 These amounts shall be subject to adjustments as provided in the *Contract Documents*.

4.5 All amounts are in Canadian funds.

ARTICLE A-5 PAYMENT

5.1 Subject to the provisions of the *Contract Documents*, and in accordance with legislation and statutory regulations respecting holdback percentages and, where such legislation or regulations do not exist or apply, subject to a holdback of

Ten percent (10 %), the *Owner* shall:

- .1 make progress payments to the *Trade Contractor* on account of the *Contract Price* when due in the amount certified by the *Payment Certifier* together with such *Value Added Taxes* as may be applicable to such payment, and
- .2 upon *Substantial Performance of the Work*, pay to the *Trade Contractor* the unpaid balance of the holdback amount when due together with such *Value Added Taxes* as may be applicable to such payment, and
- .3 upon the issuance of the final certificate for payment, pay to the *Trade Contractor* the unpaid balance of the *Contract Price* when due together with such *Value Added Taxes* as may be applicable to such payment.

5.2 In the event of loss or damage occurring where payment becomes due under the property and boiler insurance policies, payments shall be made to the *Trade Contractor* in accordance with the provisions of GC 11.1 – INSURANCE.

5.3 Interest

.1 Should either party fail to make payments as they become due under the terms of the *Contract* or in an award by arbitration or court, interest at the following rates on such unpaid amounts shall also become due and payable until payment:

(1) 2% per annum above the prime rate for the first 60 days.

(2) 4% per annum above the prime rate after the first 60 days.

Such interest shall be compounded on a monthly basis. The prime rate shall be the rate of interest quoted by

The Royal Bank of Canada

(Insert name of chartered lending institution whose prime rate is to be used)

for prime business loans as it may change from time to time.

.2 Interest shall apply at the rate and in the manner prescribed by paragraph 5.3.1 of this Article on the settlement amount of any claim in dispute that is resolved either pursuant to Part 8 of the General Conditions – DISPUTE RESOLUTION or otherwise, from the date the amount would have been due and payable under the *Contract*, had it not been in dispute, until the date it is paid.

ARTICLE A-6 COMMUNICATION

6.1 Except for the direct communications described in paragraph 6.2 of this Article, all communications between the *Trade Contractor*, and the *Owner*, the *Consultant* or the *Payment Certifier* that relate to the *Contract* shall be forwarded through the *Construction Manager*.

6.2 The parties shall inform the *Construction Manager* of the following direct communications:

- .1 between the *Payment Certifier* and the *Owner*, *Consultant* or *Trade Contractor* as described in Part 5 of the General Conditions – PAYMENT;
- .2 among the *Owner*, *Consultant* and *Trade Contractor* with respect to *Notices in Writing*; and
- .3 as otherwise expressly specified in the *Contract Documents*.

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3

ARTICLE A-7 RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING

- 7.1 *Notices in Writing* will be addressed to the recipient at the address set out below.
- 7.2 The delivery of a *Notice in Writing* will be by hand, by courier, by prepaid first class mail, or by facsimile or other form of electronic communication during the transmission of which no indication of failure of receipt is communicated to the sender.
- 7.3 A *Notice in Writing* delivered by one party in accordance with this *Contract* will be deemed to have been received by the other party on the date of delivery if delivered by hand or courier, or if sent by mail it shall be deemed to have been received five calendar days after the date on which it was mailed, provided that if either such day is not a *Working Day*, then the *Notice in Writing* shall be deemed to have been received on the *Working Day* next following such day.
- 7.4 A *Notice in Writing* sent by facsimile or other form of electronic communication shall be deemed to have been received on the date of its transmission provided that if such day is not a *Working Day* or if it is received after the end of normal business hours on the date of its transmission at the place of receipt, then it shall be deemed to have been received at the opening of business at the place of receipt on the first *Working Day* next following the transmission thereof.
- 7.5 An address for a party may be changed by *Notice in Writing* to the other party setting out the new address in accordance with this Article.

Owner

MOD Developments (197 Yonge) Limited Partnership

*name of Owner**

MOD Developments Inc.
8 Price Street, 4th Floor
Toronto, ON M4W 1Z4

address

(647) 748-2822
facsimile number

nialani@moddevelopments.com
email address

Trade Contractor

Forma-Con Construction (A DIVISION OF 1428502 ONTARIO LIMITED)

*name of Trade Contractor**

407 Basaltic Road,
Concord, ON L4K 4W8

address

(905) 303-8010
facsimile number

michaelsolano@forma-con.com
email address

Construction Manager

Tucker HiRise Construction Inc.

*name of Construction Manager**

3755 Victoria Park Ave.
Toronto, ON, M1W 3Z4

address

(416) 744-2700
facsimile number

chris.mallinos@tuckerhirise.com
email address

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Consultant

Hariri Pontarini Architects

*name of Consultant **

602 King Street West
Toronto, ON, M5V 1M6

address

(416) 929-8924

facsimile number

pyapur@hp-arch.com

email address

** If it is intended that a specific individual must receive the notice, that individual's name shall be indicated.*

ARTICLE A-8 LANGUAGE OF THE CONTRACT

8.1 When the *Contract Documents* are prepared in both the English and French languages, it is agreed that in the event of any apparent discrepancy between the English and French versions, the English / ~~French~~* language shall prevail.

** Complete this statement by striking out inapplicable term.*

8.2 This Agreement is drawn in English at the request of the parties hereto. La présente convention est rédigée en anglais à la demande des parties.

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ARTICLE A-9 SUCCESSION

9.1 The *Contract* shall enure to the benefit of and be binding upon the parties hereto, their respective heirs, legal representatives, successors, and assigns.

In witness whereof the parties hereto have executed this Agreement by the hands of their duly authorized representatives.

SIGNED AND DELIVERED
In the presence of:

WITNESS

OWNER

MOD Developments (197 Yonge) Limited
Partnership

name of Owner

signature of witness

signature

Noorez Lalani, Vice President

name of person signing

name and title of person signing

signature of witness

signature

Gary Switzer, President

name of person signing

name and title of person signing

WITNESS

TRADE CONTRACTOR

Forma-Con Construction (A DIVISION OF
1428502 ONTARIO LIMITED)

name of Trade Contractor

signature of witness

signature

Michael Solano, President

name of person signing

name and title of person signing

signature of witness

signature

name of person signing

name and title of person signing

N.B. Where legal jurisdiction, local practice or Owner or Trade Contractor requirement calls for
(a) proof of authority to execute this document, attach such proof of authority in the form of a certified copy of a resolution naming the representative(s) authorized to sign the Agreement for and on behalf of the corporation or partnership; or
(b) the affixing of a corporate seal, this Agreement should be properly sealed

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DEFINITIONS

The following Definitions shall apply to all *Contract Documents*. References in the definition to the singular shall be considered to include the plural as the context requires.

Change Directive

A *Change Directive* is a written instruction issued by the *Owner* through the *Construction Manager* and signed by the *Owner* directing the *Trade Contractor* to proceed with a change in the *Work* within the general scope of the *Contract Documents* prior to the *Owner* and the *Trade Contractor* agreeing upon adjustments in the *Contract Price* and the *Contract Time*.

Change Order

A *Change Order* is a written amendment to the *Contract* issued by the *Construction Manager* and signed by the *Owner* and the *Trade Contractor* stating their agreement upon:

- a change in the *Work*;
- the method of adjustment or the amount of the adjustment in the *Contract Price*, if any; and
- the extent of the adjustment in the *Contract Time*, if any.

Construction Equipment

Construction Equipment means all machinery and equipment, either operated or not operated, that is required for preparing, fabricating, conveying, erecting, or otherwise performing the *Work* but is not incorporated into the *Work*.

Construction Manager

The *Construction Manager* is the person or entity engaged by the *Owner* and identified as such in the Agreement.

Consultant

The *Consultant* is the person or entity engaged by the *Owner* and identified as such in the Agreement. The *Consultant* is the Architect, the Engineer or entity licensed to practise in the province or territory of the *Place of the Project*.

Contract

The *Contract* is the undertaking by the parties to perform their respective duties, responsibilities and obligations as prescribed in the *Contract Documents* and represents the entire agreement between the parties.

Contract Documents

The *Contract Documents* consist of those documents listed in Article A-3 of the Agreement – CONTRACT DOCUMENTS and amendments agreed upon between the parties.

Contract Price

The *Contract Price* is the amount stipulated in Article A-4 of the Agreement – CONTRACT PRICE.

Contract Time

The *Contract Time* is the time stipulated in paragraph 1.3 of Article A-1 of the Agreement – THE WORK from commencement of the *Work* to *Substantial Performance of the Work*.

Drawings

The *Drawings* are the graphic and pictorial portions of the *Contract Documents*, wherever located and whenever issued, showing the design, location and dimensions of the *Work*, generally including plans, elevations, sections, details, and diagrams.

Notice in Writing

A *Notice in Writing*, where identified in the *Contract Documents*, is a written communication between the parties or between them and the *Construction Manager* or the *Consultant* that is transmitted in accordance with the provisions of Article A-7 of the Agreement – RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING.

Owner

The *Owner* is the person or entity identified as such in the Agreement.

Payment Certifier

The *Payment Certifier* is either the *Construction Manager* or the *Consultant* identified as such in the Agreement.

Place of the Project

The *Place of the Project* is the designated site or location of the *Project* identified in the *Contract Documents*.

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Product

Product means material, machinery, equipment, and fixtures incorporated into the *Work*, but does not include *Construction Equipment*.

Project

The *Project* means the total construction contemplated of which the *Work* may be the whole or a part.

Project In-Use Date

Project In-Use Date shall have been reached when the *Project* is ready for use or is being used for the purpose intended and is so confirmed in writing by the *Construction Manager* in consultation with the *Consultant* and the *Owner*.

Provide

Provide means to supply and install.

Shop Drawings

Shop Drawings are drawings, diagrams, illustrations, schedules, performance charts, brochures, *Product* data, and other data which the *Trade Contractor* provides to illustrate details of portions of the *Work*.

Specifications

The *Specifications* are that portion of the *Contract Documents*, wherever located and whenever issued, consisting of the written requirements and standards for *Products*, systems, workmanship, quality, and the services necessary for the performance of the *Work*.

Substantial Performance of the Work

Substantial Performance of the Work is as defined in the lien legislation applicable to the *Place of the Project*. If such legislation is not in force or does not contain such definition, or if the *Work* is governed by the Civil Code of Quebec, *Substantial Performance of the Work* shall have been reached when the *Work* is ready for use or is being used for the purpose intended and is so certified by the *Payment Certifier*.

Supplemental Instruction

A *Supplemental Instruction* is an instruction, not involving adjustment in the *Contract Price* or *Contract Time*, in the form of *Specifications*, *Drawings*, schedules, samples, models or written instructions, consistent with the intent of the *Contract Documents*. It is to be issued by the *Construction Manager* to supplement the *Contract Documents* as required for the performance of the *Work*.

Supplier

A *Supplier* is a person or entity having a direct contract with the *Trade Contractor* to supply *Products*.

Temporary Work

Temporary Work means temporary supports, structures, facilities, services, and other temporary items, excluding *Construction Equipment*, required for the execution of the *Work* but not incorporated into the *Work*.

Trade Contractor

The *Trade Contractor* is the person or entity identified as such in the Agreement.

Trade Subcontractor

A *Trade Subcontractor* is a person or entity having a direct contract with the *Trade Contractor* to perform a part or parts of the *Work* at the *Place of the Project*.

Value Added Taxes

Value Added Taxes means such sum as shall be levied upon the *Contract Price* by the Federal or any Provincial or Territorial Government and is computed as a percentage of the *Contract Price* and includes the Goods and Services Tax, the Quebec Sales Tax, the Harmonized Sales Tax, and any similar tax, the collection and payment of which have been imposed on the *Trade Contractor* by tax legislation.

Work

The *Work* means the total construction and related services required by the *Contract Documents*.

Working Day

Working Day means a day other than a Saturday, Sunday, statutory holiday, or statutory vacation day that is observed by the construction industry in the area of the *Place of the Project*.

GENERAL CONDITIONS OF THE CONTRACT

PART 1 GENERAL PROVISIONS

GC 1.1 CONTRACT DOCUMENTS

- 1.1.1 The intent of the *Contract Documents* is to include the labour, *Products*, and services necessary for the performance of the *Work* by the *Trade Contractor* in accordance with these documents. It is not intended, however, that the *Trade Contractor* shall supply products or perform work not consistent with, not covered by, or not properly inferable from the *Contract Documents*.
- 1.1.2 Nothing contained in the *Contract Documents* shall create any contractual relationship between:
- .1 the *Owner* and a *Trade Subcontractor*, a *Supplier*, or their agent, employee, or other person performing any of the *Work* ;
 - .2 the *Construction Manager* and the *Trade Contractor*, a *Trade Subcontractor*, a *Supplier*, or their agent, employee, or other person performing any portion of the *Work*; or
 - .3 the *Consultant* and the *Trade Contractor*, a *Trade Subcontractor*, a *Supplier*, or their agent, employee, or other person performing any portion of the *Work*.
- 1.1.3 The *Contract Documents* are complementary, and what is required by any one shall be as binding as if required by all.
- 1.1.4 Words and abbreviations which have well known technical or trade meanings are used in the *Contract Documents* in accordance with such recognized meanings.
- 1.1.5 Neither the organization of the *Specifications* nor the arrangement of *Drawings* shall control the *Trade Contractor* in dividing the work among *Trade Subcontractors* and *Suppliers*.
- 1.1.6 If there is a conflict within the *Contract Documents*:
- .1 the order of priority of documents, from highest to lowest, shall be
 - the Agreement between the *Owner* and *Trade Contractor*,
 - the Definitions,
 - Supplementary Conditions,
 - the General Conditions of the *Contract*,
 - Division 1 of the *Specifications*,
 - technical *Specifications*,
 - material and finishing schedules,
 - the *Drawings*.
 - .2 *Drawings* of larger scale shall govern over those of smaller scale of the same date.
 - .3 dimensions shown on *Drawings* shall govern over dimensions scaled from *Drawings*.
 - .4 later dated documents shall govern over earlier documents of the same type.
 - .5 noted materials and annotations shall govern over graphic indications.
- 1.1.7 The *Owner* shall provide the *Trade Contractor*, without charge, sufficient copies of the *Contract Documents* to perform the *Work*.
- 1.1.8 *Specifications*, *Drawings*, models, and copies thereof furnished by the *Consultant* are and shall remain the *Consultant's* property. Signed *Contract* sets shall belong to each party to the *Contract*. All *Specifications*, *Drawings* and models prepared by the *Consultant* and issued to the *Trade Contractor* are to be used only with respect to the *Work* and are not to be used on other work. These *Specifications*, *Drawings* and models are not to be copied or altered in any manner without the written authorization of the *Consultant*.
- 1.1.9 Models furnished by the *Trade Contractor* at the *Owner's* expense are the property of the *Owner*.

GC 1.2 LAW OF THE CONTRACT

- 1.2.1 The law of the *Place of the Project* shall govern the interpretation of the *Contract*.

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GC 1.3 RIGHTS AND REMEDIES

- 1.3.1 Except as expressly provided in the *Contract Documents*, the duties and obligations imposed by the *Contract Documents* and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law.
- 1.3.2 No action or failure to act by the *Owner*, *Construction Manager*, *Consultant*, *Payment Certifier*, or *Trade Contractor* shall constitute a waiver of any right or duty afforded any of them under the *Contract*, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

GC 1.4 ASSIGNMENT

- 1.4.1 Neither party to the *Contract* shall assign the *Contract* or a portion thereof without the written consent of the other, which consent shall not be unreasonably withheld.

PART 2 ADMINISTRATION OF THE CONTRACT**GC 2.1 AUTHORITY OF THE CONSTRUCTION MANAGER AND THE CONSULTANT**

- 2.1.1 The *Construction Manager* and the *Consultant* will have authority to act on behalf of the *Owner* only to the extent provided in the *Contract Documents*, unless otherwise modified by written agreement as provided in paragraph 2.1.2.
- 2.1.2 The duties, responsibilities and limitations of authority of the *Construction Manager* and the *Consultant* as set forth in the *Contract Documents* shall be modified or extended only with the written consent of the *Owner* and the *Trade Contractor*.
- 2.1.3 If the employment of the *Construction Manager* or the *Consultant* is terminated, the *Owner* shall immediately appoint or reappoint those against whom the *Trade Contractor* makes no reasonable objection and whose duties, responsibilities and limitations of authority under the *Contract Documents* will be that of the former *Construction Manager* or the former *Consultant*, as the case may be.
- 2.1.4 If the employment of the *Construction Manager* or the *Consultant* as the *Payment Certifier* is terminated, the *Owner* shall immediately appoint or reappoint the *Construction Manager* or the *Consultant* as the *Payment Certifier*.

GC 2.2 ROLES OF THE CONSTRUCTION MANAGER AND THE CONSULTANT

- 2.2.1 The *Construction Manager* will:
- 1 provide administration of the *Contract* as described in the *Contract Documents*;
 - 2 in the first instance, receive all questions in writing by the *Owner* or the *Trade Contractor* for interpretations and findings relating to the performance of the *Work* or the interpretation of the *Contract Documents* except with respect to GC 5.1 – FINANCING INFORMATION REQUIRED OF THE OWNER;
 - 3 in the first instance, give interpretations and make findings on matters in question relating to the performance of the *Work* or the requirements of the *Contract Documents*, except with respect to any and all architectural and engineering aspects of the *Work* or GC 5.1 – FINANCING INFORMATION REQUIRED OF THE OWNER; and
 - 4 during the progress of the *Work*, issue *Supplemental Instructions* to the *Trade Contractor* with reasonable promptness or in accordance with a schedule for such instructions agreed to by the *Construction Manager* and the *Trade Contractor*.
- 2.2.2 The *Consultant* will:
- 1 visit the *Place of the Project* at intervals appropriate to the progress of construction to become familiar with the progress and quality of the *Work* and to determine if the *Work* is proceeding in general conformity with the *Contract Documents*; and
 - 2 in the first instance, give interpretations and make findings on matters in question relating to the requirements of the design.
- 2.2.3 The *Construction Manager* and the *Consultant* will:
- 1 have authority to reject work which in their opinion does not conform to the requirements of the *Contract Documents* and whenever it is considered necessary or advisable, require inspection or testing of work, whether or not such work is fabricated, installed or completed. However, neither the authority of the *Construction Manager* or the *Consultant* to act nor any decision either to exercise or not to exercise such authority shall give rise to any duty or responsibility of the *Construction Manager* or the *Consultant* to the *Trade Contractor*, *Trade Subcontractors*, *Suppliers*, or their agents, employees, or other persons performing any of the *Work*; and

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- .2 give interpretations and make findings that relate to the *Work*. Such interpretations and findings shall be provided in writing within a reasonable time, and unless otherwise agreed with the *Owner* and the *Trade Contractor*, no later than 5 *Working Days* of a request. In making such interpretations and findings the *Construction Manager* and the *Consultant* will not show partiality to either the *Owner* or the *Trade Contractor*.

2.2.4 The *Construction Manager* and the *Consultant* will not:

- .1 be responsible for the *Trade Contractor's* failure to carry out the *Work* in accordance with the *Contract Documents*; and
 .2 have control over, charge of or be responsible for, the acts or omissions of the *Trade Contractor*, *Trade Subcontractors*, *Suppliers*, or their agents, employees, or any other persons performing portions of the *Work*.

GC 2.3 REVIEW AND INSPECTION OF THE WORK

- 2.3.1 The *Owner*, the *Construction Manager* and the *Consultant* shall have access to the *Work* at all times. The *Trade Contractor* shall provide sufficient, safe and proper facilities at all times for the review of the *Work* by the *Construction Manager* and the *Consultant* and the inspection of the *Work* by authorized agencies. If parts of the *Work* are in preparation at locations other than the *Place of the Project*, the *Owner*, the *Construction Manager* and the *Consultant* shall be given access to such work whenever it is in progress.
- 2.3.2 If work is designated for tests, inspections or approvals in the *Contract Documents*, or by the instructions of the *Construction Manager* or the *Consultant*, or by the laws or ordinances of the *Place of the Project*, the *Trade Contractor* shall give the *Construction Manager* reasonable notification of when the work will be ready for review and inspection. The *Trade Contractor* shall arrange for and shall give the *Construction Manager* reasonable notification of the date and time of inspections by other authorities.
- 2.3.3 The *Trade Contractor* shall furnish promptly to the *Construction Manager* copies of certificates and inspection reports relating to the *Work*.
- 2.3.4 If the *Trade Contractor* covers, or permits to be covered, work that has been designated for special tests, inspections or approvals before such special tests, inspections or approvals are made, given or completed, the *Trade Contractor* shall, if so directed, uncover such work, have the inspections or tests satisfactorily completed, and make good covering work at the *Trade Contractor's* expense.
- 2.3.5 The *Construction Manager* may order any portion or portions of the *Work* to be examined to confirm that such work is in accordance with the requirements of the *Contract Documents*. If the work is not in accordance with the requirements of the *Contract Documents*, the *Trade Contractor* shall correct the work and pay the cost of examination and correction. If the work is in accordance with the requirements of the *Contract Documents*, the *Owner* shall pay the cost of examination and restoration.
- 2.3.6 The *Trade Contractor* shall pay the cost of making any test or inspection if such test or inspection is designated in the *Contract Documents* to be performed by the *Trade Contractor* or is so designated by the laws or ordinances applicable to the *Place of the Project*.
- 2.3.7 The *Trade Contractor* shall pay the cost of samples required for any test or inspection to be performed by others if such test or inspection is designated in the *Contract Documents* or is required pursuant to paragraph 2.3.6.

GC 2.4 DEFECTIVE WORK

- 2.4.1 The *Trade Contractor* shall promptly correct defective work that has been rejected by the *Construction Manager* or the *Consultant* as failing to conform to the *Contract Documents* whether or not the defective work has been incorporated in the *Work* and whether or not the defect is the result of poor workmanship, use of defective products or damage through carelessness or other act or omission of the *Trade Contractor*.
- 2.4.2 The *Trade Contractor* shall make good promptly other contractors' work destroyed or damaged by such corrections at the *Trade Contractor's* expense.
- 2.4.3 If in the opinion of the *Construction Manager* it is not expedient to correct defective work or work not performed as provided in the *Contract Documents*, the *Owner* may deduct from the amount otherwise due to the *Trade Contractor* the difference in value between the work as performed and that called for by the *Contract Documents*. If the *Owner* and the *Trade Contractor* do not agree on the difference in value, they shall refer the matter to the *Construction Manager* for a finding.

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PART 3 EXECUTION OF THE WORK

GC 3.1 CONTROL OF THE WORK

- 3.1.1 The *Trade Contractor* shall have total control of the *Work* and shall effectively direct and supervise the *Work* so as to ensure conformity with the *Contract Documents*.
- 3.1.2 The *Trade Contractor*, and not the *Owner*, the *Construction Manager* or the *Consultant*, shall be responsible for construction means, methods, techniques, sequences, and procedures and for co-ordinating the various parts of the *Work* under the *Contract*.

GC 3.2 CONSTRUCTION BY OWNER, CONSTRUCTION MANAGER OR OTHER CONTRACTORS

- 3.2.1 The *Owner* shall:
- .1 provide for the co-ordination of the activities and work of other contractors and the *Owner's* and the *Construction Manager's* own forces with the *Work* of the *Contract*;
 - .2 enter into separate contracts with other contractors under conditions of contract which are compatible with the conditions of the *Contract*; and
 - .3 ensure that insurance coverage is provided to the same requirements as are called for in GC 11.1 – INSURANCE and co-ordinate such insurance with the insurance coverage of the *Trade Contractor* as it affects the *Work*.
- 3.2.2 The *Trade Contractor* shall:
- .1 afford the *Owner*, the *Construction Manager* and other contractors reasonable opportunity to store their products and execute their work;
 - .2 co-ordinate and schedule the *Work* with the work of other contractors as identified in the *Contract Documents*;
 - .3 participate with other contractors and the *Construction Manager* in reviewing their construction schedules when directed to do so;
 - .4 report promptly to the *Construction Manager* in writing any apparent deficiencies in the work of other contractors or the *Owner's* or *Construction Manager's* own forces, where such work affects the proper execution of any portion of the *Work*, prior to proceeding with that portion of the *Work*; and
 - .5 take all reasonable precautions to avoid labour disputes or other disputes on the *Project* arising from the work of other contractors.
- 3.2.3 Where a change in the *Work* is required as a result of the co-ordination and integration of the work of other contractors or the *Owner's* or *Construction Manager's* own forces with the *Work*, the changes shall be authorized and valued as provided in GC 6.1 – OWNER'S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER and GC 6.3 – CHANGE DIRECTIVE.
- 3.2.4 Disputes and other matters in question between the *Trade Contractor* and other contractors shall be dealt with as provided in Part 8 of the General Conditions – DISPUTE RESOLUTION provided the other contractors have reciprocal obligations. The *Trade Contractor* shall be deemed to have consented to arbitration of any dispute with any other contractor whose contract with the *Owner* contains a similar agreement to arbitrate. In the absence of other contractors having reciprocal obligations, disputes and other matters in question initiated by the *Trade Contractor* against other contractors will be considered disputes and other matters in question between the *Trade Contractor* and the *Owner*.

GC 3.3 TEMPORARY WORK

- 3.3.1 The *Trade Contractor* shall have the responsibility for the design, erection, operation, maintenance, and removal of *Temporary Work* unless otherwise specified in the *Contract Documents*.
- 3.3.2 The *Trade Contractor* shall engage and pay for registered professional engineering personnel skilled in the appropriate disciplines to perform those functions referred to in paragraph 3.3.1 where required by law or by the *Contract Documents* and in all cases where such *Temporary Work* is of such a nature that professional engineering skill is required to produce safe and satisfactory results.
- 3.3.3 Notwithstanding the provisions of GC 3.1 – CONTROL OF THE WORK, paragraphs 3.3.1 and 3.3.2 or provisions to the contrary elsewhere in the *Contract Documents* where such *Contract Documents* include designs for *Temporary Work* or specify a method of construction in whole or in part, such designs or methods of construction shall be considered to be part of the design of the *Work* and the *Trade Contractor* shall not be held responsible for that part of the design or the specified method of construction. The *Trade Contractor* shall, however, be responsible for the execution of such design or specified method of construction in the same manner as for the execution of the *Work*.

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GC 3.4 DOCUMENT REVIEW

3.4.1 The *Trade Contractor* shall review the *Contract Documents* and shall report promptly to the *Construction Manager* any error, inconsistency, or omission the *Trade Contractor* may discover. Such review by the *Trade Contractor* shall be to the best of the *Trade Contractor's* knowledge, information and belief and in making such review the *Trade Contractor* does not assume any responsibility to the *Owner*, the *Construction Manager*, or the *Consultant* for the accuracy of the review. The *Trade Contractor* shall not be liable for damage or costs resulting from such errors, inconsistencies or omissions in the *Contract Documents* which the *Trade Contractor* did not discover. If the *Trade Contractor* does discover any error, inconsistency or omission in the *Contract Documents*, the *Trade Contractor* shall not proceed with the work affected until the *Trade Contractor* has received corrected or missing information from the *Construction Manager*.

GC 3.5 CONSTRUCTION SCHEDULE

3.5.1 The *Construction Manager* will provide to the *Trade Contractor* the *Project* schedule that indicates the timing of the major activities of the *Project* in sufficient detail for the *Trade Contractor* to schedule the *Work*.

3.5.2 The *Construction Manager* will monitor the progress of the *Work* relative to the *Project* schedule and update the *Project* schedule on a monthly basis.

3.5.3 The *Trade Contractor* shall:

- .1 prepare and submit to the *Construction Manager* within 15 calendar days after its receipt of the *Project* schedule, a construction schedule that indicates the timing of the major activities of the *Work* and provides sufficient detail of the critical events and their inter-relationship to demonstrate that the *Work* will be performed in conformity with the *Project* schedule;
- .2 monitor the progress of the *Work* relative to the construction schedule and update the schedule on a monthly basis or as stipulated by the *Contract Documents*; and
- .3 advise the *Construction Manager* of any revisions required to the schedule as the result of extensions of the *Contract Time* as provided in Part 6 of the General Conditions - CHANGES IN THE WORK.

GC 3.6 SUPERVISION

3.6.1 The *Trade Contractor* shall provide all necessary supervision and appoint a competent representative who shall be in attendance at the *Place of the Project* while work is being performed. The appointed representative shall not be changed except for valid reason.

3.6.2 The appointed representative shall represent the *Trade Contractor* at the *Place of the Project*. Information and instructions provided in accordance with the *Contract* by the *Construction Manager* to the appointed representative shall be deemed to have been received by the *Trade Contractor*, except with respect to Article A-7 of the Agreement - RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING.

GC 3.7 TRADE SUBCONTRACTORS AND SUPPLIERS

3.7.1 The *Trade Contractor* shall preserve and protect the rights of the parties under the *Contract* with respect to work to be performed under subcontract, and shall:

- .1 enter into contracts or written agreements with *Trade Subcontractors* and *Suppliers* to require them to perform their work as provided in the *Contract Documents*;
- .2 incorporate the terms and conditions of the *Contract Documents* into all contracts or written agreements with *Trade Subcontractors* and *Suppliers*; and
- .3 be as fully responsible to the *Owner* for acts and omissions of *Trade Subcontractors*, *Suppliers* and of persons directly or indirectly employed by them as for acts and omissions of persons directly employed by the *Trade Contractor*.

3.7.2 The *Trade Contractor* shall indicate in writing, if requested by the *Construction Manager*, those *Trade Subcontractors* or *Suppliers* whose bids have been received by the *Trade Contractor* which the *Trade Contractor* would be prepared to accept for the performance of a portion of the *Work*. Should the *Owner* not object before signing the *Contract*, the *Trade Contractor* shall employ those *Trade Subcontractors* or *Suppliers* so identified by the *Trade Contractor* in writing for the performance of that portion of the *Work* to which their bid applies.

3.7.3 The *Owner* may, for reasonable cause, at any time before the *Owner* has signed the *Contract*, object to the use of a proposed *Trade Subcontractor* or *Supplier* and require the *Trade Contractor* to employ one of the other trade subcontract bidders.

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- 3.7.4 If the *Owner* requires the *Trade Contractor* to change a proposed *Trade Subcontractor* or *Supplier*, the *Contract Price* and *Contract Time* shall be adjusted by the difference occasioned by such required change.
- 3.7.5 The *Trade Contractor* shall not be required to employ as a *Trade Subcontractor* or *Supplier*, a person or firm to whom the *Trade Contractor* may reasonably object.
- 3.7.6 The *Owner*, through the *Construction Manager*, may provide to a *Trade Subcontractor* or *Supplier* information as to the percentage of the *Trade Subcontractor's* or *Supplier's* work which has been certified for payment.

GC 3.8 LABOUR AND PRODUCTS

- 3.8.1 The *Trade Contractor* shall maintain good order and discipline among the *Trade Contractor's* employees engaged in the *Work* and shall not employ in the *Work* anyone not skilled in the tasks assigned.
- 3.8.2 The *Trade Contractor* shall provide and pay for labour, *Products*, tools, *Construction Equipment*, water, heat, light, power, transportation, and other facilities and services necessary for the performance of the *Work* in accordance with the *Contract*.
- 3.8.3 Unless otherwise specified in the *Contract Documents*, *Products* provided shall be new. *Products* which are not specified shall be of a quality consistent with those specified and their use acceptable to the *Consultant*.

GC 3.9 DOCUMENTS AT THE SITE

- 3.9.1 The *Trade Contractor* shall keep one copy of current *Contract Documents*, submittals, reports, and records of meetings at the *Place of the Project*, in good order and available to the *Construction Manager* and the *Consultant*.

GC 3.10 SHOP DRAWINGS

- 3.10.1 The *Trade Contractor* shall provide *Shop Drawings* as required in the *Contract Documents*.
- 3.10.2 The *Trade Contractor* shall provide *Shop Drawings* to the *Construction Manager* for review by the *Construction Manager* and the *Consultant* in orderly sequence and sufficiently in advance so as to cause no delay in the *Work* or in the work of other contractors.
- 3.10.3 The *Trade Contractor*, the *Consultant* and the *Construction Manager* shall jointly prepare a schedule of the dates for provision, review and return of *Shop Drawings* upon request by any one of them.
- 3.10.4 The *Trade Contractor* shall provide *Shop Drawings* in the form specified, or if not specified, as directed by the *Consultant*.
- 3.10.5 *Shop Drawings* provided by the *Trade Contractor* to the *Construction Manager* shall indicate by stamp, date and signature of the person responsible for the review that the *Trade Contractor* has reviewed each one of them.
- 3.10.6 The *Consultant's* review is for conformity to the design concept and for general arrangement only.
- 3.10.7 *Shop Drawings* which require approval of any legally constituted authority having jurisdiction shall be provided to such authority by the *Trade Contractor* for approval.
- 3.10.8 The *Trade Contractor* shall review all *Shop Drawings* before providing them to the *Construction Manager*. The *Trade Contractor* represents by this review that:
- .1 the *Trade Contractor* has determined and verified all field measurements, field construction conditions, *Product* requirements, catalogue numbers and similar data, or will do so; and
 - .2 the *Trade Contractor* has checked and co-ordinated each *Shop Drawing* with the requirements of the *Work* and of the *Contract Documents*.
- 3.10.9 At the time of providing *Shop Drawings*, the *Trade Contractor* shall expressly advise the *Construction Manager* in writing of any deviations in a *Shop Drawing* from the requirements of the *Contract Documents*. The *Construction Manager* shall indicate the *Consultant's* acceptance or rejection of such deviation expressly in writing.
- 3.10.10 If *Shop Drawings* are found to be in order, the *Construction Manager* will forward them to the *Consultant*. If the *Construction Manager* or the *Consultant* find the *Shop Drawings* incomplete or not in order, the *Construction Manager* may request the *Trade Contractor* to provide revised *Shop Drawings*.
- 3.10.11 The review by the *Construction Manager* and the *Consultant* shall not relieve the *Trade Contractor* of responsibility for errors or omissions in the *Shop Drawings* or for meeting all requirements of the *Contract Documents*.

- 3.10.12 The *Trade Contractor* shall provide revised *Shop Drawings* to correct those which the *Construction Manager* found to be incomplete or not in order or the *Consultant* rejects as inconsistent with the *Contract Documents*. The *Trade Contractor* shall notify the *Construction Manager* in writing of any revisions to the *Shop Drawings* other than those requested by the *Construction Manager* or the *Consultant*.
- 3.10.13 The *Construction Manager* will return *Shop Drawings* in accordance with the schedule agreed upon, or, in the absence of such schedule, with reasonable promptness so as to cause no delay in the performance of the *Work*.

GC 3.11 USE OF THE SITE

- 3.11.1 The *Trade Contractor* shall confine *Construction Equipment*, *Temporary Work*, storage of *Products*, waste products and debris, and operations of employees and *Trade Subcontractors* to limits indicated by laws, ordinances, permits, or the *Contract Documents* and shall not unreasonably encumber the *Place of the Project*.
- 3.11.2 The *Trade Contractor* shall not load or permit to be loaded any part of the *Project* with a weight or force that will endanger the safety of the *Project*.

GC 3.12 CUTTING AND REMEDIAL WORK

- 3.12.1 The *Trade Contractor* shall perform the cutting and remedial work required to make the affected parts of the *Work* come together properly.
- 3.12.2 The *Trade Contractor* shall co-ordinate the *Work* to ensure that the cutting and remedial work is kept to a minimum.
- 3.12.3 Should the *Owner*, the *Construction Manager*, the *Consultant*, other contractors, or anyone employed by them be responsible for ill-timed work necessitating cutting or remedial work to be performed, the *Contract Price* and the *Contract Time* shall be adjusted as provided in GC 6.2 - CHANGE ORDER and GC 6.3 - CHANGE DIRECTIVE.
- 3.12.4 Cutting and remedial work shall be performed by specialists familiar with the *Products* affected and shall be performed in a manner to neither damage nor endanger the *Project*.

GC 3.13 CLEANUP

- 3.13.1 The *Trade Contractor* shall maintain the *Work* in a safe and tidy condition and free from the accumulation of waste products and debris, other than that caused by the *Owner*, the *Construction Manager*, other contractors, or their employees.
- 3.13.2 Before applying for *Substantial Performance of the Work* as provided in GC 5.4 – SUBSTANTIAL PERFORMANCE OF THE WORK, the *Trade Contractor* shall remove waste products and debris, other than that resulting from the work of the *Owner*, the *Construction Manager*, other contractors, or their employees, and shall leave the *Place of the Project* clean and suitable for use or occupancy by the *Owner*. The *Trade Contractor* shall remove products, tools, *Construction Equipment*, and *Temporary Work* not required for the performance of the remaining *Work*.
- 3.13.3 Prior to application for the final payment, the *Trade Contractor* shall remove any remaining *Products*, tools, *Construction Equipment*, *Temporary Work*, and waste products and debris, other than those resulting from the work of the *Owner*, the *Construction Manager*, other contractors, or their employees.

PART 4 ALLOWANCES

GC 4.1 CASH ALLOWANCES

- 4.1.1 The *Contract Price* includes the cash allowances, if any, stated in the *Contract Documents*. The scope of work or costs included in such cash allowances shall be as described in the *Contract Documents*.
- 4.1.2 The *Contract Price*, and not the cash allowances, includes the *Trade Contractor's* overhead and profit in connection with such cash allowances.
- 4.1.3 Expenditures under cash allowances shall be authorized by the *Owner* through the *Construction Manager*.

- 4.1.4 Where the actual cost of the *Work* under any cash allowance exceeds the amount of the allowance, the *Trade Contractor* shall be compensated for the excess incurred and substantiated plus an amount for overhead and profit on the excess as set out in the *Contract Documents*. Where the actual cost of the *Work* under any cash allowance is less than the amount of the allowance, the *Owner* shall be credited for the unexpended portion of the cash allowance, but not for the *Trade Contractor's* overhead and profit on such amount. Multiple cash allowances shall not be combined for the purpose of calculating the foregoing.
- 4.1.5 The *Contract Price* shall be adjusted by *Change Order* to provide for any difference between the amount of each cash allowance and the actual cost of the *Work* under that cash allowance.
- 4.1.6 The value of the work performed under a cash allowance is eligible to be included in progress payments.
- 4.1.7 The *Trade Contractor* and the *Construction Manager* shall jointly prepare a schedule that shows when items called for under cash allowances must be ordered to avoid delaying the progress of the *Work*.

GC 4.2 CONTINGENCY ALLOWANCE

- 4.2.1 The *Contract Price* includes the contingency allowance, if any, stated in the *Contract Documents*.
- 4.2.2 The contingency allowance includes the *Trade Contractor's* overhead and profit in connection with such contingency allowance.
- 4.2.3 Expenditures under the contingency allowance shall be authorized and valued as provided in GC 6.1 – OWNER'S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER, and GC 6.3 – CHANGE DIRECTIVE.
- 4.2.4 The *Contract Price* shall be adjusted by *Change Order* to provide for any difference between the expenditures authorized under paragraph 4.2.3 and the contingency allowance.

PART 5 PAYMENT

GC 5.1 FINANCING INFORMATION REQUIRED OF THE OWNER

- 5.1.1 The *Owner* shall, at the request of the *Trade Contractor*, before signing the *Contract*, and promptly from time to time thereafter, furnish to the *Trade Contractor* reasonable evidence that financial arrangements have been made to fulfill the *Owner's* obligations under the *Contract*.
- 5.1.2 The *Owner* shall give the *Trade Contractor Notice in Writing* of any material change in the *Owner's* financial arrangements to fulfill the *Owner's* obligations under the *Contract* during the performance of the *Contract*.

GC 5.2 APPLICATIONS FOR PAYMENT

- 5.2.1 Applications for payment on account as provided in Article A-5 of the Agreement – PAYMENT may be made monthly to the *Construction Manager* as the *Work* progresses.
- 5.2.2 Applications for payment shall be dated the last day of each payment period, which is the last day of the month or an alternative day of the month agreed in writing by the parties.
- 5.2.3 The amount claimed shall be for the value, proportionate to the amount of the *Contract*, of *Work* performed and *Products* delivered to the *Place of the Project* as of the last day of the payment period.
- 5.2.4 The *Trade Contractor* shall submit to the *Construction Manager*, at least 15 calendar days before the first application for payment, a schedule of values for the parts of the *Work*, aggregating the total amount of the *Contract Price*, so as to facilitate evaluation of applications for payment.
- 5.2.5 The schedule of values shall be made out in such form and supported by such evidence as the *Payment Certifier* may reasonably require and when accepted by the *Payment Certifier*, shall be used as the basis for applications for payment, unless it is found to be in error.
- 5.2.6 The *Trade Contractor* shall include:
- .1 with each application for payment a statement based on the schedule of values, and
 - .2 with each of the second and subsequent applications for payment a CCDC 9A 'Statutory Declaration' to state that all accounts for labour, subcontracts, *Products*, *Construction Equipment*, and other indebtedness which may have been incurred by the *Trade Contractor* as of the last day of the payment period or an alternative day agreed by the parties and for which the *Owner* might in any way be held responsible have been paid in full, except for amounts properly retained as a holdback or as an identified amount in dispute.

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- 5.2.7 Applications for payment for *Products* delivered to the *Place of the Project* but not yet incorporated into the *Work* shall be supported by such evidence as the *Payment Certifier* may reasonably require to establish the value and delivery of the *Products*.

GC 5.3 PROGRESS PAYMENT

- 5.3.1 After the *Construction Manager* receives an application for payment from the *Trade Contractor* as described in GC 5.2 APPLICATIONS FOR PAYMENT:
- .1 the *Construction Manager* will promptly inform the *Owner* of the date of receipt of the *Trade Contractor's* application for payment and promptly forward a copy of the application for payment to the *Consultant*;
 - .2 the *Payment Certifier* will issue to the *Owner* and copy to the *Trade Contractor* and to the *Construction Manager* and the *Consultant*, as the case may be, no later than 10 calendar days after the receipt by the *Construction Manager* of the application for payment, a certificate for payment in the amount applied for, or in such other amount as the *Payment Certifier* determines to be properly due. If the *Payment Certifier* amends the application, the *Payment Certifier* will promptly advise the *Trade Contractor* in writing giving reasons for the amendment; and
 - .3 the *Owner* shall make payment to the *Trade Contractor* on account as provided in Article A-5 of the Agreement – PAYMENT on or before 20 calendar days after the later of:
 - receipt by the *Construction Manager* of the application for payment, or
 - the last day of the monthly payment period for which the application for payment is made.

GC 5.4 SUBSTANTIAL PERFORMANCE OF THE WORK

- 5.4.1 When the *Trade Contractor* considers that the *Work* is substantially performed, or if permitted by the lien legislation applicable to the *Place of the Project* a designated portion thereof which the *Owner* agrees to accept separately is substantially performed, the *Trade Contractor* shall, within one *Working Day*, deliver to the *Construction Manager* and to the *Owner* a comprehensive list of items to be completed or corrected, together with a written application for a review and verification by the *Construction Manager* and the *Consultant* to establish *Substantial Performance of the Work* or of the designated portion of the *Work*. Failure to include an item on the list does not alter the responsibility of the *Trade Contractor* to complete the *Contract*.
- 5.4.2 The *Construction Manager* and the *Consultant* will review the *Work* to verify the validity of the application and whichever of them is the *Payment Certifier*, acting in that capacity, will promptly, and in any event, no later than 20 calendar days after the *Construction Manager's* receipt of the *Trade Contractor's* list and application:
- .1 advise the *Trade Contractor* in writing that the *Work* or the designated portion of the *Work* is not substantially performed and give reasons why, or
 - .2 state the date of *Substantial Performance of the Work* or a designated portion of the *Work* in a certificate and issue a copy of that certificate to each of the *Owner* and the *Trade Contractor*.
- 5.4.3 Immediately following the issuance of the certificate of *Substantial Performance of the Work* or a designated portion of the *Work*, the *Trade Contractor*, in consultation with the *Construction Manager*, will establish a reasonable date for completing the *Work*.

GC 5.5 PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK

- 5.5.1 After the issuance of the certificate of *Substantial Performance of the Work*, the *Trade Contractor* shall submit to the *Construction Manager* an application for payment of the holdback amount including a CCDC 9A 'Statutory Declaration'.
- 5.5.2 After the *Construction Manager* receives an application for payment of the holdback amount from the *Trade Contractor*, whichever of the *Construction Manager* and the *Consultant* who is the *Payment Certifier*, and acting in that capacity, will issue a certificate for payment of the holdback amount.
- 5.5.3 Where the holdback amount required by the applicable lien legislation has not been placed in a separate holdback account, the *Owner* shall, 10 calendar days prior to the expiry of the holdback period stipulated in the lien legislation applicable to the *Place of the Project*, place the holdback amount in a bank account in the joint names of the *Owner* and the *Trade Contractor*.
- 5.5.4 In the common law jurisdictions, the holdback amount authorized by the certificate for payment of the holdback amount is due and payable on the first calendar day following the expiration of the holdback period stipulated in the lien legislation applicable to the *Place of the Project*. Where lien legislation does not exist or apply, the holdback amount shall be due and payable in accordance with other legislation, industry practice or provisions which may be agreed to between the parties. The *Owner* may retain out of the holdback amount any sums required by law to satisfy any liens against the *Work* or, if permitted by the lien legislation applicable to the *Place of the Project*, other third party monetary claims against the *Trade Contractor* which are enforceable against the *Owner*.

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- 5.5.5 In the Province of Quebec, the holdback amount authorized by the certificate for payment of the holdback amount is due and payable 30 calendar days after the issuance of the certificate. The *Owner* may retain out of the holdback amount any sums required to satisfy any legal hypothecs that have been taken, or could be taken, against the *Work* or other third party monetary claims against the *Trade Contractor* which are enforceable against the *Owner*.

GC 5.6 PROGRESSIVE RELEASE OF HOLDBACK

- 5.6.1 In the Common Law jurisdictions, where legislation permits and where, upon application by the *Trade Contractor*, the *Payment Certifier* has certified that the work of a *Trade Subcontractor* or *Supplier* has been performed prior to *Substantial Performance of the Work*, the *Owner* shall pay the *Trade Contractor* the holdback amount retained for such subcontract work, or the *Products* supplied by such *Supplier*, on the first calendar day following the expiration of the holdback period for such work stipulated in the lien legislation applicable to the *Place of the Project*. The *Owner* may retain out of the holdback amount any sums required by law to satisfy any liens against the *Work* or, if permitted by the lien legislation applicable to the *Place of the Project*, other third party monetary claims against the *Trade Contractor* which are enforceable against the *Owner*.
- 5.6.2 In the Province of Quebec, where, upon application by the *Trade Contractor*, the *Payment Certifier* has certified that the work of a *Trade Subcontractor* or *Supplier* has been performed prior to *Substantial Performance of the Work*, the *Owner* shall pay the *Trade Contractor* the holdback amount retained for such subcontract work, or the *Products* supplied by such *Supplier*, no later than 30 calendar days after such certification by the *Payment Certifier*. The *Owner* may retain out of the holdback amount any sums required to satisfy any legal hypothecs that have been taken, or could be taken, against the *Work* or other third party monetary claims against the *Trade Contractor* which are enforceable against the *Owner*.
- 5.6.3 Notwithstanding the provisions of the preceding paragraphs, and notwithstanding the wording of such certificates, the *Trade Contractor* shall ensure that such subcontract work or *Products* are protected pending the *Substantial Performance of the Work* and be responsible for the correction of defects or work not performed regardless of whether or not such was apparent when such certificates were issued.

GC 5.7 FINAL PAYMENT

- 5.7.1 When the *Trade Contractor* considers that the *Work* is completed, the *Trade Contractor* shall submit an application for final payment to the *Construction Manager*
- 5.7.2 No later than 10 calendar days after the receipt by the *Construction Manager* an application for final payment from the *Trade Contractor*:
- .1 the *Construction Manager* and the *Consultant* will review the *Work* to verify the validity of the application, and
 - .2 the *Payment Certifier* will advise the *Trade Contractor* in writing that the application is valid or give reasons why it is not valid.
- 5.7.3 When the *Construction Manager* and the *Consultant* find the *Trade Contractor's* application for final payment valid, whichever of them is the *Payment Certifier*, and acting in that capacity, will promptly issue a final certificate for payment.
- 5.7.4 Subject to the provision of paragraph 10.4.1 of GC 10.4 – WORKERS' COMPENSATION, and any lien legislation applicable to the *Place of the Project*, the *Owner* shall, no later than 5 calendar days after the issuance of a final certificate for payment, pay the *Trade Contractor* as provided in Article A-5 of the Agreement – PAYMENT.

GC 5.8 WITHHOLDING OF PAYMENT

- 5.8.1 If because of climatic or other conditions reasonably beyond the control of the *Trade Contractor*, there are items of work that cannot be performed, payment in full for that portion of the *Work* which has been performed as certified by the *Payment Certifier* shall not be withheld or delayed by the *Owner* on account thereof, but the *Owner* may withhold, until the remaining portion of the *Work* is finished, only such an amount that the *Payment Certifier* determines is sufficient and reasonable to cover the cost of performing such remaining *Work*.

GC 5.9 NON-CONFORMING WORK

- 5.9.1 No payment by the *Owner* under the *Contract* nor partial or entire use or occupancy of the *Work* by the *Owner* shall constitute an acceptance of any portion of the *Work* or *Products* which are not in accordance with the requirements of the *Contract Documents*.

PART 6 CHANGES IN THE WORK

GC 6.1 OWNER'S RIGHT TO MAKE CHANGES

- 6.1.1 The *Owner* without invalidating the *Contract*, may make:
- .1 changes in the *Work* consisting of additions, deletions or other revisions to the *Work* by *Change Order* or *Change Directive*, and
 - .2 changes to the *Contract Time* for the *Work*, or any part thereof, by *Change Order*.
- 6.1.2 The *Trade Contractor* shall not perform a change in the *Work* without a *Change Order* or a *Change Directive*.

GC 6.2 CHANGE ORDER

- 6.2.1 When a change in the *Work* is proposed or required, the *Construction Manager* will provide the *Trade Contractor* with a written description of the proposed change in the *Work*. The *Trade Contractor* shall promptly present, in a form acceptable to the *Construction Manager*, a method of adjustment or an amount of adjustment for the *Contract Price*, if any, and the adjustment in the *Contract Time*, if any, for the proposed change in the *Work*.
- 6.2.2 When the *Owner* and *Trade Contractor* agree to the adjustments in the *Contract Price* and *Contract Time* or to the method to be used to determine the adjustments, such agreement shall be effective immediately and shall be recorded in a *Change Order*. The value of the work performed as the result of a *Change Order* shall be included in the applications for progress payment.

GC 6.3 CHANGE DIRECTIVE

- 6.3.1 If the *Owner* requires the *Trade Contractor* to proceed with a change in the *Work* prior to the *Owner* and the *Trade Contractor* agreeing upon the corresponding adjustment in *Contract Price* and *Contract Time*, the *Owner*, through the *Construction Manager*, shall issue a *Change Directive*.
- 6.3.2 A *Change Directive* shall only be used to direct a change in the *Work* which is within the general scope of the *Contract Documents*.
- 6.3.3 A *Change Directive* shall not be used to direct a change in the *Contract Time* only.
- 6.3.4 Upon receipt of a *Change Directive*, the *Trade Contractor* shall proceed promptly with the change in the *Work*.
- 6.3.5 For the purpose of valuing *Change Directives*, changes in the *Work* that are not substitutions or otherwise related to each other shall not be grouped together in the same *Change Directive*.
- 6.3.6 The adjustment in the *Contract Price* for a change carried out by way of a *Change Directive* shall be determined on the basis of the cost of the *Trade Contractor's* actual expenditures and savings attributable to the *Change Directive*, valued in accordance with paragraph 6.3.7 and as follows:
- .1 If the change results in a net increase in the *Trade Contractor's* cost, the *Contract Price* shall be increased by the amount of the net increase in the *Trade Contractor's* cost, plus the *Trade Contractor's* percentage fee on such net increase.
 - .2 If the change results in a net decrease in the *Trade Contractor's* cost, the *Contract Price* shall be decreased by the amount of the net decrease in the *Trade Contractor's* cost, without adjustment for the *Trade Contractor's* percentage fee.
 - .3 The *Trade Contractor's* fee shall be as specified in the *Contract Documents* or as otherwise agreed by the parties.
- 6.3.7 The cost of performing the work attributable to the *Change Directive* shall be limited to the actual cost of the following:
- .1 salaries, wages and benefits paid to personnel in the direct employ of the *Trade Contractor* under a salary or wage schedule agreed upon by the *Owner* and the *Trade Contractor*, or in the absence of such a schedule, actual salaries, wages and benefits paid under applicable bargaining agreements, and in the absence of a salary or wage schedule and bargaining agreement, actual salaries, wages and benefits paid by the *Trade Contractor*, for personnel:
 - (1) stationed at the *Trade Contractor's* field office, in whatever capacity employed;
 - (2) engaged in expediting the production or transportation of material or equipment, at shops or on the road;
 - (3) engaged in the preparation or review of *Shop Drawings*, fabrication drawings, and coordination drawings; or
 - (4) engaged in the processing of changes in the *Work*.
 - .2 contributions, assessments or taxes incurred for such items as employment insurance, provincial or territorial health insurance, workers' compensation, and Canada or Quebec Pension Plan, insofar as such cost is based on wages, salaries or other remuneration paid to employees of the *Trade Contractor* and included in the cost of the *Work* as provided in paragraph 6.3.7.1;

- .3 travel and subsistence expenses of the *Trade Contractor's* personnel described in 6.3.7.1;
- .4 all *Products* including the cost of transportation thereof;
- .5 materials, supplies, *Construction Equipment*, *Temporary Work*, and hand tools not owned by the workers, including transportation and maintenance thereof, which are consumed in the performance of the *Work*; and cost less salvage value on such items used but not consumed, which remain the property of the *Trade Contractor*;
- .6 all tools and *Construction Equipment*, exclusive of hand tools used in the performance of the *Work*, whether rented from or provided by the *Trade Contractor* or others, including installation, minor repairs and replacements, dismantling, removal, transportation and delivery cost thereof;
- .7 all equipment and services required for the *Trade Contractor's* field office;
- .8 deposits lost, provided that they are not caused by negligent acts or omissions of the *Construction Manager* and the *Services* are performed in accordance with this *Contract*.
- .9 the amounts of all subcontracts;
- .10 quality assurance such as independent inspection and testing services;
- .11 charges levied by authorities having jurisdiction at the *Place of the Project*;
- .12 royalties, patent license fees and damages for infringement of patents and cost of defending suits therefor subject always to the *Trade Contractor's* obligations to indemnify the *Owner* as provided in paragraph 10.3.1 of GC 10.3 – PATENT FEES;
- .13 any adjustment in premiums for all bonds and insurance which the *Trade Contractor* is required, by the *Contract Documents*, to purchase and maintain;
- .14 any adjustment in taxes, other than *Value Added Taxes*, and duties for which the *Trade Contractor* is liable;
- .15 charges for long distance communications, courier services, expressage, printing, and reproduction incurred in relation to the performance of the *Work*;
- .16 removal and disposal of waste products and debris; and
- .17 safety measures and requirements.

- 6.3.8 Notwithstanding any other provisions contained in the General Conditions of the *Contract*, it is the intention of the parties that the cost of any item under any cost element referred to in paragraph 6.3.7 shall cover and include any and all costs or liabilities attributable to the *Change Directive* other than those which are the result of or occasioned by any failure on the part of the *Trade Contractor* to exercise reasonable care and diligence in the *Trade Contractor's* attention to the *Work*. Any cost due to failure on the part of the *Trade Contractor* to exercise reasonable care and diligence in the *Trade Contractor's* attention to the *Work* shall be borne by the *Trade Contractor*.
- 6.3.9 The *Trade Contractor* shall keep full and detailed accounts and records necessary for the documentation of the cost of performing the work attributable to the *Change Directive* and shall provide the *Construction Manager* with copies thereof when requested.
- 6.3.10 For the purpose of valuing *Change Directives*, the *Owner* and the *Construction Manager* shall be afforded reasonable access to all of the *Trade Contractor's* pertinent documents related to the cost of performing the *Work* attributable to the *Change Directive*.
- 6.3.11 Pending determination of the final amount of a *Change Directive*, the undisputed value of the *Work* performed as the result of a *Change Directive* is eligible to be included in progress payments.
- 6.3.12 If the *Owner* and the *Trade Contractor* do not agree on the proposed adjustment in the *Contract Time* attributable to the change in the *Work*, or the method of determining it, the adjustment shall be referred to the *Construction Manager* for finding.
- 6.3.13 When the *Owner* and the *Trade Contractor* reach agreement on the adjustment to the *Contract Price* and to the *Contract Time*, this agreement shall be recorded in a *Change Order*.

GC 6.4 CONCEALED OR UNKNOWN CONDITIONS

- 6.4.1 If the *Owner*, the *Trade Contractor* or the *Construction Manager* discover conditions at the *Place of the Project* which are:
- .1 subsurface or otherwise concealed physical conditions which existed before the commencement of the *Work* which differ materially from those indicated in the *Contract Documents*; or
 - .2 physical conditions, other than conditions due to weather, that are of a nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the *Contract Documents*,
- then the observing party shall give *Notice in Writing* to the *Construction Manager* of such conditions before they are disturbed and in no event later than 5 *Working Days* after first observance of the conditions. The *Construction Manager* will promptly inform the *Owner*, the *Trade Contractor* and the *Consultant* in writing.

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- 6.4.2 The *Construction Manager* will promptly investigate such conditions and make a finding. If the finding is that the conditions differ materially and this would cause an increase or decrease in the *Trade Contractor's* cost or time to perform the *Work*, the *Construction Manager*, with the *Owner's* approval, will issue appropriate instructions for a change in the *Work* as provided in GC 6.2 – CHANGE ORDER or GC 6.3 – CHANGE DIRECTIVE.
- 6.4.3 If the *Construction Manager* finds that the conditions at the *Place of the Project* are not materially different or that no change in the *Contract Price* or the *Contract Time* is justified, the *Construction Manager* will promptly inform the *Owner* and the *Trade Contractor* in writing.
- 6.4.4 If such concealed or unknown conditions relate to toxic and hazardous substances and materials, artifacts and fossils, or mould, the parties will be governed by the provisions of GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES, GC 9.3 – ARTIFACTS AND FOSSILS and GC 9.5 – MOULD.

GC 6.5 DELAYS

- 6.5.1 If the *Trade Contractor* is delayed in the performance of the *Work* by an action or omission of the *Owner*, the *Construction Manager*, the *Consultant*, or anyone employed or engaged by them directly or indirectly, contrary to the provisions of the *Contract Documents*, then the *Contract Time* shall be extended for such reasonable time as the *Construction Manager* may recommend in consultation with the *Trade Contractor*. The *Trade Contractor* shall be reimbursed by the *Owner* for reasonable costs incurred by the *Trade Contractor* as the result of such delay.
- 6.5.2 If the *Trade Contractor* is delayed in the performance of the *Work* by a stop work order issued by a court or other public authority and providing that such order was not issued as the result of an act or fault of the *Trade Contractor* or any person employed or engaged by the *Trade Contractor* directly or indirectly, then the *Contract Time* shall be extended for such reasonable time as the *Construction Manager* may recommend in consultation with the *Trade Contractor*. The *Trade Contractor* shall be reimbursed by the *Owner* for reasonable costs incurred by the *Trade Contractor* as the result of such delay.
- 6.5.3 If the *Trade Contractor* is delayed in the performance of the *Work* by:
- .1 labour disputes, strikes, lock-outs (including lock-outs decreed or recommended for its members by a recognized contractors' association, of which the *Trade Contractor* is a member or to which the *Trade Contractor* is otherwise bound),
 - .2 fire, unusual delay by common carriers or unavoidable casualties,
 - .3 abnormally adverse weather conditions, or
 - .4 any cause beyond the *Trade Contractor's* control other than one resulting from a default or breach of *Contract* by the *Trade Contractor*,
- then the *Contract Time* shall be extended for such reasonable time as the *Construction Manager* may recommend in consultation with the *Trade Contractor*. The extension of time shall not be less than the time lost as the result of the event causing the delay, unless the *Trade Contractor* agrees to a shorter extension. The *Trade Contractor* shall not be entitled to payment for costs incurred by such delays unless such delays result from actions by the *Owner*, *Consultant*, *Construction Manager*, or anyone employed or engaged by them directly or indirectly.
- 6.5.4 No extension shall be made for delay unless *Notice in Writing* of the cause of delay is given to the *Construction Manager* not later than 10 *Working Days* after the commencement of delay. In the case of a continuing cause of delay only one *Notice in Writing* shall be necessary.
- 6.5.5 If no schedule is made under paragraph 2.2.1.4 of GC 2.2 – ROLE OF THE CONSTRUCTION MANAGER AND THE CONSULTANT, then no request for extension shall be made because of failure of the *Construction Manager* to furnish instructions until 10 *Working Days* after demand for such instructions has been made.

GC 6.6 CLAIMS FOR A CHANGE IN CONTRACT PRICE

- 6.6.1 If the *Trade Contractor* intends to make a claim for an increase to the *Contract Price*, or if the *Owner* intends to make a claim against the *Trade Contractor* for a credit to the *Contract Price*, the party that intends to make the claim shall give timely *Notice in Writing* of intent to claim to the other party and to the *Construction Manager*.
- 6.6.2 Upon commencement of the event or series of events giving rise to a claim, the party intending to make the claim shall:
- .1 take all reasonable measures to mitigate any loss or expense which may be incurred as a result of such event or series of events, and
 - .2 keep such records as may be necessary to support the claim.

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- 6.6.3 The party making the claim shall submit within a reasonable time to the *Construction Manager* a detailed account of the amount claimed and the grounds upon which the claim is based, and the *Construction Manager* shall make a finding upon such claim.
- 6.6.4 Where the event or series of events giving rise to the claim has a continuing effect, the detailed account submitted under paragraph 6.6.3 shall be considered to be an interim account and the party making the claim shall, at such intervals as the *Construction Manager* may reasonably require, submit further interim accounts giving the accumulated amount of the claim and any further grounds upon which it is based. The party making the claim shall submit a final account after the end of the effects resulting from the event or series of events.
- 6.6.5 The *Construction Manager's* finding with respect to a claim made by either party, will be given by *Notice in Writing* to both parties within 30 *Working Days* after receipt of the claim by the *Construction Manager*, or within such other time period as may be agreed by the parties.
- 6.6.6 If such finding is not acceptable to either party, the claim shall be settled in accordance with Part 8 of the General Conditions – DISPUTE RESOLUTION.+

PART 7 DEFAULT NOTICE

GC 7.1 OWNER'S RIGHT TO PERFORM THE WORK, TERMINATE THE TRADE CONTRACTOR'S RIGHT TO CONTINUE WITH THE WORK OR TERMINATE THE CONTRACT

- 7.1.1 If the *Trade Contractor* is adjudged bankrupt, or makes a general assignment for the benefit of creditors because of the *Trade Contractor's* insolvency, or if a receiver is appointed because of the *Trade Contractor's* insolvency, the *Owner* may, without prejudice to any other right or remedy the *Owner* may have, terminate the *Trade Contractor's* right to continue with the *Work*, by giving the *Trade Contractor* or receiver or trustee in bankruptcy *Notice in Writing* to that effect.
- 7.1.2 If the *Trade Contractor* neglects to prosecute the *Work* properly or otherwise fails to comply with the requirements of the *Contract* to a substantial degree and if the *Construction Manager* has given a written statement to the *Owner* and *Trade Contractor* that sufficient cause exists to justify such action, the *Owner* may, without prejudice to any other right or remedy the *Owner* may have, give the *Trade Contractor Notice in Writing* with a copy to the *Construction Manager* that the *Trade Contractor* is in default of the *Trade Contractor's* contractual obligations and instruct the *Trade Contractor* to correct the default in the 5 *Working Days* immediately following the receipt of such *Notice in Writing*.
- 7.1.3 If the default cannot be corrected in the 5 *Working Days* specified or in such other time period as may be subsequently agreed in writing by the parties, the *Trade Contractor* shall be in compliance with the *Owner's* instructions if the *Trade Contractor*:
- .1 commences the correction of the default within the specified time, and
 - .2 provides the *Owner* with an acceptable schedule for such correction, and
 - .3 corrects the default in accordance with the *Contract* terms and with such schedule.
- 7.1.4 If the *Trade Contractor* fails to correct the default in the time specified or in such other time period as may be subsequently agreed in writing by the parties, without prejudice to any other right or remedy the *Owner* may have, the *Owner* may:
- .1 correct such default and deduct the cost thereof from any payment then or thereafter due to the *Trade Contractor* provided the *Payment Certifier* has certified such cost to the *Owner* and the *Trade Contractor*, or
 - .2 terminate the *Trade Contractor's* right to continue with the *Work* in whole or in part or terminate the *Contract*.
- 7.1.5 If the *Owner* terminates the *Trade Contractor's* right to continue with the *Work* as provided in paragraphs 7.1.1 and 7.1.4, the *Owner* shall be entitled to:
- .1 take possession of the *Work* and *Products* at the *Place of the Project*; subject to the rights of third parties, utilize the *Construction Equipment* at the *Place of the Project*; finish the *Work* by whatever method the *Construction Manager* may consider expedient, but without undue delay or expense, and
 - .2 withhold further payment to the *Trade Contractor* until a final certificate for payment is issued, and
 - .3 charge the *Trade Contractor* the amount by which the full cost of finishing the *Work* as certified by the *Payment Certifier*, including compensation to the *Construction Manager* and the *Consultant* for their additional services and a reasonable allowance as determined by the *Construction Manager* to cover the cost of corrections to work performed by the *Trade Contractor* that may be required under GC 12.3 – WARRANTY, exceeds the unpaid balance of the *Contract Price*; however, if such cost of finishing the *Work* is less than the unpaid balance of the *Contract Price*, the *Owner* shall pay the *Trade Contractor* the difference, and

.4 on expiry of the warranty period, charge the *Trade Contractor* the amount by which the cost of corrections to the *Trade Contractor's* work under GC 12.3 – WARRANTY exceeds the allowance provided for such corrections, or if the cost of such corrections is less than the allowance, pay the *Trade Contractor* the difference.

7.1.6 The *Trade Contractor's* obligation under the *Contract* as to quality, correction and warranty of the work performed by the *Trade Contractor* up to the time of termination shall continue in force after such termination of the *Contract*.

GC 7.2 TRADE CONTRACTOR'S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT

7.2.1 If the *Owner* is adjudged bankrupt, or makes a general assignment for the benefit of creditors because of the *Owner's* insolvency, or if a receiver is appointed because of the *Owner's* insolvency, the *Trade Contractor* may, without prejudice to any other right or remedy the *Trade Contractor* may have, terminate the *Contract* by giving the *Owner* or receiver or trustee in bankruptcy *Notice in Writing* to that effect.

7.2.2 If the *Work* should be suspended or otherwise delayed for a period of 20 *Working Days* or more under an order of a court or other public authority and providing that such order was not issued as the result of an act or fault of the *Trade Contractor* or of anyone directly or indirectly employed or engaged by the *Trade Contractor*, the *Trade Contractor* may, without prejudice to any other right or remedy the *Trade Contractor* may have, terminate the *Contract* by giving the *Owner* *Notice in Writing* to that effect.

7.2.3 The *Trade Contractor* may give *Notice in Writing* to the *Owner*, with a copy to the *Construction Manager* and the *Consultant*, that the *Owner* is in default of the *Owner's* contractual obligations if:

- .1 the *Owner* fails to furnish, when so requested by the *Trade Contractor*, reasonable evidence that financial arrangements have been made to fulfill the *Owner's* obligations under the *Contract*, or
- .2 the *Payment Certifier* fails to issue a certificate as provided in Part 5 of the General Conditions – PAYMENT, or
- .3 the *Owner* fails to pay the *Trade Contractor* when due the amounts certified by the *Payment Certifier* or awarded by arbitration or court, or
- .4 the *Owner* violates the requirements of the *Contract* to a substantial degree and the *Construction Manager*, except for GC 5.1 – FINANCING INFORMATION REQUIRED OF THE OWNER, confirms by written statement to the *Trade Contractor* that sufficient cause exists.

7.2.4 The *Trade Contractor's* *Notice in Writing* to the *Owner* provided under paragraph 7.2.3 shall advise that if the default is not corrected within 5 *Working Days* following the receipt of the *Notice in Writing*, the *Trade Contractor* may, without prejudice to any other right or remedy the *Trade Contractor* may have, suspend the *Work* or terminate the *Contract*.

7.2.5 If the *Trade Contractor* terminates the *Contract* under the conditions set out above, the *Trade Contractor* shall be entitled to be paid for all work performed including reasonable profit, for loss sustained upon *Products* and *Construction Equipment*, and such other damages as the *Trade Contractor* may have sustained as a result of the termination of the *Contract*.

PART 8 DISPUTE RESOLUTION

GC 8.1 AUTHORITY OF THE CONSTRUCTION MANAGER AND THE CONSULTANT

8.1.1 Differences between the parties to the *Contract* as to the interpretation, application or administration of the *Contract* or any failure to agree where agreement between the parties is called for, herein collectively called disputes, which are not resolved in the first instance by findings of the *Construction Manager* or the *Consultant* as provided in GC 2.2 – ROLE OF THE CONSTRUCTION MANAGER AND THE CONSULTANT, shall be settled in accordance with the requirements of Part 8 of the General Conditions – DISPUTE RESOLUTION.

8.1.2 If a dispute arises under the *Contract* in respect of a matter in which neither the *Construction Manager* nor the *Consultant* have authority under the *Contract* to make a finding, the procedures set out in paragraph 8.1.3 and paragraphs 8.2.3 to 8.2.8 of GC 8.2 – NEGOTIATION, MEDIATION AND ARBITRATION, and in GC 8.3 – RETENTION OF RIGHTS apply to that dispute with the necessary changes to detail as may be required.

8.1.3 If a dispute is not resolved promptly, the *Construction Manager* will give such instructions as in the *Construction Manager's* opinion are necessary for the proper performance of the *Work* and to prevent delays pending settlement of the dispute. The parties shall act immediately according to such instructions, it being understood that by so doing neither party will jeopardize any claim the party may have. If it is subsequently determined that such instructions were in error or at variance with the *Contract Documents*, the *Owner* shall pay the *Trade Contractor* costs incurred by the *Trade Contractor* in carrying out such instructions which the *Trade Contractor* was required to do beyond what the *Contract Documents* correctly understood and interpreted would have required, including costs resulting from interruption of the *Work*.

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GC 8.2 NEGOTIATION, MEDIATION AND ARBITRATION

- 8.2.1 In accordance with the Rules for Mediation and Arbitration of Construction Disputes as provided in CCDC 40 in effect at the time of bid closing, the parties shall appoint a Project Mediator
- .1 within 20 *Working Days* after the *Contract* was awarded, or
 - .2 if the parties neglected to make an appointment within the 20 *Working Days*, within 10 *Working Days* after either party by *Notice in Writing* requests that the Project Mediator be appointed.
- 8.2.2 A party shall be conclusively deemed to have accepted a finding of the *Construction Manager* or the *Consultant* under GC 2.2 - ROLES OF THE CONSTRUCTION MANAGER AND THE CONSULTANT and to have expressly waived and released the other party from any claims in respect of the particular matter dealt with in that finding unless, within 15 *Working Days* after receipt of that finding, the party sends a *Notice in Writing* of dispute to the other party, the *Construction Manager* and the *Consultant*, which contains the particulars of the matter in dispute and the relevant provisions of the *Contract Documents*. The responding party shall send a *Notice in Writing* of reply to the dispute within 10 *Working Days* after receipt of such *Notice in Writing* setting out particulars of this response and any relevant provisions of the *Contract Documents*.
- 8.2.3 The parties shall make all reasonable efforts to resolve their dispute by amicable negotiations and agree to provide, without prejudice, frank, candid and timely disclosure of relevant facts, information and documents to facilitate these negotiations.
- 8.2.4 After a period of 10 *Working Days* following receipt of a responding party's *Notice in Writing* of reply under paragraph 8.2.2, the parties shall request the Project Mediator to assist the parties to reach agreement on any unresolved dispute. The mediated negotiations shall be conducted in accordance with the Rules for Mediation and Arbitration of Construction Disputes as provided in CCDC 40 in effect at the time of bid closing.
- 8.2.5 If the dispute has not been resolved within 10 *Working Days* after the Project Mediator was requested under paragraph 8.2.4 or within such further period agreed by the parties, the Project Mediator shall terminate the mediated negotiations by giving *Notice in Writing* to the *Owner*, the *Trade Contractor* and the *Construction Manager*.
- 8.2.6 By giving a *Notice in Writing* to the other party and the *Construction Manager*, not later than 10 *Working Days* after the date of termination of the mediated negotiations under paragraph 8.2.5, either party may refer the dispute to be finally resolved by arbitration under the latest edition of the Rules for Mediation and Arbitration of Construction Disputes as provided in CCDC 40 in effect at the time of bid closing. The arbitration shall be conducted in the jurisdiction of the *Place of the Project*.
- 8.2.7 On expiration of the 10 *Working Days*, the arbitration agreement under paragraph 8.2.6 is not binding on the parties and, if a *Notice in Writing* is not given under paragraph 8.2.6 within the required time, the parties may refer the unresolved dispute to the courts or to any other form of dispute resolution, including arbitration, which they have agreed to use.
- 8.2.8 If neither party, by *Notice in Writing*, given within 10 *Working Days* of the date of *Notice in Writing* requesting arbitration in paragraph 8.2.6, requires that a dispute be arbitrated immediately, all disputes referred to arbitration as provided in paragraph 8.2.6 shall be
- .1 held in abeyance until
 - (1) *Substantial Performance of the Work*,
 - (2) the *Contract* has been terminated, or
 - (3) the *Trade Contractor* has abandoned the *Work*,
 whichever is earlier, and
 - .2 consolidated into a single arbitration under the rules governing the arbitration under paragraph 8.2.6.

GC 8.3 RETENTION OF RIGHTS

- 8.3.1 It is agreed that no act by either party shall be construed as a renunciation or waiver of any rights or recourses, provided the party has given the *Notice in Writing* required under Part 8 of the General Conditions – DISPUTE RESOLUTION and has carried out the instructions as provided in paragraph 8.1.3 of GC 8.1 – AUTHORITY OF THE CONSTRUCTION MANAGER AND THE CONSULTANT.
- 8.3.2 Nothing in Part 8 of the General Conditions – DISPUTE RESOLUTION shall be construed in any way to limit a party from asserting any statutory right to a lien under applicable lien legislation of the jurisdiction of the *Place of the Project* and the assertion of such right by initiating judicial proceedings is not to be construed as a waiver of any right that party may have under paragraph 8.2.6 of GC 8.2 – NEGOTIATION, MEDIATION AND ARBITRATION to proceed by way of arbitration to adjudicate the merits of the claim upon which such a lien is based.

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PART 9 PROTECTION OF PERSONS AND PROPERTY

GC 9.1 PROTECTION OF WORK AND PROPERTY

- 9.1.1 The *Trade Contractor* shall protect the *Project* and the *Owner's* property and property adjacent to the *Place of the Project* from damage which may arise as the result of the *Trade Contractor's* operations under the *Contract*, and shall be responsible for such damage, except damage which occurs as the result of:
- .1 errors in the *Contract Documents*; or
 - .2 acts or omissions by the *Owner*, the *Construction Manager*, the *Consultant*, other contractors, their agents and employees.
- 9.1.2 Before commencing any *Work*, the *Trade Contractor* shall determine the location of all underground utilities and structures indicated in the *Contract Documents* or that are reasonably apparent in an inspection of the *Place of the Project*.
- 9.1.3 Should the *Trade Contractor* in the performance of the *Contract* damage the *Project*, the *Owner's* property or property adjacent to the *Place of the Project*, the *Trade Contractor* shall be responsible for making good of such damage at the *Trade Contractor's* expense.
- 9.1.4 Should damage occur to the *Work* or *Owner's* property for which the *Trade Contractor* is not responsible, as provided in paragraph 9.1.1, the *Trade Contractor* shall make good such damage to the *Work* and, if the *Construction Manager* so directs, to the *Owner's* property. The *Contract Price* and *Contract Time* shall be adjusted as provided in GC 6.1 – OWNER'S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER, and GC 6.3 – CHANGE DIRECTIVE.

GC 9.2 TOXIC AND HAZARDOUS SUBSTANCES

- 9.2.1 For the purposes of applicable legislation related to toxic and hazardous substances, the *Owner* shall be deemed to have control and management of the *Place of the Project* with respect to existing conditions.
- 9.2.2 Prior to the *Trade Contractor* commencing the *Work*, the *Owner* shall,
- .1 take all reasonable steps to determine whether any toxic or hazardous substances are present at the *Place of the Project*, and
 - .2 provide the *Construction Manager*, the *Consultant* and the *Trade Contractor* with a written list of any such substances that are known to exist and their locations.
- 9.2.3 The *Owner* shall take all reasonable steps to ensure that no person's exposure to any toxic or hazardous substance exceeds the time weighted levels prescribed by applicable legislation at the *Place of the Project* and that no property is damaged or destroyed as a result of exposure to, or the presence of, toxic or hazardous substances which were at the *Place of the Project* prior to the *Trade Contractor* commencing the *Work*.
- 9.2.4 Unless the *Contract* expressly provides otherwise, the *Owner* shall be responsible for taking all necessary steps, in accordance with applicable legislation in force at the *Place of the Project*, to dispose of, store or otherwise render harmless toxic or hazardous substances which were present at the *Place of the Project* prior to the *Trade Contractor* commencing the *Work*.
- 9.2.5 If the *Trade Contractor*
- .1 encounters toxic or hazardous substances at the *Place of the Project*, or
 - .2 has reasonable grounds to believe that toxic or hazardous substances are present at the *Place of the Project*, which were not brought to the *Place of the Project* by the *Trade Contractor* or anyone for whom the *Trade Contractor* is responsible and which were not disclosed by the *Owner* or which were disclosed but have not been dealt with as required under paragraph 9.2.4, the *Trade Contractor* shall
 - .3 take all reasonable steps, including stopping the *Work*, to ensure that no person's exposure to any toxic or hazardous substance exceeds any applicable time weighted levels prescribed by applicable legislation at the *Place of the Project*, and
 - .4 immediately report the circumstances to the *Construction Manager*, the *Owner* and the *Consultant* in writing.
- 9.2.6 If the *Owner* and *Trade Contractor* do not agree on the existence, significance of, or whether the toxic or hazardous substances were brought onto the *Place of the Project* by the *Trade Contractor* or anyone for whom the *Trade Contractor* is responsible, the *Owner* shall retain and pay for an independent qualified expert to investigate and determine such matters. The expert's report shall be delivered to the *Owner*, the *Trade Contractor* and the *Construction Manager*.

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- 9.2.7 If the *Owner* and *Trade Contractor* agree or if the expert referred to in paragraph 9.2.6 determines that the toxic or hazardous substances were not brought onto the *Place of the Project* by the *Trade Contractor* or anyone for whom the *Trade Contractor* is responsible, the *Owner* shall promptly at the *Owner's* own expense:
- .1 take all steps as required under paragraph 9.2.4;
 - .2 reimburse the *Trade Contractor* for the costs of all steps taken pursuant to paragraph 9.2.5;
 - .3 extend the *Contract Time* for such reasonable time as the *Construction Manager* may recommend in consultation with the *Owner*, the *Trade Contractor* and the expert referred to in 9.2.6 and reimburse the *Trade Contractor* for reasonable costs incurred as a result of the delay; and
 - .4 indemnify the *Trade Contractor* as required by paragraph GC 12.1 – INDEMNIFICATION
- 9.2.8 If the *Owner* and *Trade Contractor* agree or if the expert referred to in paragraph 9.2.6 determines that the toxic or hazardous substances were brought onto the *Place of the Project* by the *Trade Contractor* or anyone for whom the *Trade Contractor* is responsible, the *Trade Contractor* shall promptly at the *Trade Contractor's* own expense:
- .1 take all necessary steps in accordance with applicable legislation in force at the *Place of the Project*, to safely remove and dispose the toxic or hazardous substances;
 - .2 make good any damage to the *Work*, the *Owner's* property or property adjacent to the *Place of the Project* as provided in paragraph 9.1.3 of GC 9.1 – PROTECTION OF WORK AND PROPERTY;
 - .3 reimburse the *Owner* for reasonable costs incurred under paragraph 9.2.6; and
 - .4 indemnify the *Owner* as required by GC 12.1 – INDEMNIFICATION.
- 9.2.9 If either party does not accept the expert's findings under paragraph 9.2.6, the disagreement shall be settled in accordance with Part 8 of the General Conditions – DISPUTE RESOLUTION. If such disagreement is not resolved promptly, the parties shall act immediately in accordance with the expert's determination and take the steps required by paragraph 9.2.7 or 9.2.8 it being understood that by so doing, neither party will jeopardize any claim that party may have to be reimbursed as provided by GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES.

GC 9.3 ARTIFACTS AND FOSSILS

- 9.3.1 Fossils, coins, articles of value or antiquity, structures and other remains or things of scientific or historic interest discovered at the *Place of the Project* shall, as between the *Owner* and the *Trade Contractor*, be deemed to be the absolute property of the *Owner*.
- 9.3.2 The *Trade Contractor* shall take all reasonable precautions to prevent removal or damage to discoveries as identified in paragraph 9.3.1, and shall advise the *Construction Manager* upon discovery of such items.
- 9.3.3 The *Construction Manager* will investigate the impact on the *Work* of the discoveries identified in paragraph 9.3.1. If conditions are found that would cause an increase or decrease in the *Trade Contractor's* cost or time to perform the *Work*, the *Owner*, through the *Construction Manager*, will issue appropriate instructions for a change in the *Work* as provided in GC 6.2 – CHANGE ORDER or GC 6.3 – CHANGE DIRECTIVE.

GC 9.4 CONSTRUCTION SAFETY

- 9.4.1 The *Trade Contractor* shall:
- .1 be responsible for construction health and safety relating to the *Work* at the *Place of the Project* in compliance with the rules, regulations and practices required by the applicable construction health and safety legislation;
 - .2 be responsible for establishing, initiating, maintaining, and supervising all health and safety precautions and programs in connection with the performance of the *Work*; and
 - .3 comply with all health and safety precautions and programs established at the *Place of the Project*.
- 9.4.2 The *Owner* shall be responsible for construction health and safety at the *Place of the Project* in compliance with the rules, regulations and practices required by the applicable construction health and safety legislation.
- 9.4.3 The *Construction Manager* will:
- .1 establish, initiate, maintain, and supervise the health and safety precautions and programs required to be put in place at the *Place of the Project*; and
 - .2 review with the *Owner* the *Trade Contractor's* health and safety program for compliance.

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GC 9.5 MOULD

- 9.5.1 If the *Trade Contractor*, the *Construction Manager*, the *Consultant*, or the *Owner* observes or reasonably suspects the presence of mould at the *Place of the Project*, the remediation of which is not expressly part of the *Work*,
- .1 the observing party shall promptly report the circumstances to the other parties in writing, and
 - .2 the *Trade Contractor* shall promptly take all reasonable steps, including stopping the *Work* if necessary, to ensure that no person suffers injury, sickness or death and that no property is damaged as a result of exposure to or the presence of the mould, and
 - .3 if the *Owner* and the *Trade Contractor* do not agree on the existence, significance or cause of the mould or as to what steps need be taken to deal with it, the *Owner* shall retain and pay for an independent qualified expert to investigate and determine such matters. The expert's report shall be delivered to the *Owner* and the *Trade Contractor*.
- 9.5.2 If the *Owner* and the *Trade Contractor* agree, or if the expert referred to in paragraph 9.5.1.3 determines that the presence of mould was caused by the *Trade Contractor's* operations under the *Contract*, the *Trade Contractor* shall promptly, at the *Trade Contractor's* own expense:
- .1 take all reasonable and necessary steps to safely remediate or dispose of the mould, and
 - .2 make good any damage to the *Work*, the *Owner's* property or property adjacent to the *Place of the Project* as provided in paragraph 9.1.3 of GC 9.1 – PROTECTION OF WORK AND PROPERTY, and
 - .3 reimburse the *Owner* for reasonable costs incurred under paragraph 9.5.1.3, and
 - .4 indemnify the *Owner* as required by GC 12.1 – INDEMNIFICATION.
- 9.5.3 If the *Owner* and *Trade Contractor* agree, or if the expert referred to in paragraph 9.5.1.3 determines that the presence of mould was not caused by the *Trade Contractor's* operations under the *Contract*, the *Owner* shall promptly, at the *Owner's* own expense:
- .1 take all reasonable and necessary steps to safely remediate or dispose of the mould, and
 - .2 reimburse the *Trade Contractor* for the cost of taking the steps under paragraph 9.5.1.2 and making good any damage to the *Work* as provided in paragraph 9.1.4 of GC 9.1 – PROTECTION OF WORK AND PROPERTY, and
 - .3 extend the *Contract Time* for such reasonable time as the *Construction Manager* may recommend in consultation with the *Trade Contractor* and the expert referred to in paragraph 9.5.1.3 and reimburse the *Trade Contractor* for reasonable costs incurred as a result of the delay, and
 - .4 indemnify the *Trade Contractor* as required by GC 12.1 – INDEMNIFICATION.
- 9.5.4 If either party does not accept the expert's finding under paragraph 9.5.1.3, the disagreement shall be settled in accordance with Part 8 of the General Conditions – DISPUTE RESOLUTION: If such disagreement is not resolved promptly, the parties shall act immediately in accordance with the expert's determination and take the steps required by paragraphs 9.5.2 or 9.5.3, it being understood that by so doing neither party will jeopardize any claim the party may have to be reimbursed as provided by GC 9.5 – MOULD.

PART 10 GOVERNING REGULATIONS**GC 10.1 TAXES AND DUTIES**

- 10.1.1 The *Contract Price* shall include all taxes and customs duties in effect at the time of the bid closing except for *Value Added Taxes* payable by the *Owner* to the *Trade Contractor* as stipulated in Article A-4 of the Agreement – CONTRACT PRICE.
- 10.1.2 Any increase or decrease in costs to the *Trade Contractor* due to changes in such included taxes and duties after the time of the bid closing shall increase or decrease the *Contract Price* accordingly.

GC 10.2 LAWS, NOTICES, PERMITS, AND FEES

- 10.2.1 The laws of the *Place of the Project* shall govern the *Work*.
- 10.2.2 The *Owner* shall obtain and pay for development approvals, building permit, permanent easements, rights of servitude, and all other necessary approvals and permits, except for the permits and fees referred to in paragraph 10.2.3 or for which the *Contract Documents* specify as the responsibility of the *Trade Contractor*.
- 10.2.3 The *Trade Contractor* shall be responsible for the procurement of permits, licences, inspections, and certificates, which are necessary for the performance of the *Work* and customarily obtained by contractors in the jurisdiction of the *Place of the Project* after the issuance of the building permit. The *Contract Price* includes the cost of these permits, licences, inspections, and certificates, and their procurement.

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- 10.2.4 The *Trade Contractor* shall give the required notices and comply with the laws, ordinances, rules, regulations, or codes which are or become in force during the performance of the *Work* and which relate to the *Work*, to the preservation of the public health, and to construction safety.
- 10.2.5 The *Trade Contractor* shall not be responsible for verifying that the *Contract Documents* are in compliance with the applicable laws, ordinances, rules, regulations, or codes relating to the *Work*. If the *Contract Documents* are at variance therewith, or if, subsequent to the time of bid closing, changes are made to the applicable laws, ordinances, rules, regulations, or codes which require modification to the *Contract Documents*, the *Trade Contractor* shall notify the *Construction Manager* in writing requesting direction immediately upon such variance or change becoming known. The *Owner*, through the *Construction Manager*, will issue the changes required to the *Contract Documents* as provided in GC 6.1 – OWNER’S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER and GC 6.3 – CHANGE DIRECTIVE.
- 10.2.6 If the *Trade Contractor* fails to advise the *Construction Manager* in writing, fails to obtain direction as required in paragraph 10.2.5, and performs work knowing it to be contrary to any laws, ordinances, rules, regulations or codes, the *Trade Contractor* shall be responsible for and shall correct the violations thereof; and shall bear the costs, expenses and damages attributable to the failure to comply with the provisions of such laws, ordinances, rules, regulations, or codes.
- 10.2.7 If, subsequent to the time of bid closing, changes are made to applicable laws, ordinances, rules, regulations, or codes of authorities having jurisdiction which affect the cost of the *Work*, either party may submit a claim in accordance with the requirements of GC 6.6 – CLAIMS FOR A CHANGE IN CONTRACT PRICE.

GC 10.3 PATENT FEES

- 10.3.1 The *Trade Contractor* shall pay the royalties and patent licence fees required for the performance of the *Contract*. The *Trade Contractor* shall hold the *Owner* harmless from and against claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of the *Trade Contractor*’s performance of the *Contract* which are attributable to an infringement or an alleged infringement of a patent of invention by the *Trade Contractor* or anyone for whose acts the *Trade Contractor* may be liable.
- 10.3.2 The *Owner* shall hold the *Trade Contractor* harmless against claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of the *Trade Contractor*’s performance of the *Contract* which are attributable to an infringement or an alleged infringement of a patent of invention in executing anything for the purpose of the *Contract*, or any model, plan or design which was supplied to the *Trade Contractor* as part of the *Contract*.

GC 10.4 WORKERS’ COMPENSATION

- 10.4.1 Prior to commencing the *Work*, and again with the *Trade Contractor*’s application for payment of the holdback amount following *Substantial Performance of the Work*, and again with the *Contractor*’s application for final payment, the *Trade Contractor* shall provide evidence of compliance with workers’ compensation legislation at the *Place of the Project*, including payments due thereunder.
- 10.4.2 At any time during the term of the *Contract*, when requested by the *Construction Manager*, the *Trade Contractor* shall provide such evidence of compliance with workers’ compensation legislation at the *Place of the Project* by the *Trade Contractor* and any *Trade Subcontractors*.

PART 11 INSURANCE AND CONTRACT SECURITY

GC 11.1 INSURANCE

- 11.1.1 Without restricting the generality of GC 12.1 – INDEMNIFICATION, the *Trade Contractor* shall provide, maintain and pay for the following insurance coverages, the minimum requirements of which are specified in CCDC 41 – INSURANCE REQUIREMENTS in effect at the time of bid closing except as hereinafter provided:
- 1 Automobile Liability Insurance from the date of commencement of the *Work* until one year after the date of *Substantial Performance of the Work*;
 - 2 Aircraft or Watercraft Liability Insurance when owned or non-owned aircraft or watercraft are used directly or indirectly in the performance of the *Work*; and
 - 3 Contractors’ Equipment Insurance from the date of commencement of the *Work* until one year after the date of *Substantial Performance of the Work*.

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- 11.1.2 If the *Trade Contractor* fails to provide or maintain insurance as required by the *Contract Documents*, then the *Owner* shall have the right to provide and maintain such insurance and give evidence to the *Trade Contractor*, the *Construction Manager* and the *Consultant*. The *Trade Contractor* shall pay the cost thereof to the *Owner* on demand or the *Owner* may deduct the cost from any amount which is due or may become due to the *Trade Contractor*.
- 11.1.3 The *Owner* shall obtain, maintain and pay for 'wrap-up' general liability insurance in the joint names of the *Owner*, the *Construction Manager*, the *Consultant* and the *Trade Contractor* with limits of not less than \$10,000,000 per occurrence and a deductible not more than \$10,000. The insurance coverage shall be primary to all other insurance policies and shall not be substantially less than the insurance provided by IBC Form 2100 (including an extension for a standard provincial and territorial form of non-owned automobile liability policy) and IBC Form 2320, except for liability arising from damage to the *Project* during construction, which shall be limited to the completed operations period. The insurance shall be maintained from the date of commencement of the *Project* until 90 calendar days after the *Project In-Use Date*. The *Owner* is responsible to provide coverage for completed operations hazards from the *Project In-Use Date* for a period of 2 year. The *Trade Contractor* shall then provide, maintain and pay for liability insurance coverage for completed operations hazards with limits of not less than \$5,000,000 per occurrence and a deductible not more than \$5,000 on an ongoing basis for a further period of 4 years.
- 11.1.4 The *Owner* shall provide, maintain and pay for the following insurance coverages:
- .1 "Broad form" property insurance in the joint names of the *Owner*, the *Trade Contractor*, the *Construction Manager*, and the *Consultant*. The policy shall have limits of not less than the sum of 1.1 times *Contract Price*, and the full value, as stated in the *Contract*, of products and design services that are specified to be provided by the *Owner* for incorporation into the *Work*, with a deductible not exceeding \$10,000. The insurance coverage shall not be less than the insurance provided by the latest edition of IBC Forms 4042 and 4047 or their equivalent replacement. In addition to the exclusions identified in the latest edition of IBC forms 4042 and 4047, the *Owner* is not required to provide insurance coverage for Asbestos, Cyber Risk, Mould, or Terrorism. The "Broad form" property insurance shall be provided from the date of commencement of the *Work* until the earliest of:
 - (1) 10 calendar days after the date of *Substantial Performance of the Work*;
 - (2) on the commencement of use or occupancy of any part or section of *Work* unless such use or occupancy is for construction purposes, habitational, office, banking, convenience store under 465 square metres in area, or parking purposes, or for the installation, testing and commissioning of equipment forming part of the *Work*;
 - (3) when left unattended for more than 30 consecutive calendar days or when construction activity has ceased for more than 30 consecutive calendar days.
 - .2 Boiler and machinery insurance in the joint names of the *Owner*, the *Trade Contractor*, the *Construction Manager*, and the *Consultant*. The insurance shall have limits of not less than the replacement value of the permanent or temporary boilers and pressure vessels, and other insurable objects forming part of the *Work*. The insurance coverage shall not be less than the insurance provided by a comprehensive boiler and machinery policy. The coverage shall be maintained continuously from commencement of use or operation of the boiler and machinery objects insured by the policy and until 10 calendar days after the date of *Substantial Performance of the Work*.
 - .3 The "Broad form" property and boiler and machinery policies shall provide that, in the case of a loss or damage, payment shall be made to the *Owner*, the *Trade Contractor*, the *Construction Manager*, and the *Consultant* as their respective interests may appear. In the event of loss or damage:
 - (1) the *Construction Manager* shall act on behalf of the *Owner*, the *Trade Contractor* and the *Consultant* for the purpose of adjusting the amount of such loss or damage payment with the insurers. When the extent of the loss or damage is determined, the *Trade Contractor* shall proceed to restore the *Work*. Loss or damage shall not affect the rights and obligations of either party under the *Contract* except that the *Trade Contractor* shall be entitled to such reasonable extension of *Contract Time* relative to the extent of the loss or damage as the *Construction Manager* may recommend in consultation with the *Trade Contractor*;
 - (2) the *Trade Contractor* shall be entitled to receive from the *Owner*, in addition to the amount due under the *Contract*, the amount which the *Owner's* interest in restoration of the *Work* has been appraised, such amount to be paid as the restoration of the *Work* proceeds in accordance with the progress payment provisions. In addition the *Trade Contractor* shall be entitled to receive from the payments made by the insurer the amount of the *Trade Contractor's* interest in the restoration of the *Work*; and
 - (3) to the *Work* arising from the work of the *Owner*, the *Owner's* own forces or another contractor, in accordance with the *Owner's* obligations under the provisions relating to construction by *Owner* or other contractors, shall pay the *Trade Contractor* the cost of restoring the *Work* as the restoration of the *Work* proceeds and as in accordance with the progress payment provisions.

- 11.1.5 Prior to commencement of the *Work* and upon the placement, renewal, amendment, or extension of all or any part of the insurance,
- .1 the *Trade Contractor* shall promptly provide the *Construction Manager* with confirmation of coverage under the policies specified in paragraph 11.1.1 and, if required, a certified true copy of the policies certified by an authorized representative of the insurer together with copies of any amending endorsements applicable to the *Work*; and
 - .2 the *Owner*, through the *Construction Manager*, shall promptly provide the *Trade Contractor* with confirmation of coverage under the policies specified in paragraphs 11.1.3 and 11.1.4 and, if required, a certified true copy of the policies certified by an authorized representative of the insurer together with copies of any amending endorsements applicable to the *Work*.
- 11.1.6 The parties shall pay their share of the deductible amounts in direct proportion to their responsibility in regards to any loss for which the above policies are required to pay, except where such amounts may be excluded by the terms of the *Contract*.
- 11.1.7 All required insurance policies shall be with insurers licensed to underwrite insurance in the jurisdiction of the *Place of the Project*.
- 11.1.8 If a revised version of CCDC 41 – INSURANCE REQUIREMENTS is published, which specifies reduced insurance requirements, the parties shall address such reduction, prior to the insurance policy becoming due for renewal, and record any agreement in a *Change Order*.
- 11.1.9 If a revised version of CCDC 41 – INSURANCE REQUIREMENTS is published, which specifies increased insurance requirements, either party may request the increased coverage by way of a *Change Order*.
- 11.1.10 A *Change Directive* shall not be used to direct a change in the insurance requirements in response to the revision of CCDC 41 – INSURANCE REQUIREMENTS.

GC 11.2 CONTRACT SECURITY

- 11.2.1 The *Trade Contractor* shall, prior to commencement of the *Work* or within the specified time, provide to the *Construction Manager* any *Contract* security specified in the *Contract Documents*.
- 11.2.2 If the *Contract Documents* require surety bonds to be provided, such bonds shall be issued by a duly licensed surety company authorized to transact the business of suretyship in the province or territory of the *Place of the Project* and shall be maintained in good standing until the fulfillment of the *Contract*. The form of such bonds shall be in accordance with the latest edition of the CCDC approved bond forms.

PART 12 INDEMNIFICATION, WAIVER OF CLAIMS AND WARRANTY

GC 12.1 INDEMNIFICATION

- 12.1.1 Without restricting the parties' obligation to indemnify as described in paragraphs 12.1.4 and 12.1.5, the *Owner* and the *Trade Contractor* shall each indemnify and hold harmless the other from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings whether in respect to losses suffered by them or in respect to claims by third parties that arise out of, or are attributable in any respect to, their involvement as parties to this *Contract*, provided such claims are:
- .1 caused by:
 - (1) the negligent acts or omissions of the party from whom indemnification is sought or anyone for whose acts or omissions that party is liable, or
 - (2) a failure of the party to the *Contract* from whom indemnification is sought to fulfill its terms or conditions; and
 - .2 made by *Notice in Writing* within a period of 6 years from the date of *Substantial Performance of the Work* as set out in the certificate of *Substantial Performance of the Work* issued pursuant to paragraph 5.4.2.2 of GC 5.4 – SUBSTANTIAL PERFORMANCE OF THE WORK or within such shorter period as may be prescribed by any limitation statute of the province or territory of the *Place of the Project*.
- The parties expressly waive the right to indemnity for claims other than those provided for in this *Contract*.
- 12.1.2 The obligation of either party to indemnify as set forth in paragraph 12.1.1 shall be limited as follows:
- .1 In respect to losses suffered by the *Owner* and the *Trade Contractor* for which insurance is to be provided by either party pursuant to GC 11.1 – INSURANCE, the insurance limit for the loss so covered in effect at the time of bid closing.
 - .2 In respect to losses suffered by the *Owner* and the *Trade Contractor* for which insurance is not required to be provided by either party in accordance with GC 11.1 – INSURANCE, the greater of the *Contract Price* as recorded in Article A-4 – CONTRACT PRICE or \$2,000,000, but in no event shall the sum be greater than \$20,000,000.

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.3 In respect to claims by third parties for direct loss resulting from bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, the obligation to indemnify is without limit. In respect to all other claims for indemnity as a result of claims advanced by third parties, the limits of indemnity set forth in paragraphs 12.1.2.1 and 12.1.2.2 shall apply.

- 12.1.3 The obligation of either party to indemnify the other as set forth in paragraphs 12.1.1 and 12.1.2 shall be inclusive of interest and all legal costs.
- 12.1.4 The *Owner* and the *Trade Contractor* shall indemnify and hold harmless the other from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of their obligations described in GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES.
- 12.1.5 The *Owner* shall indemnify and hold harmless the *Trade Contractor* from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings:
- .1 as described in paragraph 10.3.2 of GC 10.3 – PATENT FEES, and
 - .2 arising out of the *Trade Contractor's* performance of the *Contract* which are attributable to a lack of or defect in title or an alleged lack of or defect in title to the *Place of the Project*.
- 12.1.6 In respect to any claim for indemnity or to be held harmless by the *Owner* or the *Trade Contractor*:
- .1 *Notice in Writing* of such claim shall be given within a reasonable time after the facts upon which such claim is based became known;
 - .2 should either party be required, as a result of its obligation to indemnify the other, pay or satisfy a final order, judgment or award made against the party entitled by this contract to be indemnified, then the indemnifying party upon assuming all liability for any costs that might result shall have the right to appeal in the name of the party against whom such final order or judgment has been made until such rights of appeal have been exhausted.

GC 12.2 WAIVER OF CLAIMS

- 12.2.1 Subject to any lien legislation applicable to the *Place of the Project*, as of the fifth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Project*, the *Trade Contractor* waives and releases the *Owner* from all claims which the *Trade Contractor* has or reasonably ought to have knowledge of that could be advanced by the *Trade Contractor* against the *Owner* arising from the *Trade Contractor's* involvement in the *Work*, including, without limitation, those arising from negligence or breach of contract in respect to which the cause of action is based upon acts or omissions which occurred prior to or on the date of *Substantial Performance of the Work*, except as follows:
- .1 claims arising prior to or on the date of *Substantial Performance of the Work* for which *Notice in Writing* of claim has been received by the *Owner* from the *Trade Contractor* no later than the sixth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Project*;
 - .2 indemnification for claims advanced against the *Trade Contractor* by third parties for which a right of indemnification may be asserted by the *Trade Contractor* against the *Owner* pursuant to the provisions of this *Contract*;
 - .3 claims for which a right of indemnity could be asserted by the *Trade Contractor* pursuant to the provisions of paragraphs 12.1.4 or 12.1.5 of GC 12.1 – INDEMNIFICATION; and
 - .4 claims resulting from acts or omissions which occur after the date of *Substantial Performance of the Work*.
- 12.2.2 The *Trade Contractor* waives and releases the *Owner* from all claims referenced in paragraph 12.2.1.4 except for those referred in paragraphs 12.2.1.2 and 12.2.1.3 and claims for which *Notice in Writing* of claim has been received by the *Owner* from the *Trade Contractor* within 395 calendar days following the date of *Substantial Performance of the Work*.
- 12.2.3 Subject to any lien legislation applicable to the *Place of the Project*, as of the fifth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Project*, the *Owner* waives and releases the *Trade Contractor* from all claims which the *Owner* has or reasonably ought to have knowledge of that could be advanced by the *Owner* against the *Trade Contractor* arising from the *Owner's* involvement in the *Work*, including, without limitation, those arising from negligence or breach of contract in respect to which the cause of action is based upon acts or omissions which occurred prior to or on the date of *Substantial Performance of the Work*, except as follows:
- .1 claims arising prior to or on the date of *Substantial Performance of the Work* for which *Notice in Writing* of claim has been received by the *Trade Contractor* from the *Owner* no later than the sixth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Project*;
 - .2 indemnification for claims advanced against the *Owner* by third parties for which a right of indemnification may be asserted by the *Owner* against the *Trade Contractor* pursuant to the provisions of this *Contract*;

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- .3 claims for which a right of indemnity could be asserted by the *Owner* against the *Trade Contractor* pursuant to the provisions of paragraph 12.1.4 of GC 12.1 – INDEMNIFICATION;
 - .4 damages arising from the *Trade Contractor's* actions which result in substantial defects or deficiencies in the *Work*. "Substantial defects or deficiencies" mean those defects or deficiencies in the *Work* which affect the *Work* to such an extent or in such a manner that a significant part or the whole of the *Work* is unfit for the purpose intended by the *Contract Documents*;
 - .5 claims arising pursuant to GC 12.3 – WARRANTY; and
 - .6 claims arising from acts or omissions which occur after the date of *Substantial Performance of the Work*.
- 12.2.4 The *Owner* waives and releases the *Trade Contractor* from all claims referred to in paragraph 12.2.3.4 except claims for which *Notice in Writing* of claim has been received by the *Trade Contractor* from the *Owner* within a period of six years from the date of *Substantial Performance of the Work* should any limitation statute of the Province or Territory of the *Place of the Project* permit such agreement. If the applicable limitation statute does not permit such agreement, within such shorter period as may be prescribed by:
- .1 any limitation statute of the Province or Territory of the *Place of the Project*; or
 - .2 the Civil Code of Quebec, if the *Place of the Project* is the Province of Quebec.
- 12.2.5 The *Owner* waives and releases the *Trade Contractor* from all claims referenced in paragraph 12.2.3.6 except for those referred in paragraph 12.2.3.2, 12.2.3.3 and those arising under GC 12.3 – WARRANTY and claims for which *Notice in Writing* has been received by the *Trade Contractor* from the *Owner* within 395 calendar days following the date of *Substantial Performance of the Work*.
- 12.2.6 *Notice in Writing* of claim as provided for in GC 12.2 – WAIVER OF CLAIMS to preserve a claim or right of action which would otherwise, by the provisions of GC 12.2 – WAIVER OF CLAIMS, be deemed to be waived, must include the following:
- .1 a clear and unequivocal statement of the intention to claim;
 - .2 a statement as to the nature of the claim and the grounds upon which the claim is based; and
 - .3 a statement of the estimated quantum of the claim.
- 12.2.7 The party giving *Notice in Writing* of claim as provided for in GC 12.2 – WAIVER OF CLAIMS shall submit within a reasonable time a detailed account of the amount claimed.
- 12.2.8 Where the event or series of events giving rise to a claim made under paragraphs 12.2.1 or 12.2.3 has a continuing effect, the detailed account submitted under paragraph 12.2.7 shall be considered to be an interim account and the party making the claim shall submit further interim accounts, at reasonable intervals, giving the accumulated amount of the claim and any further grounds upon which it is based. The party making the claim shall submit a final account after the end of the effects resulting from the event or series of events.
- 12.2.9 If a *Notice in Writing* of claim pursuant to paragraph 12.2.1.1 is received on the seventh or sixth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Project*, the period within which *Notice in Writing* of claim shall be received pursuant to paragraph 12.2.3.1 shall be extended to two calendar days before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Project*.
- 12.2.10 If a *Notice in Writing* of claim pursuant to paragraph 12.2.3.1 is received on the seventh or sixth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Project*, the period within which *Notice in Writing* of claim shall be received pursuant to paragraph 12.2.1.1 shall be extended to two calendar days before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Project*.

GC 12.3 WARRANTY

- 12.3.1 Except for extended warranties as described in paragraph 12.3.7, the warranty period under the *Contract* is one year from the later of the date of *Substantial Performance of the Work* and the *Project In-Use Date*.
- 12.3.2 The *Trade Contractor* shall be responsible for the proper performance of the *Work* to the extent that the design and *Contract Documents* permit such performance.
- 12.3.3 The *Trade Contractor* shall submit to the *Construction Manager* for the *Owner's* acceptance all written warranties and related documents required by the *Contract Documents*.
- 12.3.4 The *Owner*, through the *Construction Manager*, shall promptly give the *Trade Contractor Notice in Writing* of observed defects and deficiencies that occur during the one year warranty period.

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- 12.3.5 Subject to paragraph 12.3.2, the *Trade Contractor* shall correct promptly, at the *Trade Contractor's* expense, defects or deficiencies in the *Work* which appear prior to and during the one year warranty period.
- 12.3.6 The *Trade Contractor* shall correct or pay for damage resulting from corrections made under the requirements of paragraph 12.3.5.
- 12.3.7 Any extended warranties beyond the one year warranty period as described in paragraph 12.3.1, shall be as specified in the *Contract Documents*. Extended warranties shall be issued by the warrantor to the benefit of the *Owner*. The *Trade Contractor's* responsibility with respect to extended warranties shall be limited to obtaining any such extended warranties from the warrantor. The obligations under such extended warranties are solely the responsibilities of the warrantor.

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SUPPLEMENTARY CONDITIONS

The Standard Construction Document for Stipulated Price Contract between *Owner* and *Trade Contractor* for Construction Management Projects form CCDC 17, 2010, English version, consisting of the Agreement Between *Owner* and *Trade Contractor*, Definitions, and General Conditions of the Contract, Parts 1 to 12 inclusive, governing same is hereby made part of these *Contract Documents*, with the following amendments, additions and modifications. Where these amendments, additions, and modifications specifically reference a change to the Agreement, Definitions, or General Conditions, these amendments, additions and modifications shall govern.

AGREEMENT

SC1.1 Article A-1 The Work

SC1.1.1 At the end of the last sentence of Article A-1 paragraph 1.1, delete the following: "for which the *Construction Manager* / *Consultant*" is acting as the *Payment Certifier*, and (*Strike out inapplicable term.)".

SC1.1.2 Delete Paragraphs 1.3.2 and 1.3.3 in their entirety.

SC1.2 Article A-4 Contract Price

SC1.2.1 At paragraph 4.1 delete, "The *Contract Price*, which excludes *Value Added Taxes*, is:" and replace with, "The *Contract Price* including taxes, duties, tariffs and royalties related to the performance of the *Work* and excluding *Value Added Taxes* is:"

SC1.3 Article A-5 Payment

SC1.3.1 Delete Paragraphs 5.1.1 and 5.1.3 in their entirety.

SC1.3.2 Add new paragraph 5.1.1 as follows:

"5.1.1 make progress payments to the *Trade Contractor* on account of the *Contract Price* when due in the amount approved by the *Owner* together with such *Value Added Taxes* as may be applicable to such payment, and

SC1.3.3 Add new paragraph 5.1.3 as follows:

"5.1.3 upon the completion of the *Work* as agreed by the *Construction Manager* and the *Consultant*, pay to the *Trade Contractor* the unpaid balance of the *Contract Price* when due together with such *Value Added Taxes* as may be applicable to such payment.

SC1.3.4 Delete paragraph 5.3.1(1) and 5.3.1(2) in their entirety.

SC1.3.5 Add new paragraph 5.3.1(1) as follows:

"5.3.1(1) 0% for the first 15 days.

SC1.3.6 Add new paragraph 5.3.1(2) as follows:

"5.3.1(2) 1% after the first 15 days.

SC1.3.7 At the end of paragraph 5.3.1 delete the following: "Such interest shall be compounded on a monthly basis. The prime rate shall be the rate of interest quoted by (Insert name of chartered lending institution whose prime rate is to be used) for prime business loans as it may change from time to time.

SC1.4 Article A-6 Communication

SC1.4.1 At paragraph 6.1 add, "or" before "the *Consultant*" and delete, "or the *Payment Certifier*".

SC1.4.2 At paragraph 6.2.1 delete, "the *Payment Certifier* and".

DEFINITIONS

SC2.1 Payment Certifier

SC2.1.1 Delete the definition for "Payment Certifier" in its entirety.

SC2.1.2 Add new definition for "Payment Certifier" as follows:
 "A *Payment Certifier* has not been and will not be assigned to this Project."

SC2.2 Project in Use Date

SC2.2.1 Delete the definition for "Project In-Use Date" in its entirety.

SC2.2.2 Add new definition for "Project In-Use Date" as follows:
 "*Project In-Use Date* shall have been reached when the Project is deemed Substantially Complete excluding any areas for which the design is not complete. The *Project In-Use Date* shall be confirmed in writing by the *Construction Manager* in consultation with the *Consultant* and the *Owner*."

SC2.3 Quality Assurance

SC2.3 Add new definition for "Quality Assurance" as follows:
 "*Quality Assurance* is the process and procedures put in place to execute the *Work* that systematically monitors, detects, corrects and ensures that quality standards are being met."

SC2.4 Quality Control

SC2.4 Add new definition for "Quality Control" as follows:
 "*Quality Control* is the process put in place to review the *Work* as it is being executed and completed to ensure that quality standards are being met."

GENERAL CONDITIONS

SC3 Part 1 General Provisions

SC3.1 At paragraph 1.3.2 delete, "*Payment Certifier*,"

SC4 Part 2 Administration of the Contract

SC4.1 Delete paragraph 2.1.4 in its entirety.


SC4.2 Add new paragraph 2.4.4 as follows:
 "2.4.4 The *Trade Contractor* will be responsible for all additional testing and inspections related to the defective work and correction of same.

SC5 Part 3 Execution of the Work

17-February-2015

- SC5.1 Add new paragraph 3.1.3 as follows:
"3.1.3 This *Trade Contractor* shall secure the area of its work to ensure no hazard to other trades people, property, equipment or other work."
- SC5.2 Add new paragraph 3.1.4 as follows:
"3.1.4 This *Trade Contractor* shall rectify immediately damage caused by this *Trade Contractor* to the work of others, temporary services and facilities, fencing, curbs, trees, sidewalks, roadways, equipment, property or neighboring properties."
- SC5.3 Add new paragraph 3.1.5 as follows:
"3.1.5 This *Trade Contractor* will be responsible to protect the *Work* during the course of the construction."
- SC5.4 Add new paragraph 3.1.6 as follows:
"3.1.6 Only major benchmarks and gridlines will be provided by the *Construction Manager*. All required extension of layout and grades to complete the *Work* are the responsibility of the *Trade Contractor*"
- SC5.5 Add to the end of 3.3.1, "When using construction equipment (including but not limited to swing stages), the *Trade Contractor* shall submit to the *Owner* a certificate indicating the initial set-up as well as any subsequent set-ups and the equipment used is in conformance with the Occupational Health and Safety Act and related regulations for a construction project."
- SC5.6 Add new paragraph 3.3.4 as follows:
"3.3.4 This *Trade Contractor* shall be responsible for providing labour to load, off-load and move their own equipment and materials as needed to complete the *Work*."
- SC5.7 Add new paragraph 3.3.5 as follows:
"3.3.5 A Man and Material Hoist will be provided by the *Owner* for use by all trade contractors working on the *Project*. The *Trade Contractor* will have use of the Man and Material Hoist as arranged through the *Construction Manager*. Deliveries will be allowed on a reserved basis coordinated by the *Construction Manager*. At times the hoist will be running beyond normal working hours to accommodate the need. The *Trade Contractor* will be expected to coordinate the delivery times with the *Construction Manager* and will not be compensated for premium time shifts if the deliveries are accepted or required outside normal working hours."
- SC5.8 Add new paragraph 3.3.6 as follows:
"3.3.6 The *Trade Contractor* is responsible for its own hoisting. Should hoisting be required prior to the installation of the Man and Material Hoist or after the hoist is dismantled it will be the *Trade Contractors* responsibility to hoist its equipment and/or material using other means. The *Trade Contractor* is responsible to advise the *Construction Manager* of any special hoisting procedures."
- SC5.9 Add new paragraph 3.3.7 as follows
"3.3.7 Should the *Trade Contractor* require the use of the Tower Crane during the timeframe that it is installed and operating on the *Project* then the *Trade Contractor* will make arrangements through the *Construction Manager* for such use. Use of the Tower Crane will be at the discretion of the formwork contractor who will provide the Tower Crane at times that will not interfere with the progress of their work. The *Trade Contractor* shall pay all costs and shall provide all insurance required for use of the Tower Crane. In the event the hoisting by the Tower Crane is outside normal working hours the *Trade Contractor* will not be compensated for premium time shifts."

- SC5.10 Add new paragraph 3.4.2 as follows:
"3.4.2 The *Trade Contractor* is responsible for ensuring that it is working with the most current revision of all drawings."
- SC5.11 Add new paragraph 3.4.3 as follows:
"3.4.3 The *Trade Contractor* is to coordinate the installation of its *Work* with all *Contracts Documents* (i.e. Architectural, Interior Design, Landscape, Structural, Mechanical and Electrical drawings and specifications) ensuring the installation of the *Work* will not adversely impact the installation of the work of other trades. Where a conflict is found, the *Trade Contractor* will advise the *Construction Manager* immediately and will not proceed with the installation of the *Work* until the conflict is resolved and direction is given through the *Construction Manager*. Should the *Trade Contractor* install portions of the *Work* that later prove to impede the work of other trades then the *Trade Contractor* will relocate the portions of the *Work* that are interfering at the *Trade Contractors* cost."
- SC5.12 At 3.5.3.2 delete, "monthly" and replace with, "weekly".
- SC5.13 Add new paragraph 3.5.3.4 as follows:
"3.5.3.4 provide all necessary material, manpower, equipment, supervision and the like to complete the work as per the Project Schedule."
- SC5.14 Add new paragraph 3.5.3.5 as follows:
"3.5.3.5 notify the *Construction Manager* within 3 *Working Days* if there is a delay to the Project Schedule. If the *Trade Contractor* is the cause for the delay then the *Trade Contractor* will develop a recovery plan within 3 *Working Days*. The *Trade Contractor's* recovery plan will include all means necessary to regain the lost time including but not limited to additional manpower, working overtime, working weekends, additional equipment and the like."
- SC5.15 Add new paragraph 3.5.4 as follows:
"3.5.4 The *Construction Manager* may reasonably rely upon the Project Schedule and the *Trade Contractor* acknowledges that the *Owner* may commence dealings with any third-party, including the procurement of owner-furnished materials, execution of leases and contracts, obtaining financing, hiring and training of employees, and advertising or marketing, or selling the improvements at the project, based upon the Schedule."
- SC5.16 Add new paragraph 3.5.5 as follows:
"3.5.5 The *Trade Contractor's* construction schedule noted in 3.5.3.1 will include the procurement of all materials and equipment."
- SC5.17 Add new paragraph 3.5.6 as follows:
"3.5.6 The *Construction Manager's* analysis of the *Trade Contractors* construction schedule shall not relieve the *Trade Contractor* of any obligation for the performance of the *Work*."
- SC5.18 At 3.7.6 delete, "certified" and replace with, "approved"
- SC5.19 Add new paragraph 3.8.4 as follows:
"3.8.4 The *Owner* will provide heat and lighting to the minimum required by Ministry of Labour. This *Trade Contractor* is responsible for any additional supplementary spot heaters and/or task lighting as required to complete the *Work*."
- SC5.20 Add new paragraph 3.8.5 as follows:
"3.8.5 The *Owner* will provide 120V, 15A power panels allowing the *Trade Contractor* to operate power tools at any location in the building using a 100 foot extension cord."

- SC5.21 Add new paragraph 3.8.6 as follows:
 "3.8.6 The *Project* will be constructed by labour working in an "open-shop" environment, union or non-union. Parties causing disruption to the progress of the work will be dismissed from the project and held responsible for any damages caused."
- SC5.22 Add new paragraph 3.9.2 as follows:
 "3.9.2 The *Trade Contractor* shall maintain current at all times, as-built drawings for the *Work*. The drawings are to be kept on site in a safe and secure lock up. Provide copies of the as-built drawings to the *Construction Manager* immediately upon request for review by the *Construction Manager*, or the *Consultant*. Upon completion of the *Work* submit 3 sets of the as-built drawings to the *Construction Manager* for review and approval."
- SC5.23 At the end of paragraph 3.10.2 add, "Shop Drawings are to be submitted to the *Construction Manager* within 4 weeks of award of *Contract* or in such instances where submission of the shop drawings within 4 weeks of award is not possible, provide a schedule for the submission of shop drawings acceptable to the *Construction Manager* within 4 weeks of award. The *Trade Contractor* is to provide 8 copies of each submission of which 1 will be returned to the *Trade Contractor* upon completion of review."
- SC5.24 Add new paragraph 3.10.14 as follows:
 "3.10.14 The *Trade Contractor* is responsible to confirm all dimensions on site prior to fabrication and/or ordering of materials to ensure proper fit of installed product. The review by the *Construction Manager* or the *Consultant* does not relieve the *Trade Contractors* responsibility in this regard."
- SC5.25 Add new paragraph 3.13.4 as follows:
 "3.13.4 The *Trade Contractor* is responsible for the costs and the carrying out for dust control related to the *Work* of this *Trade Contractor* by whatever means necessary."
- SC5.26 Add new paragraph 3.13.5 as follows:
 "3.13.5 The *Trade Contractor* is responsible for street cleaning related to its *Work*."
- SC5.27 Add new paragraph 3.13.6 as follows:
 "3.13.6 The *Trade Contractor* is responsible to clean up all of its debris on a daily basis, and to dump the same in the appropriate container(s) supplied by the *Owner*. ~~In addition one (1) worker from each ten (10) people employed or pro-rated portion thereof, shall be assigned to the *Construction Manager's* clean-up crew one (1) day per week for the duration of the *Trade Contractor's Work period*.~~ Should the *Trade Contractor* fail or refuse to clean their debris, the *Construction Manager* shall clean the debris for the *Trade Contractor* at the *Trade Contractor's* expense. All garbage is to be packaged and separated into appropriate containers as directed by the *Construction Manager* or the requirements of the Works Department and all Municipal authorities having jurisdiction (i.e., Ministry of the Environment and Energy). The complete disposal cost for mixed or contaminated loads shall be back charged to the offending *Trade Contractor*." 
- SC5.28 Add new section "GC 3.14 Quality Control and Quality Assurance"
- SC5.29 Add new paragraph 3.14.1 as follows:
 "3.14.1 The *Trade Contractor* is to submit their *Quality Assurance* program for review and acceptance by the *Construction Manager*."
- SC5.30 Add new paragraph 3.14.2 as follows:



"3.14.2 The *Trade Contractor* is to submit their *Quality Control* program for review and acceptance by the *Construction Manager*. The *Trade Contractors Quality Control* program will be in addition to any *Quality Control* being performed by the *Construction Manager, Consultant or Owner*."

SC6 Part 4 Allowances

Intentionally left blank.

SC7 Part 5 Payment

SC7.1 Delete "GC 5.1 Financing Information Required of the Owner", in its Entirety including 5.1.1 and 5.1.2.

SC7.2 At paragraph 5.2.4 delete, "15 calendar days" and replace with, "20 working days".

SC7.3 Add to the end of paragraph 5.2.4, "The schedule of values will be subject to approval by the *Construction Manager*."

SC7.4 Delete paragraph 5.2.5 in its entirety.

SC7.5 Add new paragraph 5.2.6.3 as follows:
 "5.2.6.3 with each application a valid WSIB clearance certificate."

SC7.6 Add new paragraph 5.2.6.4 as follows:
 "5.2.6.4 with each application a copy of all *Change Orders* for which the *Trade Contractor* is claiming a payment for."

SC7.7 Add new paragraph 5.2.6.5 as follows:
 "5.2.6.5 with each application a copy of approval from the *Construction Manger's* site staff."



SC7.8 Add new paragraph 5.2.6.6 as follows:
 "5.2.6.6 original documents."

SC7.9 Delete paragraph 5.2.7 in its entirety.

SC7.10 Add new paragraph 5.2.7 as follows:
 "5.2.7 Applications for payment for *Products* delivered to the *Place of the Project* but not yet incorporated into the *Work* will be at the discretion of the *Owner*. If accepted by the *Owner* the *Trade Contractor* will provide such evidence as the *Construction Manager* and *Owner* may require to establish the value and delivery of the *Products*. In no event will *Products* be permitted to be delivered to the *Project* when the installation is not scheduled to begin for more than 20 working days from the date of the delivery."

SC7.11 Delete paragraph 5.3.1 in its entirety including 5.3.1.1, 5.3.1.2 and 5.3.1.3.

SC7.12 Add new paragraph 5.3.1 as follows:
 "5.3.1 The *Trade Contractor* must submit the application for payment to the *Construction Manager's* office at 3755 Victoria Park Avenue, Toronto, Ontario, M1W 3Z4 by the 20th day of the month including all original documents required as per GC 5.2. The application for payment will reflect all work completed up to and including the 20th day of that month."

- SC7.13 Add new paragraph 5.3.2 as follows:
 "5.3.2 The *Construction Manager* will review and accept the values being claimed in the application for payment during the week prior to the application for payment being submitted as noted in 5.3.1."
- SC7.14 Add new paragraph 5.3.3 as follows:
 "5.3.3 The Owner's approval will then be complete by the 15th of the first month following the application for payment being submitted as noted in 5.3.1. Should adjustments be required the Trade Contractor will be Notified."
- SC7.15 Add new paragraph 5.3.4 as follows:
 "5.3.4 The payment will be processed by the 15th day of the second month following the application for payment being submitted as noted in 5.3.1."
- SC7.16 Add new paragraph 5.3.5 as follows:
 "5.3.5 Final Payment shall not become due until all required documentation, such as guarantees, warranties, maintenance manuals and as-built record drawings have been delivered to the *Construction Manager*."
- SC7.17 At paragraph 5.4.2 delete, "whichever of them is the *Payment Certifier*, acting in that capacity,"
- SC7.18 Delete paragraph 5.5.1 and 5.5.2 in their entirety.
- SC7.19 Add new paragraph 5.5.1 as follows:
 "5.5.1 After the *Construction Manager* confirms ~~the Substantial Performance of the Work~~, the Trade Contractor shall submit to the *Construction Manager* an application for payment of the holdback amount including a Form 6 Certificate of substantial performance as per the Construction Lien Act, proof of publication, CCDC 9A 'Statutory Declaration' and all documents required as per 5.2.6, and Construction Manager shall issue a certificate for payment of the holdback amount and pay holdback *Completion of Trade Contractor's work* 
- SC7.20 At paragraph 5.6.1 delete, "*Payment Certifier* has certified" and replace with, "Construction *Manager and Consultant* have confirmed" *to Trade Contractor forthwith* 
- SC7.21 Delete paragraph 5.6.2 in its entirety.
- SC7.22 At the end of paragraph 5.7.2.1 add the following: " will advise the Trade Contractor in writing that the application is valid or give reasons why it is not valid."
- SC7.23 Delete paragraph 5.7.2.2 in its entirety.
- SC7.24 Delete paragraph 5.7.3 in its entirety.
- SC7.25 At paragraph 5.8.1 delete, "as Certified by the *Payment Certifier*" and delete, "the *Payment Certifier* determines."
- SC8 Part 6 Changes in the Work**
- SC8.1 Add new paragraph 6.2.3 as follows:
 "6.2.3 When determining the adjustment to the *Contract Price* the *Trade Contractor* will be limited to the estimated costs as per the items identified in 6.3.6, 6.3.7, 6.3.8 and 6.3.14."

SC8.2 Add new paragraph 6.2.4 as follows:
 "6.2.4 The *Trade Contractor* shall provide a detail cost breakdown of the work within 10 days of receipt of the proposed change. Extensions to the 10 day period will only be granted upon written request. If the *Trade Contractor* fails to submit a cost for the proposed change in the work, the *Construction Manager, Owner* and/or the *Consultant* will make an assessment of the costs which will be final.

SC8.3 Delete paragraph 6.3.6.3 in its entirety.

SC8.4 Add new paragraph 6.3.6.3 as follows:
 "6.3.6.3 The *Trade Contractor's* percentage fee as noted in paragraph 6.3.6.1 shall be limited to 5% for overhead and 5% for profit."

SC8.5 Add new paragraph 6.3.14 as follows:
 "6.3.14 Work performed by subcontractors or sub-subcontractors etc. will be subject to the same restrictions as the *Trade Contractor* when pricing the work of a *Change Order* or *Change Directive*.

SC9 Part 7 Default Notice

SC9.1 At paragraph 7.1.4.1 delete the following: "provided the *Payment Certifier* has certified such cost to the *Owner* and the *Trade Contractor*"

SC9.2 At paragraph 7.1.5.3 delete the following: "as certified by the *Payment Certifier*"

SC9.3 Delete paragraphs 7.2.2, 7.2.3 and 7.2.4 in their entirety.

SC10 Part 8 Dispute Resolution

Intentionally left blank

SC11 Part 9 Protection of Persons and Property

SC11.1 At paragraph 9.4.2 delete, "Owner" and replace with, "*Construction Manager*".

SC11.2 Add new paragraph 9.4.4 as follows:
 "9.4.4 The *Owner* and *Construction Manager* have a safety program in place for the site. All *Trade Contractors/Suppliers* shall fully co-operate with the *Construction Manager* to implement the site safety program and comply with requirements of Occupational Health and Safety At R.S.O. 1990 c. O. 1 (as may be amended from time to time). All *Trade Contractors/Suppliers* are responsible for the safety of their employees, *Trade Contractors, visitors, Suppliers* and those for whom the *Trade Contractor's Suppliers* are at law responsible and must ensure that proper safety equipment and procedures are used at all times. Regular meetings regarding safe work procedures will be held on site for all workers and will be organized by the *Construction Manager*. The *Trade Contractor/Supplier* shall fully indemnify the *Owner* and *Construction Manager* for all costs, damages and pay any and all fines levied against the *Owner* its Lender or any affiliated or related entities or their shareholders, officers, directors, employees or those for whom they are at law responsible resulting from the *Trade Contractor/Supplier*, it's

employees, suppliers and those for whom the *Trade Contractor/Supplier* are at law responsible for failing to adhere to the Safety Requirements of all laws and authorities having jurisdiction. All *Trade Contractors/Suppliers* on this site will be required to have a written Health & Safety Policy according to the requirements of the Occupational Health & Safety Act R.S.O. 1190 c. 0. 1 (as may be amended from time to time) and must provide a copy to the Site Superintendent prior to starting any work on the site. All *Trade Contractors* are required to submit the following information regarding their Safety Program and accident experience: 1) Safety Policy and Programs; 2) Outline of Safety Training (i.e., W.H.M.I.S.); 3) CAD-7 Experience Rating Summary. The *Trade Contractor* shall be fully responsible for all acts of negligence committed by its personnel and for any accidents or damages caused as a result of such acts of negligence. The *Trade Contractor* shall provide the *Owner* and *Construction Manager* with copies of all Project Inspection Reports issued by the Ontario Ministry of Labour, Construction Health and Safety Branch. The *Trade Contractor* shall provide the *Owner* and *Construction Manager* with copies of all accident reports."

SC11.3 Add new paragraph 9.4.5 as follows:

"9.4.5 The *Trade Contractor* will submit to the *Construction Manager* prior to starting the *Work* at the *Place of the Project* a signed copy of the Occupational Health and Safety Trade Contractor Agreement between the *Owner* and the *Trade Contractor* that was included in the Tender Package for the *Work*."

SC12 Part 10 Governing Regulations

SC12.1 Add new paragraph 10.2.8 as follows:

"10.2.8 The *Trade Contractor* agrees to complete the *Work* in accordance with all applicable federal, provincial and municipal laws, regulations and codes and all regulations thereunder, amendments thereto or substitutions therefore, including, but not limited to the following:

- a. The Ontario Building Code;
- b. The National Building Code including all Supplements;
- c. Canada Mortgage and Housing Corporation Builders' Bulletins;
- d. Ontario Electrical Safety Code;
- e. Canada Plumbing Code;
- f. Residential Standards Canada;
- g. The National Housing Act, R.S.C. 1985, Chap. N-11, as amended;
- h. The Occupational Health and Safety Act and Regulations for Construction Projects, Revised SO, 1990, Chapter 0.1m as amended, O. Reg. 213/91, as amended by O. Reg. 631/94, O. Reg. 143/99, 571/99, 145/00 and 527/00, R.R.O. 1990, Reg. 834;
- i. The Elevating Devices Act, R.S.O. 1980, Chapter 135, as amended;
- j. Workplace Safety and Insurance Act, 1997, SO, 1997, Chapter 16, Schedule A. and O. Reg. 562/99, 1101, 456/97, 175/98, 455/97, 259/92;
- k. The Construction Lien Act, S.O. 1983, as amended;
- l. The Tarion Warranty Corporation Construction Performance Guidelines, April 2, 2003;
- m. Tarion Warranty Corporation Regulations and its latest amendments and
- n. The Ontario New Home Warranties Plan Act
- o. In the event of any differences between two codes, two statutes or a statute and a code, the more stringent code or statute shall govern.

SC13 Part 11 Insurance

SC13.1 Delete paragraph 11.1.1 in its entirety. Including paragraphs 11.1.1.1, 11.1.1.2 and 11.1.1.3

SC13.2 Add new paragraph 11.1.1 as follows:

"11.1.1 Without restricting the generality of GC 12.1- INDEMNIFICATION, the *Trade Contractor* shall provide, maintain, and pay for the insurance coverages specified below. Unless otherwise stipulated, the duration of each insurance policy shall be from the date of commencement of the *Work* until the date of the final certificate for payment. Prior to commencement of the *Work* and upon the placement, renewal, amendment, or extension of all or any part of the insurance, the *Trade Contractor* shall promptly provide the *Construction Manager* with confirmation of coverage and, if required, a certified true copy of the policies certified by an authorized representative of the insurer together with copies of any amending endorsements. The policies shall be in a form acceptable to the *Construction Manager* and endorsed to provide the *Construction Manager* with not less than 15 days notice in writing in advance of cancellation, change, or amendment restricting coverage."

SC13.3 Add new paragraph 11.1.1.1 as follows:

"11.1.1.1 Automobile Liability Insurance:

Automobile liability insurance in respect of licensed vehicles shall have limits of not less than \$5,000,000 inclusive per occurrence for bodily injury, death, and damage to property, covering all licensed vehicles owned or leased by the *Trade Contractor*. Where the policy has been issued pursuant to a government operated automobile insurance system, the *Trade Contractor* shall provide the *Construction Manager* with confirmation of automobile insurance coverage for all automobiles registered in the name of the *Trade Contractor*."

SC13.4 Add new paragraph 11.1.1.2 as follows:

"11.1.1.2 Aircraft and Watercraft Liability Insurance:

Aircraft and watercraft liability insurance with respect to owned or non-owned aircraft and watercraft if used directly or indirectly in the performance of the *Work*, including use of additional premises, shall be subject to limits of not less than \$5,000,000 inclusive per occurrence for bodily injury, death, and damage to property including loss of use thereof and limits of not less than \$5,000,000 for aircraft passenger hazard."

SC13.5 Add new paragraph 11.1.1.3 as follows:

"11.1.1.3 *Trade Contractors'* Equipment Insurance:

"All Risk" contractors' equipment insurance covering construction machinery and equipment (including contractors building and equipment, the capital cost of any item which is not included in the cost of new construction) owned, rented, leased or used by the *Trade Contractor* for the performance of the *Work*, including boiler insurance on temporary boiler and pressure vessels. Such policies will not allow for subrogation claims against the *Owner* or *Construction Manager* or their employees."

SC13.6 Delete paragraph 11.1.3 in its entirety.

SC13.7 Add new paragraph 11.1.3 as follows:

"11.1.3 The *Owner* shall obtain, maintain and pay for "wrap-up" general liability insurance in the joint names of the *Owner*, the *Construction Manager*, the *Consultant*, and all *Trade Contractors*, and all subconsultants, and all trade subcontractors with a limit of not less than \$25,000,000 per occurrence and a deductible not more than \$25,000. The coverage shall be primary and non-contributing to all other insurance policies and shall not be substantially less than the insurance provided by IBC Form 2100, (including an extension for a standard provincial and territorial form of non-owned automobile liability policy) and IBC form 2320, except for liability arising from damage to the *Project* during construction, which shall be limited to the completed operations period. The insurance shall be maintained from the date of

commencement of the *Project* until deficiency state at which point the *Owner* is responsible to provide coverage for completed operations hazards for a period of 3 years thereafter. In order to achieve the limit of insurance required the use of primary and excess liability policies is acceptable."

SC13.8 Delete paragraph 11.1.4.1 in its entirety.

SC13.9 Add new paragraph 11.1.4.1 as follows:

"11.1.4.1 The *Owner* shall obtain, maintain and pay for All Risk "broad form" property insurance including but not limited to the perils of flood, earthquake and sewer back-up in the joint names of the *Owner*, the *Owner's Mortgagee*, the *Construction Manager*, the *Consultant*, and all *Trade Contractors*. The policy shall have limits of not less the full replacement cost of the work including reoccurring soft costs subject however to limits of not less than 1.1 times the Construction Cost with a deductible not greater than \$25,000 except for the perils of sewer back-up, water damage, flood and earthquake. Such deductibles for sewer back-up, water damage and flood will not exceed \$50,000. Earthquake which will contain a deductible of not greater than 5% of the total values insured or \$100,000 whichever is greater. Loss if any will be payable to the *Owner*, the *Owner's Mortgagee*, the *Construction Manager*, the *Consultant*, and all *Trade Contractors* as their interest may appear. Providing the *Owner*, the *Owner's Mortgagee*, the *Construction Manager*, the *Consultant*, and all *Trade Contractors* will use the proceeds from any insurance to restore the work as nearly as possible to its condition before such loss or damage occurred. Such coverage will not include the replacement cost of any property not included in the capital cost of new construction. The All Risk "broad form" property insurance shall be provided from the date of commencement of the *Project* until the earliest of.

.1 120 days after the *Project In Use Date* or the registration of the condominium, whichever is later.

.2 on the commencement of use or occupancy unless such use or occupancy is for construction purposes, commercial purposes, habitational purposes, parking purposes, or for the installation and testing and commissioning of equipment forming part of the *Project*.

.3 when the *Place of the Project* is left unattended for more than 30 consecutive calendar days.

The *Owner* is not required to provide coverage for Asbestos, Cyber Risks, Mould or Terrorism."

SC13.10 Delete paragraph 11.1.4.2 in its entirety.

SC13.11 Add new paragraph 11.1.4.2 as follows:

"11.1.4.2 The *Owner* shall obtain, maintain and pay for Comprehensive Boiler and Machinery insurance including but not limited coverage for testing and commissioning in the joint names of the *Owner*, the *Construction Manager*, the *Consultant*, and all *Trade Contractors*. The policy shall have limits of not less the full replacement cost of the work including reoccurring soft costs subject however to limits of not less than 1.1 times the Construction Cost with a deductible not greater than \$25,000 except for Loss if any will be payable to the *Owner*, the *Owner's Mortgagee* and the *Construction Manager* as their interest may appear. Providing the *Owner* is not in default of any mortgage requirements the *Owner* and the *Owner's Mortgagee* will use the proceeds from any insurance to restore the work as nearly as possible to its condition before such loss or damage occurred. Such coverage will not include the replacement cost of any property not included in the capital cost of new construction. The Comprehensive Boiler and Machinery insurance shall be provided from the date of commencement of the *Project* until the earliest of.

.1 120 days after the *Project In Use Date* or the registration of the condominium, whichever is later.

.2 on the commencement of use or occupancy unless such use or occupancy is for construction purposes, commercial purposes, habitation purposes, parking purposes, or for the installation and testing and commissioning of equipment forming part of the *Project*.

.3 when the *Place of the Project* is left unattended for more than 30 consecutive calendar days. The *Owner* is not required to provide coverage for Asbestos, Cyber Risks, Mould or Terrorism.

SC13.12 At paragraph 11.1.4.3 delete, "The "Broad form" property and boiler and machinery policies shall provide that in the case of a loss or damage payment shall be made to the *Owner*, the *Trade Contractor*, the *Construction Manager* and the *Consultant* as their interest may appear."

SC13.13 Delete paragraph 11.1.5.2 in its entirety.

SC13.14 Delete paragraph 11.1.8 in its entirety.

SC13.15 Delete paragraph 11.1.9 in its entirety.

SC13.16 Delete paragraph 11.1.10 in its entirety.

SC13.17 Add new paragraph 11.1.11 as follows:

"11.1.11 Notwithstanding the requirement of the *Owner* to take out and maintain Wrap-up Liability Insurance the *Trade Contractor* shall take out and maintain Commercial General Liability Insurance (for all operations not insured under the Wrap-Up Liability Insurance Policy or for which the *Trade Contractor* desires additional insurance) with limits not less than \$5,000,000 covering the *Trade Contractor* and all operations of the *Trade Contractors* sub-contractors. The *Owner* and *Construction Manager* will be included as additional insured's, and such policies will be endorsed to provide a waiver of subrogation in favour of the *Owner* and *Construction Manager* or their employees."

SC13.18 Add new paragraph 11.1.12 as follows:

"11.1.12 General Insurance Provisions

- a. **No Representation of Coverage Adequacy.** By requiring the insurance as set out herein, the *Owner* and *Construction Manager* and their associated and affiliated companies, their officers, directors, members, managers, partners and employees, do not represent that the coverage and limits will necessarily be adequate to protect the *Trade Contractor*. The insurance required hereunder may be contained in one or more policies prior to commencement of any work or services.
- b. The *Trade Contractor* shall furnish to the *Owner* and *Construction Manager*, certificates of insurance or copies of policies showing that such insurance is in force within 10 days of award and as requested thereafter.
- c. In the event of any failure of the *Trade Contractor* to furnish and maintain insurance hereunder, the *Owner*, at its option and without waiving default of the *Trade Contractor*, shall have the right, but not the obligation, to obtain such insurance for and in the name of the *Trade Contractor*. In such event, the *Owner*, may, at its absolute discretion and option, either require that the *Trade Contractor* pay the cost thereof upon demand or deduct from any sums owing to the *Trade Contractor* all costs for obtaining such appropriate insurance. In either event, the *Trade Contractor* shall furnish to the *Owner*, all information required by the insurance carrier.
- d. The insurance requirements of this contract shall be placed with insurers licensed to operate in the Province of Ontario, with A.M. Best ratings of at least "A".

SC14 GC 12.1 Indemnification

SC14.1 Delete paragraph 12.1.2.2 in its entirety.

SC14.2 Add new paragraph 12.1.2.2 as follows:

"12.1.2.2 In respect to losses suffered by the *Owner* and the *Trade Contractor* for which insurance is not required to be provided by either party in accordance with GC 11.1 – INSURANCE, the greater of the *Contract Price* as recorded in Article A-4 – CONTRACT PRICE or \$5,000,000, but in no event shall the sum be greater than \$20,000,000."

SC14.3 Delete paragraph 12.3.1 in its entirety.

SC14.4 Add new paragraph 12.3.1 as follows:

"12.3.1 Except for extended warranties as described in paragraph 12.3.7, the warranty period under the *Contract* is two years or such longer period as specified in the contract documents or as required by the Tarion Corporation and the Ontario New Home Warranties Plan Act R.S.O. 1990 c.o.31 ("ONHWPA") from the date upon which the condominium corporation is registered, all in accordance with the requirements of the Tarion Corporation and ONHWPA Act."

SC14.5 At paragraph 12.3.4 delete, "one year warranty period" and replace with, "two year warranty period".


SC14.6 At paragraph 12.3.5 delete, "one year warranty period" and replace with, "two year warranty period".

SC14.7 At paragraph 12.3.7 delete, "one year warranty period" and replace with, "two year warranty period".

SC14.8 Add new paragraph 12.3.8, "Upon written notice from the *Owner* or *Construction Manager* to the *Trade Contractor* of any defect or deficiency the *Trade Contractor* will either make the necessary repairs, or in the event of failure to do so within five (5) working days after receiving written notification from the *Owner*, the *Owner* may make such repairs at the *Trade Contractor's* expense, which the *Trade Contractor* agrees to pay upon demand."

END OF SUPPLEMENTARY CONDITIONS

This is Exhibit ^{"1"} referred to in the
Affidavit of Aidan Ball
sworn before me this ^{10TH} day of March 2022


A Commissioner for taking Affidavits

CCDC 17

Stipulated Price Contract between
Owner and Trade Contractor
for Construction Management Projects

2 0 1 0

Massey Tower

Forma-Con

Apply a CCDC 17 copyright seal here. The application of the seal demonstrates the intention of the party proposing the use of this document that it be an accurate and unamended form of CCDC 17 – 2010 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

CANADIAN CONSTRUCTION DOCUMENTS COMMITTEE
CANADIAN CONSTRUCTION DOCUMENTS COMMITTEE

Handwritten mark

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CCDC 17 and CCDC 5A 'Construction Management Contract-For Services' are complimentary documents. CCDC 17 is the product of a consensus-building process aimed at balancing the interests of all parties on the construction project. It reflects recommended industry practices. CCDC 17 can have important consequences. The CCDC and its constituent member organizations do not accept any responsibility or liability for loss or damage which may be suffered as a result of the use or interpretation of CCDC 17.

**AGREEMENT BETWEEN OWNER AND TRADE CONTRACTOR
FOR CONSTRUCTION MANAGEMENT PROJECTS**

This Agreement made on the 19 day of December in the year 2014 .

by and between the parties

MOD Developments (197 Yonge) Limited Partnership

hereinafter called the *Owner*

and

Forma-Con Construction (A DIVISION OF 1428502 ONTARIO LIMITED)

hereinafter called the *Trade Contractor*

The *Owner* and the *Trade Contractor* agree as follows:

ARTICLE A-1 THE WORK

The *Trade Contractor* shall:

1.1 perform the *Work* required by the *Contract Documents* for

Concrete forming and falsework, void forming, concrete placing and finishing, temporary shoring, re-shoring, hoisting, and placing of all reinforcing steel and concrete accessories

insert above the description of the Work

for the *Project*

Massey Tower

Forma-Con

insert above the title of the Project

located at

197 Yonge Street, Toronto, Ontario Canada

insert above the Place of the Project

for which the Agreement has been signed by the parties, and for which

Tucker HiRise Construction Inc.

insert above the name of the Construction Manager

is acting as and is hereinafter called the *Construction Manager*, and for which

Hariri Pontarini Architects

insert above the name of the Consultant

is acting as and is hereinafter called the *Consultant*, and for which

the *Construction Manager** / *Consultant** is acting as the *Payment Certifier*, and (* Strike out inapplicable term.)

CCDC 17 – 2010

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1.2 do and fulfill everything indicated by the *Contract Documents*, and

1.3 perform the *Work*:

- .1 in accordance with a schedule provided by the *Owner* at the time of signing the *Contract*, or
- .2 in accordance with a schedule mutually agreed upon if provided by the *Owner* after the signing of the *Contract*; or
- .3 if no schedule is provided by the *Owner*, commence the *Work* by the _____ day of _____ in the year _____ and, subject to adjustment in *Contract Time* as provided for in the *Contract Documents*, attain *Substantial Performance of the Work*, by the _____ day of _____ in the year _____ .

ARTICLE A-2 AGREEMENTS AND AMENDMENTS

- 2.1 The *Contract* supersedes all prior negotiations, representations or agreements, either written or oral, relating in any manner to the *Work*, including the bidding documents that are not expressly listed in Article A-3 of the Agreement – CONTRACT DOCUMENTS.
- 2.2 The *Contract* may be amended only as provided in the *Contract Documents*.

ARTICLE A-3 CONTRACT DOCUMENTS

- 3.1 The following are the *Contract Documents* referred to in Article A-1 of the Agreement – THE WORK:
 - Agreement Between *Owner* and *Trade Contractor*
 - Definitions
 - The General Conditions of the *Contract*

*
 The additional documents listed on Appendix C of this Agreement are part of the Contract Documents.

* (Insert here, attaching additional pages if required, a list identifying all other *Contract Documents* e.g. supplementary conditions; information documents; specifications, giving a list of contents with section numbers and titles, number of pages, and date; material finishing schedules; drawings, giving drawing number, title, date, revision date or mark; addenda, giving title, number, date; schedule)

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ARTICLE A-4 CONTRACT PRICE

4.1 The *Contract Price*, which excludes *Value Added Taxes*, is:

Twenty Million Four Hundred Twenty-Nine Thousand Dollars /100 dollars \$ 20,429,000.00

4.2 *Value Added Taxes* (at 13 %) payable by the *Owner* to the *Trade Contractor* are:

Two Million Six Hundred Fifty-Five Thousand Seven Hundred & Seventy Dollars /100 dollars \$ 2,655,770.00

4.3 Total amount payable by the *Owner* to the *Trade Contractor* for the *Work* is:

Twenty-Three Million Eighty-Four Thousand Seven Hundred & Seventy Dollars /100 dollars \$ 23,084,770.00

4.4 These amounts shall be subject to adjustments as provided in the *Contract Documents*.

4.5 All amounts are in Canadian funds.

ARTICLE A-5 PAYMENT

5.1 Subject to the provisions of the *Contract Documents*, and in accordance with legislation and statutory regulations respecting holdback percentages and, where such legislation or regulations do not exist or apply, subject to a holdback of Ten percent (10 %), the *Owner* shall:

- .1 make progress payments to the *Trade Contractor* on account of the *Contract Price* when due in the amount certified by the *Payment Certifier* together with such *Value Added Taxes* as may be applicable to such payment, and
- .2 upon *Substantial Performance of the Work*, pay to the *Trade Contractor* the unpaid balance of the holdback amount when due together with such *Value Added Taxes* as may be applicable to such payment, and
- .3 upon the issuance of the final certificate for payment, pay to the *Trade Contractor* the unpaid balance of the *Contract Price* when due together with such *Value Added Taxes* as may be applicable to such payment.

5.2 In the event of loss or damage occurring where payment becomes due under the property and boiler insurance policies, payments shall be made to the *Trade Contractor* in accordance with the provisions of GC 11.1 – INSURANCE.

5.3 Interest

- .1 Should either party fail to make payments as they become due under the terms of the *Contract* or in an award by arbitration or court, interest at the following rates on such unpaid amounts shall also become due and payable until payment:
 - (1) 2% per annum above the prime rate for the first 60 days.
 - (2) 4% per annum above the prime rate after the first 60 days.

Such interest shall be compounded on a monthly basis. The prime rate shall be the rate of interest quoted by

The Royal Bank of Canada

(Insert name of chartered lending institution whose prime rate is to be used)

for prime business loans as it may change from time to time.

- .2 Interest shall apply at the rate and in the manner prescribed by paragraph 5.3.1 of this Article on the settlement amount of any claim in dispute that is resolved either pursuant to Part 8 of the General Conditions – DISPUTE RESOLUTION or otherwise, from the date the amount would have been due and payable under the *Contract*, had it not been in dispute, until the date it is paid.

ARTICLE A-6 COMMUNICATION

6.1 Except for the direct communications described in paragraph 6.2 of this Article, all communications between the *Trade Contractor*, and the *Owner*, the *Consultant* or the *Payment Certifier* that relate to the *Contract* shall be forwarded through the *Construction Manager*.

6.2 The parties shall inform the *Construction Manager* of the following direct communications:

- .1 between the *Payment Certifier* and the *Owner*, *Consultant* or *Trade Contractor* as described in Part 5 of the General Conditions – PAYMENT;
- .2 among the *Owner*, *Consultant* and *Trade Contractor* with respect to *Notices in Writing*; and
- .3 as otherwise expressly specified in the *Contract Documents*.

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ARTICLE A-7 RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING

- 7.1 *Notices in Writing* will be addressed to the recipient at the address set out below.
- 7.2 The delivery of a *Notice in Writing* will be by hand, by courier, by prepaid first class mail, or by facsimile or other form of electronic communication during the transmission of which no indication of failure of receipt is communicated to the sender.
- 7.3 A *Notice in Writing* delivered by one party in accordance with this *Contract* will be deemed to have been received by the other party on the date of delivery if delivered by hand or courier, or if sent by mail it shall be deemed to have been received five calendar days after the date on which it was mailed, provided that if either such day is not a *Working Day*, then the *Notice in Writing* shall be deemed to have been received on the *Working Day* next following such day.
- 7.4 A *Notice in Writing* sent by facsimile or other form of electronic communication shall be deemed to have been received on the date of its transmission provided that if such day is not a *Working Day* or if it is received after the end of normal business hours on the date of its transmission at the place of receipt, then it shall be deemed to have been received at the opening of business at the place of receipt on the first *Working Day* next following the transmission thereof.
- 7.5 An address for a party may be changed by *Notice in Writing* to the other party setting out the new address in accordance with this Article.

Owner

MOD Developments (197 Yonge) Limited Partnership

*name of Owner**

MOD Developments Inc.
8 Price Street, 4th Floor
Toronto, ON M4W 1Z4

address

(647) 748-2822
facsimile number

nialani@moddevelopments.com
email address

Trade Contractor

Forma-Con Construction (A DIVISION OF 1428502 ONTARIO LIMITED)

*name of Trade Contractor**

407 Basaltic Road,
Concord, ON L4K 4W8

address

(905) 303-8010
facsimile number

michaelsolano@forma-con.com
email address

Construction Manager

Tucker HiRise Construction Inc.

*name of Construction Manager**

3755 Victoria Park Ave.
Toronto, ON, M1W 3Z4

address

(416) 744-2700
facsimile number

chris.mallinos@tuckerhirise.com
email address

4

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Consultant

Hariri Pontarini Architects

*name of Consultant **

602 King Street West
Toronto, ON, M5V 1M6

address

(416) 929-8924

facsimile number

pyapur@hp-arch.com

email address

** If it is intended that a specific individual must receive the notice, that individual's name shall be indicated.*

ARTICLE A-8 LANGUAGE OF THE CONTRACT

8.1 When the *Contract Documents* are prepared in both the English and French languages, it is agreed that in the event of any apparent discrepancy between the English and French versions, the English / ~~French~~* language shall prevail.

** Complete this statement by striking out inapplicable term.*

8.2 This Agreement is drawn in English at the request of the parties hereto. La présente convention est rédigée en anglais à la demande des parties.

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ARTICLE A-9 SUCCESSION

9.1 The *Contract* shall enure to the benefit of and be binding upon the parties hereto, their respective heirs, legal representatives, successors, and assigns.

In witness whereof the parties hereto have executed this Agreement by the hands of their duly authorized representatives.

SIGNED AND DELIVERED

In the presence of:

WITNESS

signature of witness

name of person signing

signature of witness

name of person signing

OWNER

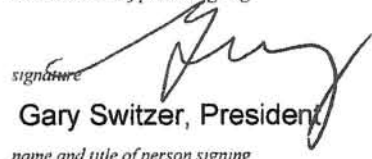
MOD Developments (197 Yonge) Limited Partnership

name of Owner

signature

Noorez Lalani, Vice President

name and title of person signing

signature


Gary Switzer, President

name and title of person signing

WITNESS

signature of witness

name of person signing

signature of witness

name of person signing

TRADE CONTRACTOR

Forma-Con Construction (A DIVISION OF 1428502 ONTARIO LIMITED)

name of Trade Contractor

signature

Michael Solano, President

name and title of person signing

signature

name and title of person signing

N.B. Where legal jurisdiction, local practice or Owner or Trade Contractor requirement calls for:

- (a) proof of authority to execute this document, attach such proof of authority in the form of a certified copy of a resolution naming the representative(s) authorized to sign the Agreement for and on behalf of the corporation or partnership; or*
- (b) the affixing of a corporate seal, this Agreement should be properly sealed*

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DEFINITIONS

The following Definitions shall apply to all *Contract Documents*. References in the definition to the singular shall be considered to include the plural as the context requires.

Change Directive

A *Change Directive* is a written instruction issued by the *Owner* through the *Construction Manager* and signed by the *Owner* directing the *Trade Contractor* to proceed with a change in the *Work* within the general scope of the *Contract Documents* prior to the *Owner* and the *Trade Contractor* agreeing upon adjustments in the *Contract Price* and the *Contract Time*.

Change Order

A *Change Order* is a written amendment to the *Contract* issued by the *Construction Manager* and signed by the *Owner* and the *Trade Contractor* stating their agreement upon:

- a change in the *Work*;
- the method of adjustment or the amount of the adjustment in the *Contract Price*, if any; and
- the extent of the adjustment in the *Contract Time*, if any.

Construction Equipment

Construction Equipment means all machinery and equipment, either operated or not operated, that is required for preparing, fabricating, conveying, erecting, or otherwise performing the *Work* but is not incorporated into the *Work*.

Construction Manager

The *Construction Manager* is the person or entity engaged by the *Owner* and identified as such in the Agreement.

Consultant

The *Consultant* is the person or entity engaged by the *Owner* and identified as such in the Agreement. The *Consultant* is the Architect, the Engineer or entity licensed to practise in the province or territory of the *Place of the Project*.

Contract

The *Contract* is the undertaking by the parties to perform their respective duties, responsibilities and obligations as prescribed in the *Contract Documents* and represents the entire agreement between the parties.

Contract Documents

The *Contract Documents* consist of those documents listed in Article A-3 of the Agreement – CONTRACT DOCUMENTS and amendments agreed upon between the parties.

Contract Price

The *Contract Price* is the amount stipulated in Article A-4 of the Agreement – CONTRACT PRICE.

Contract Time

The *Contract Time* is the time stipulated in paragraph 1.3 of Article A-1 of the Agreement – THE WORK from commencement of the *Work* to *Substantial Performance of the Work*.

Drawings

The *Drawings* are the graphic and pictorial portions of the *Contract Documents*, wherever located and whenever issued, showing the design, location and dimensions of the *Work*, generally including plans, elevations, sections, details, and diagrams.

Notice in Writing

A *Notice in Writing*, where identified in the *Contract Documents*, is a written communication between the parties or between them and the *Construction Manager* or the *Consultant* that is transmitted in accordance with the provisions of Article A-7 of the Agreement – RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING.

Owner

The *Owner* is the person or entity identified as such in the Agreement.

Payment Certifier

The *Payment Certifier* is either the *Construction Manager* or the *Consultant* identified as such in the Agreement.

Place of the Project

The *Place of the Project* is the designated site or location of the *Project* identified in the *Contract Documents*.

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Product

Product means material, machinery, equipment, and fixtures incorporated into the *Work*, but does not include *Construction Equipment*.

Project

The *Project* means the total construction contemplated of which the *Work* may be the whole or a part.

Project In-Use Date

Project In-Use Date shall have been reached when the *Project* is ready for use or is being used for the purpose intended and is so confirmed in writing by the *Construction Manager* in consultation with the *Consultant* and the *Owner*.

Provide

Provide means to supply and install.

Shop Drawings

Shop Drawings are drawings, diagrams, illustrations, schedules, performance charts, brochures, *Product* data, and other data which the *Trade Contractor* provides to illustrate details of portions of the *Work*.

Specifications

The *Specifications* are that portion of the *Contract Documents*, wherever located and whenever issued, consisting of the written requirements and standards for *Products*, systems, workmanship, quality, and the services necessary for the performance of the *Work*.

Substantial Performance of the Work

Substantial Performance of the Work is as defined in the lien legislation applicable to the *Place of the Project*. If such legislation is not in force or does not contain such definition, or if the *Work* is governed by the Civil Code of Quebec, *Substantial Performance of the Work* shall have been reached when the *Work* is ready for use or is being used for the purpose intended and is so certified by the *Payment Certifier*.

Supplemental Instruction

A *Supplemental Instruction* is an instruction, not involving adjustment in the *Contract Price* or *Contract Time*, in the form of *Specifications*, *Drawings*, schedules, samples, models or written instructions, consistent with the intent of the *Contract Documents*. It is to be issued by the *Construction Manager* to supplement the *Contract Documents* as required for the performance of the *Work*.

Supplier

A *Supplier* is a person or entity having a direct contract with the *Trade Contractor* to supply *Products*.

Temporary Work

Temporary Work means temporary supports, structures, facilities, services, and other temporary items, excluding *Construction Equipment*, required for the execution of the *Work* but not incorporated into the *Work*.

Trade Contractor

The *Trade Contractor* is the person or entity identified as such in the Agreement.

Trade Subcontractor

A *Trade Subcontractor* is a person or entity having a direct contract with the *Trade Contractor* to perform a part or parts of the *Work* at the *Place of the Project*.

Value Added Taxes

Value Added Taxes means such sum as shall be levied upon the *Contract Price* by the Federal or any Provincial or Territorial Government and is computed as a percentage of the *Contract Price* and includes the Goods and Services Tax, the Quebec Sales Tax, the Harmonized Sales Tax, and any similar tax, the collection and payment of which have been imposed on the *Trade Contractor* by tax legislation.

Work

The *Work* means the total construction and related services required by the *Contract Documents*.

Working Day

Working Day means a day other than a Saturday, Sunday, statutory holiday, or statutory vacation day that is observed by the construction industry in the area of the *Place of the Project*.

8

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GENERAL CONDITIONS OF THE CONTRACT

PART 1 GENERAL PROVISIONS

GC 1.1 CONTRACT DOCUMENTS

- 1.1.1 The intent of the *Contract Documents* is to include the labour, *Products*, and services necessary for the performance of the *Work* by the *Trade Contractor* in accordance with these documents. It is not intended, however, that the *Trade Contractor* shall supply products or perform work not consistent with, not covered by, or not properly inferable from the *Contract Documents*.
- 1.1.2 Nothing contained in the *Contract Documents* shall create any contractual relationship between:
- .1 the *Owner* and a *Trade Subcontractor*, a *Supplier*, or their agent, employee, or other person performing any of the *Work* ;
 - .2 the *Construction Manager* and the *Trade Contractor*, a *Trade Subcontractor*, a *Supplier*, or their agent, employee, or other person performing any portion of the *Work*; or
 - .3 the *Consultant* and the *Trade Contractor*, a *Trade Subcontractor*, a *Supplier*, or their agent, employee, or other person performing any portion of the *Work*.
- 1.1.3 The *Contract Documents* are complementary, and what is required by any one shall be as binding as if required by all.
- 1.1.4 Words and abbreviations which have well known technical or trade meanings are used in the *Contract Documents* in accordance with such recognized meanings.
- 1.1.5 Neither the organization of the *Specifications* nor the arrangement of *Drawings* shall control the *Trade Contractor* in dividing the work among *Trade Subcontractors* and *Suppliers*.
- 1.1.6 If there is a conflict within the *Contract Documents*:
- .1 the order of priority of documents, from highest to lowest, shall be
 - the Agreement between the *Owner* and *Trade Contractor*,
 - the Definitions,
 - Supplementary Conditions,
 - the General Conditions of the *Contract*,
 - Division 1 of the *Specifications*,
 - technical *Specifications*,
 - material and finishing schedules,
 - the *Drawings*.
 - .2 *Drawings* of larger scale shall govern over those of smaller scale of the same date.
 - .3 dimensions shown on *Drawings* shall govern over dimensions scaled from *Drawings*.
 - .4 later dated documents shall govern over earlier documents of the same type.
 - .5 noted materials and annotations shall govern over graphic indications.
- 1.1.7 The *Owner* shall provide the *Trade Contractor*, without charge, sufficient copies of the *Contract Documents* to perform the *Work*.
- 1.1.8 *Specifications*, *Drawings*, models, and copies thereof furnished by the *Consultant* are and shall remain the *Consultant's* property. Signed *Contract* sets shall belong to each party to the *Contract*. All *Specifications*, *Drawings* and models prepared by the *Consultant* and issued to the *Trade Contractor* are to be used only with respect to the *Work* and are not to be used on other work. These *Specifications*, *Drawings* and models are not to be copied or altered in any manner without the written authorization of the *Consultant*.
- 1.1.9 Models furnished by the *Trade Contractor* at the *Owner's* expense are the property of the *Owner*.

GC 1.2 LAW OF THE CONTRACT

- 1.2.1 The law of the *Place of the Project* shall govern the interpretation of the *Contract*.

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GC 1.3 RIGHTS AND REMEDIES

- 1.3.1 Except as expressly provided in the *Contract Documents*, the duties and obligations imposed by the *Contract Documents* and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law.
- 1.3.2 No action or failure to act by the *Owner*, *Construction Manager*, *Consultant*, *Payment Certifier*, or *Trade Contractor* shall constitute a waiver of any right or duty afforded any of them under the *Contract*, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

GC 1.4 ASSIGNMENT

- 1.4.1 Neither party to the *Contract* shall assign the *Contract* or a portion thereof without the written consent of the other, which consent shall not be unreasonably withheld.

PART 2 ADMINISTRATION OF THE CONTRACT

GC 2.1 AUTHORITY OF THE CONSTRUCTION MANAGER AND THE CONSULTANT

- 2.1.1 The *Construction Manager* and the *Consultant* will have authority to act on behalf of the *Owner* only to the extent provided in the *Contract Documents*, unless otherwise modified by written agreement as provided in paragraph 2.1.2.
- 2.1.2 The duties, responsibilities and limitations of authority of the *Construction Manager* and the *Consultant* as set forth in the *Contract Documents* shall be modified or extended only with the written consent of the *Owner* and the *Trade Contractor*.
- 2.1.3 If the employment of the *Construction Manager* or the *Consultant* is terminated, the *Owner* shall immediately appoint or reappoint those against whom the *Trade Contractor* makes no reasonable objection and whose duties, responsibilities and limitations of authority under the *Contract Documents* will be that of the former *Construction Manager* or the former *Consultant*, as the case may be.
- 2.1.4 If the employment of the *Construction Manager* or the *Consultant* as the *Payment Certifier* is terminated, the *Owner* shall immediately appoint or reappoint the *Construction Manager* or the *Consultant* as the *Payment Certifier*.

GC 2.2 ROLES OF THE CONSTRUCTION MANAGER AND THE CONSULTANT

- 2.2.1 The *Construction Manager* will:
- .1 provide administration of the *Contract* as described in the *Contract Documents*;
 - .2 in the first instance, receive all questions in writing by the *Owner* or the *Trade Contractor* for interpretations and findings relating to the performance of the *Work* or the interpretation of the *Contract Documents* except with respect to GC 5.1 – FINANCING INFORMATION REQUIRED OF THE OWNER;
 - .3 in the first instance, give interpretations and make findings on matters in question relating to the performance of the *Work* or the requirements of the *Contract Documents*, except with respect to any and all architectural and engineering aspects of the *Work* or GC 5.1 – FINANCING INFORMATION REQUIRED OF THE OWNER; and
 - .4 during the progress of the *Work*, issue *Supplemental Instructions* to the *Trade Contractor* with reasonable promptness or in accordance with a schedule for such instructions agreed to by the *Construction Manager* and the *Trade Contractor*.
- 2.2.2 The *Consultant* will:
- .1 visit the *Place of the Project* at intervals appropriate to the progress of construction to become familiar with the progress and quality of the *Work* and to determine if the *Work* is proceeding in general conformity with the *Contract Documents*; and
 - .2 in the first instance, give interpretations and make findings on matters in question relating to the requirements of the design.
- 2.2.3 The *Construction Manager* and the *Consultant* will:
- .1 have authority to reject work which in their opinion does not conform to the requirements of the *Contract Documents* and whenever it is considered necessary or advisable, require inspection or testing of work, whether or not such work is fabricated, installed or completed. However, neither the authority of the *Construction Manager* or the *Consultant* to act nor any decision either to exercise or not to exercise such authority shall give rise to any duty or responsibility of the *Construction Manager* or the *Consultant* to the *Trade Contractor*, *Trade Subcontractors*, *Suppliers*, or their agents, employees, or other persons performing any of the *Work*; and

- .4 on expiry of the warranty period, charge the *Trade Contractor* the amount by which the cost of corrections to the *Trade Contractor's* work under GC 12.3 – WARRANTY exceeds the allowance provided for such corrections, or if the cost of such corrections is less than the allowance, pay the *Trade Contractor* the difference.

7.1.6 The *Trade Contractor's* obligation under the *Contract* as to quality, correction and warranty of the work performed by the *Trade Contractor* up to the time of termination shall continue in force after such termination of the *Contract*.

GC 7.2 TRADE CONTRACTOR'S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT

- 7.2.1 If the *Owner* is adjudged bankrupt, or makes a general assignment for the benefit of creditors because of the *Owner's* insolvency, or if a receiver is appointed because of the *Owner's* insolvency, the *Trade Contractor* may, without prejudice to any other right or remedy the *Trade Contractor* may have, terminate the *Contract* by giving the *Owner* or receiver or trustee in bankruptcy *Notice in Writing* to that effect.
- 7.2.2 If the *Work* should be suspended or otherwise delayed for a period of 20 *Working Days* or more under an order of a court or other public authority and providing that such order was not issued as the result of an act or fault of the *Trade Contractor* or of anyone directly or indirectly employed or engaged by the *Trade Contractor*, the *Trade Contractor* may, without prejudice to any other right or remedy the *Trade Contractor* may have, terminate the *Contract* by giving the *Owner Notice in Writing* to that effect.
- 7.2.3 The *Trade Contractor* may give *Notice in Writing* to the *Owner*, with a copy to the *Construction Manager* and the *Consultant*, that the *Owner* is in default of the *Owner's* contractual obligations if:
- .1 the *Owner* fails to furnish, when so requested by the *Trade Contractor*, reasonable evidence that financial arrangements have been made to fulfill the *Owner's* obligations under the *Contract*, or
 - .2 the *Payment Certifier* fails to issue a certificate as provided in Part 5 of the General Conditions – PAYMENT, or
 - .3 the *Owner* fails to pay the *Trade Contractor* when due the amounts certified by the *Payment Certifier* or awarded by arbitration or court, or
 - .4 the *Owner* violates the requirements of the *Contract* to a substantial degree and the *Construction Manager*, except for GC 5.1 – FINANCING INFORMATION REQUIRED OF THE OWNER, confirms by written statement to the *Trade Contractor* that sufficient cause exists.
- 7.2.4 The *Trade Contractor's Notice in Writing* to the *Owner* provided under paragraph 7.2.3 shall advise that if the default is not corrected within 5 *Working Days* following the receipt of the *Notice in Writing*, the *Trade Contractor* may, without prejudice to any other right or remedy the *Trade Contractor* may have, suspend the *Work* or terminate the *Contract*.
- 7.2.5 If the *Trade Contractor* terminates the *Contract* under the conditions set out above, the *Trade Contractor* shall be entitled to be paid for all work performed including reasonable profit, for loss sustained upon *Products* and *Construction Equipment*, and such other damages as the *Trade Contractor* may have sustained as a result of the termination of the *Contract*.

PART 8 DISPUTE RESOLUTION

GC 8.1 AUTHORITY OF THE CONSTRUCTION MANAGER AND THE CONSULTANT

- 8.1.1 Differences between the parties to the *Contract* as to the interpretation, application or administration of the *Contract* or any failure to agree where agreement between the parties is called for, herein collectively called disputes, which are not resolved in the first instance by findings of the *Construction Manager* or the *Consultant* as provided in GC 2.2 – ROLE OF THE CONSTRUCTION MANAGER AND THE CONSULTANT, shall be settled in accordance with the requirements of Part 8 of the General Conditions – DISPUTE RESOLUTION.
- 8.1.2 If a dispute arises under the *Contract* in respect of a matter in which neither the *Construction Manager* nor the *Consultant* have authority under the *Contract* to make a finding, the procedures set out in paragraph 8.1.3 and paragraphs 8.2.3 to 8.2.8 of GC 8.2 – NEGOTIATION, MEDIATION AND ARBITRATION, and in GC 8.3 – RETENTION OF RIGHTS apply to that dispute with the necessary changes to detail as may be required.
- 8.1.3 If a dispute is not resolved promptly, the *Construction Manager* will give such instructions as in the *Construction Manager's* opinion are necessary for the proper performance of the *Work* and to prevent delays pending settlement of the dispute. The parties shall act immediately according to such instructions, it being understood that by so doing neither party will jeopardize any claim the party may have. If it is subsequently determined that such instructions were in error or at variance with the *Contract Documents*, the *Owner* shall pay the *Trade Contractor* costs incurred by the *Trade Contractor* in carrying out such instructions which the *Trade Contractor* was required to do beyond what the *Contract Documents* correctly understood and interpreted would have required, including costs resulting from interruption of the *Work*.

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GC 8.2 NEGOTIATION, MEDIATION AND ARBITRATION

- 8.2.1 In accordance with the Rules for Mediation and Arbitration of Construction Disputes as provided in CCDC 40 in effect at the time of bid closing, the parties shall appoint a Project Mediator
- .1 within 20 *Working Days* after the *Contract* was awarded, or
 - .2 if the parties neglected to make an appointment within the 20 *Working Days*, within 10 *Working Days* after either party by *Notice in Writing* requests that the Project Mediator be appointed.
- 8.2.2 A party shall be conclusively deemed to have accepted a finding of the *Construction Manager* or the *Consultant* under GC 2.2 - ROLES OF THE CONSTRUCTION MANAGER AND THE CONSULTANT and to have expressly waived and released the other party from any claims in respect of the particular matter dealt with in that finding unless, within 15 *Working Days* after receipt of that finding, the party sends a *Notice in Writing* of dispute to the other party, the *Construction Manager* and the *Consultant*, which contains the particulars of the matter in dispute and the relevant provisions of the *Contract Documents*. The responding party shall send a *Notice in Writing* of reply to the dispute within 10 *Working Days* after receipt of such *Notice in Writing* setting out particulars of this response and any relevant provisions of the *Contract Documents*.
- 8.2.3 The parties shall make all reasonable efforts to resolve their dispute by amicable negotiations and agree to provide, without prejudice, frank, candid and timely disclosure of relevant facts, information and documents to facilitate these negotiations.
- 8.2.4 After a period of 10 *Working Days* following receipt of a responding party's *Notice in Writing* of reply under paragraph 8.2.2, the parties shall request the Project Mediator to assist the parties to reach agreement on any unresolved dispute. The mediated negotiations shall be conducted in accordance with the Rules for Mediation and Arbitration of Construction Disputes as provided in CCDC 40 in effect at the time of bid closing.
- 8.2.5 If the dispute has not been resolved within 10 *Working Days* after the Project Mediator was requested under paragraph 8.2.4 or within such further period agreed by the parties, the Project Mediator shall terminate the mediated negotiations by giving *Notice in Writing* to the *Owner*, the *Trade Contractor* and the *Construction Manager*.
- 8.2.6 By giving a *Notice in Writing* to the other party and the *Construction Manager*, not later than 10 *Working Days* after the date of termination of the mediated negotiations under paragraph 8.2.5, either party may refer the dispute to be finally resolved by arbitration under the latest edition of the Rules for Mediation and Arbitration of Construction Disputes as provided in CCDC 40 in effect at the time of bid closing. The arbitration shall be conducted in the jurisdiction of the *Place of the Project*.
- 8.2.7 On expiration of the 10 *Working Days*, the arbitration agreement under paragraph 8.2.6 is not binding on the parties and, if a *Notice in Writing* is not given under paragraph 8.2.6 within the required time, the parties may refer the unresolved dispute to the courts or to any other form of dispute resolution, including arbitration, which they have agreed to use.
- 8.2.8 If neither party, by *Notice in Writing*, given within 10 *Working Days* of the date of *Notice in Writing* requesting arbitration in paragraph 8.2.6, requires that a dispute be arbitrated immediately, all disputes referred to arbitration as provided in paragraph 8.2.6 shall be
- .1 held in abeyance until
 - (1) *Substantial Performance of the Work*,
 - (2) the *Contract* has been terminated, or
 - (3) the *Trade Contractor* has abandoned the *Work*,
 whichever is earlier, and
 - .2 consolidated into a single arbitration under the rules governing the arbitration under paragraph 8.2.6.

GC 8.3 RETENTION OF RIGHTS

- 8.3.1 It is agreed that no act by either party shall be construed as a renunciation or waiver of any rights or recourses, provided the party has given the *Notice in Writing* required under Part 8 of the General Conditions – DISPUTE RESOLUTION and has carried out the instructions as provided in paragraph 8.1.3 of GC 8.1 – AUTHORITY OF THE CONSTRUCTION MANAGER AND THE CONSULTANT.
- 8.3.2 Nothing in Part 8 of the General Conditions – DISPUTE RESOLUTION shall be construed in any way to limit a party from asserting any statutory right to a lien under applicable lien legislation of the jurisdiction of the *Place of the Project* and the assertion of such right by initiating judicial proceedings is not to be construed as a waiver of any right that party may have under paragraph 8.2.6 of GC 8.2 – NEGOTIATION, MEDIATION AND ARBITRATION to proceed by way of arbitration to adjudicate the merits of the claim upon which such a lien is based.

PART 9 PROTECTION OF PERSONS AND PROPERTY

GC 9.1 PROTECTION OF WORK AND PROPERTY

- 9.1.1 The *Trade Contractor* shall protect the *Project* and the *Owner's* property and property adjacent to the *Place of the Project* from damage which may arise as the result of the *Trade Contractor's* operations under the *Contract*, and shall be responsible for such damage, except damage which occurs as the result of:
- .1 errors in the *Contract Documents*; or
 - .2 acts or omissions by the *Owner*, the *Construction Manager*, the *Consultant*, other contractors, their agents and employees.
- 9.1.2 Before commencing any *Work*, the *Trade Contractor* shall determine the location of all underground utilities and structures indicated in the *Contract Documents* or that are reasonably apparent in an inspection of the *Place of the Project*.
- 9.1.3 Should the *Trade Contractor* in the performance of the *Contract* damage the *Project*, the *Owner's* property or property adjacent to the *Place of the Project*, the *Trade Contractor* shall be responsible for making good of such damage at the *Trade Contractor's* expense.
- 9.1.4 Should damage occur to the *Work* or *Owner's* property for which the *Trade Contractor* is not responsible, as provided in paragraph 9.1.1, the *Trade Contractor* shall make good such damage to the *Work* and, if the *Construction Manager* so directs, to the *Owner's* property. The *Contract Price* and *Contract Time* shall be adjusted as provided in GC 6.1 – OWNER'S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER, and GC 6.3 – CHANGE DIRECTIVE.

GC 9.2 TOXIC AND HAZARDOUS SUBSTANCES

- 9.2.1 For the purposes of applicable legislation related to toxic and hazardous substances, the *Owner* shall be deemed to have control and management of the *Place of the Project* with respect to existing conditions.
- 9.2.2 Prior to the *Trade Contractor* commencing the *Work*, the *Owner* shall,
- .1 take all reasonable steps to determine whether any toxic or hazardous substances are present at the *Place of the Project*, and
 - .2 provide the *Construction Manager*, the *Consultant* and the *Trade Contractor* with a written list of any such substances that are known to exist and their locations.
- 9.2.3 The *Owner* shall take all reasonable steps to ensure that no person's exposure to any toxic or hazardous substance exceeds the time weighted levels prescribed by applicable legislation at the *Place of the Project* and that no property is damaged or destroyed as a result of exposure to, or the presence of, toxic or hazardous substances which were at the *Place of the Project* prior to the *Trade Contractor* commencing the *Work*.
- 9.2.4 Unless the *Contract* expressly provides otherwise, the *Owner* shall be responsible for taking all necessary steps, in accordance with applicable legislation in force at the *Place of the Project*, to dispose of, store or otherwise render harmless toxic or hazardous substances which were present at the *Place of the Project* prior to the *Trade Contractor* commencing the *Work*.
- 9.2.5 If the *Trade Contractor*
- .1 encounters toxic or hazardous substances at the *Place of the Project*, or
 - .2 has reasonable grounds to believe that toxic or hazardous substances are present at the *Place of the Project*, which were not brought to the *Place of the Project* by the *Trade Contractor* or anyone for whom the *Trade Contractor* is responsible and which were not disclosed by the *Owner* or which were disclosed but have not been dealt with as required under paragraph 9.2.4, the *Trade Contractor* shall
 - .3 take all reasonable steps, including stopping the *Work*, to ensure that no person's exposure to any toxic or hazardous substance exceeds any applicable time weighted levels prescribed by applicable legislation at the *Place of the Project*, and
 - .4 immediately report the circumstances to the *Construction Manager*, the *Owner* and the *Consultant* in writing.
- 9.2.6 If the *Owner* and *Trade Contractor* do not agree on the existence, significance of, or whether the toxic or hazardous substances were brought onto the *Place of the Project* by the *Trade Contractor* or anyone for whom the *Trade Contractor* is responsible, the *Owner* shall retain and pay for an independent qualified expert to investigate and determine such matters. The expert's report shall be delivered to the *Owner*, the *Trade Contractor* and the *Construction Manager*.

- 9.2.7 If the *Owner* and *Trade Contractor* agree or if the expert referred to in paragraph 9.2.6 determines that the toxic or hazardous substances were not brought onto the *Place of the Project* by the *Trade Contractor* or anyone for whom the *Trade Contractor* is responsible, the *Owner* shall promptly at the *Owner's* own expense:
- .1 take all steps as required under paragraph 9.2.4;
 - .2 reimburse the *Trade Contractor* for the costs of all steps taken pursuant to paragraph 9.2.5;
 - .3 extend the *Contract Time* for such reasonable time as the *Construction Manager* may recommend in consultation with the *Owner*, the *Trade Contractor* and the expert referred to in 9.2.6 and reimburse the *Trade Contractor* for reasonable costs incurred as a result of the delay; and
 - .4 indemnify the *Trade Contractor* as required by paragraph GC 12.1 – INDEMNIFICATION
- 9.2.8 If the *Owner* and *Trade Contractor* agree or if the expert referred to in paragraph 9.2.6 determines that the toxic or hazardous substances were brought onto the *Place of the Project* by the *Trade Contractor* or anyone for whom the *Trade Contractor* is responsible, the *Trade Contractor* shall promptly at the *Trade Contractor's* own expense:
- .1 take all necessary steps in accordance with applicable legislation in force at the *Place of the Project*, to safely remove and dispose the toxic or hazardous substances;
 - .2 make good any damage to the *Work*, the *Owner's* property or property adjacent to the *Place of the Project* as provided in paragraph 9.1.3 of GC 9.1 – PROTECTION OF WORK AND PROPERTY;
 - .3 reimburse the *Owner* for reasonable costs incurred under paragraph 9.2.6; and
 - .4 indemnify the *Owner* as required by GC 12.1 – INDEMNIFICATION.
- 9.2.9 If either party does not accept the expert's findings under paragraph 9.2.6, the disagreement shall be settled in accordance with Part 8 of the General Conditions – DISPUTE RESOLUTION. If such disagreement is not resolved promptly, the parties shall act immediately in accordance with the expert's determination and take the steps required by paragraph 9.2.7 or 9.2.8 it being understood that by so doing, neither party will jeopardize any claim that party may have to be reimbursed as provided by GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES.

GC 9.3 ARTIFACTS AND FOSSILS

- 9.3.1 Fossils, coins, articles of value or antiquity, structures and other remains or things of scientific or historic interest discovered at the *Place of the Project* shall, as between the *Owner* and the *Trade Contractor*, be deemed to be the absolute property of the *Owner*.
- 9.3.2 The *Trade Contractor* shall take all reasonable precautions to prevent removal or damage to discoveries as identified in paragraph 9.3.1, and shall advise the *Construction Manager* upon discovery of such items.
- 9.3.3 The *Construction Manager* will investigate the impact on the *Work* of the discoveries identified in paragraph 9.3.1. If conditions are found that would cause an increase or decrease in the *Trade Contractor's* cost or time to perform the *Work*, the *Owner*, through the *Construction Manager*, will issue appropriate instructions for a change in the *Work* as provided in GC 6.2 – CHANGE ORDER or GC 6.3 – CHANGE DIRECTIVE.

GC 9.4 CONSTRUCTION SAFETY

- 9.4.1 The *Trade Contractor* shall:
- .1 be responsible for construction health and safety relating to the *Work* at the *Place of the Project* in compliance with the rules, regulations and practices required by the applicable construction health and safety legislation;
 - .2 be responsible for establishing, initiating, maintaining, and supervising all health and safety precautions and programs in connection with the performance of the *Work*; and
 - .3 comply with all health and safety precautions and programs established at the *Place of the Project*.
- 9.4.2 The *Owner* shall be responsible for construction health and safety at the *Place of the Project* in compliance with the rules, regulations and practices required by the applicable construction health and safety legislation.
- 9.4.3 The *Construction Manager* will:
- .1 establish, initiate, maintain, and supervise the health and safety precautions and programs required to be put in place at the *Place of the Project*; and
 - .2 review with the *Owner* the *Trade Contractor's* health and safety program for compliance.

GC 9.5 MOULD

- 9.5.1 If the *Trade Contractor*, the *Construction Manager*, the *Consultant*, or the *Owner* observes or reasonably suspects the presence of mould at the *Place of the Project*, the remediation of which is not expressly part of the *Work*,
- .1 the observing party shall promptly report the circumstances to the other parties in writing, and
 - .2 the *Trade Contractor* shall promptly take all reasonable steps, including stopping the *Work* if necessary, to ensure that no person suffers injury, sickness or death and that no property is damaged as a result of exposure to or the presence of the mould, and
 - .3 if the *Owner* and the *Trade Contractor* do not agree on the existence, significance or cause of the mould or as to what steps need be taken to deal with it, the *Owner* shall retain and pay for an independent qualified expert to investigate and determine such matters. The expert's report shall be delivered to the *Owner* and the *Trade Contractor*.
- 9.5.2 If the *Owner* and the *Trade Contractor* agree, or if the expert referred to in paragraph 9.5.1.3 determines that the presence of mould was caused by the *Trade Contractor's* operations under the *Contract*, the *Trade Contractor* shall promptly, at the *Trade Contractor's* own expense:
- .1 take all reasonable and necessary steps to safely remediate or dispose of the mould, and
 - .2 make good any damage to the *Work*, the *Owner's* property or property adjacent to the *Place of the Project* as provided in paragraph 9.1.3 of GC 9.1 – PROTECTION OF WORK AND PROPERTY, and
 - .3 reimburse the *Owner* for reasonable costs incurred under paragraph 9.5.1.3, and
 - .4 indemnify the *Owner* as required by GC 12.1 – INDEMNIFICATION.
- 9.5.3 If the *Owner* and *Trade Contractor* agree, or if the expert referred to in paragraph 9.5.1.3 determines that the presence of mould was not caused by the *Trade Contractor's* operations under the *Contract*, the *Owner* shall promptly, at the *Owner's* own expense:
- .1 take all reasonable and necessary steps to safely remediate or dispose of the mould, and
 - .2 reimburse the *Trade Contractor* for the cost of taking the steps under paragraph 9.5.1.2 and making good any damage to the *Work* as provided in paragraph 9.1.4 of GC 9.1 – PROTECTION OF WORK AND PROPERTY, and
 - .3 extend the *Contract Time* for such reasonable time as the *Construction Manager* may recommend in consultation with the *Trade Contractor* and the expert referred to in paragraph 9.5.1.3 and reimburse the *Trade Contractor* for reasonable costs incurred as a result of the delay, and
 - .4 indemnify the *Trade Contractor* as required by GC 12.1 – INDEMNIFICATION.
- 9.5.4 If either party does not accept the expert's finding under paragraph 9.5.1.3, the disagreement shall be settled in accordance with Part 8 of the General Conditions – DISPUTE RESOLUTION: If such disagreement is not resolved promptly, the parties shall act immediately in accordance with the expert's determination and take the steps required by paragraphs 9.5.2 or 9.5.3, it being understood that by so doing neither party will jeopardize any claim the party may have to be reimbursed as provided by GC 9.5 – MOULD.

PART 10 GOVERNING REGULATIONS

GC 10.1 TAXES AND DUTIES

- 10.1.1 The *Contract Price* shall include all taxes and customs duties in effect at the time of the bid closing except for *Value Added Taxes* payable by the *Owner* to the *Trade Contractor* as stipulated in Article A-4 of the Agreement – CONTRACT PRICE.
- 10.1.2 Any increase or decrease in costs to the *Trade Contractor* due to changes in such included taxes and duties after the time of the bid closing shall increase or decrease the *Contract Price* accordingly.

GC 10.2 LAWS, NOTICES, PERMITS, AND FEES

- 10.2.1 The laws of the *Place of the Project* shall govern the *Work*.
- 10.2.2 The *Owner* shall obtain and pay for development approvals, building permit, permanent easements, rights of servitude, and all other necessary approvals and permits, except for the permits and fees referred to in paragraph 10.2.3 or for which the *Contract Documents* specify as the responsibility of the *Trade Contractor*.
- 10.2.3 The *Trade Contractor* shall be responsible for the procurement of permits, licences, inspections, and certificates, which are necessary for the performance of the *Work* and customarily obtained by contractors in the jurisdiction of the *Place of the Project* after the issuance of the building permit. The *Contract Price* includes the cost of these permits, licences, inspections, and certificates, and their procurement.

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- 10.2.4 The *Trade Contractor* shall give the required notices and comply with the laws, ordinances, rules, regulations, or codes which are or become in force during the performance of the *Work* and which relate to the *Work*, to the preservation of the public health, and to construction safety.
- 10.2.5 The *Trade Contractor* shall not be responsible for verifying that the *Contract Documents* are in compliance with the applicable laws, ordinances, rules, regulations, or codes relating to the *Work*. If the *Contract Documents* are at variance therewith, or if, subsequent to the time of bid closing, changes are made to the applicable laws, ordinances, rules, regulations, or codes which require modification to the *Contract Documents*, the *Trade Contractor* shall notify the *Construction Manager* in writing requesting direction immediately upon such variance or change becoming known. The *Owner*, through the *Construction Manager*, will issue the changes required to the *Contract Documents* as provided in GC 6.1 – OWNER’S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER and GC 6.3 – CHANGE DIRECTIVE.
- 10.2.6 If the *Trade Contractor* fails to advise the *Construction Manager* in writing, fails to obtain direction as required in paragraph 10.2.5, and performs work knowing it to be contrary to any laws, ordinances, rules, regulations or codes, the *Trade Contractor* shall be responsible for and shall correct the violations thereof; and shall bear the costs, expenses and damages attributable to the failure to comply with the provisions of such laws, ordinances, rules, regulations, or codes.
- 10.2.7 If, subsequent to the time of bid closing, changes are made to applicable laws, ordinances, rules, regulations, or codes of authorities having jurisdiction which affect the cost of the *Work*, either party may submit a claim in accordance with the requirements of GC 6.6 – CLAIMS FOR A CHANGE IN CONTRACT PRICE.

GC 10.3 PATENT FEES

- 10.3.1 The *Trade Contractor* shall pay the royalties and patent licence fees required for the performance of the *Contract*. The *Trade Contractor* shall hold the *Owner* harmless from and against claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of the *Trade Contractor's* performance of the *Contract* which are attributable to an infringement or an alleged infringement of a patent of invention by the *Trade Contractor* or anyone for whose acts the *Trade Contractor* may be liable.
- 10.3.2 The *Owner* shall hold the *Trade Contractor* harmless against claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of the *Trade Contractor's* performance of the *Contract* which are attributable to an infringement or an alleged infringement of a patent of invention in executing anything for the purpose of the *Contract*, or any model, plan or design which was supplied to the *Trade Contractor* as part of the *Contract*.

GC 10.4 WORKERS' COMPENSATION

- 10.4.1 Prior to commencing the *Work*, and again with the *Trade Contractor's* application for payment of the holdback amount following *Substantial Performance of the Work*, and again with the *Contractor's* application for final payment, the *Trade Contractor* shall provide evidence of compliance with workers' compensation legislation at the *Place of the Project*, including payments due thereunder.
- 10.4.2 At any time during the term of the *Contract*, when requested by the *Construction Manager*, the *Trade Contractor* shall provide such evidence of compliance with workers' compensation legislation at the *Place of the Project* by the *Trade Contractor* and any *Trade Subcontractors*.

PART 11 INSURANCE AND CONTRACT SECURITY

GC 11.1 INSURANCE

- 11.1.1 Without restricting the generality of GC 12.1 – INDEMNIFICATION, the *Trade Contractor* shall provide, maintain and pay for the following insurance coverages, the minimum requirements of which are specified in CCDC 41 – INSURANCE REQUIREMENTS in effect at the time of bid closing except as hereinafter provided:
- .1 Automobile Liability Insurance from the date of commencement of the *Work* until one year after the date of *Substantial Performance of the Work*;
 - .2 Aircraft or Watercraft Liability Insurance when owned or non-owned aircraft or watercraft are used directly or indirectly in the performance of the *Work*; and
 - .3 Contractors' Equipment Insurance from the date of commencement of the *Work* until one year after the date of *Substantial Performance of the Work*.

- 11.1.2 If the *Trade Contractor* fails to provide or maintain insurance as required by the *Contract Documents*, then the *Owner* shall have the right to provide and maintain such insurance and give evidence to the *Trade Contractor*, the *Construction Manager* and the *Consultant*. The *Trade Contractor* shall pay the cost thereof to the *Owner* on demand or the *Owner* may deduct the cost from any amount which is due or may become due to the *Trade Contractor*.
- 11.1.3 The *Owner* shall obtain, maintain and pay for 'wrap-up' general liability insurance in the joint names of the *Owner*, the *Construction Manager*, the *Consultant* and the *Trade Contractor* with limits of not less than \$10,000,000 per occurrence and a deductible not more than \$10,000. The insurance coverage shall be primary to all other insurance policies and shall not be substantially less than the insurance provided by IBC Form 2100 (including an extension for a standard provincial and territorial form of non-owned automobile liability policy) and IBC Form 2320, except for liability arising from damage to the *Project* during construction, which shall be limited to the completed operations period. The insurance shall be maintained from the date of commencement of the *Project* until 90 calendar days after the *Project In-Use Date*. The *Owner* is responsible to provide coverage for completed operations hazards from the *Project In-Use Date* for a period of 2 year. The *Trade Contractor* shall then provide, maintain and pay for liability insurance coverage for completed operations hazards with limits of not less than \$5,000,000 per occurrence and a deductible not more than \$5,000 on an ongoing basis for a further period of 4 years.
- 11.1.4 The *Owner* shall provide, maintain and pay for the following insurance coverages:
- .1 "Broad form" property insurance in the joint names of the *Owner*, the *Trade Contractor*, the *Construction Manager*, and the *Consultant*. The policy shall have limits of not less than the sum of 1.1 times *Contract Price*, and the full value, as stated in the *Contract*, of products and design services that are specified to be provided by the *Owner* for incorporation into the *Work*, with a deductible not exceeding \$10,000. The insurance coverage shall not be less than the insurance provided by the latest edition of IBC Forms 4042 and 4047 or their equivalent replacement. In addition to the exclusions identified in the latest edition of IBC forms 4042 and 4047, the *Owner* is not required to provide insurance coverage for Asbestos, Cyber Risk, Mould, or Terrorism. The "Broad form" property insurance shall be provided from the date of commencement of the *Work* until the earliest of:
 - (1) 10 calendar days after the date of *Substantial Performance of the Work*;
 - (2) on the commencement of use or occupancy of any part or section of *Work* unless such use or occupancy is for construction purposes, habitational, office, banking, convenience store under 465 square metres in area, or parking purposes, or for the installation, testing and commissioning of equipment forming part of the *Work*;
 - (3) when left unattended for more than 30 consecutive calendar days or when construction activity has ceased for more than 30 consecutive calendar days.
 - .2 Boiler and machinery insurance in the joint names of the *Owner*, the *Trade Contractor*, the *Construction Manager*, and the *Consultant*. The insurance shall have limits of not less than the replacement value of the permanent or temporary boilers and pressure vessels, and other insurable objects forming part of the *Work*. The insurance coverage shall not be less than the insurance provided by a comprehensive boiler and machinery policy. The coverage shall be maintained continuously from commencement of use or operation of the boiler and machinery objects insured by the policy and until 10 calendar days after the date of *Substantial Performance of the Work*.
 - .3 The "Broad form" property and boiler and machinery policies shall provide that, in the case of a loss or damage, payment shall be made to the *Owner*, the *Trade Contractor*, the *Construction Manager*, and the *Consultant* as their respective interests may appear. In the event of loss or damage:
 - (1) the *Construction Manager* shall act on behalf of the *Owner*, the *Trade Contractor* and the *Consultant* for the purpose of adjusting the amount of such loss or damage payment with the insurers. When the extent of the loss or damage is determined, the *Trade Contractor* shall proceed to restore the *Work*. Loss or damage shall not affect the rights and obligations of either party under the *Contract* except that the *Trade Contractor* shall be entitled to such reasonable extension of *Contract Time* relative to the extent of the loss or damage as the *Construction Manager* may recommend in consultation with the *Trade Contractor*;
 - (2) the *Trade Contractor* shall be entitled to receive from the *Owner*, in addition to the amount due under the *Contract*, the amount which the *Owner's* interest in restoration of the *Work* has been appraised, such amount to be paid as the restoration of the *Work* proceeds in accordance with the progress payment provisions. In addition the *Trade Contractor* shall be entitled to receive from the payments made by the insurer the amount of the *Trade Contractor's* interest in the restoration of the *Work*; and
 - (3) to the *Work* arising from the work of the *Owner*, the *Owner's* own forces or another contractor, in accordance with the *Owner's* obligations under the provisions relating to construction by *Owner* or other contractors, shall pay the *Trade Contractor* the cost of restoring the *Work* as the restoration of the *Work* proceeds and as in accordance with the progress payment provisions.

- 11.1.5 Prior to commencement of the *Work* and upon the placement, renewal, amendment, or extension of all or any part of the insurance,
- .1 the *Trade Contractor* shall promptly provide the *Construction Manager* with confirmation of coverage under the policies specified in paragraph 11.1.1 and, if required, a certified true copy of the policies certified by an authorized representative of the insurer together with copies of any amending endorsements applicable to the *Work*; and
 - .2 the *Owner*, through the *Construction Manager*, shall promptly provide the *Trade Contractor* with confirmation of coverage under the policies specified in paragraphs 11.1.3 and 11.1.4 and, if required, a certified true copy of the policies certified by an authorized representative of the insurer together with copies of any amending endorsements applicable to the *Work*.
- 11.1.6 The parties shall pay their share of the deductible amounts in direct proportion to their responsibility in regards to any loss for which the above policies are required to pay, except where such amounts may be excluded by the terms of the *Contract*.
- 11.1.7 All required insurance policies shall be with insurers licensed to underwrite insurance in the jurisdiction of the *Place of the Project*.
- 11.1.8 If a revised version of CCDC 41 – INSURANCE REQUIREMENTS is published, which specifies reduced insurance requirements, the parties shall address such reduction, prior to the insurance policy becoming due for renewal, and record any agreement in a *Change Order*.
- 11.1.9 If a revised version of CCDC 41 – INSURANCE REQUIREMENTS is published, which specifies increased insurance requirements, either party may request the increased coverage by way of a *Change Order*.
- 11.1.10 A *Change Directive* shall not be used to direct a change in the insurance requirements in response to the revision of CCDC 41 – INSURANCE REQUIREMENTS.

GC 11.2 CONTRACT SECURITY

- 11.2.1 The *Trade Contractor* shall, prior to commencement of the *Work* or within the specified time, provide to the *Construction Manager* any *Contract* security specified in the *Contract Documents*.
- 11.2.2 If the *Contract Documents* require surety bonds to be provided, such bonds shall be issued by a duly licensed surety company authorized to transact the business of suretyship in the province or territory of the *Place of the Project* and shall be maintained in good standing until the fulfillment of the *Contract*. The form of such bonds shall be in accordance with the latest edition of the CCDC approved bond forms.

PART 12 INDEMNIFICATION, WAIVER OF CLAIMS AND WARRANTY

GC 12.1 INDEMNIFICATION

- 12.1.1 Without restricting the parties' obligation to indemnify as described in paragraphs 12.1.4 and 12.1.5, the *Owner* and the *Trade Contractor* shall each indemnify and hold harmless the other from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings whether in respect to losses suffered by them or in respect to claims by third parties that arise out of, or are attributable in any respect to, their involvement as parties to this *Contract*, provided such claims are:
- .1 caused by:
 - (1) the negligent acts or omissions of the party from whom indemnification is sought or anyone for whose acts or omissions that party is liable, or
 - (2) a failure of the party to the *Contract* from whom indemnification is sought to fulfill its terms or conditions; and
 - .2 made by *Notice in Writing* within a period of 6 years from the date of *Substantial Performance of the Work* as set out in the certificate of *Substantial Performance of the Work* issued pursuant to paragraph 5.4.2.2 of GC 5.4 – SUBSTANTIAL PERFORMANCE OF THE WORK or within such shorter period as may be prescribed by any limitation statute of the province or territory of the *Place of the Project*.
- The parties expressly waive the right to indemnity for claims other than those provided for in this *Contract*.
- 12.1.2 The obligation of either party to indemnify as set forth in paragraph 12.1.1 shall be limited as follows:
- .1 In respect to losses suffered by the *Owner* and the *Trade Contractor* for which insurance is to be provided by either party pursuant to GC 11.1 – INSURANCE, the insurance limit for the loss so covered in effect at the time of bid closing.
 - .2 In respect to losses suffered by the *Owner* and the *Trade Contractor* for which insurance is not required to be provided by either party in accordance with GC 11.1 – INSURANCE, the greater of the *Contract Price* as recorded in Article A-4 – CONTRACT PRICE or \$2,000,000, but in no event shall the sum be greater than \$20,000,000.

- .3 In respect to claims by third parties for direct loss resulting from bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, the obligation to indemnify is without limit. In respect to all other claims for indemnity as a result of claims advanced by third parties, the limits of indemnity set forth in paragraphs 12.1.2.1 and 12.1.2.2 shall apply.
- 12.1.3 The obligation of either party to indemnify the other as set forth in paragraphs 12.1.1 and 12.1.2 shall be inclusive of interest and all legal costs.
- 12.1.4 The *Owner* and the *Trade Contractor* shall indemnify and hold harmless the other from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of their obligations described in GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES.
- 12.1.5 The *Owner* shall indemnify and hold harmless the *Trade Contractor* from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings:
- .1 as described in paragraph 10.3.2 of GC 10.3 – PATENT FEES, and
 - .2 arising out of the *Trade Contractor's* performance of the *Contract* which are attributable to a lack of or defect in title or an alleged lack of or defect in title to the *Place of the Project*.
- 12.1.6 In respect to any claim for indemnity or to be held harmless by the *Owner* or the *Trade Contractor*:
- .1 *Notice in Writing* of such claim shall be given within a reasonable time after the facts upon which such claim is based became known;
 - .2 should either party be required, as a result of its obligation to indemnify the other, pay or satisfy a final order, judgment or award made against the party entitled by this contract to be indemnified, then the indemnifying party upon assuming all liability for any costs that might result shall have the right to appeal in the name of the party against whom such final order or judgment has been made until such rights of appeal have been exhausted.

GC 12.2 WAIVER OF CLAIMS

- 12.2.1 Subject to any lien legislation applicable to the *Place of the Project*, as of the fifth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Project*, the *Trade Contractor* waives and releases the *Owner* from all claims which the *Trade Contractor* has or reasonably ought to have knowledge of that could be advanced by the *Trade Contractor* against the *Owner* arising from the *Trade Contractor's* involvement in the *Work*, including, without limitation, those arising from negligence or breach of contract in respect to which the cause of action is based upon acts or omissions which occurred prior to or on the date of *Substantial Performance of the Work*, except as follows:
- .1 claims arising prior to or on the date of *Substantial Performance of the Work* for which *Notice in Writing* of claim has been received by the *Owner* from the *Trade Contractor* no later than the sixth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Project*;
 - .2 indemnification for claims advanced against the *Trade Contractor* by third parties for which a right of indemnification may be asserted by the *Trade Contractor* against the *Owner* pursuant to the provisions of this *Contract*;
 - .3 claims for which a right of indemnity could be asserted by the *Trade Contractor* pursuant to the provisions of paragraphs 12.1.4 or 12.1.5 of GC 12.1 – INDEMNIFICATION; and
 - .4 claims resulting from acts or omissions which occur after the date of *Substantial Performance of the Work*.
- 12.2.2 The *Trade Contractor* waives and releases the *Owner* from all claims referenced in paragraph 12.2.1.4 except for those referred in paragraphs 12.2.1.2 and 12.2.1.3 and claims for which *Notice in Writing* of claim has been received by the *Owner* from the *Trade Contractor* within 395 calendar days following the date of *Substantial Performance of the Work*.
- 12.2.3 Subject to any lien legislation applicable to the *Place of the Project*, as of the fifth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Project*, the *Owner* waives and releases the *Trade Contractor* from all claims which the *Owner* has or reasonably ought to have knowledge of that could be advanced by the *Owner* against the *Trade Contractor* arising from the *Owner's* involvement in the *Work*, including, without limitation, those arising from negligence or breach of contract in respect to which the cause of action is based upon acts or omissions which occurred prior to or on the date of *Substantial Performance of the Work*, except as follows:
- .1 claims arising prior to or on the date of *Substantial Performance of the Work* for which *Notice in Writing* of claim has been received by the *Trade Contractor* from the *Owner* no later than the sixth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Project*;
 - .2 indemnification for claims advanced against the *Owner* by third parties for which a right of indemnification may be asserted by the *Owner* against the *Trade Contractor* pursuant to the provisions of this *Contract*;

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- .3 claims for which a right of indemnity could be asserted by the *Owner* against the *Trade Contractor* pursuant to the provisions of paragraph 12.1.4 of GC 12.1 – INDEMNIFICATION;
 - .4 damages arising from the *Trade Contractor*'s actions which result in substantial defects or deficiencies in the *Work*. "Substantial defects or deficiencies" mean those defects or deficiencies in the *Work* which affect the *Work* to such an extent or in such a manner that a significant part or the whole of the *Work* is unfit for the purpose intended by the *Contract Documents*;
 - .5 claims arising pursuant to GC 12.3 – WARRANTY; and
 - .6 claims arising from acts or omissions which occur after the date of *Substantial Performance of the Work*.
- 12.2.4 The *Owner* waives and releases the *Trade Contractor* from all claims referred to in paragraph 12.2.3.4 except claims for which *Notice in Writing* of claim has been received by the *Trade Contractor* from the *Owner* within a period of six years from the date of *Substantial Performance of the Work* should any limitation statute of the Province or Territory of the *Place of the Project* permit such agreement. If the applicable limitation statute does not permit such agreement, within such shorter period as may be prescribed by:
- .1 any limitation statute of the Province or Territory of the *Place of the Project*; or
 - .2 the Civil Code of Quebec, if the *Place of the Project* is the Province of Quebec.
- 12.2.5 The *Owner* waives and releases the *Trade Contractor* from all claims referenced in paragraph 12.2.3.6 except for those referred in paragraph 12.2.3.2, 12.2.3.3 and those arising under GC 12.3 – WARRANTY and claims for which *Notice in Writing* has been received by the *Trade Contractor* from the *Owner* within 395 calendar days following the date of *Substantial Performance of the Work*.
- 12.2.6 *Notice in Writing* of claim as provided for in GC 12.2 – WAIVER OF CLAIMS to preserve a claim or right of action which would otherwise, by the provisions of GC 12.2 – WAIVER OF CLAIMS, be deemed to be waived, must include the following:
- .1 a clear and unequivocal statement of the intention to claim;
 - .2 a statement as to the nature of the claim and the grounds upon which the claim is based; and
 - .3 a statement of the estimated quantum of the claim.
- 12.2.7 The party giving *Notice in Writing* of claim as provided for in GC 12.2 – WAIVER OF CLAIMS shall submit within a reasonable time a detailed account of the amount claimed.
- 12.2.8 Where the event or series of events giving rise to a claim made under paragraphs 12.2.1 or 12.2.3 has a continuing effect, the detailed account submitted under paragraph 12.2.7 shall be considered to be an interim account and the party making the claim shall submit further interim accounts, at reasonable intervals, giving the accumulated amount of the claim and any further grounds upon which it is based. The party making the claim shall submit a final account after the end of the effects resulting from the event or series of events.
- 12.2.9 If a *Notice in Writing* of claim pursuant to paragraph 12.2.1.1 is received on the seventh or sixth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Project*, the period within which *Notice in Writing* of claim shall be received pursuant to paragraph 12.2.3.1 shall be extended to two calendar days before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Project*.
- 12.2.10 If a *Notice in Writing* of claim pursuant to paragraph 12.2.3.1 is received on the seventh or sixth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Project*, the period within which *Notice in Writing* of claim shall be received pursuant to paragraph 12.2.1.1 shall be extended to two calendar days before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Project*.

GC 12.3 WARRANTY

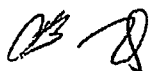
- 12.3.1 Except for extended warranties as described in paragraph 12.3.7, the warranty period under the *Contract* is one year from the later of the date of *Substantial Performance of the Work* and the *Project In-Use Date*.
- 12.3.2 The *Trade Contractor* shall be responsible for the proper performance of the *Work* to the extent that the design and *Contract Documents* permit such performance.
- 12.3.3 The *Trade Contractor* shall submit to the *Construction Manager* for the *Owner*'s acceptance all written warranties and related documents required by the *Contract Documents*.
- 12.3.4 The *Owner*, through the *Construction Manager*, shall promptly give the *Trade Contractor* *Notice in Writing* of observed defects and deficiencies that occur during the one year warranty period.

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- 12.3.5 Subject to paragraph 12.3.2, the *Trade Contractor* shall correct promptly, at the *Trade Contractor's* expense, defects or deficiencies in the *Work* which appear prior to and during the one year warranty period.
- 12.3.6 The *Trade Contractor* shall correct or pay for damage resulting from corrections made under the requirements of paragraph 12.3.5.
- 12.3.7 Any extended warranties beyond the one year warranty period as described in paragraph 12.3.1, shall be as specified in the *Contract Documents*. Extended warranties shall be issued by the warrantor to the benefit of the *Owner*. The *Trade Contractor's* responsibility with respect to extended warranties shall be limited to obtaining any such extended warranties from the warrantor. The obligations under such extended warranties are solely the responsibilities of the warrantor.



SUPPLEMENTARY CONDITIONS

The Standard Construction Document for Stipulated Price Contract between *Owner* and *Trade Contractor* for Construction Management Projects form CCDC 17, 2010, English version, consisting of the Agreement Between *Owner* and *Trade Contractor*, Definitions, and General Conditions of the Contract, Parts 1 to 12 inclusive, governing same is hereby made part of these *Contract Documents*, with the following amendments, additions and modifications. Where these amendments, additions, and modifications specifically reference a change to the Agreement, Definitions, or General Conditions, these amendments, additions and modifications shall govern.

AGREEMENT

SC1.1 Article A-1 The Work

SC1.1.1 At the end of the last sentence of Article A-1 paragraph 1.1, delete the following: "for which the *Construction Manager* / Consultant** is acting as the *Payment Certifier*, and (*Strike out inapplicable term.)".

SC1.1.2 Delete Paragraphs 1.3.2 and 1.3.3 in their entirety.

SC1.2 Article A-4 Contract Price

SC1.2.1 At paragraph 4.1 delete, "The *Contract Price*, which excludes *Value Added Taxes*, is:" and replace with, "The *Contract Price* including taxes, duties, tariffs and royalties related to the performance of the *Work* and excluding *Value Added Taxes* is:"

SC1.3 Article A-5 Payment

SC1.3.1 Delete Paragraphs 5.1.1 and 5.1.3 in their entirety.

SC1.3.2 Add new paragraph 5.1.1 as follows:

"5.1.1 make progress payments to the *Trade Contractor* on account of the *Contract Price* when due in the amount approved by the *Owner* together with such *Value Added Taxes* as may be applicable to such payment, and

SC1.3.3 Add new paragraph 5.1.3 as follows:

"5.1.3 upon the completion of the *Work* as agreed by the *Construction Manager* and the *Consultant*, pay to the *Trade Contractor* the unpaid balance of the *Contract Price* when due together with such *Value Added Taxes* as may be applicable to such payment.

SC1.3.4 Delete paragraph 5.3.1(1) and 5.3.1(2) in their entirety.

SC1.3.5 Add new paragraph 5.3.1(1) as follows:

"5.3.1(1) 0% for the first 15 days.

SC1.3.6 Add new paragraph 5.3.1(2) as follows:

"5.3.1(2) 1% after the first 15 days.

SC1.3.7 At the end of paragraph 5.3.1 delete the following: "Such interest shall be compounded on a monthly basis. The prime rate shall be the rate of interest quoted by (Insert name of chartered lending institution whose prime rate is to be used) for prime business loans as it may change from time to time.

SC1.4 Article A-6 Communication

- SC1.4.1 At paragraph 6.1 add, "or" before "the *Consultant*" and delete, "or the Payment Certifier".
- SC1.4.2 At paragraph 6.2.1 delete, "the *Payment Certifier* and".

DEFINITIONS

SC2.1 Payment Certifier

- SC2.1.1 Delete the definition for "Payment Certifier" in its entirety.
- SC2.1.2 Add new definition for "Payment Certifier" as follows:
 "A *Payment Certifier* has not been and will not be assigned to this Project."

SC2.2 Project In Use Date

- SC2.2.1 Delete the definition for "Project In-Use Date" in its entirety.
- SC2.2.2 Add new definition for "Project In-Use Date" as follows:
 "*Project In-Use Date* shall have been reached when the Project is deemed Substantially Complete excluding any areas for which the design is not complete. The *Project In-Use Date* shall be confirmed in writing by the *Construction Manager* in consultation with the *Consultant* and the *Owner*."

SC2.3 Quality Assurance

- SC2.3 Add new definition for "Quality Assurance" as follows:
 "Quality Assurance is the process and procedures put in place to execute the *Work* that systematically monitors, detects, corrects and ensures that quality standards are being met."

SC2.4 Quality Control

- SC2.4 Add new definition for "Quality Control" as follows:
 "Quality Control is the process put in place to review the *Work* as it is being executed and completed to ensure that quality standards are being met."

GENERAL CONDITIONS

SC3 Part 1 General Provisions

- SC3.1 At paragraph 1.3.2 delete, "*Payment Certifier*."

SC4 Part 2 Administration of the Contract

- SC4.1 Delete paragraph 2.1.4 in its entirety.
- SC4.2 Add new paragraph 2.4.4 as follows:
 "2.4.4 The *Trade Contractor* will be responsible for all additional testing and inspections related to the defective work and correction of same.

SC5 Part 3 Execution of the Work

- SC5.1 Add new paragraph 3.1.3 as follows:
"3.1.3 This *Trade Contractor* shall secure the area of its work to ensure no hazard to other trades people, property, equipment or other work."
- SC5.2 Add new paragraph 3.1.4 as follows:
"3.1.4 This *Trade Contractor* shall rectify immediately damage caused by this *Trade Contractor* to the work of others, temporary services and facilities, fencing, curbs, trees, sidewalks, roadways, equipment, property or neighboring properties."
- SC5.3 Add new paragraph 3.1.5 as follows:
"3.1.5 This *Trade Contractor* will be responsible to protect the *Work* during the course of the construction."
- SC5.4 Add new paragraph 3.1.6 as follows:
"3.1.6 Only major benchmarks and gridlines will be provided by the *Construction Manager*. All required extension of layout and grades to complete the *Work* are the responsibility of the *Trade Contractor*"
- SC5.5 Add to the end of 3.3.1, "When using construction equipment (including but not limited to swing stages), the *Trade Contractor* shall submit to the *Owner* a certificate indicating the initial set-up as well as any subsequent set-ups and the equipment used is in conformance with the Occupational Health and Safety Act and related regulations for a construction project."
- SC5.6 Add new paragraph 3.3.4 as follows:
"3.3.4 This *Trade Contractor* shall be responsible for providing labour to load, off-load and move their own equipment and materials as needed to complete the *Work*."
- SC5.7 Add new paragraph 3.3.5 as follows:
"3.3.5 A Man and Material Hoist will be provided by the *Owner* for use by all trade contractors working on the *Project*. The *Trade Contractor* will have use of the Man and Material Hoist as arranged through the *Construction Manager*. Deliveries will be allowed on a reserved basis coordinated by the *Construction Manager*. At times the hoist will be running beyond normal working hours to accommodate the need. The *Trade Contractor* will be expected to coordinate the delivery times with the *Construction Manager* and will not be compensated for premium time shifts if the deliveries are accepted or required outside normal working hours."
- SC5.8 Add new paragraph 3.3.6 as follows:
"3.3.6 The *Trade Contractor* is responsible for its own hoisting. Should hoisting be required prior to the installation of the Man and Material Hoist or after the hoist is dismantled it will be the *Trade Contractors* responsibility to hoist its equipment and/or material using other means. The *Trade Contractor* is responsible to advise the *Construction Manager* of any special hoisting procedures."
- SC5.9 Add new paragraph 3.3.7 as follows
"3.3.7 Should the *Trade Contractor* require the use of the Tower Crane during the timeframe that it is installed and operating on the *Project* then the *Trade Contractor* will make arrangements through the *Construction Manager* for such use. Use of the Tower Crane will be at the discretion of the formwork contractor who will provide the Tower Crane at times that will not interfere with the progress of their work. The *Trade Contractor* shall pay all costs and shall provide all insurance required for use of the Tower Crane. In the event the hoisting by the Tower Crane is outside normal working hours the *Trade Contractor* will not be compensated for premium time shifts."

- SC5.10 Add new paragraph 3.4.2 as follows:
"3.4.2 The *Trade Contractor* is responsible for ensuring that it is working with the most current revision of all drawings."
- SC5.11 Add new paragraph 3.4.3 as follows:
"3.4.3 The *Trade Contractor* is to coordinate the installation of its *Work* with all *Contracts Documents* (i.e. Architectural, Interior Design, Landscape, Structural, Mechanical and Electrical drawings and specifications) ensuring the installation of the *Work* will not adversely impact the installation of the work of other trades. Where a conflict is found, the *Trade Contractor* will advise the *Construction Manager* immediately and will not proceed with the installation of the *Work* until the conflict is resolved and direction is given through the *Construction Manager*. Should the *Trade Contractor* install portions of the *Work* that later prove to impede the work of other trades then the *Trade Contractor* will relocate the portions of the *Work* that are interfering at the *Trade Contractors* cost."
- SC5.12 At 3.5.3.2 delete, "monthly" and replace with, "weekly".
- SC5.13 Add new paragraph 3.5.3.4 as follows:
"3.5.3.4 provide all necessary material, manpower, equipment, supervision and the like to complete the work as per the Project Schedule."
- SC5.14 Add new paragraph 3.5.3.5 as follows:
"3.5.3.5 notify the *Construction Manager* within 3 *Working Days* if there is a delay to the Project Schedule. If the *Trade Contractor* is the cause for the delay then the *Trade Contractor* will develop a recovery plan within 3 *Working Days*. The *Trade Contractor's* recovery plan will include all means necessary to regain the lost time including but not limited to additional manpower, working overtime, working weekends, additional equipment and the like."
- SC5.15 Add new paragraph 3.5.4 as follows:
"3.5.4 The *Construction Manager* may reasonably rely upon the Project Schedule and the *Trade Contractor* acknowledges that the *Owner* may commence dealings with any third-party, including the procurement of owner-furnished materials, execution of leases and contracts, obtaining financing, hiring and training of employees, and advertising or marketing, or selling the improvements at the project, based upon the Schedule."
- SC5.16 Add new paragraph 3.5.5 as follows:
"3.5.5 The *Trade Contractor's* construction schedule noted in 3.5.3.1 will include the procurement of all materials and equipment."
- SC5.17 Add new paragraph 3.5.6 as follows:
"3.5.6 The *Construction Manager's* analysis of the *Trade Contractors* construction schedule shall not relieve the *Trade Contractor* of any obligation for the performance of the *Work*."
- SC5.18 At 3.7.6 delete, "certified" and replace with, "approved"
- SC5.19 Add new paragraph 3.8.4 as follows:
"3.8.4 The *Owner* will provide heat and lighting to the minimum required by Ministry of Labour. This *Trade Contractor* is responsible for any additional supplementary spot heaters and/or task lighting as required to complete the *Work*."
- SC5.20 Add new paragraph 3.8.5 as follows:
"3.8.5 The *Owner* will provide 120V, 15A power panels allowing the *Trade Contractor* to operate power tools at any location in the building using a 100 foot extension cord."

- SC5.21 Add new paragraph 3.8.6 as follows:
 "3.8.6 The *Project* will be constructed by labour working in an "open-shop" environment, union or non-union. Parties causing disruption to the progress of the work will be dismissed from the project and held responsible for any damages caused."
- SC5.22 Add new paragraph 3.9.2 as follows:
 "3.9.2 The *Trade Contractor* shall maintain current at all times, as-built drawings for the *Work*. The drawings are to be kept on site in a safe and secure lock up. Provide copies of the as-built drawings to the *Construction Manager* immediately upon request for review by the *Construction Manager*, or the *Consultant*. Upon completion of the *Work* submit 3 sets of the as-built drawings to the *Construction Manager* for review and approval."
- SC5.23 At the end of paragraph 3.10.2 add, "Shop Drawings are to be submitted to the *Construction Manager* within 4 weeks of award of *Contract* or in such instances where submission of the shop drawings within 4 weeks of award is not possible, provide a schedule for the submission of shop drawings acceptable to the *Construction Manager* within 4 weeks of award. The *Trade Contractor* is to provide 8 copies of each submission of which 1 will be returned to the *Trade Contractor* upon completion of review."
- SC5.24 Add new paragraph 3.10.14 as follows:
 "3.10.14 The *Trade Contractor* is responsible to confirm all dimensions on site prior to fabrication and/or ordering of materials to ensure proper fit of installed product. The review by the *Construction Manager* or the *Consultant* does not relieve the *Trade Contractors* responsibility in this regard."
- SC5.25 Add new paragraph 3.13.4 as follows:
 "3.13.4 The *Trade Contractor* is responsible for the costs and the carrying out for dust control related to the *Work* of this *Trade Contractor* by whatever means necessary."
- SC5.26 Add new paragraph 3.13.5 as follows:
 "3.13.5 The *Trade Contractor* is responsible for street cleaning related to its *Work*."
- SC5.27 Add new paragraph 3.13.6 as follows:
 "3.13.6 The *Trade Contractor* is responsible to clean up all of its debris on a daily basis, and to dump the same in the appropriate container(s) supplied by the *Owner*. ~~In addition one (1) worker from each ten (10) people employed or pro-rated portion thereof, shall be assigned to the *Construction Manager's* clean-up crew one (1) day per week for the duration of the *Trade Contractor's Work period*.~~ Should the *Trade Contractor* fail or refuse to clean their debris, the *Construction Manager* shall clean the debris for the *Trade Contractor* at the *Trade Contractor's* expense. All garbage is to be packaged and separated into appropriate containers as directed by the *Construction Manager* or the requirements of the Works Department and all Municipal authorities having jurisdiction (i.e., Ministry of the Environment and Energy). The complete disposal cost for mixed or contaminated loads shall be back charged to the offending *Trade Contractor*."
- SC5.28 Add new section "GC 3.14 Quality Control and Quality Assurance"
- SC5.29 Add new paragraph 3.14.1 as follows:
 "3.14.1 The *Trade Contractor* is to submit their *Quality Assurance* program for review and acceptance by the *Construction Manager*."
- SC5.30 Add new paragraph 3.14.2 as follows:

"3.14.2 The *Trade Contractor* is to submit their *Quality Control* program for review and acceptance by the *Construction Manager*. The *Trade Contractors Quality Control* program will be in addition to any *Quality Control* being performed by the *Construction Manager, Consultant* or *Owner*."

SC6 Part 4 Allowances

Intentionally left blank.

SC7 Part 5 Payment

SC7.1 Delete "GC 5.1 Financing Information Required of the Owner", in its Entirety including 5.1.1 and 5.1.2.

SC7.2 At paragraph 5.2.4 delete, "15 calendar days" and replace with, "20 working days".

SC7.3 Add to the end of paragraph 5.2.4, "The schedule of values will be subject to approval by the *Construction Manager*."

SC7.4 Delete paragraph 5.2.5 in its entirety.

SC7.5 Add new paragraph 5.2.6.3 as follows:
 "5.2.6.3 with each application a valid WSIB clearance certificate."

SC7.6 Add new paragraph 5.2.6.4 as follows:
 "5.2.6.4 with each application a copy of all *Change Orders* for which the *Trade Contractor* is claiming a payment for."

SC7.7 Add new paragraph 5.2.6.5 as follows:
 "5.2.6.5 with each application a copy of approval from the *Construction Manger's* site staff."

SC7.8 Add new paragraph 5.2.6.6 as follows:
 "5.2.6.6 original documents."

SC7.9 Delete paragraph 5.2.7 in its entirety.

SC7.10 Add new paragraph 5.2.7 as follows:
 "5.2.7 Applications for payment for *Products* delivered to the *Place of the Project* but not yet incorporated into the *Work* will be at the discretion of the *Owner*. If accepted by the *Owner* the *Trade Contractor* will provide such evidence as the *Construction Manager* and *Owner* may require to establish the value and delivery of the *Products*. In no event will *Products* be permitted to be delivered to the *Project* when the installation is not scheduled to begin for more than 20 working days from the date of the delivery."

SC7.11 Delete paragraph 5.3.1 in its entirety including 5.3.1.1, 5.3.1.2 and 5.3.1.3.

SC7.12 Add new paragraph 5.3.1 as follows:
 "5.3.1 The *Trade Contractor* must submit the application for payment to the *Construction Manager's* office at 3755 Victoria Park Avenue, Toronto, Ontario, M1W 3Z4 by the 20th day of the month including all original documents required as per GC 5.2. The application for payment will reflect all work completed up to and including the 20th day of that month."

SC7.13 Add new paragraph 5.3.2 as follows:
 "5.3.2 The *Construction Manager* will review and accept the values being claimed in the application for payment during the week prior to the application for payment being submitted as noted in 5.3.1."

SC7.14 Add new paragraph 5.3.3 as follows:
 "5.3.3 The Owner's approval will then be complete by the 15th of the first month following the application for payment being submitted as noted in 5.3.1. Should adjustments be required the Trade Contractor will be Notified."

SC7.15 Add new paragraph 5.3.4 as follows:
 "5.3.4 The payment will be processed by the 15th day of the second month following the application for payment being submitted as noted in 5.3.1."

SC7.16 Add new paragraph 5.3.5 as follows:
 "5.3.5 Final Payment shall not become due until all required documentation, such as guarantees, warranties, maintenance manuals and as-built record drawings have been delivered to the *Construction Manager*."

SC7.17 At paragraph 5.4.2 delete, "whichever of them is the *Payment Certifier*, acting in that capacity,"

SC7.18 Delete paragraph 5.5.1 and 5.5.2 in their entirety.

SC7.19 Add new paragraph 5.5.1 as follows:
 "5.5.1 After the *Construction Manager* confirms ~~the Substantial Performance of the Work~~, the Trade Contractor shall submit to the *Construction Manager* an application for payment of the holdback amount including a Form 6 Certificate of substantial performance as per the Construction Lien Act, proof of publication, CCDC 9A 'Statutory Declaration' and all documents required as per 5.2.6," *and Construction Manager shall issue a certificate for payment of the holdback amount and pay holdback*

SC7.20 At paragraph 5.6.1 delete, "*Payment Certifier* has certified" and replace with, "*Construction Manager and Consultant* have confirmed"

SC7.21 Delete paragraph 5.6.2 in its entirety.

SC7.22 At the end of paragraph 5.7.2.1 add the following: " will advise the Trade Contractor in writing that the application is valid or give reasons why it is not valid."

SC7.23 Delete paragraph 5.7.2.2 in its entirety.

SC7.24 Delete paragraph 5.7.3 in its entirety.

SC7.25 At paragraph 5.8.1 delete, "as Certified by the *Payment Certifier*" and delete, "the *Payment Certifier* determines."

SC8 Part 6 Changes in the Work

SC8.1 Add new paragraph 6.2.3 as follows:
 "6.2.3 When determining the adjustment to the *Contract Price* the *Trade Contractor* will be limited to the estimated costs as per the items identified in 6.3.6, 6.3.7, 6.3.8 and 6.3.14."

SC8.2 Add new paragraph 6.2.4 as follows:
 "6.2.4 The *Trade Contractor* shall provide a detail cost breakdown of the work within 10 days of receipt of the proposed change. Extensions to the 10 day period will only be granted upon written request. If the *Trade Contractor* fails to submit a cost for the proposed change in the work, the *Construction Manager*, *Owner* and/or the *Consultant* will make an assessment of the costs which will be final.

SC8.3 Delete paragraph 6.3.6.3 in its entirety.

SC8.4 Add new paragraph 6.3.6.3 as follows:
 "6.3.6.3 The *Trade Contractor's* percentage fee as noted in paragraph 6.3.6.1 shall be limited to 5% for overhead and 5% for profit."

SC8.5 Add new paragraph 6.3.14 as follows:
 "6.3.14 Work performed by subcontractors or sub-subcontractors etc. will be subject to the same restrictions as the *Trade Contractor* when pricing the work of a *Change Order* or *Change Directive*.

SC9 Part 7 Default Notice

SC9.1 At paragraph 7.1.4.1 delete the following: "provided the *Payment Certifier* has certified such cost to the *Owner* and the *Trade Contractor*"

SC9.2 At paragraph 7.1.5.3 delete the following: "as certified by the *Payment Certifier*"

SC9.3 Delete paragraphs 7.2.2, 7.2.3 and 7.2.4 in their entirety.

SC10 Part 8 Dispute Resolution

Intentionally left blank

SC11 Part 9 Protection of Persons and Property

SC11.1 At paragraph 9.4.2 delete, "Owner" and replace with, "*Construction Manager*".

SC11.2 Add new paragraph 9.4.4 as follows:
 "9.4.4 The *Owner* and *Construction Manager* have a safety program in place for the site. All *Trade Contractors/Suppliers* shall fully co-operate with the *Construction Manager* to implement the site safety program and comply with requirements of Occupational Health and Safety At R.S.O. 1990 c. 0. 1 (as may be amended from time to time). All *Trade Contractors/Suppliers* are responsible for the safety of their employees, *Trade Contractors*, visitors, *Suppliers* and those for whom the *Trade Contractor's Suppliers* are at law responsible and must ensure that proper safety equipment and procedures are used at all times. Regular meetings regarding safe work procedures will be held on site for all workers and will be organized by the *Construction Manager*. The *Trade Contractor/Supplier* shall fully indemnify the *Owner* and *Construction Manager* for all costs, damages and pay any and all fines levied against the *Owner* its Lender or any affiliated or related entities or their shareholders, officers, directors, employees or those for whom they are at law responsible resulting from the *Trade Contractor/Supplier*, it's

employees, suppliers and those for whom the *Trade Contractor/Supplier* are at law responsible for failing to adhere to the Safety Requirements of all laws and authorities having jurisdiction. All *Trade Contractors/Suppliers* on this site will be required to have a written Health & Safety Policy according to the requirements of the Occupational Health & Safety Act R.S.O. 1190 c. 0. 1 (as may be amended from time to time) and must provide a copy to the Site Superintendent prior to starting any work on the site. All *Trade Contractors* are required to submit the following information regarding their Safety Program and accident experience: 1) Safety Policy and Programs; 2) Outline of Safety Training (i.e., W.H.M.I.S.); 3) CAD-7 Experience Rating Summary. The *Trade Contractor* shall be fully responsible for all acts of negligence committed by its personnel and for any accidents or damages caused as a result of such acts of negligence. The *Trade Contractor* shall provide the *Owner* and *Construction Manager* with copies of all Project Inspection Reports issued by the Ontario Ministry of Labour, Construction Health and Safety Branch. The *Trade Contractor* shall provide the *Owner* and *Construction Manager* with copies of all accident reports."

SC11.3 Add new paragraph 9.4.5 as follows:

"9.4.5 The *Trade Contractor* will submit to the *Construction Manager* prior to starting the *Work* at the *Place of the Project* a signed copy of the Occupational Health and Safety Trade Contractor Agreement between the *Owner* and the *Trade Contractor* that was included in the Tender Package for the *Work*."

SC12 Part 10 Governing Regulations

SC12.1 Add new paragraph 10.2.8 as follows:

"10.2.8 The *Trade Contractor* agrees to complete the *Work* in accordance with all applicable federal, provincial and municipal laws, regulations and codes and all regulations thereunder, amendments thereto or substitutions therefore, including, but not limited to the following:

- a. The Ontario Building Code;
- b. The National Building Code including all Supplements;
- c. Canada Mortgage and Housing Corporation Builders' Bulletins;
- d. Ontario Electrical Safety Code;
- e. Canada Plumbing Code;
- f. Residential Standards Canada;
- g. The National Housing Act, R.S.C. 1985, Chap. N-11, as amended;
- h. The Occupational Health and Safety Act and Regulations for Construction Projects, Revised SO, 1990, Chapter 0.1m as amended, O. Reg. 213/91, as amended by O. Reg. 631/94, O. Reg. 143/99, 571/99, 145/00 and 527/00, R.R.O. 1990, Reg. 834;
- i. The Elevating Devices Act, R.S.O. 1980, Chapter 135, as amended;
- j. Workplace Safety and Insurance Act, 1997, SO, 1997, Chapter 16, Schedule A. and O. Reg. 562/99, 1101, 456/97, 175/98, 455/97, 259/92;
- k. The Construction Lien Act, S.O. 1983, as amended;
- l. The Tarion Warranty Corporation Construction Performance Guidelines, April 2, 2003;
- m. Tarion Warranty Corporation Regulations and its latest amendments and
- n. The Ontario New Home Warranties Plan Act
- o. In the event of any differences between two codes, two statutes or a statute and a code, the more stringent code or statute shall govern.

SC13 Part 11 Insurance

- SC13.1 Delete paragraph 11.1.1 in its entirety. Including paragraphs 11.1.1.1, 11.1.1.2 and 11.1.1.3
- SC13.2 Add new paragraph 11.1.1 as follows:
 "11.1.1 Without restricting the generality of GC 12.1- INDEMNIFICATION, the *Trade Contractor* shall provide, maintain, and pay for the insurance coverages specified below. Unless otherwise stipulated, the duration of each insurance policy shall be from the date of commencement of the *Work* until the date of the final certificate for payment. Prior to commencement of the *Work* and upon the placement, renewal, amendment, or extension of all or any part of the insurance, the *Trade Contractor* shall promptly provide the *Construction Manager* with confirmation of coverage and, if required, a certified true copy of the policies certified by an authorized representative of the insurer together with copies of any amending endorsements. The policies shall be in a form acceptable to the *Construction Manager* and endorsed to provide the *Construction Manager* with not less than 15 days notice in writing in advance of cancellation, change, or amendment restricting coverage."
- SC13.3 Add new paragraph 11.1.1.1 as follows:
 "11.1.1.1 Automobile Liability Insurance:
 Automobile liability insurance in respect of licensed vehicles shall have limits of not less than \$5,000,000 inclusive per occurrence for bodily injury, death, and damage to property, covering all licensed vehicles owned or leased by the *Trade Contractor*. Where the policy has been issued pursuant to a government operated automobile insurance system, the *Trade Contractor* shall provide the *Construction Manager* with confirmation of automobile insurance coverage for all automobiles registered in the name of the *Trade Contractor*."
- SC13.4 Add new paragraph 11.1.1.2 as follows:
 "11.1.1.2 Aircraft and Watercraft Liability Insurance:
 Aircraft and watercraft liability insurance with respect to owned or non-owned aircraft and watercraft if used directly or indirectly in the performance of the *Work*, including use of additional premises, shall be subject to limits of not less than \$5,000,000 inclusive per occurrence for bodily injury, death, and damage to property including loss of use thereof and limits of not less than \$5,000,000 for aircraft passenger hazard."
- SC13.5 Add new paragraph 11.1.1.3 as follows:
 "11.1.1.3 *Trade Contractors'* Equipment Insurance:
 "All Risk" contractors' equipment insurance covering construction machinery and equipment (including contractors building and equipment, the capital cost of any item which is not included in the cost of new construction) owned, rented, leased or used by the *Trade Contractor* for the performance of the *Work*, including boiler insurance on temporary boiler and pressure vessels. Such policies will not allow for subrogation claims against the *Owner* or *Construction Manager* or their employees."
- SC13.6 Delete paragraph 11.1.3 in its entirety.
- SC13.7 Add new paragraph 11.1.3 as follows:
 "11.1.3 The *Owner* shall obtain, maintain and pay for "wrap-up" general liability insurance in the joint names of the *Owner*, the *Construction Manager*, the *Consultant*, and all *Trade Contractors*, and all subconsultants, and all trade subcontractors with a limit of not less than \$25,000,000 per occurrence and a deductible not more than \$25,000. The coverage shall be primary and non-contributing to all other insurance policies and shall not be substantially less than the insurance provided by IBC Form 2100, (including an extension for a standard provincial and territorial form of non-owned automobile liability policy) and IBC form 2320, except for liability arising from damage to the *Project* during construction, which shall be limited to the completed operations period. The insurance shall be maintained from the date of

commencement of the *Project* until deficiency state at which point the *Owner* is responsible to provide coverage for completed operations hazards for a period of 3 years thereafter. In order to achieve the limit of insurance required the use of primary and excess liability policies is acceptable."

SC13.8 Delete paragraph 11.1.4.1 in its entirety.

SC13.9 Add new paragraph 11.1.4.1 as follows:

"11.1.4.1 The *Owner* shall obtain, maintain and pay for All Risk "broad form "property insurance including but not limited to the perils of flood, earthquake and sewer back-up in the joint names of the *Owner*, the *Owner's* Mortgagee, the *Construction Manager*, the *Consultant*, and all *Trade Contractors*. The policy shall have limits of not less the full replacement cost of the work including reoccurring soft costs subject however to limits of not less than 1.1 times the Construction Cost with a deductible not greater than \$25,000 except for the perils of sewer back-up, water damage, flood and earthquake. Such deductibles for sewer back-up, water damage and flood will not exceed \$50,000. Earthquake which will contain a deductible of not greater than 5% of the total values insured or \$100,000 whichever is greater. Loss if any will be payable to the *Owner*, the *Owner's* Mortgagee, the *Construction Manager*, the *Consultant*, and all *Trade Contractors* as their interest may appear. Providing the *Owner*, the *Owner's* Mortgagee, the *Construction Manager*, the *Consultant*, and all *Trade Contractors* will use the proceeds from any insurance to restore the work as nearly as possible to its condition before such loss or damage occurred. Such coverage will not include the replacement cost of any property not included in the capital cost of new construction. The All Risk "broad form" property insurance shall be provided from the date of commencement of the *Project* until the earliest of.

.1 120 days after the *Project In Use Date* or the registration of the condominium, whichever is later.

.2 on the commencement of use or occupancy unless such use or occupancy is for construction purposes, commercial purposes, habitational purposes, parking purposes, or for the installation and testing and commissioning of equipment forming part of the *Project*.

.3 when the *Place of the Project* is left unattended for more than 30 consecutive calendar days.

The *Owner* is not required to provide coverage for Asbestos, Cyber Risks, Mould or Terrorism."

SC13.10 Delete paragraph 11.1.4.2 in its entirety.

SC13.11 Add new paragraph 11.1.4.2 as follows:

"11.1.4.2 The *Owner* shall obtain, maintain and pay for Comprehensive Boiler and Machinery insurance including but not limited coverage for testing and commissioning in the joint names of the *Owner*, the *Construction Manager*, the *Consultant*, and all *Trade Contractors*. The policy shall have limits of not less the full replacement cost of the work including reoccurring soft costs subject however to limits of not less than 1.1 times the Construction Cost with a deductible not greater than \$25,000 except for Loss if any will be payable to the *Owner*, the *Owner's* Mortgagee and the *Construction Manager* as their interest may appear. Providing the *Owner* is not in default of any mortgage requirements the *Owner* and the *Owner's* Mortgagee will use the proceeds from any insurance to restore the work as nearly as possible to its condition before such loss or damage occurred. Such coverage will not include the replacement cost of any property not included in the capital cost of new construction. The Comprehensive Boiler and Machinery insurance shall be provided from the date of commencement of the *Project* until the earliest of.

.1 120 days after the *Project In Use Date* or the registration of the condominium, whichever is later.

.2 on the commencement of use or occupancy unless such use or occupancy is for construction purposes, commercial purposes, habitational purposes, parking purposes, or for the installation and testing and commissioning of equipment forming part of the *Project*.

.3 when the *Place of the Project* is left unattended for more than 30 consecutive calendar days. The *Owner* is not required to provide coverage for Asbestos, Cyber Risks, Mould or Terrorism.

SC13.12 At paragraph 11.1.4.3 delete, "The "Broad form" property and boiler and machinery policies shall provide that in the case of a loss or damage payment shall be made to the *Owner*, the *Trade Contractor*, the *Construction Manager* and the *Consultant* as their interest may appear."

SC13.13 Delete paragraph 11.1.5.2 in its entirety.

SC13.14 Delete paragraph 11.1.8 in its entirety.

SC13.15 Delete paragraph 11.1.9 in its entirety.

SC13.16 Delete paragraph 11.1.10 in its entirety.

SC13.17 Add new paragraph 11.1.11 as follows:

"11.1.11 Notwithstanding the requirement of the *Owner* to take out and maintain Wrap-up Liability Insurance the *Trade Contractor* shall take out and maintain Commercial General Liability Insurance (for all operations not insured under the Wrap-Up Liability Insurance Policy or for which the *Trade Contractor* desires additional insurance) with limits not less than \$5,000,000 covering the *Trade Contractor* and all operations of the *Trade Contractors* sub-contractors. The *Owner* and *Construction Manager* will be included as additional insured's, and such policies will be endorsed to provide a waiver of subrogation in favour of the *Owner* and *Construction Manager* or their employees."

SC13.18 Add new paragraph 11.1.12 as follows:

"11.1.12 General Insurance Provisions

- a. **No Representation of Coverage Adequacy.** By requiring the insurance as set out herein, the *Owner* and *Construction Manager* and their associated and affiliated companies, their officers, directors, members, managers, partners and employees, do not represent that the coverage and limits will necessarily be adequate to protect the *Trade Contractor*. The insurance required hereunder may be contained in one or more policies prior to commencement of any work or services.
- b. The *Trade Contractor* shall furnish to the *Owner* and *Construction Manager*, certificates of insurance or copies of policies showing that such insurance is in force within 10 days of award and as requested thereafter.
- c. In the event of any failure of the *Trade Contractor* to furnish and maintain insurance hereunder, the *Owner*, at its option and without waiving default of the *Trade Contractor*, shall have the right, but not the obligation, to obtain such insurance for and in the name of the *Trade Contractor*. In such event, the *Owner*, may, at its absolute discretion and option, either require that the *Trade Contractor* pay the cost thereof upon demand or deduct from any sums owing to the *Trade Contractor* all costs for obtaining such appropriate insurance. In either event, the *Trade Contractor* shall furnish to the *Owner*, all information required by the insurance carrier.
- d. The insurance requirements of this contract shall be placed with insurers licensed to operate in the Province of Ontario, with A.M. Best ratings of at least "A".

SC14 GC 12.1 Indemnification

SC14.1 Delete paragraph 12.1.2.2 in its entirety.

SC14.2 Add new paragraph 12.1.2.2 as follows:

"12.1.2.2 In respect to losses suffered by the *Owner* and the *Trade Contractor* for which insurance is not required to be provided by either party in accordance with GC 11.1 – INSURANCE, the greater of the *Contract Price* as recorded in Article A-4 – CONTRACT PRICE or \$5,000,000, but in no event shall the sum be greater than \$20,000,000."

SC14.3 Delete paragraph 12.3.1 in its entirety.

SC14.4 Add new paragraph 12.3.1 as follows:

"12.3.1 Except for extended warranties as described in paragraph 12.3.7, the warranty period under the *Contract* is two years or such longer period as specified in the contract documents or as required by the Taron Corporation and the Ontario New Home Warranties Plan Act R.S.O. 1990 c.o.31 ("ONHWPA") from the date upon which the condominium corporation is registered, all in accordance with the requirements of the Taron Corporation and ONHWPA Act."

SC14.5 At paragraph 12.3.4 delete, "one year warranty period" and replace with, "two year warranty period".

SC14.6 At paragraph 12.3.5 delete, "one year warranty period" and replace with, "two year warranty period".

SC14.7 At paragraph 12.3.7 delete, "one year warranty period" and replace with, "two year warranty period".

SC14.8 Add new paragraph 12.3.8, "Upon written notice from the *Owner* or *Construction Manager* to the *Trade Contractor* of any defect or deficiency the *Trade Contractor* will either make the necessary repairs, or in the event of failure to do so within five (5) working days after receiving written notification from the *Owner*, the *Owner* may make such repairs at the *Trade Contractor's* expense, which the *Trade Contractor* agrees to pay upon demand."

END OF SUPPLEMENTARY CONDITIONS



TAB2

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

BETWEEN:

BRIDGING FINANCE INC., as agent for
2665405 ONTARIO INC.,
APPLICANT,

AND

1033803 ONTARIO INC. and 1087507 ONTARIO LIMITED,
RESPONDENTS,

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

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CROSS-EXAMINATION OF STEVEN MARK AQUINO
ON HIS AFFIDAVIT SWORN AUGUST 11, 2022

FRIDAY, OCTOBER 07, 2022
10:05 A.M.

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NOTE: The above-recorded indices are provided for ease of reference only and are not to be relied upon in any manner whatsoever by the parties hereto or any third party.

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1 **CROSS-EXAMINATION OF STEVEN MARK AQUINO**

2 **FRIDAY, OCTOBER 07, 2022**

3 **10:05 A.M.**

4
5
6
7 COURT REPORTER: Can the witness
8 please state and spell their full name for the record?

9 THE DEPONENT: My name is Steven Mark
10 Aquino S-T-E-V-E-N M-A-R-K A-Q-U-I-N-O.

11 COURT REPORTER: Thank you. Do you
12 solemnly affirm that the evidence you're about to give
13 shall be the truth, the whole truth and nothing but
14 the truth?

15 THE DEPONENT: I do.

16 COURT REPORTER: Thank you. Good
17 morning, my name is Alyssa Scott and I'm here on
18 behalf of Professional Court Reporters. We are here
19 today on October the 7th, 2022 to take the examination
20 of Steven Aquino in the matter of Bridging Finance
21 Inc. versus 1033803 Ontario Inc. et al. Will counsel
22 please identify themselves for the record stating your
23 name, firm and who you represent?

24 MR. FARACE: Thank you. My name is
25 Michael, last name is Farace. It's spelled F-A-R-A-C-

1 E. I'm with the law firm Miller Thompson LLP. I
2 represent MOD Developments.

3 MR. OPOLSKY: My name is Jeremey
4 Opolsky O-P-O-L-S-K-Y. I am counsel at Torys LLP. I
5 represent the Receiver in this matter, KSV
6 Restructuring Inc.

7 MR. BABAD: And I ---

8 COURT REPORTER: Thank you. Oh, go
9 ahead.

10 MR. BABAD: I'm Jake Babad J-A-K-E B-
11 A-B-A-D, also at Torys LLP representing the Receiver.

12 COURT REPORTER: Okay, great. Thank
13 you, Counsel. The time is now 10:05 a.m., you may
14 proceed.

15 STEVEN MARK AQUINO, affirmed,

16 EXAMINATION BY MR. FARACE:

17 1. Q. Good morning, Mr. Aquino, could you please
18 state your name for the record?

19 A. My name is Steven Mark Aquino.

20 2. Q. And you've been affirmed this morning to
21 truthfully answer the questions that I will be asking
22 you, is that correct?

23 A. Yes.

24 3. Q. And you are obviously not in the same office
25 that Mr. Opolsky's in this morning, you're somewhere

1 else, is that correct?

2 A. Yes.

3 4. Q. And where are you located this morning?

4 A. North York.

5 5. Q. Okay. Is there a municipal address that you
6 can tell me that you're located at?

7 A. One hundred and thirty Toro Road.

8 6. Q. Okay. And is that the business address of
9 Bondfield?

10 A. It's the business address of Corebuild
11 Construction, however we continue to receive mail and
12 correspondence for Bondfield here.

13 7. Q. Okay. And you're alone in the office room
14 that you're in right now? You're by yourself,
15 correct?

16 A. Yes, I am.

17 8. Q. Door is closed?

18 A. Yes.

19 9. Q. And there's nobody else in the room with
20 you, correct?

21 A. Correct.

22 10. Q. And you don't have any documents open in
23 front of you other than possibly your Affidavit sworn
24 August 11, 2022, correct?

25 A. Correct.

1 11. Q. Thank you. And can you please describe for
2 me, sir, your education background? Post-secondary if
3 that's the case.

4 A. I graduated from the University of Toronto
5 in 2000 with a degree in -- a Bachelor's of Applied
6 Science. My specialty was civil engineering.

7 12. Q. Are you a professional engineer?

8 A. I am not.

9 13. Q. And can you describe for me, sir, the work
10 experience that you had after your graduation from U
11 of T?

12 A. I joined Bondfield in May of 2000. Over the
13 last 22 years, I've held a number of roles including
14 I've been a site superintendent; I've been an
15 estimator, project coordinator, project manager. I
16 spent a significant time as our head of operations and
17 eventually ascended into the role of President.

18 14. Q. Okay. In your role as head of operations,
19 what time frame would you have that that role?

20 A. Probably around 2010 to 2018.

21 15. Q. Okay. And the company that's -- one of the
22 companies that's the subject matter of the motions
23 before the court is a company whose full name is
24 1428508 Ontario Limited. According to your Affidavit,
25 I believe it was incorporated in the year 2000,

1 correct?

2 A. Yes.

3 16. Q. And just for ease of reference, I'll just
4 call this company 508 from hereon in, is that okay?

5 A. Yes.

6 17. Q. Thank you. Do you recall for what purpose
7 508 was incorporated for?

8 A. We incorporated that company because we were
9 starting a concrete form work division.

10 18. Q. And, when you say concrete form work, it
11 would be to provide form work such as the form work
12 that was being done at the condominium project that
13 was being -- that's the subject matter of the
14 agreement that's also the subject of this court
15 motion, correct?

16 A. Yes.

17 19. Q. And was 508 the first corporation to carry
18 out the concrete work that you've described on behalf
19 of Bondfield?

20 A. It was the first entity that was independent
21 of the Bondfield company.

22 20. Q. Okay. And when do you say the company
23 1033803 Incorporated got involved in the concrete
24 forming work?

25 A. When we decided to amalgamate the two

1 companies within the group.

2 21. Q. I'm going to refer to that 1033803 Ontario
3 Incorporated as 803 from hereon in, is that okay?

4 A. Yes.

5 22. Q. When you said, sir, that you -- 803 got
6 involved in the concrete forming work when it was
7 decided that 803 and 508 be amalgamated in the
8 company's group, what do you mean by amalgamated?

9 A. Merged.

10 23. Q. Okay. And when you say company's group,
11 which company are you referring to?

12 A. The Bondfield group of companies.

13 24. Q. Okay. So can I explain to you what I
14 understand? What you've just told me is that, at some
15 point, 508 and 803 came under the umbrella of the
16 Bondfield group of companies in a formal sort of
17 fashion such that they shared the same address as
18 Bondfield and would work on Bondfield projects? As
19 well as third party projects?

20 A. No, I don't think that's what I said.

21 25. Q. Okay, can you clear that up for me? Because
22 I don't understand the concept of amalgamating them
23 into the company's group.

24 A. The Bondfield Group had a number of various
25 companies operating as part of the overall entity.

1 26. Q. Okay.

2 A. There were a number of companies of which
3 508 and 803 were part of.

4 27. Q. And were 508 and 803 the only entities that
5 carried on concrete forming work as part of the
6 Bondfield Group?

7 A. Bondfield, prior to the creation of 508, had
8 completed concrete forming work with its own employees
9 and equipment prior to the incorporation of 508.

10 28. Q. Okay. And then, once 508 was incorporated,
11 what happened? Did 508 then have its own employees
12 that performed concrete forming work?

13 A. Yes.

14 29. Q. Okay. And is that the -- also true of 803?
15 That it then acquired also at some time employees to
16 carry on forming work?

17 A. All of the employees of 508 were transferred
18 to 803.

19 30. Q. Okay. Do you recall when that transfer of
20 employees had happened?

21 A. I do not recall.

22 31. Q. Can you undertake to review information and
23 records available to you and provide me with an answer
24 to that question?

25 MR. OPOLSKY: Take that under

1 advisement.

2 MR. FARACE: Okay. When will you get
3 back to me on that question of whether or not you'll
4 answer it? Because you've taken it under advisement.

5 MR. OPOLSKY: We'll let you know next
6 week, Mr. Farace.

7 MR. FARACE: Thank you, sir.

8 (Whereupon UNDER ADVISEMENT NO. 1: To advise when
9 the transfer of employees from 508 to 803 happened and
10 to advise by next week whether it will be answered or
11 not.)

12 BY MR. FARACE:

13 32. Q. 803 was incorporated on December 30, 2007
14 according to your Affidavit. Is there a reason as to
15 why a second company to carry on forming work was
16 incorporated such as 803?

17 A. 803 was not incorporated initially to
18 undertake forming work. It was a real estate hold co.

19 33. Q. Who decided that 803 was to take on the
20 forming work that was being performed by 508?

21 A. It was a decision made amongst our CFO,
22 President, myself. I think my father was involved as
23 well.

24 34. Q. Okay. And what were the names of the CFO,
25 the President and your father?

1 A. My father's name is Ralph Aquino. John
2 Aquino is my brother. At the time he was President of
3 Bondfield. And the CFO was Dominic DiPede.

4 35. Q. Okay. And Michael Solana that was the
5 officer and director of 508, he wasn't involved in
6 that decision at all?

7 A. No, he wasn't.

8 36. Q. Okay. When was that decision made?

9 A. I don't recall the exact time. It had been
10 discussed for some time.

11 37. Q. Okay. Can you undertake to review records
12 available to you and advise me as to whether or not
13 you can determine on what date that decision was made?

14 MR. OPOLSKY: Same answer, Mr.
15 Farace. I will take it under advisement and let you
16 know next week whether we intend to answer it.

17 MR. FARACE: Thank you, Counsel.
18 (Whereupon UNDER ADVISEMENT NO. 2: To advise when
19 the decision was made that 803 was to take on the
20 forming work being performed by 508 and to advise by
21 next week whether it will be answered or not.)

22 BY MR. FARACE:

23 38. Q. So is it fair to say, sir, that, from
24 December 30, 2007, the date of incorporation of 803,
25 through to June of 2016, that it was simply a real

1 estate holding company?

2 MR. OPOLSKY: Can you repeat those
3 dates, Mr. Farace?

4 MR. FARACE: Yes. The dates are
5 December 30, 2007 to June 2016.

6 THE DEPONENT: I can't answer that
7 question. I don't know the exact date of the -- I'd
8 have to go back and check the exact date. But, yes,
9 it was a hold co. until it absorbed the assets and
10 staff and projects of 508.

11 BY MR. FARACE:

12 39. Q. Okay. Can you undertake to review records
13 and information available to you so that way you can
14 advise me of whether or not 803 was simply a holding
15 company for real estate up until June 2016?

16 MR. OPOLSKY: Same answer, Mr.
17 Farace.

18 MR. FARACE: Thank you.
19 (Whereupon UNDER ADVISEMENT NO. 3: To advise
20 whether or not 803 was simply a holding company for
21 real estate up until June 2016 and to advise by next
22 week if it will be answered or not.)

23 BY MR. FARACE:

24 40. Q. So 508 was involved in the concrete forming
25 business from its inception roughly in 2000 going

1 forward, is that correct?

2 A. Yes.

3 41. Q. Okay. So, from the year 2000 going forward,
4 were you involved in the operations of 508?

5 A. I had a peripheral role.

6 42. Q. What was your role?

7 A. I was involved in all of the projects that
8 508 completed on sites where Bondfield was the general
9 contractor.

10 43. Q. So you were not involved on sites such as
11 the one that's the -- we'll call it the Massey Tower
12 project as you call it in paragraph 6 of your
13 Affidavit. You weren't involved on that particular
14 project, correct?

15 A. I -- maybe in an oversight role in terms of
16 understanding the number of manpower on site and how
17 those resources were being allocated throughout the
18 company, but not in the day-to-day operations of the
19 site in any capacity.

20 44. Q. Okay. And is it fair to say that you never
21 had any day-to-day involvement in any capacity of 508
22 on any projects at all from 2000 through to 2016 June,
23 correct?

24 A. I did not say that.

25 45. Q. Okay. So what was your involvement --

1 sorry. You did say you were involved on projects
2 where 508 performed where Bondfield was a general
3 contractor. So I'd like to refine or revise my
4 question to you, sir. From the year 2000 through to
5 June 2016, you were not involved in day-to-day
6 operations of 508 where it was performing work on
7 projects wherein Bondfield was not the general
8 contractor.

9 A. Yes.

10 46. Q. Okay. Who was it that was the person who
11 was overseeing the day-to-day operations of 508 in the
12 time frame that I've described from the year 2000 to
13 the year -- or to the month June of 2016?

14 A. John Aquino.

15 47. Q. And he's your brother that you referred to
16 earlier, correct?

17 A. Yes.

18 48. Q. And what role did Michael Solano play, if
19 any, in relation to the day-to-day operations of 508
20 in the time frame that I previously described?

21 A. Administration and clerical duties.

22 49. Q. Okay. And was he your cousin, Michael
23 Solano?

24 A. Yes.

25 50. Q. Okay. Do you recall what his education

1 background was?

2 A. I recall that he spent a year at Laurentian
3 University. I don't believe he completed that year.
4 And I believe had some bookkeeping and accounting
5 courses at the collegiate level that he had completed.

6 51. Q. Okay. And, with respect to the agreement
7 that you refer to in paragraph 6 of your Affidavit as
8 the Massey Tower project agreement, I'm going to call
9 that the contract just for ease of reference and using
10 a shorter term to refer to it as. And I was wondering
11 if your counsel on this call, Mr. Opolsky, if you
12 could call that up on the screen for me as a favour.
13 Share screen. I just want to confirm with this
14 witness that this is the agreement that he's referring
15 to.

16 MR. OPOLSKY: I can do that, but I
17 think Mr. Babad is prepared ---

18 MR. FARACE: Oh.

19 MR. OPOLSKY: --- to do that as ---

20 MR. FARACE: Excellent.

21 MR. OPOLSKY: --- well so...

22 MR. FARACE: Thank you, Mr. Babad.

23 BY MR. FARACE:

24 52. Q. Mr. Aquino, this is a CCDC 17 form of
25 contract. Yesterday it was produced in the cross-

1 examination of Aidan, that's A-I-D-A-N, last name Ball
2 B-A-L-L for the record. We marked it as Exhibit A.

3 I'd like to refer to it as Exhibit A in your
4 examination as well. Counsel, are you okay with that?

5 MR. OPOLSKY: I'm content to proceed
6 that way.

7 MR. FARACE: Okay. And Madam
8 Reporter, we'll send you a copy of this contract after
9 this exam's over, that way you can mark it as an
10 exhibit for us. Mr. Babad, if you could please move
11 forward over to the face page of the contract that
12 follows the table of contents so that way Mr. Aquino
13 can see it.

14 (Whereupon EXHIBIT NO. A : CCDC 17 form of
15 contract.)

16 BY MR. FARACE:

17 53. Q. Sir, so here's the face page of the
18 agreement and I'm putting to you that this is the
19 agreement that you refer to in paragraph 6 of the
20 Massey Tower project agreement. It shows that it's
21 MOD Developments (197 Yonge) Limited Partnership and
22 Formaon-Construction -- sorry, Formaon hyphen --
23 sorry, let me spell that. Forma F-O-R-M (sic) hyphen
24 C-O-N and then the word Construction (a division of
25 1428502 Ontario Limited). You see that, correct?

1 A. Yes.

2 54. Q. Do you recall who it was on behalf of 508
3 that negotiated this contract?

4 A. My brother negotiated all of the contracts
5 that Forma-Con undertook with other developers.

6 55. Q. Okay.

7 A. But I do not recall the details of this
8 specific one.

9 56. Q. Okay. Do you know if -- and, when you say
10 your brother, you're talking -- you're speaking of
11 John Aquino, right?

12 A. Yes.

13 57. Q. And was it John Aquino that you believe
14 negotiated this contract?

15 A. Yes.

16 58. Q. Okay. And were you involved in any part of
17 the negotiations regarding this contract?

18 A. No.

19 59. Q. And have you spoken with him about this
20 contract prior to today and the fact that it's in the
21 name of a company known as 1428502 Ontario Limited?

22 A. I have not spoken to John.

23 60. Q. Okay. So you've never had any conversations
24 prior to today -- and by the way, that numbered
25 company that I just spoke of, let me call it 502 for

1 ease of reference, is that okay?

2 A. Yes.

3 61. Q. And is it fair to say, sir, that you never
4 have spoken with John about this contract?

5 MR. OPOLSKY: Can you clarify the
6 question, Mr. Farace? Are you asking in the context
7 of this litigation? Are you asking since it was
8 signed?

9 MR. FARACE: Since it was signed.

10 THE DEPONENT: I have had discussions
11 with John about the Forma-Con contract with MOD at
12 Massey, yes.

13 BY MR. FARACE:

14 62. Q. Do you recall when you had those
15 conversations?

16 A. It would have been during the course of
17 construction.

18 63. Q. Okay. And do you recall when you would have
19 had your last conversation with your brother John
20 about this contract? Month and year?

21 A. Most likely August or September of 2018.

22 64. Q. Okay. And is it fair to say that, up until
23 that time, that date that you've described, your
24 conversations with John were mostly with respect, and
25 only with respect actually, to performance regarding

1 the services that were to be performed or the work to
2 be performed under this contract?

3 A. Performance and payment.

4 65. Q. Okay. Thank you. And, since that time in
5 2018 going forward, you've never spoken with John
6 about this contract since, correct?

7 A. Correct.

8 66. Q. Okay. Very good. And have you spoken with
9 John about the subject matter of the motion that's
10 before the Commercial Court that is the subject to
11 which your Affidavit is related?

12 A. I have not spoken to John Aquino.

13 67. Q. Is there a reason why you haven't spoken to
14 him?

15 A. Yes.

16 68. Q. And what's the reason?

17 A. He is a liar and a thief and has really hurt
18 our family.

19 69. Q. And your reference to him being a liar and a
20 thief, is that also an opinion that you hold as a
21 result of the court decisions that have come out
22 regarding Bondfield and fraudulent invoicing schemes?

23 A. Yes.

24 70. Q. With respect to paragraph 6 of your
25 Affidavit, sir ---

1 MR. OPOLSKY: Sorry, if you're going
2 to refer to the Affidavit, I would ask that we call it
3 up. I'm happy to have Mr. Babad do so.

4 MR. FARACE: Absolutely, Counsel,
5 thank you for that.

6 BY MR. FARACE:

7 71. Q. Mr. Aquino, we called up on screen your
8 Affidavit and I refer you to your paragraph 6. If
9 you'd like, you can read it through quietly to
10 yourself. I just want to ask you some questions
11 regarding that paragraph.

12 A. Okay.

13 72. Q. What is your source for this information
14 that you've provided in paragraph 6. Did you speak to
15 anybody to come up with this information?

16 A. Yes.

17 73. Q. Who was it that you spoke to with respect to
18 the information that's contained in this paragraph?

19 A. I have spoken to staff of the group and ---

20 74. Q. And when you say group ---

21 A. --- former staff.

22 75. Q. --- you mean Bondfield or do you mean Forma-
23 Con?

24 A. I consider them the same.

25 76. Q. Okay.

1 MR. OPOLSKY: Mr. Farace, I don't
2 believe that Mr. Aquino has finished his answer. So
3 I ---

4 MR. FARACE: I'm sorry.

5 MR. OPOLSKY: --- propose that he
6 finish his answer and then we clarify any questions
7 you have.

8 MR. FARACE: That's fine. Thank you.
9 Proceed, sir, please.

10 THE DEPONENT: I've spoken to staff.
11 I've spoken to the Receiver. I have spoken to counsel
12 to the Receiver.

13 BY MR. FARACE:

14 77. Q. The contract that we saw earlier up on the
15 screen is dated December 19, 2014 and you say in this
16 paragraph that the project -- until the project was
17 completed, March 20, 2019. So what I'd like to ask
18 you is this. Why was it that the contract was signed
19 on December 19, 2014 and then in or about December 31,
20 2014 there was a dissolution resolution passed for
21 508. Do you know what the reason was for that, sir?

22 A. We were considering the sale of a property
23 that is owned or held within 803 that would have
24 resulted in the group being exposed to a large capital
25 gains expenditure. Whereas 508 had had losses in its

1 operations that would have been utilized to offset the
2 gains realized in the sale of the property. So we --
3 it was decided to amalgamate the two companies for tax
4 planning purposes.

5 78. Q. Okay. And do you know why it was that the
6 articles of dissolution for 508 were not filed with
7 the Ontario government until June of 2016?

8 A. I do not.

9 79. Q. Do you know why nobody on behalf of 508 or
10 803 why they never told anyone at MOD Developments or
11 Tucker Hi-Rise Construction that this dissolution of
12 508 had taken place by way of a dissolution resolution
13 signed on December 31, 2014?

14 A. I don't know.

15 80. Q. You'll agree with me that nobody ever on
16 behalf of 508 or 803 ever did tell MOD Developments or
17 Tucker Hi-Rise of that dissolution that I just
18 described, correct?

19 A. Sir, I don't agree with that.

20 81. Q. No? Why don't you agree with that?

21 A. We provided correspondence that indicated
22 that 803 was the entity that was representing Forma-
23 Con on the project.

24 82. Q. Yeah. But that doesn't answer my question
25 about formally telling MOD Developments or Tucker Hi-

1 Rise Construction that a dissolution had taken place,
2 correct?

3 A. I don't agree.

4 83. Q. Okay. So is it your position that, by
5 virtue of some other documentation, notice of a
6 dissolution was provided to MOD Developments and
7 Tucker Hi-Rise?

8 A. I believe they were notified to the extent
9 that they were required.

10 84. Q. Okay. And notified how? By what documents?
11 By what communication?

12 A. I recall insurance documentation, WSIB
13 information, billings, documents outlining who was
14 actually completing the work that was happening every
15 month on site.

16 85. Q. Have you reviewed those documents?

17 A. Yes.

18 86. Q. And you'll agree with me that none of those
19 documents state in them anywhere that 508 was being --
20 was dissolved on December 31, 2014, correct?

21 A. I don't recall if we had put those timelines
22 in any of the documents.

23 87. Q. Okay. So is it fair to say that those
24 documents speak for themselves as to whether or not
25 that information's contained therein, that there was

1 dissolution of 508 on or about December 31, 2014?

2 MR. OPOLSKY: I'm not sure I

3 understand the question.

4 MR. FARACE: Yeah.

5 MR. OPOLSKY: Can you rephrase it?

6 MR. FARACE: This gentleman has just
7 told me that he's not sure about the timelines that
8 we've talked about or the information we've talked
9 about regarding what's contained in the documents he
10 described being WSIB insurance certificates and other
11 -- and billings and whatnot. I'd like to have this
12 witness confirm that he's relying on those documents
13 as being evidence of the dissolution. That's what
14 I've heard from him. He's saying that those documents
15 are evidence of notice of dissolution of 508, is that
16 correct?

17 THE DEPONENT: I don't understand the
18 question.

19 BY MR. FARACE:

20 88. Q. Yeah. I'm asking you, sir, as to what
21 documents you say were delivered to MOD Developments
22 and Tucker Hi-Rise that would evidence that 508 was
23 dissolved by virtue of that resolution to dissolve --
24 or dissolution resolution back -- dated back December
25 31, 2014.

1 A. And I would say that the company that was
2 completing the form work for MOD Developments
3 submitted insurance, WSIB and there's email
4 correspondence indicating the entity that was
5 completing the work.

6 89. Q. Okay. And my specific question to you is,
7 what formal documentation states in it and provides
8 the information that 508 was dissolved on December 31,
9 2014 by virtue of the resolution to dissolve that I've
10 described? What documentation do you say contains
11 that information was sent to MOD Developments and
12 Tucker Hi-Rise?

13 A. I don't believe they were given that
14 dissolution information.

15 90. Q. Thank you. Is it your evidence, sir, that
16 508 operating as Forma-Con performed pursuant to the
17 contract as described in the billings that 508
18 provided to MOD Developments and Tucker Hi-Rise?

19 MR. OPOLSKY: Sorry, could you
20 clarify? That was a very long question.

21 MR. FARACE: Yeah.

22 MR. OPOLSKY: Could you clarify that,
23 please?

24 MR. FARACE: Yeah, let me break that
25 up some.

1 BY MR. FARACE:

2 91. Q. According to the progress draws on the
3 subject project, the Massey Tower project, the
4 progress draws are initiated by 508 and they commence
5 sometime in early 2015 or thereabouts. And they --
6 the progress draws I believe from 508 for the project
7 go to up until December of, say, 2016. Do you agree
8 with that? Roughly?

9 A. Roughly. I don't have that in front of me.

10 92. Q. Okay. And, after the progress draws were no
11 longer submitted by 508, they were submitted by 803,
12 correct? For the Massey Tower project?

13 A. Yes.

14 93. Q. Okay. So we have two sets of progress
15 draws, the 508 draws up until, say, December of 2016
16 and thereafter 803 submitted progress draws. And were
17 you ever involved in the preparation and submission of
18 those progress draws for 508 or 803?

19 A. No.

20 94. Q. Okay. When was it that you understand that
21 the dispute that you referred to about the correct
22 parties to the contract as referred to in your
23 paragraph 6 first came to your attention or the
24 attention of 803?

25 A. It was brought to my attention by the

1 Receiver at some point in early 2019.

2 95. Q. Okay. Sorry about that. Is it fair to say
3 that the first time you reviewed the Massey Tower --
4 or sorry, this contract that we're reviewing that's
5 Exhibit A to your Affidavit, that it was for the
6 purposes of this motion that's been brought by the
7 Receiver to the Commercial Court?

8 A. I believe I saw this contract when the lien
9 was initially undertaken.

10 96. Q. Yeah. So that lien that you're referring
11 to, that'd be the lien the Receiver registered against
12 the Massey Tower project in or about early 2019,
13 either February, March or April, correct?

14 A. I believe so.

15 97. Q. In preparation for today's cross-
16 examination, did you review the Affidavit of Aidan
17 Ball on behalf of MOD that was sworn September 16,
18 2022?

19 A. Yes.

20 98. Q. When the Receiver was engaging in having
21 work performed at the Massey Tower project end of
22 December of 2018 going forward, were you at all
23 involved in that work that was being performed?

24 A. Yes.

25 99. Q. Okay. In what capacity were you involved in

1 that work?

2 A. I was assisting the Receiver in managing the
3 remaining staff of 803.

4 100. Q. And the remaining staff of 803 that you're
5 referring to was for the purposes of completing the
6 work that was the subject matter of the close-out
7 agreement?

8 A. The staff was completing a number of
9 projects, not just that.

10 101. Q. But it was also completing the remaining
11 work that was the subject matter of the close-out
12 agreement regarding the Massey Tower project as well,
13 correct?

14 A. Yes.

15 102. Q. Okay. And was John Aquino involved at all
16 in the completion of those works?

17 A. John Aquino was let go in October of 2018,
18 so his involvement would have ceased from that moment.

19 103. Q. Okay. When you say let go, he was let go
20 with respect to the operations of 803?

21 A. All of the companies within the Bondfield
22 group.

23 104. Q. Very good. Were you involved at all, sir,
24 in the review or preparation of the dissolution
25 resolution that I referred to earlier that's dated

1 December 31, 2014 for 508?

2 A. I don't understand the question.

3 105. Q. Were you involved in the preparation of a
4 document that I referred to as the dissolution
5 resolution of 508 that was signed on December 31,
6 2014?

7 MR. OPOLSKY: Counsel, I'm happy for
8 Mr. Aquino to answer the question, but I would advise
9 him that any conversations with counsel at the time
10 are privileged and not to get into any specifics
11 of ---

12 MR. FARACE: Right.

13 MR. OPOLSKY: --- discussions with
14 counsel.

15 MR. FARACE: Yeah. Do you think we
16 need call up that document just to be sure that Mr.
17 Aquino has the benefit of it so he can see it? I
18 believe it appears in the Affidavit of -- or sorry,
19 the Receiver's report. There it is. Dissolution
20 resolution. I believe it's O -- tab O. Thank you,
21 Mr. Babad.

22 BY MR. FARACE:

23 106. Q. There we go. And Mr. Aquino, this is the --
24 no, no, this is the resolution of shareholders. Yeah,
25 I guess that's what we'll call it. So it's O, it's

1 tabbed as being a dissolution resolution. The title
2 of the document is Resolution of the Shareholders.
3 And Mr. Babad, if you could please scroll down. So
4 Mr. Aquino, what we'll do is, if you want to take a
5 look at this, take your time. I just want to be sure
6 that you understand this is the document I'm referring
7 to.

8 I think the document is three or four pages
9 long and you can take your time and read it and we can
10 take a bit of a break here. I just want to be sure
11 you understand what this document is, the date that
12 it's signed and, subject to your counsel's caution of
13 not telling anything you spoke to your lawyers about,
14 I want to know what your involvement was with this
15 document, if any. Would you like to take a break and
16 review it?

17 A. I don't need a break, no.

18 107. Q. Okay. Would you like to scroll through the
19 document, sir? That way you can see it, you can see
20 the first page and other pages plus the signature
21 page.

22 A. Sure.

23 108. Q. Okay.

24 MR. OPOLSKY: Counsel, I believe the
25 document at Appendix O is a single page. You may be

1 referring, however, to the document at Appendix P
2 which is the agreement itself.

3 MR. FARACE: Counsel, if you see Mr.
4 Babad has just flipped to page 2 of that O and it's --
5 there's a page 2 signature page. Am I missing
6 something or...

7 MR. OPOLSKY: I think, Counsel, you
8 may be referring to Appendix P which I believe is the
9 agreement which is multiple pages.

10 MR. FARACE: But that's an agreement
11 -- let's open that. Okay, so that's a dissolution
12 agreement, right?

13 MR. OPOLSKY: I just want to clarify,
14 Counsel, are you referring to the resolution or the
15 agreement in your question?

16 MR. FARACE: I'm referring to the
17 resolution. This is a dissolution agreement. I'm
18 referring to the resolution of dissolution.

19 MR. OPOLSKY: I don't believe that
20 the resolution is multiple -- is more than a single
21 page other than the signature page.

22 MR. FARACE: Okay. So isn't it, in
23 fact, two pages then? Isn't it page PDF 187 and 188?

24 MR. OPOLSKY: I have no disagreement
25 with you, Counsel. I just wanted to clarify that

1 we're all talking about the same document. So if this
2 is ---

3 MR. FARACE: Okay.

4 MR. OPOLSKY: --- the document you're
5 talking about, then we're all literally on the same
6 page.

7 BY MR. FARACE:

8 109. Q. Okay. Do you see page 2 of Exhibit O which
9 is the dissolution resolution, Mr. Aquino? Do you see
10 that?

11 A. Yes.

12 110. Q. Okay. And it's signed on the date of
13 December 31, 2014 by 803 Ontario Inc. Do you see
14 that?

15 A. Yes.

16 111. Q. Okay. Can you scroll up, Mr. Babad? Thank
17 you, sir. This is page 1. It comes ahead of that
18 signing page and it's a resolution of the sole
19 shareholder that says that,

20 "The property of the corporation shall be distributed
21 to shareholders and any debts, obligations or
22 liabilities shall be discharged."

23 And then what happens following distribution
24 of the property and then it talks about the entering
25 into the corporation -- by the corporation of

1 dissolution agreement which I think is the other tab
2 that we just reviewed. And then it goes on to say,
3 "Any officer of the corporation is authorized and
4 directed on behalf of the corporation to negotiate and
5 do further things...", etcetera.

6 Paragraph 5,

7 "Any officer of the corporation is authorized and
8 directed to take any and all further actions...",
9 etcetera.

10 And then the resolution,

11 "These resolutions may be executed by means of
12 facsimile signature..." etcetera.

13 So I'm asking you, sir, if you ever were at
14 all involved in reviewing or preparing this document
15 at all?

16 A. I don't recall.

17 112. Q. Thank you. And can we -- thank you,
18 Counsel. I'd like to go back to your Affidavit,
19 paragraph 11. Do you see, sir, at paragraph 11 that
20 you say -- of your Affidavit, you also believe the
21 following -- that,
22 "Following the dissolution of 508 from December 2016
23 through to completion of the Massey project, 803 was
24 the proper party to the Massey Tower project agreement
25 and it was the proper party who was required to

1 perform the work."

2 How do you say that 803 became a proper
3 party to the agreement -- the contract? Do you know
4 why what method it became a proper party?

5 A. They were doing the work.

6 113. Q. Oh. Okay. Let's see here. And I'd like to
7 just clarify something with respect to this paragraph
8 11. In your last sentence, you state,
9 "If MOD had at any time taken the position there was
10 no contract between MOD and 803 or failed to pay 803
11 for work performed on the project, 803 would not have
12 continued to provide the work."

13 Is that correct?

14 A. Yes.

15 114. Q. Okay. You're making two statements there.
16 One is that 803 wouldn't have continued with the work,
17 one, if MOD had taken the position there was no
18 contract with 803. So, at that point, if MOD ever --
19 because am I right in saying that what you're telling
20 us in paragraph 11 of that sentence that there's two
21 situations wherein 803 would have stopped work. It
22 would have stopped work if MOD had told it there was
23 no contract. That would have been sufficient to stop
24 the work, correct?

25 A. Of course.

1 115. Q. And, separate and apart from that, 803 would
2 also have stopped the work if MOD wasn't paying for
3 work performed, correct? So either one -- do you
4 agree with that statement? If it wasn't getting paid?

5 A. I don't -- I don't want to say that that's
6 an absolute statement. If MOD had a reason for not
7 providing payment that was warranted, we would have
8 continued to work.

9 116. Q. Okay. But if it wasn't -- just simply as a
10 point of contract, if it wasn't paying for the work
11 that was performed -- or at point of billing, I should
12 say. I want to correct that. So, if it was receiving
13 billings for work performed by 803 and 803 wasn't
14 getting paid, 803 would not have continued to do work
15 unless it got paid, correct?

16 A. Correct.

17 117. Q. Yeah. And am I right in understanding that
18 either one of those situations, MOD stating there was
19 no contract with 803 or MOD not paying 803 for work
20 performed, either one of those situations would have
21 enabled 803 to stop work? That's what you're saying
22 there, correct? It didn't have to be both situations;
23 it could be one or the other.

24 A. I'm having difficulty understanding the
25 question. Maybe if you could rephrase it.

1 118. Q. Yeah. So you confirmed for me that there
2 were two situations under which 803 in that last
3 sentence would stop performing the work. I'd like to
4 know from you that it didn't have to be a situation
5 where both occurred so that there -- it had to be a
6 situation where MOD said, "There is no contract with
7 803" and 803 wasn't being paid and that 803 would stop
8 working. 803 -- correct me if I'm wrong, you're
9 saying that, under -- in the event that either there
10 was a statement that there's no contract or payment
11 for work done wasn't done, either one of those would
12 have triggered 803 to stop the work. It didn't have
13 to be both; it could be one or the other that occurred
14 to stop the work, is that correct?

15 A. What I'm saying and what I meant by that was
16 that, if we had continued to satisfy the requirements
17 of the contract and MOD did not pay us or ---

18 119. Q. Yes?

19 A. --- stated that they were not going to pay
20 us because no contract existed, then we would have
21 stopped the work.

22 MR. FARACE: Okay. Subject to
23 answers to the questions that were taken under
24 advisement which for me are refusals and the answers
25 that relates thereto and any further questions that I

1 may have in relation to those, those are my questions
2 for today. Thank you very much.

3 MR. OPOLSKY: Mr. Farace, I suggest
4 we take a five-minute break. Let's say ten
5 minutes ---

6 MR. FARACE: Yes.

7 MR. OPOLSKY: --- and I can canvass
8 my notes to see if I have any re-examination. I think
9 if I do it'll be very short.

10 MR. FARACE: Thank you. So we'll be
11 back at let's say 11:05?

12 OFF THE RECORD AT 11:00 A.M.

13 (WHEREUPON A BRIEF RECESS WAS TAKEN)

14 ON THE RECORD AT 11:10 A.M.

15 COURT REPORTER: Back on the record,
16 just to let you know.

17 MR. OPOLSKY: Counsel, thank you for
18 that break. We have no further questions and I
19 believe that concludes the examination.

20 MR. FARACE: Thank you, Mr. Aquino.

21 --- WHEREUPON THE PROCEEDINGS ARE
22 ADJOURNED AT 11:11 A.M.

23

24

25

1 I hereby certify the foregoing to be the Cross-
2 Examination of STEVEN MARK AQUINO taken before me,
3 via videoconference, on Friday, the 7th day of
4 October, 2022.

5 **CERTIFIED CORRECT:** PROFESSIONAL COURT REPORTERS INC.

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BRIDGING FINANCE INC., as agent for
2665405 ONTARIO INC.
Applicant

and 1033803 ONTARIO INC. and 1087507
ONTARIO LIMITED
Respondent

CV-18-00608978-00CL

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

Proceedings commenced in Toronto

IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF
THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS
AMENDED;

AND SECTION 101 OF THE COURTS OF JUSTICE ACT,
R.S.O. 1990, c. C.43, AS AMENDED

**BOOK OF TRANSCRIPTS OF THE MOVING PARTY
(Motion Returnable November 4, 2022)**

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