

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

KINGSETT MORTGAGE CORPORATION

Applicant

- AND -

**759 WINSTON CHURCHILL GP INC., 759 WINSTON CHURCHILL L.P., 688 SOUTHDOWN
GP INC., 688 SOUTHDOWN LP, 2226 ROYAL WINDSOR GP INC. and 2226 ROYAL
WINDSOR LP**

Respondents

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

**MOTION RECORD
(Motion for Amendment to Receivership Order, Returnable April 28, 2025)**

April 24, 2025

NORTON ROSE FULBRIGHT CANADA LLP
222 Bay Street
Suite 3000, P.O. Box 53
Toronto, Ontario M5K 1E7

Meghan Fougere LSO#: 66623B
Tel: 613.780.1555
meghan.fougere@nortonrosefulbright.com

Evan Cobb LSO#: 55787N
Tel: 416.216.1929
evan.cobb@nortonrosefulbright.com

Fax: 613.230.5459

Lawyers for Kenaidan Contracting Limited

TO: **SERVICE LIST**

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

BETWEEN:

KINGSETT MORTGAGE CORPORATION

Applicant

- and -

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SERVICE LIST

As at April 24, 2025	
BENNETT JONES LLP 3400 One First Canadian Place P.O. Box 130 Toronto, ON M5X 1A4 <i>Lawyers for the Applicant</i>	Sean Zweig Tel: (416) 777-6254 Email: zweigs@bennettjones.com Aiden Nelms Tel: (416) 777-4642 Email: nelmsa@bennettjones.com
KSV RESTRUCTURING INC. 220 Bay Street, 13th Floor Toronto, ON M5J 2W4 <i>The Receiver</i>	Noah Goldstein Tel: (416) 932-6207 Email: ngoldstein@ksvadvisory.com Murtaza Tallat Tel: (416) 932-6031 Email: mtallat@ksvadvisory.com

OSLER, HOSKIN & HARCOURT LLP 1 First Canadian Place 100 King Street West, Suite 6200 Toronto, ON M5X 1B8 <i>Lawyers for the Receiver</i>	Marc Wasserman Tel: (416) 862-4908 Email: mwasserman@osler.com David Rosenblat Tel: (416) 862-5673 Email: drosenblat@osler.com
MCCARTHY TETRAULT 66 Wellington Street West, Suite 5300 Toronto, ON M5K 1E6 <i>Lawyers for the Respondents</i>	Heather L. Meredith Tel: (416) 601-8342 Email: hmeredith@mccarthy.ca Geoff Hall Tel: (416) 601-8342 Email: ghall@mccarthy.ca Saneea Tanvir Tel: (416) 601-8181 Email: stanvir@mccarthy.ca
ONTARIO MINISTRY OF FINANCE (INSOLVENCY UNIT) Ministry of Finance – Legal Services Branch 11-777 Bay Street Toronto, ON M5G 2C8	Email: insolvency.unit@ontario.ca
ATTORNEY GENERAL OF CANADA Department of Justice Canada Ontario Regional Office, Tax Law Section 120 Adelaide Street West, Suite 400 Toronto, ON	Email: AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca
7037619 CANADA INC. 385 Southdown Road Mississauga, ON L5J 2Y3	
WEIRFOULDS LLP 66 Wellington Street West, Suite 4100 Toronto, ON M5K 1B7 <i>Lawyers for Nucor Steel ULC c.o.b. Nucor Rebar Fabrication, a Construction Lien Claimant (759 Winston Churchill) and Precon Precast Limited, a Kenaidan subcontractor (759 Winston Churchill)</i>	Sandra Astolfo Tel: (416) 947-5045 Email: sastolfo@weirfoulds.com Philip Cho Tel: (416) 619-6296 Email: pcho@weirfoulds.com

<p>DRUDI ALEXIOU KUCCHAR LLP 4950 Yonge Street, Suite 508 Toronto, ON M2N 6K1</p> <p><i>Lawyers for the JC Infrastructure Ltd. and Montana Electrical Contractors Ltd., each a Construction Lien Claimant (759 Winston Churchill)</i></p>	<p>Marco Drudi Tel: (905) 850-6116 Email: mdrudi@dakilp.com</p>
<p>LOOPSTRA NIXON LLP 135 Queens Plate Drive, Suite 600 Etobicoke, ON M9W 6V7</p> <p><i>Lawyers for Superior Sprinkler Co. Ltd., a Construction Lien Claimant (759 Winston Churchill)</i></p>	<p>Christophe Shammass Tel: (416) 748-5121 Email: cshammass@LN.Law</p> <p>Tamara Watson Tel: (416) 748-7544 Email: twatson@LN.Law</p>
<p>NORTON ROSE FULLBRIGHT CANADA LLP 99 Bank Street, Suite 500 Ottawa, ON K1P 6B9</p> <p><i>Lawyers for Kenaidan Contracting Ltd., a Construction Lien Claimant (759 Winston Churchill and 688 Southdown)</i></p>	<p>Evan Cobb Tel: (416) 216-1929 Email: evan.cobb@nortonrosefulbright.com</p> <p>Meghan C. Fougere Tel: (613) 780-1555 Email: meghan.fougere@nortonrosefulbright.com</p>
<p>SPEIGEL NICHOLS FOX LLP 1 Robert Speck Parkway, Suite 200 Mississauga, ON L4Z 3M3</p> <p><i>Lawyers for Black & McDonald Limited, a Construction Lien Claimant (759 Winston Churchill)</i></p>	<p>Jennifer Lake Tel: (905) 366-9700 ext. 245 Email: jennifer@ontlaw.com</p>
<p>SUTHERLAND LAW 330 Hwy 7, Suite 904 Concord, ON L4K 4M3</p> <p><i>Lawyers for Soilcan Inc., a Construction Lien Claimant (688 Southdown)</i></p>	<p>Rob Moubarak Tel: (905) 695-5500 ext. 2800 Email: rmoubarak@sutherlaw.com</p> <p>Jonathan L. Frustaglio Tel: (905) 695-5500 ext. 2760 Email: jfrustaglio@sutherlaw.com</p> <p>Adam Zweig Tel: (905) 695-5500 ext. 2950 Email: azweig@sutherlaw.com</p>

BORDEN LADNER GERVAIS LLP Bay Adelaide Centre, East Tower 22 Adelaide Street West, Suite 3400 Toronto, ON M5H 4E3 <i>Lawyers for Petro-Canada Lubricants Inc.</i>	Nick Hollard Tel: (416) 367-6545 Email: NHollard@blg.com Andrew Guerrisi Tel: (416) 367-6556 Email: AGuerrisi@blg.com
KAGAN SHASTRI DEMELO WINER PARK LLP 188 Avenue Road Toronto, ON M5R 2J1 <i>Lawyers for Noram Glass Corporation, a Construction Lien Claimant (759 Winston Churchill)</i>	David Winer Tel: (416) 368-2100 ext. 225 Email: dwiner@ksllp.ca Jeremy Ruffalo Tel: (416) 368-2100 ext. 260 Email: jruffalo@ksllp.ca
GOODMANS LLP Bay Adelaide Centre 333 Bay Street, Suite 3400 Toronto, ON M5H 2S7 <i>Lawyers for Coulson Contracting Ltd., a Kenaidan subcontractor (759 Winston Churchill)</i>	Joe Cosentino Tel: (416) 597-4245 Email: jcosentino@goodmans.ca Joe Latham Tel: (416) 597-4211 Email: jlatham@goodmans.ca
HARRISON PENSA LLP 130 Dufferin Ave., Suite 1101 London, ON N6A 5R2 <i>Lawyers for the Toronto-Dominion Bank</i>	Timothy Hogan Tel: (519) 661-6743 Email: thogan@harrisonpensa.com
DENTONS CANADA LLP Suite 400, 77 King Street West Toronto, Ontario M5K 0A1 <i>Lawyers for SCI Logistics Ltd.</i>	Michael Beeforth Tel: (416) 367-6779 Email: michael.beeforth@dentons.com
CASSELS BROCK & BLACKWELL LLP Suite 3200, Bay Adelaide Centre North Tower 40 Temperance St. Toronto, ON M5H 0B4 Canada <i>Lawyers for Timbercreek Mortgage Servicing Inc.</i>	Jeremy Bornstein Tel: (416) 869-5386 Email: jbornstein@cassels.com

<p>SIMPSON WIGLE LAW LLP 1 Hunter Street St East Suite 200, Hamilton, ON L8N 3W1</p> <p><i>Lawyers for Kenaidan Contracting Ltd.</i></p>	<p>Derek A. Schmuck Tel: (905) 528-8411 Email: schmuckd@simpsonwigle.com</p>
<p>TORYS LLP 79 Wellington St. W., Suite 3000 Box 270, TD Centre Toronto, ON M5K 1N2</p> <p><i>Lawyers for Tarion Warranty Corporation</i></p>	<p>Adam Slavens Tel: 416.865.7333 Email: aslavens@torys.com</p>

EMAIL ADDRESS LIST

zweigs@bennettjones.com; nelmsa@bennettjones.com; ngoldstein@ksvadvisory.com;
mtallat@ksvadvisory.com; mwasserman@osler.com; drosenblat@osler.com; jkanji@osler.com;
sfarr@osler.com; hmeredith@mccarthy.ca; ghall@mccarthy.ca; stanvir@mccarthy.ca; [AGC-
PGC.Toronto-Tax-Fiscal@justice.gc.ca](mailto:AGC-
PGC.Toronto-Tax-Fiscal@justice.gc.ca); insolvency.unit@ontario.ca; sastolfo@weirfoulds.com;
mdrudi@dakilp.com; meghan.fougere@nortonrosefulbright.com; jennifer@ontlaw.com;
pcho@weirfoulds.com; riachetta@soilcan.com; rmoubarak@sutherlaw.com;
evan.cobb@nortonrosefulbright.com; cshammas@LN.Law; twatson@ln.law; cfotopoulos@ln.law;
jfrustaglio@sutherlaw.com; azweig@sutherlaw.com; ktoma@sutherlaw.com; NHolland@blg.com;
AGuerrisi@blg.com; dwiner@ksllp.ca; thogan@harrisonpensa.com;
michael.beeforth@dentons.com; Pat.Confalone@justice.gc.ca; jruffolo@ksllp.ca;
jlatham@goodmans.ca; jcosentino@goodmans.ca; jbornstein@cassels.com;
schmuckd@simpsonwigle.com; aslavens@torys.com

COURIER LIST

7037619 CANADA INC. 385 Southdown Road Mississauga, ON L5J 2Y3	
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**ONTARIO
SUPERIOR COURT OF JUSTICE
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TAB 1

Court File No. CV-24-00714543-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

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- AND -

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101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED

NOTICE OF MOTION

KENAI DAN CONTRACTING LIMITED (“KCL”) will make a motion to a Judge of the
Superior Court of Justice (Commercial List), on April 28, 2025 at 10 a.m. or as soon after that time
as the motion can be heard, by judicial videoconference via Zoom at Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

1. An order clarifying the scope of the stay of proceedings granted in Paragraph 9 of the Amended and Restated Order in these proceedings, dated November 15, 2024 (the “**Appointment Order**”); and
2. Such further and other relief as KCL may request and this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:**Background**

1. KCL was the construction manager on the construction project located at 759 Winston Churchill Boulevard, Mississauga, Ontario (the “**Project**”) owned by 759 Winston Churchill L.P. (the “**Owner**”) pursuant to a Construction Management Contract (CCDC 5B) with the Owner dated May 4, 2020 (the “**CM Agreement**”);
2. The Project is now the subject of these receivership proceedings;
3. As a result of work on the Project prior to the commencement of these Proceedings, including completion of “Building 3” of the Project, KCL is owed in excess of \$31 million;
4. KCL holds registered and perfected lien claims against the Project in the aggregate amount of \$31,961,541 (the “**KCL Lien**”);
5. According to KCL’s records, the statutory holdback not remitted to KCL by the Owner at this time, and that is included in the KCL Lien, is currently calculated as \$9,291,213.74 (the “**KCL Holdback**”);

6. In addition to the KCL Lien, KCL also delivered certain security deposits and development charge amounts to the City of Mississauga on behalf of the Owner, which KCL should be able to recover from the City of Mississauga. These amounts total \$4,199,045.69;

Supplier and Service Provider Claims

7. The KCL Lien includes claims of its suppliers and service providers who were engaged on the Project, which claims are passed through to the Owner by KCL;

8. KCL is not in a position to pay these claims of suppliers and service providers because KCL has not received the KCL Holdback from which those supplier and service provider claims could be paid;

9. KCL's agreements with its suppliers and service providers, including those retained on the Project, include the following provision:

“The Subcontractor agrees that the obligation of the Contractor to pay the Subcontractor shall not in any case exceed the amount approved by the Certifier and paid by the Owner.”;

10. KCL has advised suppliers and service providers that payments would be able to continue when KCL is paid by the Owner or the Receiver and, more specifically, when the KCL Holdback is released;

11. KCL has further advised suppliers and service providers that KCL believes their claims against KCL are currently stayed pursuant to the Appointment Order;

12. It is unclear whether any suppliers or subcontractors will dispute KCL's position regarding the scope of the stay or the contractual right to payment;

13. Given the now anticipated extended duration of these proceedings while “Building 1” and “Building 2” are constructed, KCL and all other interested parties would benefit from clarity that the status quo will be maintained as between the Owner, KCL and other suppliers and service providers pending completion of the Project;

14. KCL requests clarification to the terms of Paragraph 9 of the Appointment Order to make clear that the stay of proceedings applies to claims between these suppliers and service providers and KCL;

15. If such protections are not confirmed, a significant timing mismatch could arise between claims for payment by KCL against the Owner and claims for payment by suppliers and service providers against KCL. In short, this could result in claims against KCL in an amount of \$7.14 million, for which KCL will have no available payments from the Receiver;

16. This situation would materially prejudice KCL, in its capacity as priority ranking secured creditor for the KCL Holdback, as KCL would not have concurrent recourse to the assets of the Owner to satisfy these claims;

17. This risk is significantly increased as the duration of the Project continues to extend now to the end of Q1 2026;

Requested Modifications

18. Paragraph 9 of the Appointment Order currently states:

no Proceeding against or in respect of any of the Debtors or the Property shall be commenced or continued except with the written consent of the Receiver or leave of this Court, and any and all proceedings currently under way against or in respect of any of the

Debtors or the Property are hereby stayed and suspended pending further Order of this Court. [Emphasis added].

19. KCL requests the court's assistance to confirm this comprehensive stay for the Project, including as against suppliers and service providers, and those parties with claims directly or indirectly against the Project;

General

20. Such further and other grounds as counsel for the Plaintiffs may advise and this Honourable Court permit.

21. Section 101 of the *Courts of Justice Act* (Ontario);

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The Affidavit of Gian Fortuna, sworn April 24, 2025;
2. Such other material as counsel for the Plaintiff may advise and this Honourable Court permit.

April 24, 2025

NORTON ROSE FULBRIGHT CANADA LLP

222 Bay Street
Suite 3000, P.O. Box 53
Toronto, Ontario M5K 1E7 CANADA

Evan Cobb LSO #: 55787N

evan.cobb@nortonrosefulbright.com

Tel: 416.216.1929

Meghan Fougere LSO#: 66623B

Meghan.fougere@nortonrosefulbright.com

Tel: 613.780.1555

Lawyers for Kenaidan Contracting Limited

TO: THE SERVICE LIST

Court File No. CV-24-00714543-00CL

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

KINGSETT MORTGAGE CORPORATION
Applicant

-and- **759 WINSTON CHURCHILL GP INC., et al.**
Respondents

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

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF MOTION

NORTON ROSE FULBRIGHT CANADA LLP
222 Bay Street
Suite 3000, P.O. Box 53
Toronto, Ontario M5K 1E7

Evan Cobb LSO #: 55787N
evan.cobb@nortonrosefulbright.com
Tel: 416.216.1929

Meghan Fougere LSO#: 66623B
meghan.fougere@nortonrosefulbright.com
Tel: 613.780.1555

Lawyers for Kenaidan Contracting Limited

TAB 2

Court File No. CV-24-00714543-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

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AMENDED

**AFFIDAVIT OF GIAN FORTUNA
(sworn April 24, 2025)**

1. I, **GIAN FORTUNA**, of the City of Mississauga, in the Province of Ontario, MAKE
OATH AND SAY:

2. I am Senior Vice President of Kenaidan Contracting Limited ("**KCL**"), which is an
Ontario corporation carrying on business as a construction management, design-build,
general contracting and preconstruction company. I have been a Senior Vice President with
KCL for over 20 years and have worked in the construction industry for over 46 years.

3. I am also the primary representative for KCL on a construction project at issue in these proceedings located at 759 Winston Churchill Boulevard, Mississauga, Ontario (“**Project**”). I have been involved with the Project since 2020 when KCL was engaged pursuant to a Construction Management Contract (CCDC 5B) on May 4, 2020 by 759 Winston Churchill L.P. (the “**Owner**”).

4. As part of my role I was responsible for oversight of construction, including the budgeting, procurement and delivery of the Project, acting as KCL’s representative to the Owner. As a result, I have first-hand knowledge of the matters set out in this affidavit. Where information set out in this affidavit is based upon information which I have received from others, I have stated the source of that information and believe the information to be true.

5. I swear this affidavit in support of a motion by KCL to clarify the scope of the stay of proceedings set out in paragraph 9 of the Amended and Restated Order, dated November 15, 2024, in these proceedings (the “**Amended Appointment Order**”).

Kenaidan Contracting Limited Claims

6. KCL was the construction manager on the Project pursuant to the Construction Management Contract (CCDC 5B) with the Owner dated May 4, 2020 (the “**CM Agreement**”). A copy of the CM Agreement is attached as **Exhibit “A”**.

7. As a result of work on the Project prior to the commencement of these Proceedings, including completion of “Building 3” of the Project, KCL is owed in excess of \$31 million. KCL holds registered and perfected lien claims against the Project in the aggregate amount of \$31,961,541 (the “**KCL Lien**”).

8. According to KCL's records, the statutory holdback not remitted to KCL by the Owner at this time, and that is included in the KCL Lien, is \$9,291,213.74 (the "**KCL Holdback**").

9. In addition to the KCL Lien, KCL also delivered certain security deposits and development charge amounts to the City of Mississauga on behalf of the Owner, which KCL should be able to recover from the City of Mississauga. These amounts total \$4,199,045.69.

10. For clarity, these receivership proceedings were not the result of any issues regarding KCL's work, which was completed in accordance with the CM Agreement and without any concerns raised by the Owner.

Suppliers and Service Providers to KCL

11. The KCL Lien includes claims of its suppliers and service providers who were also engaged on the Project, which KCL has passed through to the Owner.

12. In particular, certain suppliers and service providers have not been paid amounts owing on account of statutory holdback under the *Construction Act* (Ontario), which has not been remitted by the Owner to KCL, and has therefore not been paid by KCL to the relevant suppliers. These claimed amounts are included in the KCL Holdback mentioned above.

13. KCL's agreements with its suppliers and service providers, including those retained on the Project, include the following provision:

"The Subcontractor agrees that the obligation of the Contractor to pay the Subcontractor shall not in any case exceed the amount approved by the Certifier and paid by the Owner."

14. During these proceedings, KCL has advised suppliers and service providers that

payments would flow to them when KCL is paid by the Owner or the Receiver and, more specifically, when the KCL Holdback is released. The KCL Holdback claim and the claims of the KCL suppliers and subcontractors are in substance the same claims.

15. KCL would be substantially prejudiced if suppliers and service providers were able to pursue claims against KCL for work on the Project while KCL's statutory lien claims, including the KCL Holdback, are not remitted by the Owner and KCL is stayed from pursuing such amounts.

16. This could result in claims against KCL in the amount of approximately \$7.14 million based on KCL's books and records for which KCL would have no available payments from the Owner as a result of the stay of proceedings, notwithstanding any priority provided at law to the KCL Holdback.

17. KCL took some comfort from the terms of the Appointment Order, which provided:

"no Proceeding against or in respect of any of the Debtors or the Property shall be commenced or continued except with the written consent of the Receiver or leave of this Court, and any and all proceedings currently under way against or in respect of any of the Debtors or the Property are hereby stayed and suspended pending further Order of this Court."

18. As any claim by a KCL supplier or service provider would be in relation to the Property and the Project, I believe the above protections would cover any claims by KCL's suppliers and service providers against KCL that relate to the Project.

19. In any event, KCL expected that the Project would ultimately be sold and the KCL Holdback would be repaid in priority to other amounts, thereby providing KCL with sufficient funds to flow through to the KCL suppliers and service providers.

Proposal To Complete Building 1 and Building 2

20. I now understand from the Second Report of the Receiver, dated April 11, 2025, that the Receiver believes the best option for the Project in the circumstances is the completion of Building 1 and Building 2.

21. This results in the continuation of these proceedings until at least the second quarter of 2026 given the anticipated completion date for construction in March 2026.

22. This approach will delay the time of realization on the Project and the release of distributions to KCL, including the KCL Holdback.

23. The increased duration of these proceedings as a result of the proposed continuing construction, and any delays in receipt of the KCL Holdback amounts until that time, creates significant concern that KCL may need to respond to claims of suppliers and service providers, who do not believe their claims are stayed. KCL would then need to either (i) seek to enforce the stay of proceedings against these individual claims; or (ii) defend such claims, including on the basis of the payment provision in the subcontract agreements described above. In the alternative, KCL may need to seek to lift the stay of proceedings under the Appointment Order to pursue its claim to the KCL Holdback in order to fund any supplier or service provider claims.

24. KCL is no longer involved in the Project as the CM Agreement was disclaimed by the Receiver on November 11, 2024.

Stay of Proceedings

25. If the Receiver believes a more extended process to complete Building 1 and Building 2 is the value maximizing option, protections should be available to KCL as a result

of that delay.

26. KCL requests that the Court provide clarification on the scope of the stay of proceedings at this time and seeks confirmation that the status quo can be maintained for the Project, KCL, the suppliers and service providers, pending completion of the Project and release of the KCL Holdback (and any other recoveries of the KCL Lien) that could be used to fund supplier and service provider recoveries.

27. Specifically, KCL requests that the Appointment Order be modified to provide that claims and proceedings against or by KCL and its subcontractors, suppliers and service providers in connection with the Project are in all cases covered by the stay of proceedings, subject to any further order the court may make.

AFFIRMED over videoconference this 24th day of April, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely. The affiant is located in the City of Mississauga, in the Province of Ontario and the commissioner is located in the City of Toronto, in the Province of Ontario.

}

Evan Cobb

Commissioner for Taking Affidavits
(or as may be)

Evan Cobb

LSO #: 55787N

Gian Fortuna
GIAN FORTUNA

This is Exhibit "A" referred to in the Affidavit
of Gian Fortuna sworn April 24, 2025.

A handwritten signature in cursive script that reads "Evan Cobb".

Commissioner for Taking Affidavits (or as may be)

Evan Cobb
LSO #: 55787N

CCDC 5B

Construction Management Contract – for Services and Construction

2 0 1 0

759 Winston Churchill Industrial Development
Building 3 -
Goodfood Market Corp.

Apply a CCDC 5B copyright seal here. The application of the seal demonstrates the intention of the party proposing the use of this document that it be an accurate and unamended form of CCDC 5B – 2010 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

CANADIAN CONSTRUCTION DOCUMENTS COMMITTEE
CANADIAN CONSTRUCTION DOCUMENTS COMMITTEE
CANADIAN CONSTRUCTION DOCUMENTS COMMITTEE

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17.	Cost of the Work
18.	Drawings
19.	Guaranteed Maximum Price
20.	Notice in Writing
21.	Owner
22.	Place of the Work
23.	Price of the Services
24.	Price of the Work
25.	Product
26.	Project
27.	Services
28.	Shop Drawings
29.	Specifications
30.	Subcontractor
31.	Substantial Performance of the Work
32.	Supplemental Instruction
33.	Supplier
34.	Temporary Work
35.	Value Added Taxes
36.	Work
37.	Working Day

GENERAL CONDITIONS

PART 1 GENERAL PROVISIONS

GC 1.1	Contract Documents
GC 1.2	Law of the Contract
GC 1.3	Rights and Remedies
GC 1.4	Assignment
GC 1.5	Performance of the Services
GC 1.6	Project Representatives

PART 2 ADMINISTRATION OF THE CONTRACT

GC 2.1	Owner's Responsibilities
GC 2.2	Authority of the Consultant
GC 2.3	Consultant's Responsibilities
GC 2.4	Review and Inspection of the Work
GC 2.5	Defective Work

PART 3 PERFORMANCE OF THE SERVICES AND EXECUTION OF THE WORK

GC 3.1	Control of the Work
GC 3.2	Construction by Owner or Other Contractors
GC 3.3	Temporary Work
GC 3.4	Review of Drawings, Specifications and Material and Finish Schedules
GC 3.5	Construction Schedule
GC 3.6	Supervision
GC 3.7	Subcontractors and Suppliers
GC 3.8	Labour and Products
GC 3.9	Documents at the Site
GC 3.10	Shop Drawings
GC 3.11	Use of the Work
GC 3.12	Cutting and Remedial Work
GC 3.13	Cleanup

PART 4 ALLOWANCE

GC 4.1	Cash Allowances
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PART 5 PAYMENT

GC 5.1	Financing Information Required of the Owner
GC 5.2	Accounting and Audit
GC 5.3	Progress Payment for the Services
GC 5.4	Progress Payment for the Work
GC 5.5	Substantial Performance of the Work
GC 5.6	Payment of Holdback Upon Substantial Performance of the Work
GC 5.7	Progressive Release of Holdback for the Work
GC 5.8	Final Payment for the Work
GC 5.9	Withholding of Payment for the Work
GC 5.10	Non-Conforming Work

PART 6 CHANGES

GC 6.1	Owner's Right to Make Changes
GC 6.2	Change Order
GC 6.3	Change Directive
GC 6.4	Concealed or Unknown Conditions
GC 6.5	Delays
GC 6.6	Claims for a Change in Construction Manager's Fee for the Services, the Price of the Work or the Guaranteed Maximum Price

PART 7 DEFAULT NOTICE

GC 7.1	Owner's Right to Perform the Work or Terminate the Contract
GC 7.2	Construction Manager's Right to Suspend the Work or Terminate the Contract

PART 8 DISPUTE RESOLUTION

GC 8.1	Authority of the Consultant
GC 8.2	Negotiation, Mediation and Arbitration
GC 8.3	Retention of Rights

PART 9 PROTECTION OF PERSONS AND PROPERTY

GC 9.1	Protection of Work and Property
GC 9.2	Toxic and Hazardous Substances
GC 9.3	Artifacts and Fossils
GC 9.4	Construction Safety
GC 9.5	Mould

PART 10 GOVERNING REGULATIONS

GC 10.1	Taxes and Duties
GC 10.2	Laws, Notices, Permits, and Fees
GC 10.3	Patent Fees
GC 10.4	Workers' Compensation

PART 11 INSURANCE — CONTRACT SECURITY

GC 11.1	Insurance
GC 11.2	Contract Security

PART 12 INDEMNIFICATION, WAIVER OF CLAIMS AND WARRANTY

GC 12.1	Indemnification
GC 12.2	Waiver of Claims
GC 12.3	Warranty

APPENDIX STIPULATED PRICE OPTION

AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER – FOR SERVICES AND CONSTRUCTION

This agreement made on the 4th day of May in the year 2020
by and between

759 Winston Churchill GP Inc. for and on behalf of 759 Winston Churchill L. P.
Attention: Michael Moldenhauer

hereinafter called the “*Owner*”
and

Kenaidan Contracting Ltd.
Attention: Gian Fortuna

hereinafter called the “*Construction Manager*”

The *Owner* and *Construction Manager* agree as follows:

ARTICLE A-1 THE SERVICES AND THE WORK

The *Construction Manager* shall

- 1.1 perform the *Services* and the *Work* for
759 Winston Churchill Industrial Development
Building 3 -
Goodfood Market Corp.

insert above the title of the Project

located at

759 Winston Churchill Blvd.
Mississauga ON, L5M 0L7

insert above the Place of the Work

and as further described in Article A-3 of the Agreement – DESCRIPTION OF THE PROJECT, for which the Agreement has been signed by the parties, and for which

Ware Malcomb Architecture ULC

insert above the name of the Consultant

is acting as and is hereinafter called the “*Consultant*”, and

- 1.2 do and fulfill everything indicated by the *Contract Documents*, and
- 1.3 commence the *Services* and the *Work* by the 04 day of May in the year 2020 and continue in accordance with any schedule provided in Article A-3 of the Agreement – DESCRIPTION OF THE PROJECT. The *Construction Manager*’s obligation to provide *Services* shall end no later than one year after the date of *Substantial Performance of the Work*.

ARTICLE A-2 AGREEMENTS AND AMENDMENTS

- 2.1 This *Contract* supersedes all prior negotiations, representations or agreements, either written or oral, relating in any manner to the *Project*.
- 2.2 This *Contract* may be amended only as provided in the *Contract Documents*.

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ARTICLE A-3 DESCRIPTION OF THE PROJECT

- 3.1 The following is a description of the *Project* including intended use, scope, budget, schedule, phases if applicable, and the anticipated date of *Substantial Performance of the Work*), and any other information which further generally describes the nature of the *Project* and the *Work*:

Development of the 759 Winston Churchill Blvd site,

-design development to achieve Site Plan Approval and Building Permit Application

-secure site,

-cut fill site for Building 1, 2 and 3

-below grade services for Building 1, 2 and 3

-construction Building 3 shell, below grade structure and above grade superstructure

-exterior surfaces, asphalt pavement, curbs and sidewalks, landscaping for occupancy of Building 3

Project Schedule

Commence work on Site by May 19, 2020

Complete Building 3 sufficient for Tenant to commence Tenant Improvements by March 08, 2021

Substantially Perform the Building 3 Shell by April 30, 2021

ARTICLE A-4 CONTRACT DOCUMENTS

4.1 The following are the *Contract Documents* referred to in Article A-1 of the Agreement – THE SERVICES AND THE WORK:

- the Agreement Between *Owner* and *Construction Manager* (including the Schedules to the Agreement)
- the Appendix – STIPULATED PRICE OPTION
- the Definitions
- the General Conditions
- the *Construction Documents*

*

-the Supplementary Conditions

-Appendix 1, Project Support Services referred to in 5.2.1

-Appendix 2, Cost of the Works referred to in 5.3.1

Draft Site Plan Application - Issued May 22, 2020

* (Insert here, attaching additional pages if required, a list identifying all other Contract Documents)

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ARTICLE A-5 CONSTRUCTION MANAGER'S FEE

5.1 The *Construction Manager's Fee* shall be equal to the sum of the fee for the *Services* as specified in paragraph 5.2 and the fee for the *Work* as described in paragraph 5.3.

5.2 The *Construction Manager's Fee* for the *Services* is comprised of one or more of the following:

- .1~~☒~~ A fixed amount of \$1,009,289 to provide the Project Support Services as outlined in Appendix 1; and
- .2~~☒~~ A percentage amount of _____ percent (____%) of the *Construction Cost Estimate*. Final reconciliation payments shall be adjusted based on *Class A Construction Cost Estimate*; and
- .3~~☒~~ An amount based on the time-based rates for personnel employed by the *Construction Manager* as described in Schedule B to the Agreement and engaged in performing the *Services* to the level of effort agreed prior to the commencement of the *Services*. The *Owner* may by written request require the *Construction Manager* to provide prior to commencement of the *Services* an estimate of the total fee for *Services* to be performed based on the time-based rates for evaluation and verification purposes.

* Strike out inapplicable paragraph(s).

5.3 The *Construction Manager's Fee* for the *Work* is comprised of one or more of the following:

- .1~~☒~~ A percentage fee of TWO AND A HALF percent (2.5 %) of the *Cost of the Work* earned as the *Cost of the Work* accrues. In the event the *Owner* furnishes labour or material below market cost or materials are re-used beyond that anticipated in the original scope of the *Work*, the *Cost of the Work* for purposes of establishing the *Construction Manager's Fee* for the *Work* is the cost of all materials and labour necessary to complete the *Project* as if all materials had been new and as if all labour had been paid for at market prices at the time of construction or, in the event that the construction does not proceed, at existing market prices at the anticipated time of construction; and
- .2~~☒~~ A fixed fee of _____ ,
earned as follows:

~~☒~~ Delete inapplicable paragraph.

5.4 The *Construction Manager's Fee* shall be subject to adjustment as may be required in accordance with the provisions of the *Contract Documents* listed in Article A-4 of the Agreement – CONTRACT DOCUMENTS.

5.5 All amounts are in Canadian funds.

ARTICLE A-6 REIMBURSABLE EXPENSES FOR THE SERVICES

6.1 The reimbursable expenses are the actual expenses, supported by receipts or invoices, that the *Construction Manager* incurred in performing the *Services*, and as identified in Schedule A2 to the Agreement plus the administrative charge of FIVE percent (5 %). If there are no receipts or invoices, the expenses shall be at rates prevailing in the area of the *Place of the Work* and supported with suitable documentation.

6.2 The *Owner* may by written request require the *Construction Manager* to:

- .1 provide prior to commencement of the *Services* an estimate of the total reimbursable expenses incurred by the *Construction Manager* in performing the *Services* for evaluation and verification purposes; and
- .2 inform the *Owner* in writing prior to incurring reimbursable expenses relating to the *Services*.

ARTICLE A-7 COST OF THE WORK

- 7.1 The *Cost of the Work* is the actual cost incurred by the *Construction Manager* in performing the *Work* and is limited to the actual cost of the following:
- .1 salaries, wages and benefits paid to personnel in the direct employ of the *Construction Manager* under a salary or wage schedule agreed upon by the *Owner* and the *Construction Manager*, or in the absence of such a schedule, actual salaries, wages and benefits paid under applicable bargaining agreement, and in the absence of a salary or wage schedule and bargaining agreement, actual salaries, wages and benefits paid by the *Construction Manager*, for personnel
 - (1) stationed at the *Place of the Work*, in whatever capacity employed;
 - (2) engaged in expediting the production or transportation of material or equipment, at shops or on the road;
 - (3) engaged in the preparation or review of *Shop Drawings*, fabrication drawings and coordination drawings; or
 - (4) engaged in the processing of changes in the *Work*.
 - .2 contributions, assessments or taxes incurred for such items as employment insurance, provincial or territorial health insurance, workers' compensation, and Canada or Quebec Pension Plan, insofar as such cost is based on wages, salaries or other remuneration paid to employees of the *Construction Manager* and included in the cost of the *Work* as provided in paragraph 7.1.1;
 - .3 travel and subsistence expenses of the *Construction Manager's* personnel described in paragraph 7.1.1;
 - .4 all *Products* including cost of transportation thereof;
 - .5 materials, supplies, *Construction Equipment*, *Temporary Work*, and hand tools not owned by the workers, including transportation and maintenance thereof, which are consumed in the performance of the *Work*; and cost less salvage value on such items used but not consumed, which remain the property of the *Construction Manager*;
 - .6 all tools and *Construction Equipment*, exclusive of hand tools used in the performance of the *Work*, whether rented from or provided by the *Construction Manager* or others, including installation, minor repairs and replacements, dismantling, removal, transportation, and delivery cost thereof;
 - .7 the *Construction Manager's* field office;
 - .8 deposits lost provided that they are not caused by negligent acts or omissions of the *Construction Manager* and the *Services* are performed in accordance with this *Contract*;
 - .9 the amounts of all contracts or written agreements with *Subcontractors* and *Suppliers* and the unrecoverable costs to the *Construction Manager* that result from any *Subcontractor's* or *Supplier's* default, insolvency or abandonment; termination of any *Subcontractor's* or *Supplier's* right to perform due to default by the *Subcontractor* or *Supplier*; or termination of any *Subcontractor's* or *Supplier's* contract due to default by the *Subcontractor* or *Supplier*;
 - .10 quality assurance such as independent inspection and testing services;
 - .11 charges levied by authorities having jurisdiction at the *Place of the Work*;
 - .12 royalties, patent license fees and damages for infringement of patents and cost of defending suits therefor subject always to the *Construction Manager's* obligations to indemnify the *Owner* as provided in paragraph 10.3.1 of GC 10.3 – PATENT FEES;
 - .13 premiums for all contract securities and insurance that the *Construction Manager* is required, by the *Contract Documents*, to purchase and maintain;
 - .14 taxes, other than *Value Added Taxes*, and duties relating to the *Work* for which the *Construction Manager* is liable;
 - .15 charges for long distance communications, courier services, expressage, printing, and reproduction incurred in relation to the performance of the *Work*;
 - .16 removal and disposal of waste products and debris;
 - .17 the cost of safety measures and requirements;
 - .18 legal costs, incurred by the *Construction Manager* in relation to the performance of the *Work* provided that they are not caused by negligent acts or omissions of the *Construction Manager* and the *Work* is performed in accordance with this *Contract*;
 - .19 the cost of financing the *Work* in accordance with the method determined by the parties and identified in Article A-3 of the Agreement – DESCRIPTION OF THE PROJECT;

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- .20 the cost of auditing when requested by the *Owner*;
- .21 the cost of project-specific information technology and usage in accordance with the method determined by the parties in writing;
- .22 the cost of removal or containment of toxic or hazardous substances pursuant to GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES;
- .23 other costs incurred in the performance of the *Work* as listed below:

- 7.2 The *Cost of the Work* excludes *Value Added Taxes* and shall be at rates prevailing in the locality of the *Place of the Work*, except with the prior consent of the *Owner*.
- 7.3 Any costs incurred by the *Construction Manager* due to failure on the part of the *Construction Manager* to exercise reasonable care and diligence in the *Construction Manager's* attention to the *Work* shall be borne by the *Construction Manager*.
- 7.4 All cash discounts shall accrue to the *Construction Manager* unless the *Owner* deposits funds with the *Construction Manager* with which to make payments, or where the *Owner* pays the costs of financing the *Work*, in which case the cash discounts shall accrue to the *Owner*.
- 7.5 All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment applicable to the *Work* shall accrue to the *Owner*, and the *Construction Manager* shall make provisions so that they can be secured.
- 7.6 The *Owner* may by written request require the *Construction Manager* to:
 - .1 provide prior to commencement of the *Work* an estimate of the total *Cost of the Work* for evaluation and verification purposes; and
 - .2 inform the *Owner* in writing prior to incurring reimbursable expenses relating to the *Cost of the Work*.

ARTICLE A-8 OPTIONS

- 8.1 The *Owner* and the *Construction Manager* may agree to exercise the options described in paragraph 8.2, 8.3 or 8.4 at the time of signing of this *Contract* or any time during the term of the *Contract*. Any agreement to exercise any of the following options after the signing of this *Contract* shall be recorded by a *Change Order*.

8.2 GUARANTEED MAXIMUM PRICE (GMP) OPTION

The sum of the *Price of the Services* and the *Price of the Work* are guaranteed by the *Construction Manager* not to exceed _____/100 dollars (\$ _____), subject to the adjustment as provided in GC 6.1 – OWNER'S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER or GC 6.3 – CHANGE DIRECTIVE. Any amount, consisting of the sum of the *Price of the Services* and the *Price of the Work*, in excess of this *Guaranteed Maximum Price* will be paid by the *Construction Manager* without reimbursement by the *Owner*.

8.3 GUARANTEED MAXIMUM PRICE PLUS % COST SAVINGS OPTION

The *Price of the Services* and the *Price of the Work* are guaranteed by the *Construction Manager* not to exceed _____/100 dollars (\$ _____), subject to the adjustment as provided in GC 6.1 – OWNER'S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER or GC 6.3 – CHANGE DIRECTIVE.

At the conclusion of the *Project*,

- .1 any amount, consisting of the sum of the *Price of the Services* and the *Price of the Work*, in excess of this *Guaranteed Maximum Price* will be paid by the *Construction Manager* without reimbursement by the *Owner*.
- .2 if the sum of the *Price of the Services* and the *Price of the Work* is less than this *Guaranteed Maximum Price*, the difference will be disbursed as follows:
 - (1) retained by the *Owner*: _____ %
 - (2) paid to the *Construction Manager*: _____ %

8.4 STIPULATED PRICE OPTION

The *Owner* and the *Construction Manager* may agree to change this *Contract* to a stipulated price contract, in accordance with the amendments as provided in the Appendix – STIPULATED PRICE OPTION.

ARTICLE A-9 PAYMENT

9.1 Where required by provincial or territorial legislation, payments shall be subject to the lien legislation applicable to the *Place of the Work*. The *Owner* shall pay the *Construction Manager*:

- .1 payments on account of the *Construction Manager's Fee* for the *Services* earned as described in Article A-5 of the Agreement – CONSTRUCTION MANAGER'S FEE together with such *Value Added Taxes* as may be applicable to such payments, and
- .2 payments on account of the reimbursable expenses for the *Services* earned as described in Article A-6 of the Agreement – REIMBURSABLE EXPENSES FOR THE SERVICES together with such *Value Added Taxes* as may be applicable to such payments,
- .3 payments on account of the *Price of the Work* when due in the amount certified by the *Consultant* together with such *Value Added Taxes* as may be applicable to such payments,
- .4 upon *Substantial Performance of the Work*, the unpaid balance of the holdback amount when due together with such *Value Added Taxes* as may be applicable to such payment, and
- .5 upon the issuance of the final certificate for payment, the unpaid balance of the *Construction Manager's Fee* for the *Services*, the reimbursable expenses for the *Services*, and the *Price of the Work* when due together with such *Value Added Taxes* as may be applicable to such payment.

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

9.3 Interest

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

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

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

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

The 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 9.3.1 of this Article on the settlement amount of any claim in dispute that is resolved either pursuant to Part 8 of the General Conditions – DISPUTE RESOLUTION or otherwise, from the date the amount would have been due and payable under the *Contract*, had it not been in dispute, until the date it is paid.

ARTICLE A-10 RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING

- 10.1 *Notices in Writing* will be addressed to the recipient at the address set out below.
- 10.2 The delivery of a *Notice in Writing* will be by hand, by courier, by prepaid first class mail, or by facsimile or other form of electronic communication during the transmission of which no indication of failure of receipt is communicated to the sender.
- 10.3 A *Notice in Writing* delivered by one party in accordance with this *Contract* will be deemed to have been received by the other party on the date of delivery if delivered by hand or courier, or if sent by mail it shall be deemed to have been received 5 calendar days after the date on which it was mailed, provided that if either such day is not a *Working Day*, then the *Notice in Writing* shall be deemed to have been received on the *Working Day* next following such day.
- 10.4 A *Notice in Writing* sent by facsimile or other form of electronic communication shall be deemed to have been received on the date of its transmission provided that if such day is not a *Working Day* or if it is received after the end of normal business hours on the date of its transmission at the place of receipt, then it shall be deemed to have been received at the opening of business at the place of receipt on the first *Working Day* next following the transmission thereof.
- 10.5 An address for a party may be changed by *Notice in Writing* to the other party setting out the new address in accordance with this Article.

Owner

759 Winston Churchill GP Inc. for and on behalf of 759 Winston Churchill L. P.
 Attention: Michael Moldenhauer

*name of Owner**

7080 Derrycrest Drive,
 Mississauga, ON L5W 0G5

address

facsimile number

mm@moldenhauer.ca

email address

Construction Manager

Kenaidan Contracting Ltd.
 Attention: Gian Fortuna

*name of Construction Manager**

7080 Derrycrest Drive,
 Mississauga, ON L5W 0G5

address

facsimile number

gfortuna@kenaidan.com

email address

Consultant

Ware Malcomb Architecture ULC

*name of Consultant**

180 Bass Pro Mills Dr. #103,
 Vaughan, ON L4K 0G9

address

facsimile number

fdirioma@waremalcomb.com

email address

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

8

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ARTICLE A-11 LANGUAGE OF THE CONTRACT

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

#Complete this statement by striking out inapplicable term.

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

ARTICLE A-12 SUCCESSION

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

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

SIGNED AND DELIVERED

in the presence of:

WITNESS


signature

Peter Diab

name of person signing

signature

name of person signing

WITNESS

signature

name of person signing

signature

name of person signing

OWNER

759 Winston Churchill GP Inc. for and on behalf of 759 Winston Churchill L. P.

Attention: Michael Moldenhauer

name of Owner

signature

name and title of person signing

signature

name and title of person signing

CONSTRUCTION MANAGER

Kenaidan Contracting Ltd.

Attention: Gian Fortuna

name of Construction Manager

signature

name and title of person signing

signature

name and title of person signing

DocuSigned by:
Gian Fortuna
Senior Vice President
Kenaidan Contracting Ltd.
T: 905.870.2660 x2302
gfortuna@kenaidan.com

2459AA572DB7438...
Senior Vice President

N.B. Where legal jurisdiction, local practice or Owner or Construction Manager requirement calls for:

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

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SCHEDULE A1 TO THE AGREEMENT – SERVICES AND COMPENSATION

1. PRECONSTRUCTION (*Note: F1 Included in the fixed amount as described in paragraph 5.2.1 of Article A-5 – CONSTRUCTION MANAGER'S FEE. F2 Included in the percentage amount as described in paragraph 5.2.2 of Article A-5 – CONSTRUCTION MANAGER'S FEE. F3 Fee to the Construction Manager based on time-based rates as described in paragraph 5.2.3 of Article A-5 – CONSTRUCTION MANAGER'S FEE.)	Performed by the Owner or someone other than the Construction Manager	Performed by the Construction Manager (*F1/F2/F3)	Not Applicable
1.1 General Services .1 Attend regular <i>Project</i> meetings with the <i>Owner</i> and the <i>Consultant</i> . .2 Provide advice to the <i>Owner</i> and the <i>Consultant</i> with respect to construction and market conditions.		F1 F1	
1.2 Predesign .1 Estimating: (1) Confirm or prepare a <i>Class D Construction Cost Estimate</i> . (2) Advise the <i>Owner</i> if it appears that the <i>Construction Cost Estimate</i> may exceed the <i>Project</i> budget, and make recommendation for corrective action. .2 Scheduling: Prepare a preliminary overall <i>Project</i> schedule.		F1 F1	
1.3 Schematic Design Phase .1 Constructability: Provide advice on site use and possible improvements, selection of materials, assembly systems, and, equipment and provide recommendations on construction feasibility, availability of materials and labour, time requirements for installation and construction, and factors related to alternative designs and possible economies. .2 Estimating: (1) Prepare a <i>Class C Construction Cost Estimate</i> at the end of the Schematic Design Phase. (2) Advise the <i>Owner</i> if it appears that the <i>Construction Cost Estimate</i> may exceed the <i>Project</i> budget, and make recommendation for corrective action. .3 Scheduling: Prepare, in consultation with the <i>Consultant</i> and the <i>Owner</i> , a preliminary <i>Project</i> schedule for the <i>Owner's</i> review; such <i>Project</i> schedule shall take into consideration the sequence and timing of the required basic program decisions, including anticipated design time, approval period, preparation of documentation, bid calls and subsequent evaluations, trade contract awards, on-site construction activities, and the anticipated date of <i>Substantial Performance of the Work</i> . .4 Other Services: Assist in providing liaison and coordination among government authorities, utility companies, and other authorities having jurisdiction over the <i>Place of the Work</i> .		F1 F1 F1 F1	
1.4 Design Development Phase .1 Constructability: (1) Provide updates as necessary regarding the availability of materials and labour, building systems, and possible economies. (2) Make recommendations to the <i>Owner</i> and the <i>Consultant</i> regarding the scope of <i>Work</i> packages and <i>Work</i> to be performed by the <i>Construction Manager's</i> own forces to help facilitate the subsequent bidding and awarding of <i>Subcontractor</i> and <i>Supplier</i> contracts. (3) Review the <i>Specifications</i> and <i>Drawings</i> and, at the end of the Design Development Phase, make recommendations to the <i>Owner</i> and the <i>Consultant</i> as to constructability and coordination among the <i>Subcontractors</i> . .2 Estimating and Cost Control: (1) Prepare a <i>Class B Construction Cost Estimate</i> at the end of the Design Development Phase. (2) Advise the <i>Owner</i> if it appears that the <i>Construction Cost Estimate</i> may exceed the <i>Project</i> budget, and make recommendations for corrective action. (3) Establish a cost control program and prepare a cash flow forecast for the <i>Project</i> .		F1 F1	

<p>1. PRECONSTRUCTION</p> <p>(*Note: F1 Included in the fixed amount as described in paragraph 5.2.1 of Article A-5 – CONSTRUCTION MANAGER’S FEE. F2 Included in the percentage amount as described in paragraph 5.2.2 of Article A-5 – CONSTRUCTION MANAGER’S FEE. F3 Fee to the Construction Manager based on time-based rates as described in paragraph 5.2.3 of Article A-5 – CONSTRUCTION MANAGER’S FEE.)</p>	<p>Performed by the Owner or someone other than the Construction Manager</p>	<p>Performed by the Construction Manager (*F1/F2/F3)</p>	<p>Not Applicable</p>
<p>.3 Scheduling:</p> <p>(1) Review and update the <i>Project</i> schedule with appropriate details.</p> <p>(2) Advise the <i>Owner</i> if it appears that the <i>Project</i> schedule may vary from that specified in Article A-3 of the Agreement – DESCRIPTION OF THE PROJECT or otherwise agreed with the <i>Owner</i>, and make recommendations for corrective action.</p> <p>(3) Make recommendations to the <i>Owner</i> regarding any equipment or materials which should be pre-ordered to meet the <i>Project</i> schedule.</p>		<p>F1</p>	
<p>1.5 Construction Document Phase</p> <p>.1 Constructability:</p> <p>(1) Provide updates as necessary regarding the availability of materials and labour, building systems, and possible economies.</p> <p>(2) Review the <i>Specifications</i> and <i>Drawings</i> and make recommendations to the <i>Owner</i> and the <i>Consultant</i> as to clarity, consistency, constructability, and coordination among the <i>Subcontractors</i>.</p> <p>(3) Assist the <i>Owner</i> and the <i>Consultant</i> in preparing bid documents for <i>Subcontractors</i>.</p> <p>(4) Assist the <i>Owner</i> in determining the contract security requirements of <i>Subcontractors</i>.</p> <p>.2 Estimating and Cost Control:</p> <p>(1) Update the <i>Class B Construction Cost Estimate</i> at defined intervals of <i>Construction Documents</i> completion.</p> <p>(2) Prepare a <i>Class A Construction Cost Estimate</i> at the end of the Construction Document Phase.</p> <p>(3) Update the cash flow forecasts for the <i>Project</i>.</p> <p>(4) Advise the <i>Owner</i> if it appears that the <i>Construction Cost Estimate</i> may exceed the <i>Project</i> budget, and make recommendations for corrective action.</p> <p>.3 Scheduling:</p> <p>(1) Review and update the <i>Project</i> schedule with appropriate details.</p> <p>(2) Advise the <i>Owner</i> if it appears that the <i>Project</i> schedule may vary from that specified in Article A-3 of the Agreement – DESCRIPTION OF THE PROJECT or otherwise agreed with the <i>Owner</i>, and make recommendations for corrective action, including changes to <i>Project</i> scope, schedule or budget.</p> <p>.4 Other Services:</p> <p>(1) Make recommendations to the <i>Owner</i> regarding any equipment or materials which should be pre-ordered to meet the <i>Project</i> objective.</p>		<p>F1</p> <p>F1</p> <p>F1</p> <p>F1</p>	
<p>1.6 Construction Procurement Phase</p> <p>.1 Scheduling:</p> <p>(1) Review and update the <i>Project</i> schedule with appropriate details.</p> <p>.2 Contracting:</p> <p>(1) Develop methods of solicitation for <i>Subcontractors</i> and the distribution of addenda.</p> <p>(2) Prepare the prequalification criteria for <i>Subcontractors</i> and <i>Suppliers</i> as required by the <i>Owner</i>.</p> <p>(3) Review for completeness and coordinate all bid documents for the solicitation of competitive bids for the <i>Work</i> to be performed by <i>Subcontractors</i>.</p> <p>.3 Other Service:</p> <p>(1) Update the cash flow forecasts for the <i>Project</i>.</p>		<p>F1</p> <p>F1</p> <p>F1</p>	

SCHEDULE A1 TO THE AGREEMENT – SERVICES AND COMPENSATION

2. CONSTRUCTION (*Note: F1 Included in the fixed amount as described in paragraph 5.2.1 of Article A-5 – CONSTRUCTION MANAGER'S FEE. F2 Included in the percentage amount as described in paragraph 5.2.2 of Article A-5 – CONSTRUCTION MANAGER'S FEE. F3 Fee to the Construction Manager based on time-based rates as described in paragraph 5.2.3 of Article A-5 – CONSTRUCTION MANAGER'S FEE.)	Performed by the Owner or someone other than the Construction Manager	Performed by the Construction Manager (*F1/F2/F3)	Not Applicable
2.1 General Service .1 Chair and minute regular <i>Project</i> meetings with the <i>Owner</i> and the <i>Consultant</i> .		F1	
2.2 Cost Control and Accounting .1 Prepare and update the <i>Construction Cost</i> and cash flow forecasts in accordance with the <i>Project</i> budget as specified in Article A-3 of the Agreement – DESCRIPTION OF THE PROJECT or otherwise agreed with the <i>Owner</i> . .2 Develop, implement and maintain a system of <i>Project</i> cost control and accounting. .3 Advise the <i>Owner</i> and the <i>Consultant</i> on the variances between actual cost and <i>Construction Cost Estimate</i> . .4 Provide reasonable assistance and information to permit recovery of all tax rebates where applicable. .5 Provide recommendations to the <i>Owner</i> for necessary changes to maintain the <i>Project</i> budget and <i>Project</i> schedule.		F1 F1 F1 F1	
3. POST-CONSTRUCTION			
3.1 General Service .1 Prepare final <i>Construction Cost</i> report.		F1	
3.2 Occupancy Review .1 Assist the <i>Owner</i> in conducting post-construction occupancy review.		F1	

SCHEDULE A2 – REIMBURSABLE EXPENSES APPLICABLE TO SCHEDULE A1

Unless otherwise agreed to by the parties or as indicated in the following table, all expense items relating to *Services* are included in the *Construction Manager's Fee* for the *Services* as described in paragraph 5.2 of Article of the Agreement A-5 – CONSTRUCTION MANAGER'S FEE.

	Costs Included in the Construction Manager's Fee (A-5.2)	Reimbursable Expenses (A-6)
1. Travel and subsistence expenses of the <i>Construction Manager's</i> personnel outside a radius of 50km from the <i>Place of the Work</i> .	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. Charges for long distance telephone and facsimile communications, courier services, reproduction of <i>Contract Documents</i> incurred in relation to the performance of this Contract.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. The cost of <i>Project</i> specific information technology support in accordance with the method determined by the parties.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. Deposits lost provided that they are not caused by negligent acts or omissions of the <i>Construction Manager</i> and the <i>Services</i> are performed in accordance with this <i>Contract</i> .		<input checked="" type="checkbox"/>
5. The costs to the <i>Construction Manager</i> that result from any <i>Subcontractor's</i> insolvency or failure to perform.		<input checked="" type="checkbox"/>
6. Charges levied by authorities having jurisdiction at the <i>Place of the Work</i> .		<input checked="" type="checkbox"/>
7. Royalties, patent licence fees and damages for infringement of patents and cost of defending suits therefore.		<input checked="" type="checkbox"/>
8. Any adjustment in taxes and duties directly related to the <i>Project</i> for which the <i>Construction Manager</i> is liable.		<input checked="" type="checkbox"/>
9. Losses and expenses sustained by the <i>Construction Manager</i> for matters which are the subject of the insurance coverages obtained pursuant to GC 11.1 – INSURANCE when such losses and expenses are not recoverable because the amounts are in excess of collectible amounts, within the deductible amounts or are not insurable.		<input checked="" type="checkbox"/>
10. The costs incurred due to emergencies affecting the safety of persons or property.		<input checked="" type="checkbox"/>
11. Legal costs, incurred by the <i>Construction Manager</i> in relation to the performance of the <i>Services</i> provided that they are not caused by negligent acts or omissions of the <i>Construction Manager</i> and the <i>Services</i> are performed in accordance with this <i>Contract</i> .		<input checked="" type="checkbox"/>
12. Such other costs directly incurred by the <i>Construction Manager</i> in the performance of this <i>Contract</i> as follows: <div style="border: 1px solid black; height: 150px; width: 100%;"></div>		<input checked="" type="checkbox"/>

SCHEDULE B – TIME-BASED RATES FOR PERSONNEL EMPLOYED BY THE CONSTRUCTION MANAGER

Personnel employed by the <i>Construction Manager</i> in the performance of the <i>Services</i> and <i>Work</i>.	Unit	Rate
Project Director	Hour	\$175.00
Project Manager	Hour	\$123.60
Assistant Project Manager	Hour	\$93.30
Site Supervisor	Hour	\$123.60
Assistant Site Supervisor	Hour	\$93.30
Preconstruction Manager	Hour	\$114.60
Project Engineer	Hour	\$64.50
Field Surveyor, with instruments	Hour	\$110.00
Scheduler	Hour	\$94.20
3 D Technician, Auto Cadd	Hour	\$102.00
Estimator	Hour	\$106.20
Project Administrator	Hour	\$68.10
Site Foreman	Hour	\$74.50
Carpenter	Hour	\$69.30
Labourer	Hour	\$66.92
Safety Officer	Hour	\$92.10

DEFINITIONS

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

Class A Construction Cost Estimate

The *Class A Construction Cost Estimate* is an estimate of the *Construction Cost* based on the completed *Contract Documents*. *Class A Construction Cost Estimate* is the final estimate before the bid or proposal call. *Class A Construction Cost Estimate* shall be presented in elemental format and include labour and material costs, allowance for all costs resulting from the *Project* schedule, all actual associated costs, including cash allowances, contingencies, allowances for design, escalation, market conditions and anticipated amendment amounts as applicable.

Class B Construction Cost Estimate

The *Class B Construction Cost Estimate* is an estimate of the *Construction Cost* with a level of precision that is based on the degree of completion of the *Contract Documents* at the time of preparation of the estimate. The *Class B Construction Cost Estimate* is typically prepared when all site or installation investigations are completed and the design of the major systems and sub-systems of the *Project* (including outline specifications and preliminary drawings and models) are well underway. *Class B Construction Cost Estimate* shall be presented in elemental format and include labour and material costs, allowance for all costs resulting from the *Project* schedule, all actual associated costs, including cash allowances, contingencies, allowances for design, escalation, market conditions and anticipated amendment amounts as applicable.

Class C Construction Cost Estimate

The *Class C Construction Cost Estimate* is an estimate of the *Construction Cost* based on updated *Owner* requirements, general description of the *Project*, preliminary site information and existing conditions, and takes into consideration market conditions as well as basic implementation logistics. *Class C Construction Cost Estimate* shall include labour and material costs and the *Owner's* construction contingencies and allowances.

Class D Construction Cost Estimate

The *Class D Construction Cost Estimate* is an estimate of the *Construction Cost* based on the *Owner's* functional requirements to the degree known at the time. The *Class D Construction Cost Estimate* shall as a minimum be based on historical cost data for similar projects, suitably adjusted for such factors as inflation, location, risk, quality, size, and time. All related factors affecting cost are considered to the extent possible. The *Class D Construction Cost Estimate* provides the *Owner* an indication of the order of magnitude of the *Construction Cost* for a project completed within the estimated completion date, and shall include labour and material costs and the *Owner's* construction contingencies and allowances.

Change Directive

A *Change Directive* is a written instruction prepared by the *Consultant* and signed by the *Owner* directing the *Construction Manager* to proceed with a change in the *Work* within the general scope of this *Contract* prior to the *Owner* and the *Construction Manager* agreeing upon an adjustment in any or all of the *Construction Manager's Fee*, the *Guaranteed Maximum Price* and the *Contract Time*.

Change Order

A *Change Order* is a written amendment to this *Contract* prepared by the *Consultant* and signed by the *Owner* and the *Construction Manager* stating their agreement upon:

- a change in the *Services*;
- a change in the *Work*;
- the method of adjustment or the amount of the adjustment in the *Construction Manager's Fee*, if any;
- the method of adjustment or the amount of the adjustment in the *Guaranteed Maximum Price*, if any;
- the extent of the adjustment in the *Contract Time*, if any; and
- the options described in Article A-8 of the Agreement – OPTIONS.

Construction Cost

Construction Cost means the actual cost of all elements of the *Project* including all applicable taxes but excluding the applicable value added taxes, whether recoverable or not. *Construction Cost* does not include the *Construction Manager's Fee*, the reimbursable expenses for the *Services* as described in Article A-6 of the Agreement – REIMBURSABLE EXPENSES FOR THE SERVICES and the compensation of the *Consultant*.

Construction Cost Estimate

Construction Cost Estimate is either a *Class A Construction Cost Estimate*, a *Class B Construction Cost Estimate*, a *Class C Construction Cost Estimate*, or a *Class D Construction Cost Estimate*, as the context shall require and is prepared with a level of precision commensurate with the level of detail of information available at the time.

Construction Documents

The *Construction Documents* consist of the *Specifications* and *Drawings* that are consistent with the *Contract Documents* and are prepared by the *Consultant* and accepted by the *Owner* after execution of the Agreement for the performance of the *Project*.

Construction Equipment

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

Construction Manager

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

Construction Manager's Fee

The *Construction Manager's Fee* is the *Construction Manager's* fee for performing the *Services* and the *Work* and the amount is as stipulated in Article A-5 of the Agreement – CONSTRUCTION MANAGER'S FEE.

Consultant

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

Contract

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

Contract Documents

The *Contract Documents* consist of those documents listed in Article A-4 of the Agreement – CONTRACT DOCUMENTS and amendments agreed upon between the parties.

Contract Time

The *Contract Time* is the time stipulated in paragraph 1.3 of Article A-1 of the Agreement – THE SERVICES AND THE WORK.

Cost of the Work

The *Cost of the Work* is the amount stipulated in Article A-7 of the Agreement – COST OF THE WORK which excludes *Value Added Taxes*.

Drawings

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

Guaranteed Maximum Price

The *Guaranteed Maximum Price* is the amount, if any, stipulated in paragraphs 8.2 or 8.3 of Article A-8 of the Agreement – OPTIONS which excludes *Value Added Taxes*. In the event that no amount is stipulated in paragraphs 8.2 or 8.3 of Article A-8 of the Agreement – OPTIONS, the provisions pertinent to the *Guaranteed Maximum Price*, wherever they appear in this *Contract*, shall be individually inoperative and considered as deleted from this agreement.

Notice in Writing

A *Notice in Writing*, where identified in this *Contract*, is a written communication between the parties or between them and the *Consultant* that is transmitted in accordance with the provisions of Article A-10 of the Agreement – RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING.

Owner

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

Place of the Work

The *Place of the Work* is the designated site or location of the *Work* identified in the Agreement.

Price of the Services

The *Price of the Services*, which excludes *Value Added Taxes*, is the sum of the *Construction Manager's Fee* for the *Services* as stipulated in paragraph 5.2 of Article A-5 – CONSTRUCTION MANAGER'S FEE and the reimbursable expenses for the *Services* as stipulated in paragraph 6.1 of Article A-6 of the Agreement – REIMBURSABLE EXPENSES FOR THE SERVICES.

Price of the Work

The *Price of the Work*, which excludes *Value Added Taxes*, is the sum of the *Construction Manager's Fee* for the *Work* as stipulated in paragraph 5.3 of Article A-5 – CONSTRUCTION MANAGER'S FEE and the *Cost of the Work*.

Product

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

Project

The *Project* means the total construction as described in Article A-3 of the Agreement – DESCRIPTION OF THE PROJECT contemplated by the *Owner* of which the *Work* may be the whole or a part.

Services

The *Services* means all services described in Schedule A1 to the Agreement – SERVICES AND COMPENSATION to be performed by the *Construction Manager* under this *Contract*.

Shop Drawings

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

Specifications

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

Subcontractor

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

Substantial Performance of the Work

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

Supplemental Instruction

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

Supplier

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

Temporary Work

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

Value Added Taxes

Value Added Taxes means such sums as shall be levied upon the *Owner's* payment to the *Construction Manager* by the Federal or any Provincial or Territorial government and is computed as a percentage of such payment and includes the Goods and Services Tax, the Quebec Sales Tax, the Harmonized Sales Tax, and any other similar tax, the collection and payment of which have been imposed on the *Construction Manager* by the tax legislation.

Work

The *Work* means the total construction and related services to be performed by the *Construction Manager* as required by the *Contract Documents* but does not include *Services*.

Working Day

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

GENERAL CONDITIONS

PART 1 GENERAL PROVISIONS

GC 1.1 CONTRACT DOCUMENTS

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

GC 1.2 LAW OF THE CONTRACT

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

GC 1.3 RIGHTS AND REMEDIES

- 1.3.1 Except as expressly provided in the *Contract Documents*, the duties and obligations imposed by the *Contract Documents* and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law.

- 1.3.2 No action or failure to act by the *Owner*, *Consultant* or *Construction Manager* shall constitute a waiver of any right or duty afforded either of the parties to this *Contract*, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

GC 1.4 ASSIGNMENT

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

GC 1.5 PERFORMANCE OF THE SERVICES

- 1.5.1 Architectural or engineering aspects of the *Project* shall not be the responsibility of the *Construction Manager*. In providing *Services*, the *Construction Manager* assumes no responsibility for the performance of the *Consultant* nor offers any professional design advice.
- 1.5.2 Notwithstanding any other provisions of this *Contract*, the *Construction Manager* shall be deemed not to assume any duties nor responsibilities as agent of the *Owner*.

GC 1.6 PROJECT REPRESENTATIVES

- 1.6.1 The *Owner*, *Construction Manager* and *Consultant* may appoint one or more project representatives to assist in carrying out their responsibilities under this *Contract*. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in writing.

PART 2 ADMINISTRATION OF THE CONTRACT

GC 2.1 OWNER'S RESPONSIBILITIES

- 2.1.1 The *Owner* shall:
- .1 provide full and timely information and approvals regarding the requirements of the *Project* for the orderly progress of the *Services* and the *Work*;
 - .2 review documents submitted by the *Construction Manager* and give the *Construction Manager* timely decisions for the orderly progress of the *Services* and the *Work*;
 - .3 furnish promptly to the *Construction Manager* all information that is available or requested by the *Construction Manager* regarding the *Place of the Work* including surveys as to the physical characteristics of the site, soils reports, subsurface investigations, legal limitations, utility locations, and legal description. Subject to paragraph 9.1.2 of GC 9.1 – PROTECTION OF WORK AND PROPERTY, the *Construction Manager* shall be entitled to rely on such information;
 - .4 designate in writing a representative who shall be fully acquainted with the *Work*; and shall have the authority to act on the *Owner's* behalf in relation to all duties and responsibilities of the *Owner* under this *Contract*;
 - .5 retain the *Consultant* who shall be responsible for the design and design related services required for the *Work*;
 - .6 inform the *Construction Manager* of the scope and terms of the *Consultant's* services;
 - .7 inform the *Consultant* of the scope and terms of the *Services* and the *Work*;
 - .8 immediately notify the *Construction Manager* if the *Owner* observes or otherwise becomes aware of any fault or defect in the *Project* or any non-conformity with the requirements of the *Contract*; and
 - .9 coordinate and facilitate the *Services* of the *Construction Manager* and the *Consultant's* services.

GC 2.2 AUTHORITY OF THE CONSULTANT

- 2.2.1 The *Consultant* will have authority to act on behalf of the *Owner* only to the extent provided in the *Contract Documents*, unless otherwise modified by written agreement as provided in paragraph 2.2.2.
- 2.2.2 The duties, responsibilities and limitations of authority of the *Consultant* as set forth in the *Contract Documents* may be modified or extended only with the written consent of the *Construction Manager* following consultation with the *Consultant*.
- 2.2.3 If the *Consultant's* employment is terminated, the *Owner* shall immediately appoint or reappoint a *Consultant* against whom the *Construction Manager* makes no reasonable objection and whose duties, responsibilities and limitations of authority under the *Contract Documents* will be that of the former *Consultant*.

GC 2.3 CONSULTANT'S RESPONSIBILITIES

- 2.3.1 The *Consultant* will provide administration of the *Work* as described in the *Contract Documents*.
- 2.3.2 The *Consultant* will visit the *Place of the Work* at intervals appropriate to the progress of construction to become familiar with the progress and quality of the *Work* and to determine if the *Work* is proceeding in general conformity with the *Contract Documents*.
- 2.3.3 If the *Owner* and the *Consultant* agree, the *Consultant* will provide at the *Place of the Work*, one or more project representatives to assist in carrying out the *Consultant's* responsibilities. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in writing to the *Construction Manager*.
- 2.3.4 The *Consultant* will promptly inform the *Owner* of the date of receipt of the *Construction Manager's* applications for payment for the *Work* performed as provided in paragraph 5.4.7.1 of GC 5.4 – PROGRESS PAYMENT FOR THE WORK.
- 2.3.5 Based on the *Consultant's* observations and evaluation of the *Construction Manager's* applications for payment for the *Work* performed, the *Consultant* will determine the amounts owing to the *Construction Manager* for the *Price of the Work* and will issue certificates for payment as provided in Article A-9 of the Agreement – PAYMENT, GC 5.4 – PROGRESS PAYMENT FOR THE WORK and GC 5.8 – FINAL PAYMENT FOR THE WORK.
- 2.3.6 The *Consultant* will not be responsible for and will not have control, charge or supervision of construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs required in connection with the *Work* in accordance with the applicable construction safety legislation, other regulations or general construction practice. The *Consultant* will not be responsible for the *Construction Manager's* failure to carry out the *Work* in accordance with the *Contract Documents*. The *Consultant* will not have control over, charge of or be responsible for the acts or omissions of the *Construction Manager, Subcontractors, Suppliers*, or their agents, employees, or any other persons performing portions of the *Work*.
- 2.3.7 Except with respect to GC 5.1 – FINANCING INFORMATION REQUIRED OF THE OWNER, the *Consultant* will be, in the first instance, the interpreter of the requirements of the *Work*.
- 2.3.8 Matters in question relating to the performance of the *Work* or the interpretation of the *Contract Documents*, except with respect to the scope, fee and reimbursable expenses of the *Services*, shall be initially referred in writing to the *Consultant* by the party raising the question for interpretations and findings and copied to the other party.
- 2.3.9 Interpretations and findings of the *Consultant* shall be consistent with the intent of the *Contract Documents* as they relate to the *Work*. In making such interpretations and findings the *Consultant* will not show partiality to either the *Owner* or the *Construction Manager*.
- 2.3.10 The *Consultant's* interpretations and findings will be given in writing to the parties within a reasonable time.
- 2.3.11 With respect to claims for a change in *Price of the Work*, the *Consultant* will make findings as set out in GC 6.6 – CLAIMS FOR A CHANGE IN CONSTRUCTION MANAGER'S FEE FOR THE SERVICES, THE PRICE OF THE WORK OR THE GUARANTEED MAXIMUM PRICE.
- 2.3.12 The *Consultant* will have authority to reject work which in the *Consultant's* opinion does not conform to the requirements of the *Contract Documents*. Whenever the *Consultant* considers it necessary or advisable, the *Consultant* will have authority to require inspection or testing of work, whether or not such work is fabricated, installed or completed. However, neither the authority of the *Consultant* to act nor any decision either to exercise or not to exercise such authority shall give rise to any duty or responsibility of the *Consultant* to the *Construction Manager, Subcontractor, Suppliers*, or their agents, employees, or other persons performing any of the *Work*.
- 2.3.13 During the progress of the *Work* the *Consultant* will furnish *Supplemental Instructions* to the *Construction Manager* with reasonable promptness or in accordance with a schedule for such instructions agreed to by the *Consultant* and the *Construction Manager*.
- 2.3.14 The *Consultant* will review and take appropriate action upon *Shop Drawings*, samples and other *Construction Manager's* submittals which are provided in accordance with the *Construction Documents*.
- 2.3.15 The *Consultant* will prepare *Change Orders* and *Change Directives* as provided in GC 6.2 – CHANGE ORDER and GC 6.3 – CHANGE DIRECTIVE.
- 2.3.16 The *Consultant* will conduct reviews of the *Work* to determine the date of *Substantial Performance of the Work* as provided in GC 5.5 – SUBSTANTIAL PERFORMANCE OF THE WORK.

- 2.3.17 All certificates issued by the *Consultant* will be to the best of the *Consultant's* knowledge, information and belief. By issuing any certificate, the *Consultant* does not guarantee the *Work* is correct or complete.
- 2.3.18 The *Consultant* will receive and review written warranties and related documents required by the *Contract* and provided by the *Construction Manager* and will forward such warranties and documents to the *Owner* for the *Owner's* acceptance.

GC 2.4 REVIEW AND INSPECTION OF THE WORK

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

GC 2.5 DEFECTIVE WORK

- 2.5.1 The *Construction Manager* shall promptly correct defective work that has been rejected by the *Consultant* as failing to conform to the *Contract Documents* whether or not the defective work has been incorporated in the *Work* and whether or not the defect is the result of poor workmanship, use of defective products or damage through carelessness or other act or omission of the *Construction Manager*. Subject to paragraph 7.1.9 of Article A-7 of the Agreement – COST OF THE WORK, the correction of defective work shall be at the *Construction Manager's* expense.
- 2.5.2 The *Construction Manager* shall promptly make good other contractors' work destroyed or damaged by such removals or replacements. Subject to paragraph 7.1.9 of Article A-7 of the Agreement – COST OF THE WORK, the correction of destroyed or damaged work shall be at the *Construction Manager's* expense.
- 2.5.3 If in the opinion of the *Consultant* it is not expedient to correct defective work or work not performed as provided in the *Contract Documents*, the *Owner* may deduct from the amount otherwise due to the *Construction Manager* the difference in value between the work as performed and that called for by the *Contract Documents*. If the *Owner* and the *Construction Manager* do not agree on the difference in value, they shall refer the matter to the *Consultant* for a finding.

PART 3 PERFORMANCE OF THE SERVICES AND EXECUTION OF THE WORK

GC 3.1 CONTROL OF THE WORK

- 3.1.1 The *Construction Manager* shall have total control of the *Work* and shall effectively direct and supervise the *Work* so as to ensure conformity with the *Contract Documents*.
- 3.1.2 The *Construction Manager* shall be solely responsible for construction means, methods, techniques, sequences, and procedures and for co-ordinating the various parts of the *Work* under the *Contract*.

GC 3.2 CONSTRUCTION BY OWNER OR OTHER CONTRACTORS

- 3.2.1 The *Owner* reserves the right to award separate contracts in connection with other parts of the *Project* to other contractors and to perform work with own forces.
- 3.2.2 When separate contracts are awarded for other parts of the *Project*, or when work is performed by the *Owner's* own forces, the *Owner* shall:
- .1 provide for the co-ordination of the activities and work of other contractors and *Owner's* own forces with the *Work*;
 - .2 assume overall responsibility for compliance with the applicable health and construction safety legislation at the *Place of the Work*;
 - .3 enter into separate contracts with other contractors under conditions of contract which are compatible with the conditions of the *Contract*;
 - .4 ensure that insurance coverage is provided to the same requirements as are called for in GC 11.1 – INSURANCE and co-ordinate such insurance with the insurance coverage of the *Construction Manager* as it affects the *Work*; and
 - .5 take all reasonable precautions to avoid labour disputes or other disputes on the *Project* arising from the work of other contractors or the *Owner's* own forces.
- 3.2.3 When separate contracts are awarded for other parts of the *Project*, or when work is performed by the *Owner's* own forces, the *Construction Manager* shall:
- .1 afford the *Owner* and other contractors reasonable opportunity to store their products and execute their work;
 - .2 cooperate with other contractors and the *Owner* in reviewing their construction schedules; and
 - .3 promptly report to the *Consultant* in writing any apparent deficiencies in the work of other contractors or of the *Owner's* own forces, where such work affects the proper execution of any portion of the *Work*, prior to proceeding with that portion of the *Work*.
- 3.2.4 Where the *Contract Documents* identify work to be performed by other contractors or the *Owner's* own forces, the *Construction Manager* shall co-ordinate and schedule the *Work* with the work of other contractors and the *Owner's* own forces as specified in the *Contract Documents*.
- 3.2.5 Where a change in the *Work* is required as a result of the co-ordination and integration of the work of other contractors or *Owner's* own forces with the *Work*, the changes shall be authorized and valued as provided in GC 6.1 – OWNER'S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER and GC 6.3 – CHANGE DIRECTIVE.
- 3.2.6 Disputes and other matters in question between the *Construction Manager* and other contractors shall be dealt with as provided in Part 8 of the General Conditions – DISPUTE RESOLUTION provided the other contractors have reciprocal obligations. The *Construction Manager* shall be deemed to have consented to arbitration of any dispute with any contractor whose contract with the *Owner* contains a similar agreement to arbitrate.

GC 3.3 TEMPORARY WORK

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

GC 3.4 REVIEW OF DRAWINGS, SPECIFICATIONS AND MATERIAL AND FINISH SCHEDULES

- 3.4.1 The *Construction Manager* shall review the *Drawings, Specifications* and material and finish schedules and shall report promptly to the *Consultant* any error, inconsistency or omission the *Construction Manager* may discover. If the *Construction Manager* does discover any error, inconsistency or omission in the *Drawings, Specifications* and material and finish schedules, the *Construction Manager* shall not proceed with the work affected until the *Construction Manager* has received corrected or missing information from the *Consultant*.
- 3.4.2 The review of *Drawings, Specifications* and material and finish schedules under paragraph 3.4.1 shall be to the best of the *Construction Manager's* knowledge, information and belief. In making such review the *Construction Manager* assumes no responsibility for the accuracy of the review. The *Construction Manager* shall not be liable for any damage or costs resulting from errors, inconsistencies or omissions, which the *Construction Manager* did not discover.

GC 3.5 CONSTRUCTION SCHEDULE

- 3.5.1 The *Construction Manager* shall:
- .1 prepare and submit to the *Owner* and the *Consultant* prior to the first application for payment, a construction schedule that indicates the timing of the major activities of the *Work* and provides sufficient detail of the critical events and their inter-relationship to demonstrate that the *Work* will be performed in conformity with the *Contract Time*;
 - .2 monitor the progress of the *Work* relative to the construction schedule and update the construction schedule on a monthly basis or as stipulated by the *Contract Documents*; and
 - .3 advise the *Consultant* of any revisions required to the construction schedule as the result of extensions of the *Contract Time* as provided in Part 6 of the General Conditions – CHANGES.

GC 3.6 SUPERVISION

- 3.6.1 The *Construction Manager* shall provide all necessary supervision and appoint a competent representative who shall be in attendance at the *Place of the Work* while work is being performed. The *Construction Manager* may appoint a new representative for a valid reason and to whom the *Owner* makes no reasonable objection.
- 3.6.2 The appointed representative shall represent the *Construction Manager* at the *Place of the Work*. Information and instructions provided by the *Consultant* to the *Construction Manager's* appointed representative shall be deemed to have been received by the *Construction Manager*, except with respect to Article A-10 of the Agreement – RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING.

GC 3.7 SUBCONTRACTORS AND SUPPLIERS

- 3.7.1 The *Construction Manager* shall preserve and protect the rights of the parties under the *Contract* with respect to work to be performed under subcontract, and shall:
- .1 enter into contracts or written agreements with *Subcontractors* and *Suppliers* to require them to perform their work as provided in the *Contract Documents*;
 - .2 incorporate the terms and conditions of the *Contract Documents* into all contracts or written agreements with *Subcontractors* and *Suppliers*; and
 - .3 subject to paragraph 7.1.9 of Article A-7 of the Agreement – COST OF THE WORK, be as fully responsible to the *Owner* for acts and omissions of *Subcontractors, Suppliers* and of persons directly or indirectly employed by them as for acts and omissions of persons directly employed by the *Construction Manager*.
- 3.7.2 The *Construction Manager* shall, before entering into contracts or written agreements with *Subcontractors* and *Suppliers*, submit to the *Owner* all bids received for the various parts of the *Work* to be subcontracted and obtain the *Owner's* acceptance of the *Subcontractors* and *Suppliers* selected.
- 3.7.3 The *Construction Manager* shall cause to be obtained contract security from *Subcontractors* to the extent and for the amounts approved by the *Owner*.
- 3.7.4 The *Construction Manager* shall not be required to employ as a *Subcontractor* or *Supplier*, a person or firm to which the *Construction Manager* may reasonably object.
- 3.7.5 The *Owner*, through the *Consultant*, may provide to a *Subcontractor* or *Supplier* information as to the percentage of the *Subcontractor's* or *Supplier's* work which has been certified for payment.

GC 3.8 LABOUR AND PRODUCTS

- 3.8.1 The *Construction Manager* shall maintain good order and discipline among the *Construction Manager's* employees engaged on the *Work* and shall not employ on the *Work* anyone not skilled in the tasks assigned.
- 3.8.2 Unless otherwise specified in the *Contract Documents*, *Products* provided shall be new. *Products* which are not specified shall be of a quality consistent with those specified and their use acceptable to the *Consultant*.

GC 3.9 DOCUMENTS AT THE SITE

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

GC 3.10 SHOP DRAWINGS

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

GC 3.11 USE OF THE WORK

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

GC 3.12 CUTTING AND REMEDIAL WORK

- 3.12.1 The *Construction Manager* shall perform the cutting and remedial work required to make the affected parts of the *Work* come together properly.
- 3.12.2 The *Construction Manager* shall co-ordinate the *Work* to ensure that the cutting and remedial work is kept to a minimum.
- 3.12.3 Should the *Owner*, the *Consultant*, other contractors or anyone employed by them be responsible for poorly timed work necessitating cutting or remedial work to be performed, the cost of such cutting or remedial work shall be valued as provided in GC 6.1 – OWNER’S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER and GC 6.3 – CHANGE DIRECTIVE.
- 3.12.4 Cutting and remedial work shall be performed by specialists familiar with the *Products* affected and shall be performed in a manner to neither damage nor endanger the *Work*.

GC 3.13 CLEANUP

- 3.13.1 The *Construction Manager* shall maintain the *Work* in a safe and tidy condition and free from the accumulation of waste products and debris, other than that caused by the *Owner*, other contractors or their employees.
- 3.13.2 Before applying for *Substantial Performance of the Work* as provided in GC 5.5 – SUBSTANTIAL PERFORMANCE OF THE WORK, the *Construction Manager* shall remove waste products and debris, other than that resulting from the work of the *Owner*, other contractors or their employees, and shall leave the *Place of the Work* clean and suitable for use or occupancy by the *Owner*. The *Construction Manager* shall remove products, tools, *Construction Equipment*, and *Temporary Work* not required for the performance of the remaining work.
- 3.13.3 Prior to application for the final payment, the *Construction Manager* shall remove any remaining products, tools, *Construction Equipment*, and *Temporary Work*, and waste products and debris, other than that resulting from the work of the *Owner*, other contractors or their employees.

PART 4 ALLOWANCE**GC 4.1 CASH ALLOWANCES**

- 4.1.1 Cash allowances may be stated in this *Contract* if the *Guaranteed Maximum Price* is stipulated in paragraphs 8.2 or 8.3 of Article A-8 of the Agreement – OPTIONS.
- 4.1.2 The *Price of the Work* includes the cash allowances, if any, stated in this *Contract*. The scope of work or costs included in such cash allowances shall be as described in this *Contract*.
- 4.1.3 Expenditures under cash allowances shall be authorized by the *Owner* through the *Consultant*.
- 4.1.4 Where costs under any cash allowance exceed the amount of the allowance specified in this *Contract*, the *Construction Manager's Fee* for the *Work* and the *Guaranteed Maximum Price* shall be adjusted by *Change Order* to compensate the *Construction Manager* for any excess incurred and substantiated. Where costs under any cash allowance are less than the amount of the allowance, the *Owner* shall be credited for the unexpended portion of the cash allowance, but not for the *Construction Manager's* overhead and profit on such amount. Multiple cash allowances shall not be combined for the purpose of calculating the foregoing.
- 4.1.5 The *Construction Manager's* overhead and profit in connection with such cash allowances is eligible to be included in progress payments on account of the *Construction Manager's Fee* for the *Work*.
- 4.1.6 The value of the *Work* performed under a cash allowance is eligible to be included in progress payments on account of the *Cost of the Work*.
- 4.1.7 The *Construction Manager* and the *Consultant* shall jointly prepare a schedule that shows when the *Consultant* and the *Owner* must authorize ordering of items called for under cash allowances to avoid delaying the progress of the *Work*.

PART 5 PAYMENT

GC 5.1 FINANCING INFORMATION REQUIRED OF THE OWNER

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

GC 5.2 ACCOUNTING AND AUDIT

- 5.2.1 The *Construction Manager* shall keep full and detailed accounts and records necessary for the documentation of the *Cost of the Work*.
- 5.2.2 For 60 calendar days after the application for final payment or for such other period specified in the *Contract*, the *Owner* shall be afforded reasonable access to all of the *Construction Manager's* books, records, correspondence, instructions, drawings, receipt vouchers, *Subcontractor* and *Supplier* invoices, and memoranda relating to the *Cost of the Work*, and for this purpose the *Construction Manager* shall preserve all such records.

GC 5.3 PROGRESS PAYMENT FOR THE SERVICES

- 5.3.1 The *Owner* shall make payment for the *Construction Manager's Fee* for the *Services* as described in paragraph of 5.2 of Article A-5 of the Agreement – CONSTRUCTION MANAGER'S FEE and on account of the reimbursable expenses for the *Services* as described in Article A-6 of the Agreement – REIMBURSABLE EXPENSES FOR THE SERVICES no later than 20 calendar days after receipt of an application for payment for the *Services* submitted by the *Construction Manager*.
- 5.3.2 The application for payment for the reimbursable expenses for the *Services* shall include items of cost as defined in Schedule A2 to the Agreement – REIMBURSABLE EXPENSES APPLICABLE TO SCHEDULE A1 and other support documents required by the *Owner* in accordance with the *Contract Documents*.

GC 5.4 PROGRESS PAYMENT FOR THE WORK

- 5.4.1 Applications for payment on account as provided in Article A-9 of the Agreement – PAYMENT may be made monthly as the *Work* progresses.
- 5.4.2 Applications for payment shall be dated the last day of each payment period, which is the last day of the month or an alternative day of the month agreed in writing by the parties.
- 5.4.3 The amount applied for shall be the cost of the *Work* performed and *Products* delivered to the *Place of the Work* or other locations designated by the *Owner* in accordance with the provisions of Article A-7 of the Agreement – COST OF THE WORK, as of the last day of the month or an alternative day of the month agreed in writing by the parties plus the *Construction Manager's Fee* for the *Work* earned in accordance with the provisions of Article A-5 of the Agreement – CONSTRUCTION MANAGER'S FEE.
- 5.4.4 The application for payment for the *Work* shall include items of cost as defined in Article A-7 of the Agreement – COST OF THE WORK and other support documents required by the *Owner* as in accordance with the *Contract Documents*.
- 5.4.5 When submitting the second and succeeding applications for payment, the *Construction Manager* shall furnish receipted vouchers or other satisfactory evidence of payment for all items included in the preceding applications. If the *Owner* has reasonable grounds for believing that any amount included in preceding applications has not been paid the *Owner* may withhold payment in respect of such amount from the current application until satisfactory evidence of payment is given by the *Construction Manager*.
- 5.4.6 Applications for payment for *Products* delivered to the *Place of the Work* but not yet incorporated into the *Work* shall be supported by such evidence as the *Consultant* may reasonably require to establish the value and delivery of the *Products*.

- 5.4.7 After receipt by the *Consultant* of an application for payment for the *Work* submitted by the *Construction Manager* in accordance with paragraphs 5.4.1 to 5.4.6:
- .1 the *Consultant* will promptly inform the *Owner* of the date of receipt of the *Construction Manager's* application for payment;
 - .2 the *Consultant* will issue to the *Owner* and copy to the *Construction Manager*, no later than 10 calendar days after the receipt of the application for payment, a certificate for payment in the amount applied for, or in such other amount as the *Consultant* determines to be properly due. If the *Consultant* amends the application, the *Consultant* will promptly advise the *Construction Manager* in writing giving reasons for the amendment; and
 - .3 the *Owner* shall make payment to the *Construction Manager* on account as provided in Article A-9 of the Agreement – PAYMENT on or before 20 calendar days after the later of:
 - receipt by the *Consultant* of the application for payment, or
 - the last day of the monthly payment period for which the application for payment is made.

GC 5.5 SUBSTANTIAL PERFORMANCE OF THE WORK

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

GC 5.6 PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK

- 5.6.1 After the issuance of the certificate of *Substantial Performance of the Work*, the *Construction Manager* shall:
- .1 submit an application for payment of the holdback amount,
 - .2 submit CCDC 9A 'Statutory Declaration' to state that all accounts for labour, subcontracts, *Products*, *Construction Equipment*, and other indebtedness which may have been incurred by the *Construction Manager* in the *Substantial Performance of the Work* and for which the *Owner* might in any way be held responsible have been paid in full, except for amounts properly retained as a holdback or as an identified amount in dispute.
- 5.6.2 After the receipt of an application for payment from the *Construction Manager* and the statement as provided in paragraph 5.6.1, the *Consultant* will issue a certificate for payment of the holdback amount.
- 5.6.3 Where the holdback amount required by the applicable lien legislation has not been placed in a separate holdback account, the *Owner* shall, 10 calendar days prior to the expiry of the holdback period stipulated in the lien legislation applicable to the *Place of the Work*, place the holdback amount in a bank account in the joint names of the *Owner* and the *Construction Manager*.
- 5.6.4 In the common law jurisdictions, the holdback amount authorized by the certificate for payment of the holdback amount is due and payable on the first calendar day following the expiration of the holdback period stipulated in the lien legislation applicable to the *Place of the Work*. Where lien legislation does not exist or apply, the holdback amount shall be due and payable in accordance with other legislation, industry practice or provisions which may be agreed to between the parties. The *Owner* may retain out of the holdback amount any sums required by law to satisfy any liens against the *Work* or, if permitted by the lien legislation applicable to the *Place of the Work*, other third party monetary claims against the *Construction Manager* which are enforceable against the *Owner*.
- 5.6.5 In the Province of Quebec, the holdback amount authorized by the certificate for payment of the holdback amount is due and payable 30 calendar days after the issuance of the certificate. The *Owner* may retain out of the holdback amount any sums required to satisfy any legal hypothecs that have been taken, or could be taken, against the *Work* or other third party monetary claims against the *Construction Manager* which are enforceable against the *Owner*.

GC 5.7 PROGRESSIVE RELEASE OF HOLDBACK FOR THE WORK

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

GC 5.8 FINAL PAYMENT FOR THE WORK

- 5.8.1 When the *Construction Manager* considers that the *Work* is completed, the *Construction Manager* shall submit an application for final payment.
- 5.8.2 The *Consultant* will, no later than 10 calendar days after the receipt of an application from the *Construction Manager* for final payment, review the *Work* to verify the validity of the application and advise the *Construction Manager* in writing that the application is valid or give reasons why it is not valid.
- 5.8.3 When the *Consultant* finds the *Construction Manager's* application for final payment valid, the *Consultant* will promptly issue a final certificate for payment.
- 5.8.4 Subject to the provision of paragraph 10.4.1 of GC 10.4 – WORKERS' COMPENSATION and any lien legislation applicable to the *Place of the Work*, the *Owner* shall, no later than 5 calendar days after the issuance of a final certificate for payment, pay the *Construction Manager* as provided in Article A-9 of the Agreement – PAYMENT.

GC 5.9 WITHHOLDING OF PAYMENT FOR THE WORK

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

GC 5.10 NON-CONFORMING WORK

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

PART 6 CHANGES**GC 6.1 OWNER'S RIGHT TO MAKE CHANGES**

- 6.1.1 The *Owner*, through the *Consultant*, without invalidating the *Contract*, may make:
- .1 changes in the *Work* consisting of additions, deletions, or other revisions to the *Work* by *Change Order* or *Change Directive*, and
 - .2 changes to the *Contract Time* for the *Work*, or any part thereof, by *Change Order*.

- 6.1.2 The *Construction Manager* shall not perform a change in the *Work* without a *Change Order* or a *Change Directive*.
- 6.1.3 The *Owner* and the *Construction Manager*, without invalidating the *Contract*, may agree to make changes to the *Services*.

GC 6.2 CHANGE ORDER

- 6.2.1 When a change in the *Work* is proposed or required, the *Consultant* shall provide the *Construction Manager* with a written description of the proposed change in the *Work*. The *Construction Manager* shall promptly present, in a form acceptable to the *Consultant*, a method of adjustment or an amount of adjustment for the *Construction Manager's Fee*, a method of adjustment or an amount of adjustment for the *Guaranteed Maximum Price*, and the adjustment in the *Contract Time*, as applicable, for the proposed change in the *Work*.
- 6.2.2 When the *Owner* and *Construction Manager* agree to the adjustments in the *Construction Manager's Fee*, the *Guaranteed Maximum Price* and the *Contract Time*, or to the method to be used to determine the adjustments, such agreement shall be effective immediately and shall be recorded in a *Change Order*. The value of the work performed as the result of a *Change Order* shall be included in applications for progress payment.
- 6.2.3 When the *Owner* and *Construction Manager* agree to exercise the stipulated price option at any time during the term of the *Contract*, such agreement shall be recorded in a *Change Order*.

GC 6.3 CHANGE DIRECTIVE

- 6.3.1 If the *Owner* requires the *Construction Manager* to proceed with a change in the *Work* prior to the *Owner* and the *Construction Manager* agreeing upon any corresponding adjustment in the *Construction Manager's Fee*, the *Guaranteed Maximum Price* and the *Contract Time*, the *Owner*, through the *Consultant*, shall issue a *Change Directive*.
- 6.3.2 A *Change Directive* shall only be used to direct a change in the *Work* which is within the general scope of the *Contract Documents*.
- 6.3.3 A *Change Directive* shall not be used to direct a change in the *Contract Time* only.
- 6.3.4 Upon receipt of a *Change Directive*, the *Construction Manager* shall proceed promptly with the change in the *Work*.
- 6.3.5 If no method of adjustment is agreed:
 - .1 the adjustment in the *Construction Manager's Fee* for a change carried out by way of a *Change Directive* shall be determined on the basis of the changes in costs of the *Construction Manager*; and
 - .2 the *Guaranteed Maximum Price* shall be adjusted by the changes in the *Cost of Work* and in the *Construction Manager's Fee* for the *Work* resulting from a *Change Directive*.
- 6.3.6 Pending determination of the adjustment to the *Construction Manager's Fee* required as a result of a *Change Directive*, the *Cost of the Work* incurred and the undisputed amount of the *Construction Manager's Fee* as the result of a *Change Directive* is eligible to be included in progress payments, notwithstanding the limit imposed by the *Guaranteed Maximum Price*.
- 6.3.7 If the *Owner* and the *Construction Manager* do not agree on the proposed adjustment in the *Construction Manager's Fee*, the *Guaranteed Maximum Price*, the *Contract Time*, or in the method of determining them, the adjustment shall be referred to the *Consultant* for a finding.
- 6.3.8 When the *Owner* and the *Construction Manager* reach agreement on the adjustment to the *Construction Manager's Fee*, the *Guaranteed Maximum Price* and the *Contract Time*, this agreement shall be recorded in a *Change Order*.

GC 6.4 CONCEALED OR UNKNOWN CONDITIONS

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

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

GC 6.5 DELAYS

- 6.5.1 If the *Construction Manager* is delayed in the performance of the *Work* by an action or omission of the *Owner*, *Consultant* or anyone employed or engaged by them directly or indirectly, contrary to the provisions of the *Contract Documents*, then the *Contract Time* shall be extended for such reasonable time as the *Consultant* may recommend in consultation with the *Construction Manager*. The *Construction Manager's Fee* and the *Guaranteed Maximum Price* shall be adjusted by a reasonable amount for costs incurred by the *Construction Manager* as the result of such delay.
- 6.5.2 If the *Construction Manager* is delayed in the performance of the *Work* by a stop work order issued by a court or other public authority and providing that such order was not issued as the result of an act or fault of the *Construction Manager* or any person employed or engaged by the *Construction Manager* directly or indirectly, then the *Contract Time* shall be extended for such reasonable time as the *Consultant* may recommend in consultation with the *Construction Manager*. The *Construction Manager's Fee* and the *Guaranteed Maximum Price* shall be adjusted by a reasonable amount for costs incurred by the *Construction Manager* as the result of such delay.
- 6.5.3 If the *Construction Manager* is delayed in the performance of the *Work* by:
- .1 labour disputes, strikes, lock-outs (including lock-outs decreed or recommended for its members by a recognized contractors' association, of which the *Construction Manager* is a member or to which the *Construction Manager* is otherwise bound),
 - .2 fire, unusual delay by common carriers or unavoidable casualties,
 - .3 abnormally adverse weather conditions, or
 - .4 any cause beyond the *Construction Manager's* control other than one resulting from a default or breach of *Contract* by the *Construction Manager*,
- then the *Contract Time* shall be extended for such reasonable time as the *Consultant* may recommend in consultation with the *Construction Manager*. The extension of time shall not be less than the time lost as the result of the event causing the delay, unless the *Construction Manager* agrees to a shorter extension. The *Construction Manager's Fee* and the *Guaranteed Maximum Price* shall be adjusted by a reasonable amount for overhead costs incurred by the *Construction Manager* as the result of such delay.
- 6.5.4 No extension shall be made for delay unless *Notice in Writing* of the cause of the delay is given to the *Consultant* not later than 10 *Working Days* after the commencement of the delay. In the case of a continuing cause of delay only one *Notice in Writing* shall be necessary.
- 6.5.5 If no schedule is made under paragraph 2.3.13 of GC 2.3 – CONSULTANT'S RESPONSIBILITIES or paragraph 3.5.1 of GC 3.5 – CONSTRUCTION SCHEDULE, then no request for extension shall be made because of failure of the *Consultant* to furnish instructions until 10 *Working Days* after demand for such instructions has been made.

GC 6.6 CLAIMS FOR A CHANGE IN CONSTRUCTION MANAGER'S FEE FOR THE SERVICES, THE PRICE OF THE WORK OR THE GUARANTEED MAXIMUM PRICE

- 6.6.1 If the *Construction Manager* intends to make a claim for an increase to the *Construction Manager's Fee* for the *Services*, the *Price of the Work* or the *Guaranteed Maximum Price*, or if the *Owner* intends to make a claim against the *Construction Manager* for a credit to the *Construction Manager's Fee* for the *Services*, the *Price of the Work* or the *Guaranteed Maximum Price*, the party that intends to make the claim shall give timely *Notice in Writing* of intent to claim to the other party and, if the claim relates to the *Price of the Work* or the *Guaranteed Maximum Price*, with a copy to the *Consultant*.

- 6.6.2 Upon commencement of the event or series of events giving rise to a claim, the party intending to make the claim shall:
- .1 take all reasonable measures to mitigate any loss or expense which may be incurred as a result of such event or series of events, and
 - .2 keep such records as may be necessary to support the claim.
- 6.6.3 The party making the claim shall submit within a reasonable time to the other party a detailed account of the amount claimed and the grounds upon which the claim is based.
- 6.6.4 Where the event or series of events giving rise to the claim has a continuing effect, the detailed account submitted under paragraph 6.6.3 shall be considered to be an interim account and the party making the claim shall, at such intervals as the party receiving the claim may reasonably require, submit further interim accounts giving the accumulated amount of the claim and any further grounds upon which it is based. The party making the claim shall submit a final account after the end of the effects resulting from the event or series of events.
- 6.6.5 If the claim is not acceptable to the other party, it shall be settled in accordance with Part 8 of the General Conditions – DISPUTE RESOLUTION.

PART 7 DEFAULT NOTICE

GC 7.1 OWNER'S RIGHT TO PERFORM THE WORK OR TERMINATE THE CONTRACT

- 7.1.1 If the *Construction Manager* is adjudged bankrupt, or makes a general assignment for the benefit of creditors because of the *Construction Manager's* insolvency, or if a receiver is appointed because of the *Construction Manager's* insolvency, the *Owner* may, without prejudice to any other right or remedy the *Owner* may have, terminate the *Construction Manager's* right to continue with the *Work* by giving the *Construction Manager* or receiver or trustee in bankruptcy *Notice in Writing* to that effect.
- 7.1.2 If the *Construction Manager* neglects to prosecute the *Work* properly or otherwise fails to comply with the requirements of the *Contract Documents* to a substantial degree, and if the *Consultant* has given a written statement to the *Owner* and *Construction Manager* that sufficient cause exists to justify such action, the *Owner* may, without prejudice to any other right or remedy the *Owner* may have, give the *Construction Manager Notice in Writing* that the *Construction Manager* is in default of the *Construction Manager's* contractual obligations and instruct the *Construction Manager* to correct the default in the 5 *Working Days* immediately following the receipt of such *Notice in Writing*.
- 7.1.3 If the default cannot be corrected in the 5 *Working Days* specified or in such other time period as may be subsequently agreed in writing by the parties, the *Construction Manager* shall be in compliance with the *Owner's* instructions if the *Construction Manager*:
- .1 commences the correction of the default within the specified time, and
 - .2 provides the *Owner* with an acceptable schedule for such correction, and
 - .3 corrects the default in accordance with the *Contract* terms and with such schedule.
- 7.1.4 If the *Construction Manager* fails to correct the default in the time specified or in such other time period as may be subsequently agreed in writing by the parties, without prejudice to any other right or remedy the *Owner* may have, the *Owner* may:
- .1 correct such default and deduct the cost thereof from any payment then or thereafter due the *Construction Manager* provided the *Consultant* has certified such cost to the *Owner* and the *Construction Manager*, or
 - .2 terminate the *Construction Manager's* right to continue with the *Work* in whole or in part or terminate the *Contract*.
- 7.1.5 If the *Owner* terminates the *Construction Manager's* right to continue with the *Work* as provided in paragraphs 7.1.1 and 7.1.4, the *Owner* shall:
- .1 be entitled to take possession of the *Work* and *Products* at the *Place of the Work*; subject to the rights of third parties, utilize the *Construction Equipment* at the *Place of the Work*; finish the *Work* by whatever method the *Owner* may consider expedient, but without undue delay or expense, and
 - .2 pay the *Construction Manager* upon the *Consultant's* certificate and in accordance with Part 5 of the General Conditions – PAYMENT for the costs properly incurred by the *Construction Manager* to that time plus the proportionate amount of the fee as provided in Article A-5 of the Agreement – CONSTRUCTION MANAGER'S FEE, and
 - .3 pay to the *Construction Manager* fair compensation, either by purchase or rental, at the option of the *Owner*, for any *Construction Equipment* retained for use in the *Work*, and
 - .4 assume and become liable for all obligations, commitments and unliquidated claims as certified by the *Consultant* that the *Construction Manager* may have heretofore, in good faith, undertaken or incurred in connection with the *Work*, other than such as are properly payable by the *Construction Manager* because of neglect or default.

- 7.1.6 If the *Owner* terminates the *Construction Manager's* right to continue with the *Work* as provided in paragraphs 7.1.1 and 7.1.4, the *Construction Manager* shall, as a condition of receiving the payments, execute and deliver such papers and take such action, including the legal assignment in the *Construction Manager's* contractual rights, as the *Owner* may require for the purpose of fully vesting in the *Construction Manager* the rights and benefits of the *Construction Manager* under the obligations or commitments to be assumed by the *Owner*.
- 7.1.7 The *Construction Manager's* obligation under the *Contract* as to quality, correction and warranty of the work performed by the *Construction Manager* up to the time of termination shall continue in force after such termination of the *Contract*.

GC 7.2 CONSTRUCTION MANAGER'S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT

- 7.2.1 If the *Owner* is adjudged bankrupt, or makes a general assignment for the benefit of creditors because of the *Owner's* insolvency, or if a receiver is appointed because of the *Owner's* insolvency, the *Construction Manager* may, without prejudice to any other right or remedy the *Construction Manager* may have, terminate the *Contract* by giving the *Owner* or receiver or trustee in bankruptcy *Notice in Writing* to that effect.
- 7.2.2 If the *Work* is suspended or otherwise delayed for a period of 20 *Working Days* or more under an order of a court or other public authority and providing that such order was not issued as the result of an act or fault of the *Construction Manager* or of anyone directly or indirectly employed or engaged by the *Construction Manager*, the *Construction Manager* may, without prejudice to any other right or remedy the *Construction Manager* may have, terminate the *Contract* by giving the *Owner* *Notice in Writing* to that effect.
- 7.2.3 The *Construction Manager* may give *Notice in Writing* to the *Owner*, with a copy to the *Consultant*, that the *Owner* is in default of the *Owner's* contractual obligations if:
- .1 the *Owner* fails to furnish, when so requested by the *Construction Manager*, reasonable evidence that financial arrangements have been made to fulfill the *Owner's* obligations under the *Contract*, or
 - .2 the *Consultant* fails to issue a certificate as provided in GC 5.4 – PROGRESS PAYMENT FOR THE WORK, or
 - .3 the *Owner* fails to pay the *Construction Manager*, or
 - .4 the *Owner* violates the requirements of the *Contract* to a substantial degree and the *Consultant*, except for GC 5.1 – FINANCING INFORMATION REQUIRED OF THE OWNER, confirms by written statement to the *Construction Manager* that sufficient cause exists.
- 7.2.4 The *Construction Manager's* *Notice in Writing* to the *Owner* provided under paragraph 7.2.3 shall advise that if the default is not corrected within 5 *Working Days* following receipt of the *Notice in Writing*, the *Construction Manager* may, without prejudice to any other right or remedy the *Construction Manager* may have, suspend the *Work* or terminate the *Contract*.
- 7.2.5 If the *Construction Manager* terminates the *Contract* under the conditions set out above, the *Construction Manager* shall be entitled to be paid for all work performed including reasonable profit, for loss sustained upon *Products* and *Construction Equipment*, and such other damages as the *Construction Manager* may have sustained as a result of the termination of the *Contract*.

PART 8 DISPUTE RESOLUTION

GC 8.1 AUTHORITY OF THE CONSULTANT

- 8.1.1 Differences between the parties to the *Contract* as to the interpretation, application or administration of the *Contract* or any failure to agree where agreement between the parties is called for, herein collectively called disputes, which are not resolved in the first instance by findings of the *Consultant* as provided in GC 2.3 – CONSULTANT'S RESPONSIBILITIES, shall be settled in accordance with the requirements of Part 8 of the General Conditions – DISPUTE RESOLUTION.
- 8.1.2 If a dispute arises under the *Contract* in respect of a matter in which the *Consultant* has no authority under the *Contract* to make a finding, the procedures set out in paragraph 8.1.3 and paragraphs 8.2.3 to 8.2.8 of GC 8.2 – NEGOTIATION, MEDIATION AND ARBITRATION, and in GC 8.3 – RETENTION OF RIGHTS apply to that dispute with the necessary changes to detail as may be required.

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

GC 8.2 NEGOTIATION, MEDIATION AND ARBITRATION

- 8.2.1 In accordance with the Rules for Mediation of Construction Disputes as provided in CCDC 40 in effect at the time of bid closing, the parties shall appoint a *Project Mediator*
- .1 within 20 *Working Days* after the *Contract* was awarded, or
 - .2 if the parties neglected to make an appointment within the 20 *Working Days*, within 10 *Working Days* after either party by *Notice in Writing* requests that the *Project Mediator* be appointed.
- 8.2.2 A party shall be conclusively deemed to have accepted a finding of the *Consultant* under GC 2.3 – CONSULTANT'S RESPONSIBILITIES and to have expressly waived and released the other party from any claims in respect of the particular matter dealt with in that finding unless, within 15 *Working Days* after receipt of that finding, the party sends a *Notice in Writing* of dispute to the other party and to the *Consultant*, which contains the particulars of the matter in dispute and the relevant provisions of the *Contract Documents*. The responding party shall send a *Notice in Writing* of reply to the dispute within 10 *Working Days* after receipt of such *Notice in Writing* setting out particulars of this response and any relevant provisions of the *Contract Documents*.
- 8.2.3 The parties shall make all reasonable efforts to resolve their dispute by amicable negotiations and agree to provide, without prejudice, frank, candid, and timely disclosure of relevant facts, information and documents to facilitate these negotiations.
- 8.2.4 After a period of 10 *Working Days* following receipt of a responding party's *Notice in Writing* of reply under paragraph 8.2.2, the parties shall request the *Project Mediator* to assist the parties to reach agreement on any unresolved dispute. The mediated negotiations shall be conducted in accordance with the Rules for Mediation of Construction Disputes as provided in CCDC 40 in effect at the time of bid closing.
- 8.2.5 If the dispute has not been resolved within 10 *Working Days* after the *Project Mediator* was requested under paragraph 8.2.4 or within such further period agreed by the parties, the *Project Mediator* shall terminate the mediated negotiations by giving *Notice in Writing* to the *Owner*, the *Construction Manager* and the *Consultant*.
- 8.2.6 By giving a *Notice in Writing* to the other party and the *Consultant*, not later than 10 *Working Days* after the date of termination of the mediated negotiations under paragraph 8.2.5, either party may refer the dispute to be finally resolved by arbitration under the Rules for Arbitration of Construction Disputes as provided in CCDC 40 in effect at the time of bid closing. The arbitration shall be conducted in the jurisdiction of the *Place of the Work*.
- 8.2.7 On expiration of the 10 *Working Days*, the arbitration agreement under paragraph 8.2.6 is not binding on the parties and, if a *Notice in Writing* is not given under paragraph 8.2.6 within the required time, the parties may refer the unresolved dispute to the courts or to any other form of dispute resolution, including arbitration, which they have agreed to use.
- 8.2.8 If neither party, by *Notice in Writing* given within 10 *Working Days* of the date of *Notice in Writing* requesting arbitration in paragraph 8.2.6, requires that a dispute be arbitrated immediately, all disputes referred to arbitration as provided in paragraph 8.2.6 shall be
- .1 held in abeyance until
 - (1) Substantial Performance of the *Work*,
 - (2) the *Contract* has been terminated, or
 - (3) the *Construction Manager* has abandoned the *Work*,
 whichever is earlier, and
 - .2 consolidated into a single arbitration under the rules governing the arbitration under paragraph 8.2.6.

GC 8.3 RETENTION OF RIGHTS

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

PART 9 PROTECTION OF PERSONS AND PROPERTY

GC 9.1 PROTECTION OF WORK AND PROPERTY

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

GC 9.2 TOXIC AND HAZARDOUS SUBSTANCES

- 9.2.1 For the purposes of applicable legislation, the *Owner* shall be deemed to have control and management of the *Place of the Work* with respect to existing conditions.
- 9.2.2 Prior to the *Construction Manager* commencing the *Work*, the *Owner* shall,
- .1 take all reasonable steps to determine whether any toxic or hazardous substances are present at the *Place of the Work*, and
 - .2 provide the *Consultant* and the *Construction Manager* with a written list of any such substances that are known to exist and their locations.
- 9.2.3 The *Owner* shall take all reasonable steps to ensure that no person's exposure to any toxic or hazardous substance exceeds the time weighted levels prescribed by applicable legislation at the *Place of the Work* and that no property is damaged or destroyed as a result of exposure to, or the presence of, toxic or hazardous substances which were at the *Place of the Work* prior to the *Construction Manager* commencing the *Work*.
- 9.2.4 Unless the *Contract* expressly provides otherwise, the *Owner* shall be responsible for taking all necessary steps, in accordance with applicable legislation in force at the *Place of the Work*, to dispose of, store or otherwise render harmless toxic or hazardous substances which were present at the *Place of the Work* prior to the *Construction Manager* commencing the *Work*.

- 9.2.5 If the *Construction Manager*
- .1 encounters toxic or hazardous substances at the *Place of the Work*, or
 - .2 has reasonable grounds to believe that toxic or hazardous substances are present at the *Place of the Work*, which were not brought to the *Place of the Work* by the *Construction Manager* or anyone for whom the *Construction Manager* is responsible and which were not disclosed by the *Owner* or which were disclosed but have not been dealt with as required under paragraph 9.2.4, the *Construction Manager* shall
 - .3 take all reasonable steps, including stopping the *Work*, to ensure that no person's exposure to any toxic or hazardous substances exceeds any applicable time weighted levels prescribed by applicable legislation at the *Place of the Work*, and
 - .4 immediately report the circumstances to the *Consultant* and the *Owner* in writing.
- 9.2.6 If the *Owner* and *Construction Manager* do not agree on the existence or significance of toxic or hazardous substances, or whether the toxic or hazardous substances were brought onto the *Place of the Work* by the *Construction Manager* or anyone for whom the *Construction Manager* is responsible, the *Owner* shall retain and pay for an independent qualified expert to investigate and determine such matters. The expert's report shall be delivered to the *Owner* and the *Construction Manager*.
- 9.2.7 If the *Owner* and *Construction Manager* agree or if the expert referred to in paragraph 9.2.6 determines that the toxic or hazardous substances were not brought onto the place of the *Work* by the *Construction Manager* or anyone for whom the *Construction Manager* is responsible, the *Owner* shall promptly at the *Owner's* own expense:
- .1 take all steps as required under paragraph 9.2.4;
 - .2 adjust the *Construction Manager's Fee* and the *Guaranteed Maximum Price* by a reasonable amount for overhead costs incurred by the *Construction Manager* in taking the steps pursuant to paragraph 9.2.5;
 - .3 extend the *Contract Time* for such reasonable time as the *Consultant* may recommend in consultation with the *Construction Manager* and the expert referred to in paragraph 9.2.6 and adjust the *Construction Manager's Fee* and the *Guaranteed Maximum Price* by a reasonable amount for costs incurred by the *Construction Manager* as a result of the delay; and
 - .4 indemnify the *Construction Manager* as required by GC 12.1 – INDEMNIFICATION.
- 9.2.8 If the *Owner* and *Construction Manager* agree or if the expert referred to in paragraph 9.2.6 determines that the toxic or hazardous substances were brought onto the *Place of the Work* by the *Construction Manager* or anyone for whom the *Construction Manager* is responsible, the *Construction Manager* shall promptly at the *Construction Manager's* own expense:
- .1 take all necessary steps, in accordance with applicable legislation in force at the *Place of the Work*, to safely remove and dispose the toxic or hazardous substance;
 - .2 make good any damage to the *Work*, the *Owner's* property or property adjacent to the *Place of the Work* as provided in paragraph 9.1.3 of GC 9.1 – PROTECTION OF WORK AND PROPERTY;
 - .3 reimburse the *Owner* for reasonable costs incurred under paragraph 9.2.6; and
 - .4 indemnify the *Owner* as required by GC 12.1 – INDEMNIFICATION.
- 9.2.9 If either party does not accept the expert's findings under paragraph 9.2.6, the disagreement shall be settled in accordance with Part 8 of the General Conditions – DISPUTE RESOLUTION. If such disagreement is not resolved promptly, the parties shall act immediately in accordance with the expert's determination and take the steps required by paragraph 9.2.7 or 9.2.8 it being understood that by so doing, neither party will jeopardize any claim that party may have to be reimbursed as provided by GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES.

GC 9.3 ARTIFACTS AND FOSSILS

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

GC 9.4 CONSTRUCTION SAFETY

- 9.4.1 Subject to paragraph 3.2.2.2 of GC 3.2 – CONSTRUCTION BY OWNER OR OTHER CONTRACTORS, the *Construction Manager* shall be responsible for
- .1 construction health and safety at the *Place of the Work* in compliance with the rules, regulations and practices required by the applicable construction health and safety legislation, and
 - .2 establishing, initiating, maintaining and supervising all health and safety precautions and programs in connection with the performance of the *Work*.

GC 9.5 MOULD

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

PART 10 GOVERNING REGULATIONS

GC 10.1 TAXES AND DUTIES

- 10.1.1 The *Construction Manager* shall pay all customs, taxes and duties in effect during the performance of the *Work*. The amount incurred shall be included in the *Cost of the Work* as in accordance with paragraph 7.1.14 of the Agreement A-7 – COST OF THE WORK.

GC 10.2 LAWS, NOTICES, PERMITS, AND FEES

- 10.2.1 The laws of the *Place of the Work* shall govern the *Work*.
- 10.2.2 The *Owner* shall obtain and pay for development approvals, building permit, permanent easements, rights of servitude, and all other necessary approvals and permits, except for the permits and fees referred to in paragraph 10.2.3 or for which the *Contract Documents* specify as the responsibility of the *Construction Manager*.
- 10.2.3 The *Construction Manager* shall be responsible for the procurement of permits, licences, inspections, and certificates, which are necessary for the performance of the *Work* and customarily obtained by contractors in the jurisdiction of the *Place of the Work* after the issuance of the building permit. The *Cost of the Work* includes the cost of these permits, licences, inspections, and certificates, and their procurement.
- 10.2.4 The *Construction Manager* shall give the required notices and comply with the laws, ordinances, rules, regulations, or codes which are or become in force during the performance of the *Work* and which relate to the *Work*, to the preservation of the public health, and to construction safety.
- 10.2.5 The *Construction Manager* shall not be responsible for verifying that the *Contract Documents* are in compliance with the applicable laws, ordinances, rules, regulations, or codes relating to the *Work*. If the *Contract Documents* are at variance therewith, or if, subsequent to the time of bid closing, changes are made to the applicable laws, ordinances, rules, regulations, or codes which require modification to the *Contract Documents*, the *Construction Manager* shall advise the *Consultant* in writing requesting direction immediately upon such variance or change becoming known. The *Consultant* will make the changes required to the *Contract Documents* as provided in GC 6.1 – OWNER'S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER and GC 6.3 – CHANGE DIRECTIVE.
- 10.2.6 If the *Construction Manager* fails to advise the *Consultant* in writing, fails to obtain direction as required in paragraph 10.2.5, and performs work knowing it to be contrary to any laws, ordinances, rules, regulations or codes; the *Construction Manager* shall be responsible for and shall correct the violations thereof; and shall bear the costs, expenses and damages attributable to the failure to comply with the provisions of such laws, ordinances, rules, regulations, or codes.

GC 10.3 PATENT FEES

- 10.3.1 The *Construction Manager* shall pay the royalties and patent licence fees required for the performance of the *Contract*. The amount incurred shall be included in the *Cost of the Work* in accordance with paragraph 7.1.12 of the Agreement A-7 – COST OF THE WORK. The *Construction Manager* shall hold the *Owner* harmless from and against claims, demands, losses, costs, damages, actions, suits or proceedings arising out of the *Construction Manager's* performance of the *Contract* which are attributable to an infringement or an alleged infringement of a patent of invention by the *Construction Manager* or anyone for whose acts the *Construction Manager* may be liable.
- 10.3.2 The *Owner* shall hold the *Construction Manager* harmless against claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of the *Construction Manager's* performance of the *Contract* which are attributable to an infringement or an alleged infringement of a patent of invention in executing anything for the purpose of the *Contract*, or any model, plan or design which was supplied to the *Construction Manager* as part of the *Contract*.

GC 10.4 WORKERS' COMPENSATION

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

PART 11 INSURANCE — CONTRACT SECURITY

GC 11.1 INSURANCE

- 11.1.1 Without restricting the generality of GC 12.1 – INDEMNIFICATION, the *Construction Manager* shall provide, maintain and pay for the following insurance coverages, the minimum requirements of which are specified in CCDC 41 – INSURANCE REQUIREMENTS in effect at the time of bid closing except as hereinafter provided:
- .1 General liability insurance in the name of the *Construction Manager* and include, or in the case of a single, blanket policy, be endorsed to name, the *Owner* and the *Consultant* as insureds but only with respect to liability, other than legal liability arising out of their sole negligence, arising out of the operations of the *Construction Manager* with regard to the *Work*. General liability insurance shall be maintained from the date of commencement of the *Services* until one year from the date of *Substantial Performance of the Work*. Liability coverage shall be provided for completed operations hazards from the date of *Substantial Performance of the Work*, as set out in the certificate of *Substantial Performance of the Work*, on an ongoing basis for a period of 6 years following *Substantial Performance of the Work*.
 - .2 Automobile Liability Insurance from the date of commencement of the *Services* until one year after the date of *Substantial Performance of the Work*.
 - .3 Aircraft or Watercraft Liability Insurance when owned or non-owned aircraft or watercraft are used directly or indirectly in the performance of the *Work*.
 - .4 "Broad form" property insurance in the joint names of the *Construction Manager*, the *Owner* and the *Consultant*. The policy shall include as insureds all *Subcontractors*. The "broad form" property insurance shall be provided from the date of commencement of the *Work* until the earliest of:
 - (1) 10 calendar days after the date of *Substantial Performance of the Work*;
 - (2) on the commencement of use or occupancy of any part or section of the *Work* unless such use or occupancy is for construction purposes, habitational, office, banking, convenience store under 465 square metres in area, or parking purposes, or for the installation, testing and commissioning of equipment forming part of the *Work*;
 - (3) when left unattended for more than 30 consecutive calendar days or when construction activity has ceased for more than 30 consecutive calendar days.
 - .5 Boiler and machinery insurance in the joint names of the *Construction Manager*, the *Owner* and the *Consultant*. The policy shall include as insureds all *Subcontractors*. The coverage shall be maintained continuously from commencement of use or operation of the boiler and machinery objects insured by the policy and until 10 calendar days after the date of *Substantial Performance of the Work*.
 - .6 The "Broad form" property and boiler and machinery policies shall provide that, in the case of a loss or damage, payment shall be made to the *Owner* and the *Construction Manager* as their respective interests may appear. In the event of loss or damage:
 - (1) the *Construction Manager* shall act on behalf of the *Owner* for the purpose of adjusting the amount of such loss or damage payment with the insurers. When the extent of the loss or damage is determined, the *Construction Manager* shall proceed to restore the *Work*. Loss or damage shall not affect the rights and obligations of either party under the *Contract* except that the *Construction Manager* shall be entitled to such reasonable extension of *Contract Time* relative to the extent of the loss or damage as the *Consultant* may recommend in consultation with the *Construction Manager*;
 - (2) the *Construction Manager* shall be entitled to receive from the *Owner*, in addition to the amount due under the *Contract*, the amount which the *Owner's* interest in restoration of the *Work* has been appraised, such amount to be paid as the restoration of the *Work* proceeds in accordance with the progress payment provisions. In addition the *Construction Manager* shall be entitled to receive from the payments made by the insurer the amount of the *Construction Manager's* interest in the restoration of the *Work*; and
 - (3) to the *Work* arising from the work of the *Owner*, the *Owner's* own forces or another contractor, the *Owner* shall, in accordance with the *Owner's* obligations under the provisions relating to construction by *Owner* or other contractors, pay the *Construction Manager* the cost of restoring the *Work* as the restoration of the *Work* proceeds and as in accordance with the progress payment provisions.
 - .7 Contractors' Equipment Insurance from the date of commencement of the *Work* until one year after the date of *Substantial Performance of the Work*.
- 11.1.2 Prior to commencement of the *Services* and upon the placement, renewal, amendment or extension of all or any part of the insurance, the *Construction Manager* shall promptly provide the *Owner* with confirmation of coverage and, if required, a certified true copy of the policies certified by an authorized representative of the insurer together with copies of any amending endorsements applicable to this *Contract*.

- 11.1.3 The parties shall pay their share of the deductible amounts in direct proportion to their responsibility in regards to any loss for which the above policies are required to pay, except where such amounts may be excluded by the terms of the *Contract*.
- 11.1.4 If the *Construction Manager* fails to provide or maintain insurance as required by the *Contract Documents*, then the *Owner* shall have the right to provide and maintain such insurance and give evidence to the *Construction Manager* and the *Consultant*. The *Construction Manager* shall pay the cost thereof to the *Owner* on demand or the *Owner* may deduct the cost from the amount which is due or may become due to the *Construction Manager*.
- 11.1.5 All required insurance policies shall be with insurers licensed to underwrite insurance in the jurisdiction of the *Place of the Work*.
- 11.1.6 If a revised version of CCDC 41 – INSURANCE REQUIREMENTS is published, which specifies reduced insurance requirements, the parties shall address such reduction, prior to the *Construction Manager's* insurance policy becoming due for renewal, and record any agreement in a *Change Order*.
- 11.1.7 If a revised version of CCDC 41 – INSURANCE REQUIREMENTS is published, which specifies increased insurance requirements, the *Owner* may request the increased coverage from the *Construction Manager* by way of a *Change Order*.
- 11.1.8 A *Change Directive* shall not be used to direct a change in the insurance requirements in response to the revision of CCDC 41 – INSURANCE REQUIREMENTS.

GC 11.2 CONTRACT SECURITY

- 11.2.1 The *Construction Manager* shall, prior to commencement of the *Work* or within the specified time, provide to the *Owner* any *Contract* security required by this *Contract* as in accordance with paragraph 7.1.13 of the Agreement A-7 – COST OF THE WORK.
- 11.2.2 If this *Contract* requires surety bonds to be provided, such bonds shall be issued by a duly licensed surety company authorized to transact a business of suretyship in the province or territory of the *Place of the Work* and shall be maintained in good standing until the fulfilment of this *Contract*. The form of such bonds shall be in accordance with the latest edition of the CCDC approved bond forms.

PART 12 INDEMNIFICATION, WAIVER OF CLAIMS AND WARRANTY

GC 12.1 INDEMNIFICATION

- 12.1.1 Without restricting the parties' obligation to indemnify as described in paragraphs 12.1.4 and 12.1.5, the *Owner* and the *Construction Manager* shall each indemnify and hold harmless the other from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings whether in respect to losses suffered by them or in respect to claims by third parties that arise out of, or are attributable in any respect to, their involvement as parties to this *Contract*, provided such claims are:
 - .1 caused by:
 - (1) the negligent acts or omissions of the party from whom indemnification is sought or anyone for whose acts or omissions that party is liable, or
 - (2) a failure of the party to the *Contract* from whom indemnification is sought to fulfill its terms or conditions; and
 - .2 made by *Notice in Writing* within a period of 6 years from the date of *Substantial Performance of the Work* as set out in the certificate of *Substantial Performance of the Work* issued pursuant to paragraph 5.5.2.2 of GC 5.5 – SUBSTANTIAL PERFORMANCE OF THE WORK or within such shorter period as may be prescribed by any limitation statute of the province or territory of the *Place of the Work*.

The parties expressly waive the right to indemnity for claims other than those provided for in this *Contract*.
- 12.1.2 The obligation of either party to indemnify as set forth in paragraph 12.1.1 shall be limited as follows:
 - .1 In respect to losses suffered by the *Owner* and the *Construction Manager* for which insurance is to be provided by either party pursuant to GC 11.1 – INSURANCE, the insurance limit in effect at the time of bid closing.
 - .2 In respect to losses suffered by the *Owner* and the *Construction Manager* for which insurance is not required to be provided by either party in accordance with GC 11.1 – INSURANCE, the greater of the *Price of the Work* or \$2,000,000, but in no event shall the sum be greater than \$20,000,000.

- .3 In respect to claims by third parties for direct loss resulting from bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, the obligation to indemnify is without limit. In respect to all other claims for indemnity as a result of claims advanced by third parties, the limits of indemnity set forth in paragraphs 12.1.2.1 and 12.1.2.2 shall apply.
- 12.1.3 The obligation of either party to indemnify the other as set forth in paragraphs 12.1.1 and 12.1.2 shall be inclusive of interest and all legal costs.
- 12.1.4 The *Owner* and the *Construction Manager* shall indemnify and hold harmless the other from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of their obligations described in GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES.
- 12.1.5 The *Owner* shall indemnify and hold harmless the *Construction Manager* from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings:
- .1 as described in GC 10.3 – PATENT FEES, and
 - .2 arising out of the *Construction Manager's* performance of the *Contract* which are attributable to a lack of or defect in title or an alleged lack of or defect in title to the *Place of the Work*.
- 12.1.6 In respect to any claim for indemnity or to be held harmless by the *Owner* or the *Construction Manager*:
- .1 *Notice in Writing* of such claim shall be given within a reasonable time after the facts upon which such claim is based became known;
 - .2 should either party be required as a result of its obligation to indemnify the other pay or satisfy a final order, judgment or award made against the party entitled by this contract to be indemnified, then the indemnifying party upon assuming all liability for any costs that might result shall have the right to appeal in the name of the party against whom such final order or judgment has been made until such rights of appeal have been exhausted.

GC 12.2 WAIVER OF CLAIMS

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

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

GC 12.3 WARRANTY

- 12.3.1 Except for extended warranties as described in paragraph 12.3.7, the warranty period under this *Contract* is one year from the date of *Substantial Performance of the Work*.
- 12.3.2 The *Construction Manager* shall be responsible for the proper performance of the *Work* to the extent that the design and *Contract Documents* permit such performance.
- 12.3.3 The *Owner*, through the *Consultant*, shall promptly give the *Construction Manager* *Notice in Writing* of observed defects and deficiencies which occur during the one year warranty period.
- 12.3.4 Subject to paragraph 12.3.2, the *Construction Manager* shall correct promptly, at the *Construction Manager's* expense, defects or deficiencies in the *Work* which appear prior to and during the one year warranty period.

- 12.3.5 The *Construction Manager* shall correct or pay for damage resulting from corrections made under the requirements of paragraph 12.3.4.
- 12.3.6 The *Construction Manager* shall enforce the warranty obligations of the *Subcontractors* and *Suppliers* which shall include the following provisions:
- .1 the *Subcontractor* or the *Supplier* shall correct promptly at its expense defects or deficiencies in the work which appear prior to and during the warranty periods specified in the *Contract Documents*; and .
 - .2 the *Subcontractor* or the *Supplier* shall correct or pay for damage resulting from corrections made under the requirements of paragraph 12.3.4.
- 12.3.7 Any extended warranties required beyond the one year warranty period as described in paragraph 12.3.1 shall be as specified in the *Contract Documents*. Extended warranties shall be issued by the warrantor to the benefit of the *Owner*. The *Construction Manager*'s responsibility with respect to extended warranties shall be limited to obtaining any such extended warranties from the warrantor. The obligations under such extended warranties are solely the responsibilities of the warrantor.

APPENDIX – STIPULATED PRICE OPTION

The *Owner* and the *Construction Manager* may agree to exercise the stipulated price option at any time during the term of the *Contract* as in accordance with Article A-8 of the Agreement – OPTIONS. Upon the issuance of the *Change Order* exercising the stipulated price option, the following Articles of the Agreement, Definitions and General Conditions shall be deemed deleted, amended or added, as the case may be, and the *Contract* so revised shall be deemed to govern the rights and obligations of the parties with respect to the *Services* and *Work* to be provided from and after the date of the *Change Order*, unless stipulated otherwise in the *Change Order*.

ARTICLES OF THE AGREEMENT

1. **Article A-1**

New paragraph 1.4

insert new paragraph as follows:

1.4 subject to adjustment in *Contract Time* as provided for in the *Contract Documents*, attain *Substantial Performance of the Work*, by the _____ day of _____ in the year _____.

2. **Article A-5**

Delete this Article in its entirety.

3. **Article A-6**

Delete this Article in its entirety.

4. **Article A-7**

Delete this Article and replace with the following:

ARTICLE A-7 COST OF WORK

7.1 The cost of performing the work attributable to any *Change Directive* shall include:

- .1 salaries, wages and benefits paid to personnel in the direct employ of the *Construction Manager* under a salary or wage schedule agreed upon by the *Owner* and the *Construction Manager*, or in the absence of such a schedule, actual salaries, wages and benefits paid under applicable bargaining agreement, and in the absence of a salary or wage schedule and bargaining agreement, actual salaries, wages and benefits paid by the *Construction Manager*, for personnel
 - (1) stationed at the *Place of the Work*, in whatever capacity employed;
 - (2) engaged in expediting the production or transportation of material or equipment, at shops or on the road;
 - (3) engaged in the preparation or review of *Shop Drawings*, fabrication drawings and coordination drawings;
 - or
 - (4) engaged in the processing of changes in the *Work*.
- .2 contributions, assessments or taxes incurred for such items as employment insurance, provincial or territorial health insurance, workers' compensation, and Canada or Quebec Pension Plan, insofar as such cost is based on wages, salaries or other remuneration paid to employees of the *Construction Manager* and included in the cost of the *Work* as provided in paragraph 7.1.1;
- .3 travel and subsistence expenses of the *Construction Manager's* personnel described in paragraph 7.1.1;
- .4 all *Products* including cost of transportation thereof;
- .5 materials, supplies, *Construction Equipment*, *Temporary Work*, and hand tools not owned by the workers, including transportation and maintenance thereof, which are consumed in the performance of the *Work*; and cost less salvage value on such items used but not consumed, which remain the property of the *Construction Manager*;
- .6 all tools and *Construction Equipment*, exclusive of hand tools used in the performance of the *Work*, whether rented from or provided by the *Construction Manager* or others, including installation, minor repairs and replacements, dismantling, removal, transportation, and delivery cost thereof;
- .7 the *Construction Manager's* field office;

- .8 deposits lost provided that they are not caused by negligent acts or omissions of the *Construction Manager* and the *Services* are performed in accordance with this *Contract*;
- .9 the amount of all subcontracts;
- .10 quality assurance such as independent inspection and testing services;
- .11 charges levied by authorities having jurisdiction at the *Place of the Work*;
- .12 royalties, patent license fees and damages for infringement of patents and cost of defending suits therefor subject always to the *Construction Manager's* obligations to indemnify the *Owner* as provided in paragraph 10.3.1 of GC 10.3 – PATENT FEES;
- .13 any adjustment in premiums for all contract securities and insurance that the *Construction Manager* is required, by the *Contract Documents*, to purchase and maintain;
- .14 any adjustment in taxes, other than *Value Added Taxes*, and duties relating to the *Work* for which the *Construction Manager* is liable;
- .15 charges for long distance communications, courier services, expressage, printing, and reproduction incurred in relation to the performance of the *Work*;
- .16 removal and disposal of waste products and debris;
- .17 the cost of safety measures and requirements;
- .18 other costs incurred in the performance of the *Work* as listed below:

6. **Article A-8**

Delete this Article and replace with the following:

ARTICLE A-8 CONTRACT PRICE

- 8.1 The *Contract Price*, which excludes *Value Added Taxes*, is:
_____/100 dollars \$ _____
- 8.2 *Value Added Taxes* (of _____ %) payable by the *Owner* to the *Construction Manager* are:
_____/100 dollars \$ _____
- 8.3 Total amount payable by the *Owner* to the *Construction Manager* for the construction of the *Work* is:
_____/100 dollars \$ _____
- 8.4 These amounts shall be subject to adjustments as provided in the *Contract Documents*.
- 8.5 All amounts are in Canadian funds.

7. **Article A-9**

paragraph 9.1

Delete and replace with the following:

- 9.1 Where required by provincial or territorial legislation, payments shall be subject to the lien legislation applicable to the *Place of the Work*. The *Owner* shall pay the *Construction Manager*:
 - .1 payments on account of the *Contract Price* when due in the amount certified by the *Consultant* together with such *Value Added Taxes* as may be applicable to such payments,
 - .2 upon *Substantial Performance of the Work*, the unpaid balance of the holdback amount when due together with such *Value Added Taxes* as may be applicable to such payment, and
 - .3 upon the issuance of the final certificate for payment, the unpaid balance of the *Construction Manager's Fee* for the *Services* and the *Contract Price* when due together with such *Value Added Taxes* as may be applicable to such payment.

8. **Schedule, A1**

Delete this Schedule in its entirety.

9. **Schedule A2**
Delete this Schedule in its entirety.
10. **Schedule B**
Delete this Schedule in its entirety.

DEFINITIONS

11. **Definition 5 – CHANGE DIRECTIVE**
Delete and replace with the following:
 5. **Change Directive**
A *Change Directive* is a written instruction prepared by the *Consultant* and signed by the *Owner* directing the *Construction Manager* to proceed with a change in the *Work* within the general scope of this *Contract* prior to the *Owner* and the *Construction Manager* agreeing upon adjustments in the *Contract Price* and the *Contract Time*.
12. **Definition 6 – CHANGE ORDER**
Delete and replace with the following:
 6. **Change Order**
A *Change Order* is a written amendment to this *Contract* prepared by the *Consultant* and signed by the *Owner* and the *Construction Manager* stating their agreement upon:
 - a change in the *Services*;
 - a change in the *Work*;
 - the method of adjustment or the amount of the adjustment in the *Contract Price*, if any; and
 - the extent of the adjustment in the *Contract Time*, if any.
13. **Definition 32 – SUPPLEMENTAL INSTRUCTION**
Delete and replace with the following:

Supplemental Instruction

A *Supplemental Instruction* is an instruction, not involving adjustment in the *Contract Price* or *Contract Time*, in the form of *Specifications*, *Drawings*, schedules, samples, models or written instructions, consistent with the intent of the *Contract Documents*. It is to be issued by the *Consultant* to supplement the *Contract Documents*, as required for the performance of the *Work*.
14. **New Definition 38 – CONTRACT PRICE**
Insert new Definition as follows:

Contract Price

The *Contract Price*, which excludes *Value Added Taxes*, is the amount specified in Article A-8 – CONTRACT PRICE to complete the *Services* and the *Work*.

GENERAL CONDITIONS

15. GC 2.3
Delete and replace with the following:
 - 2.3.1 The *Consultant* will provide administration of the *Work* as described in the *Contract Documents*.
 - 2.3.2 The *Consultant* will visit the *Place of the Work* at intervals appropriate to the progress of construction to become familiar with the progress and quality of the work and to determine if the *Work* is proceeding in general conformity with the *Contract Documents*.
 - 2.3.3 If the *Owner* and the *Consultant* agree, the *Consultant* will provide at the *Place of the Work*, one or more project representatives to assist in carrying out the *Consultant's* responsibilities. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in writing to the *Construction Manager*.
 - 2.3.4 The *Consultant* will promptly inform the *Owner* of the date of receipt of the *Construction Manager's* applications for payment for the *Work* performed as provided in paragraph 5.4.7.1 of GC 5.4 – PROGRESS PAYMENT FOR THE WORK.

- 2.3.5 Based on the *Consultant's* observations and evaluation of the *Construction Manager's* applications for payment for the *Work* performed, the *Consultant* will determine the amounts owing to the *Construction Manager* for the *Contract Price* and will issue certificates for payment as provided in Article A-9 of the Agreement – PAYMENT, GC 5.4 – PROGRESS PAYMENT FOR THE WORK and GC 5.8 – FINAL PAYMENT FOR THE WORK.
- 2.3.6 The *Consultant* will not be responsible for and will not have control, charge or supervision of construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs required in connection with the *Work* in accordance with the applicable construction safety legislation, other regulations or general construction practice. The *Consultant* will not be responsible for the *Construction Manager's* failure to carry out the *Work* in accordance with the *Contract Documents*. The *Consultant* will not have control over, charge of or be responsible for the acts or omissions of the *Construction Manager*, *Subcontractors*, *Suppliers*, or their agents, employees, or any other persons performing portions of the *Work*.
- 2.3.7 Except with respect to GC 5.1 – FINANCING INFORMATION REQUIRED OF THE OWNER, the *Consultant* will be, in the first instance, the interpreter of the requirements of the *Work*.
- 2.3.8 Matters in question relating to the performance of the *Work* or the interpretation of the *Contract Documents*, except with respect to the scope, fee and reimbursable expenses of the *Services*, shall be initially referred in writing to the *Consultant* by the party raising the question for interpretations and findings and copied to the other party.
- 2.3.9 Interpretations and findings of the *Consultant* shall be consistent with the intent of the *Contract Documents* as they relate to the *Work*. In making such interpretations and findings the *Consultant* will not show partiality to either the *Owner* or the *Construction Manager*.
- 2.3.10 The *Consultant's* interpretations and findings will be given in writing to the parties within a reasonable time.
- 2.3.11 With respect to claims for a change in the *Contract Price*, the *Consultant* will make findings as set out in GC 6.6 – CLAIMS FOR A CHANGE IN CONTRACT PRICE
- 2.3.12 The *Consultant* will have authority to reject work which in the *Consultant's* opinion does not conform to the requirements of the *Contract Documents*. Whenever the *Consultant* considers it necessary or advisable, the *Consultant* will have authority to require inspection or testing of work, whether or not such work is fabricated, installed or completed. However, neither the authority of the *Consultant* to act nor any decision either to exercise or not to exercise such authority shall give rise to any duty or responsibility of the *Consultant* to the *Construction Manager*, *Subcontractor*, *Suppliers*, or their agents, employees, or other persons performing any of the *Work*.
- 2.3.13 During the progress of the *Work* the *Consultant* will furnish *Supplemental Instructions* to the *Construction Manager* with reasonable promptness or in accordance with a schedule for such instructions agreed to by the *Consultant* and the *Construction Manager*.
- 2.3.14 The *Consultant* will review and take appropriate action upon *Shop Drawings*, samples and other *Construction Manager's* submittals which are provided in accordance with the *Construction Documents*.
- 2.3.15 The *Consultant* will prepare *Change Orders* and *Change Directives* as provided in GC 6.2 – CHANGE ORDER and GC 6.3 – CHANGE DIRECTIVE.
- 2.3.16 The *Consultant* will conduct reviews of the *Work* to determine the date of *Substantial Performance of the Work* as provided in GC 5.5 – SUBSTANTIAL PERFORMANCE OF THE WORK.
- 2.3.17 All certificates issued by the *Consultant* will be to the best of the *Consultant's* knowledge, information and belief. By issuing any certificate, the *Consultant* does not guarantee the *Work* is correct or complete.
- 2.3.18 The *Consultant* will receive and review written warranties and related documents required by the *Contract* and provided by the *Construction Manager* and will forward such warranties and documents to the *Owner* for the *Owner's* acceptance.

16. GC 2.4

Delete and replace with the following:

- 2.4.1 The *Construction Manager* shall provide the *Owner* and the *Consultant* access to the *Work* at all times. The *Construction Manager* shall provide sufficient, safe and proper facilities at all times for the review of the *Work* by the *Consultant* and the inspection of the *Work* by authorized agencies. If parts of the *Work* are in preparation at locations other than the *Place of the Work*, the *Owner* and the *Consultant* shall be given access to such work whenever it is in progress.

- 2.4.2 If work is designated for tests, inspections or approvals in the *Contract Documents*, or by the *Consultant's* instructions, or by the laws or ordinances of the *Place of the Work*, the *Construction Manager* shall give the *Consultant* reasonable notification of when the work will be ready for review and inspection. The *Construction Manager* shall arrange for and shall give the *Consultant* reasonable notification of the date and time of inspections by other authorities.
- 2.4.3 The *Construction Manager* shall furnish promptly to the *Consultant* two copies of certificates and inspection reports relating to the *Work*.
- 2.4.4 If the *Construction Manager* covers, or permits to be covered, work that has been designated for special tests, inspections or approvals before such special tests, inspections or approvals are made, given or completed, the *Construction Manager* shall, if so directed, uncover such work, have the inspections or tests satisfactorily completed, and make good covering work at the *Construction Manager's* expense.
- 2.4.5 The *Consultant* may order any portion or portions of the *Work* to be examined to confirm that such work is in accordance with the requirements of the *Contract Documents*. If the work is not in accordance with the requirements of the *Contract Documents*, the *Construction Manager* shall correct the work and pay the cost of examination and correction at the *Construction Manager's* expense. If the work is in accordance with the requirements of the *Contract Documents*, the *Owner* shall pay the cost of examination and restoration.
- 2.4.6 The *Construction Manager* shall pay the cost of making any test or inspection, including the cost of samples required for such test or inspection, if such test or inspection is designated in the *Contract Documents* to be performed by the *Construction Manager* or is designated by the laws or ordinances applicable to the *Place of the Work*.
- 2.4.7 The *Construction Manager* shall pay the cost of samples required for any test or inspection to be performed by the *Consultant* or the *Owner* if such test or inspection is designated in the *Contract Documents*.

17. GC 2.5

Delete and replace with the following:

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

18. GC 3.7

Delete and replace with the following:

- 3.7.1 The *Construction Manager* shall preserve and protect the rights of the parties under the *Contract* with respect to work to be performed under subcontract, and shall:
 - .1 enter into contracts or written agreements with *Subcontractors* and *Suppliers* to require them to perform their work as provided in the *Contract Documents*;
 - .2 incorporate the terms and conditions of the *Contract Documents* into all contracts or written agreements with *Subcontractors* and *Suppliers*; and
 - .3 be as fully responsible to the *Owner* for acts and omissions of *Subcontractors*, *Suppliers* and of persons directly or indirectly employed by them as for acts and omissions of persons directly employed by the *Construction Manager*.
- 3.7.2 The *Construction Manager* shall, before entering into contracts or written agreements with *Subcontractors* and *Suppliers*, submit to the *Owner* all bids received for the various parts of the *Work* to be subcontracted and obtain the *Owner's* acceptance of the *Subcontractors* and *Suppliers* selected.

- 3.7.3 The *Construction Manager* shall cause to be obtained contract security from *Subcontractors* to the extent and for the amounts approved by the *Owner*.
- 3.7.4 The *Construction Manager* shall not be required to employ as a *Subcontractor* or *Supplier*, a person or firm to which the *Construction Manager* may reasonably object.
- 3.7.5 The *Owner*, through the *Consultant*, may provide to a *Subcontractor* or *Supplier* information as to the percentage of the *Subcontractor's* or *Supplier's* work which has been certified for payment.

19. **GC 3.8**

Delete and replace with the following:

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

20. **New GC 3.14 – SERVICES**

Insert new General Condition as follows:

GC 3.14 SERVICES

- 3.14.1 The *Construction Manager* shall:
 - .1 chair and minute regular *Project* meetings with the *Owner* and the *Consultant*,
 - .2 prepare and update the cash flow forecasts in accordance with the *Project* budget that are specified in the *Contract* or otherwise agreed with the *Owner*;
 - .3 provide reasonable assistance and information to permit recovery of all tax rebates where applicable, and
 - .4 assist the *Owner* in conducting post-construction occupancy review.

21. **GC 4.1**

Delete and replace with the following:

- 4.1.1 The *Contract Price*, and not the cash allowances, includes the *Construction Manager's* overhead and profit in connection with such cash allowances.
- 4.1.2 The *Contract Price* includes the cash allowances, if any, stated in this *Contract*. The scope of work or costs included in such cash allowances shall be as described in this *Contract*.
- 4.1.3 Expenditures under cash allowances shall be authorized by the *Owner* through the *Consultant*.
- 4.1.4 Where costs under any cash allowance exceed the amount of the allowance, the *Construction Manager* shall be compensated for the excess incurred and substantiated plus an amount for overhead and profit on the excess as set out in the *Contract Documents*. Where costs under any cash allowance are less than the amount of the allowance, the *Owner* shall be credited for the unexpended portion of the cash allowance, but not for the *Construction Manager's* overhead and profit on such amount. Multiple cash allowances shall not be combined for the purpose of calculating the foregoing.
- 4.1.5 The *Contract Price* shall be adjusted by *Change Order* to provide for any difference between each cash allowance and its actual cost.
- 4.1.6 The value of the *Work* performed under a cash allowance is eligible to be included in progress payments.
- 4.1.7 The *Construction Manager* and the *Consultant* shall jointly prepare a schedule that shows when the *Consultant* and the *Owner* must authorize ordering of items called for under cash allowances to avoid delaying the progress of the *Work*.

22. **GC 5.2**

Delete and replace with the following:

- 5.2.1 The *Construction Manager* shall keep full and detailed accounts and records necessary for the documentation of and the cost of performing the work attributable to the *Change Directive*.

- 5.2.2 For 60 calendar days after the application for final payment or for such other period specified in the *Contract*, the *Owner* shall be afforded reasonable access to all of the *Construction Manager's* books, records, correspondence, instructions, drawings, receipt vouchers, *Subcontractor* and *Supplier* invoices, and memoranda relating to the cost of performing the work attributable to the *Change Directive*, and for this purpose the *Construction Manager* shall preserve all such records..

23. **GC 5.3**

Delete this General Condition in its entirety.

24. **GC 5.4**

Delete and replace with the following:

- 5.4.1 Applications for payment on account as provided in Article A-9 of the Agreement – PAYMENT may be made monthly as the *Work* progresses.
- 5.4.2 Applications for payment shall be dated the last day of each payment period, which is the last day of the month or an alternative day of the month agreed in writing by the parties.
- 5.4.3 The amount claimed shall be for the value, proportionate to the *Contract Price*, of *Work* performed and *Products* delivered to the *Place of the Work* as of the last day of the payment period
- 5.4.4 The *Construction Manager* shall submit to the *Consultant*, at least 15 calendar days before the first application for payment after exercising the stipulated price option, a schedule of values for the parts of the *Work*, aggregating the total amount of the *Contract Price*, so as to facilitate evaluation of applications for payment.
- 5.4.5 The schedule of values shall be made out in such form and supported by such evidence as the *Consultant* may reasonably direct and when accepted by the *Consultant*, shall be used as the basis for applications for payment, unless it is found to be in error.
- 5.4.6 Applications for payment for *Products* delivered to the *Place of the Work* but not yet incorporated into the *Work* shall be supported by such evidence as the *Consultant* may reasonably require to establish the value and delivery of the *Products*.
- 5.4.7 After receipt by the *Consultant* of an application for payment for the *Work* submitted by the *Construction Manager* in accordance with paragraphs 5.4.1 to 5.4.6:
- .1 the *Consultant* will promptly inform the *Owner* of the date of receipt of the *Construction Manager's* application for payment;
 - .2 the *Consultant* will issue to the *Owner* and copy to the *Construction Manager*, no later than 10 calendar days after the receipt of the application for payment, a certificate for payment in the amount applied for, or in such other amount as the *Consultant* determines to be properly due. If the *Consultant* amends the application, the *Consultant* will promptly advise the *Construction Manager* in writing giving reasons for the amendment; and
 - .3 the *Owner* shall make payment to the *Construction Manager* on account as provided in Article A-9 of the Agreement – PAYMENT on or before 20 calendar days after the later of:
 - receipt by the *Consultant* of the application for payment, or
 - the last day of the monthly payment period for which the application for payment is made.
- 5.4.8 The *Construction Manager* shall include a statement based on the schedule of values with each application for payment.

25. **GC 6.2**

Delete and replace with the following:

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

26. **GC 6.3**

Delete and replace with the following:

- 6.3.1 If the *Owner* requires the *Construction Manager* to proceed with a change in the *Work* prior to the *Owner* and the *Construction Manager* agreeing upon any corresponding adjustment in the *Contract Price* and the *Contract Time*, the *Owner*, through the *Consultant*, shall issue a *Change Directive*.
- 6.3.2 A *Change Directive* shall only be used to direct a change in the *Work* which is within the general scope of the *Contract Documents*.
- 6.3.3 A *Change Directive* shall not be used to direct a change in the *Contract Time* only.
- 6.3.4 Upon receipt of a *Change Directive*, the *Construction Manager* shall proceed promptly with the change in the *Work*.
- 6.3.5 For the purpose of valuing *Change Directives*, changes in the *Work* that are not substitutions or otherwise related to each other shall not be grouped together in the same *Change Directive*.
- 6.3.6 The adjustment in the *Contract Price* for a change carried out by way of a *Change Directive* shall be determined on the basis of the cost of the *Construction Manager's* actual expenditures and savings attributable to the *Change Directive*, valued in accordance with Article A-7 of the Agreement – COST OF WORK and as follows:
 - .1 If the change results in a net increase in the *Construction Manager's* cost, the *Contract Price* shall be increased by the amount of the net increase in the *Construction Manager's* cost, plus the *Construction Manager's* percentage fee on such net increase.
 - .2 If the change results in a net decrease in the *Construction Manager's* cost, the *Contract Price* shall be decreased by the amount of the net decrease in the *Construction Manager's* cost, without adjustment for the *Construction Manager's* percentage fee.
 - 3 The *Construction Manager's* fee shall be as specified in the *Contract Documents* or as otherwise agreed by the parties.
- 6.3.7 If the *Owner* and the *Construction Manager* do not agree on the proposed adjustment in the *Contract Price*, the *Contract Time*, or in the method of determining them, the adjustment shall be referred to the *Consultant* for a finding.
- 6.3.8 When the *Owner* and the *Construction Manager* reach agreement on the adjustment to the *Contract Price* and the *Contract Time*, this agreement shall be recorded in a *Change Order*.
- 6.3.9 Pending determination of the final amount of a *Change Directive*, the undisputed value of the work performed as the result of a *Change Directive* is eligible to be included in progress payments.

27. **GC 6.4**

Delete and replace with the following:

- 6.4.1 If the *Owner* or the *Construction Manager* discover conditions at the *Place of the Work* which are:
 - .1 subsurface or otherwise concealed physical conditions which existed before the commencement of the *Work* which differ materially from those indicated in the *Contract Documents*; or
 - .2 physical conditions, other than conditions due to weather, that are of a nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the *Contract Documents*,
 then the observing party shall give *Notice in Writing* to the other party of such conditions before they are disturbed and in no event later than 5 *Working Days* after first observance of the conditions.
- 6.4.2 The *Consultant* will promptly investigate such conditions and make a finding. If the finding is that the conditions differ materially and this would justify an increase or decrease in the *Contract Price* or the *Contract Time*, the *Consultant*, with the *Owner's* approval, will issue appropriate instructions for a change in the *Work* as provided in GC 6.2 – CHANGE ORDER or GC 6.3 – CHANGE DIRECTIVE.
- 6.4.3 If the *Consultant* finds that the conditions at the *Place of the Work* are not materially different or that no change in the *Contract Price* or the *Contract Time* is justified, the *Consultant* will report the reasons for this finding to the *Owner* and the *Construction Manager* in writing.
- 6.4.4 If such concealed or unknown conditions relate to toxic and hazardous substances and materials, artifacts and fossils, or mould, the parties will be governed by the provisions of GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES, GC 9.3 – ARTIFACTS AND FOSSILS and GC 9.5 – MOULD.

28. **GC 6.5**

Delete and replace with the following:

- 6.5.1 If the *Construction Manager* is delayed in the performance of the *Work* by an action or omission of the *Owner*, *Consultant* or anyone employed or engaged by them directly or indirectly, contrary to the provisions of the *Contract Documents*, then the *Contract Time* shall be extended for such reasonable time as the *Consultant* may recommend in consultation with the *Construction Manager*. The *Contract Price* shall be adjusted by a reasonable amount for costs incurred by the *Construction Manager* as the result of such delay.
- 6.5.2 If the *Construction Manager* is delayed in the performance of the *Work* by a stop work order issued by a court or other public authority and providing that such order was not issued as the result of an act or fault of the *Construction Manager* or any person employed or engaged by the *Construction Manager* directly or indirectly, then the *Contract Time* shall be extended for such reasonable time as the *Consultant* may recommend in consultation with the *Construction Manager*. The *Contract Price* shall be adjusted by a reasonable amount for costs incurred by the *Construction Manager* as the result of such delay.
- 6.5.3 If the *Construction Manager* is delayed in the performance of the *Work* by:
- .1 labour disputes, strikes, lock-outs (including lock-outs decreed or recommended for its members by a recognized contractors' association, of which the *Construction Manager* is a member or to which the *Construction Manager* is otherwise bound),
 - .2 fire, unusual delay by common carriers or unavoidable casualties,
 - .3 abnormally adverse weather conditions, or
 - .4 any cause beyond the *Construction Manager's* control other than one resulting from a default or breach of *Contract* by the *Construction Manager*,
- then the *Contract Time* shall be extended for such reasonable time as the *Consultant* may recommend in consultation with the *Construction Manager*. The extension of time shall not be less than the time lost as the result of the event causing the delay, unless the *Construction Manager* agrees to a shorter extension. The *Construction Manager* shall not be entitled to payment for costs incurred by such delays unless such delays result from actions by the *Owner*, *Consultant* or anyone employed or engaged by them directly or indirectly.
- 6.5.4 No extension shall be made for delay unless *Notice in Writing* of the cause of the delay is given to the *Consultant* not later than 10 *Working Days* after the commencement of the delay. In the case of a continuing cause of delay only one *Notice in Writing* shall be necessary.
- 6.5.5 If no schedule is made under paragraph 2.3.13 of GC 2.3 – CONSULTANT'S RESPONSIBILITIES or paragraph 3.5.1 of GC 3.5 – CONSTRUCTION SCHEDULE, then no request for extension shall be made because of failure of the *Consultant* to furnish instructions until 10 *Working Days* after demand for such instructions has been made.

29. **GC 6.6**

Delete and replace with the following:

GC 6.6. CLAIMS FOR A CHANGE IN CONTRACT PRICE

- 6.6.1 If the *Construction Manager* intends to make a claim for an increase to the *Contract Price*, or if the *Owner* intends to make a claim against the *Construction Manager* for a credit to the *Contract Price*, the party that intends to make the claim shall give timely *Notice in Writing* of intent to claim to the other party with a copy to the *Consultant*.

30. **GC 7.1**

Delete and replace with the following:

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

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

31. GC 9.1

Delete and replace with the following:

- 9.1.1 The *Construction Manager* shall protect the *Work* and the *Owner's* property and property adjacent to the *Place of the Work* from damage which may arise as the result of the *Construction Manager's* operations under this *Contract*, and shall be responsible for such damage, except damage which occurs as the result of:
- .1 errors in the *Contract Documents*;
 - .2 acts or omissions by the *Owner*, the *Consultant*, other contractors, or their respective agents and employees.
- 9.1.2 Before commencing any work, the *Construction Manager* shall locate on site all underground utilities and structures that are indicated in the *Contract Documents* or information provided by the *Owner*, or that are reasonably apparent in an inspection of the *Place of the Work*.
- 9.1.3 Should the *Construction Manager* in the performance of the *Contract* damage the *Work*, the *Owner's* property or property adjacent to the *Place of the Work*, the *Construction Manager* shall be responsible for making good such damage at the *Construction Manager's* expense.

- 9.1.4 Should damage occur to the *Work* or *Owner's* property for which the *Construction Manager* is not responsible, as provided in paragraph 9.1.1, the *Construction Manager* shall make good such damage to the *Work* and, if the *Owner* so directs, to the *Owner's* property. The *Contract Price* and the *Contract Time* shall be adjusted as provided in GC 6.1 – OWNER'S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER and GC 6.3 – CHANGE DIRECTIVE.

32. GC 9.2

Delete and replace with the following:

- 9.2.1 For the purposes of applicable legislation, the *Owner* shall be deemed to have control and management of the *Place of the Work* with respect to existing conditions.
- 9.2.2 Prior to the *Construction Manager* commencing the *Work*, the *Owner* shall,
- .1 take all reasonable steps to determine whether any toxic or hazardous substances are present at the *Place of the Work*, and
 - .2 provide the *Consultant* and the *Construction Manager* with a written list of any such substances that are known to exist and their locations.
- 9.2.3 The *Owner* shall take all reasonable steps to ensure that no person's exposure to any toxic or hazardous substance exceeds the time weighted levels prescribed by applicable legislation at the *Place of the Work* and that no property is damaged or destroyed as a result of exposure to, or the presence of, toxic or hazardous substances which were at the *Place of the Work* prior to the *Construction Manager* commencing the *Work*.
- 9.2.4 Unless the *Contract* expressly provides otherwise, the *Owner* shall be responsible for taking all necessary steps, in accordance with applicable legislation in force at the *Place of the Work*, to dispose of, store or otherwise render harmless toxic or hazardous substances which were present at the *Place of the Work* prior to the *Construction Manager* commencing the *Work*.
- 9.2.5 If the *Construction Manager*
- .1 encounters toxic or hazardous substances at the *Place of the Work*, or
 - .2 has reasonable grounds to believe that toxic or hazardous substances are present at the *Place of the Work*, which were not brought to the *Place of the Work* by the *Construction Manager* or anyone for whom the *Construction Manager* is responsible and which were not disclosed by the *Owner* or which were disclosed but have not been dealt with as required under paragraph 9.2.4, the *Construction Manager* shall
 - .3 take all reasonable steps, including stopping the *Work*, to ensure that no person's exposure to any toxic or hazardous substances exceeds any applicable time weighted levels prescribed by applicable legislation at the *Place of the Work*, and
 - .4 immediately report the circumstances to the *Consultant* and the *Owner* in writing.
- 9.2.6 If the *Owner* and *Construction Manager* do not agree on the existence or significance of toxic or hazardous substances, or whether the toxic or hazardous substances were brought onto the *Place of the Work* by the *Construction Manager* or anyone for whom the *Construction Manager* is responsible, the *Owner* shall retain and pay for an independent qualified expert to investigate and determine such matters. The expert's report shall be delivered to the *Owner* and the *Construction Manager*.
- 9.2.7 If the *Owner* and *Construction Manager* agree or if the expert referred to in paragraph 9.2.6 determines that the toxic or hazardous substances were not brought onto the place of the *Work* by the *Construction Manager* or anyone for whom the *Construction Manager* is responsible, the *Owner* shall promptly at the *Owner's* own expense:
- .1 take all steps as required under paragraph 9.2.4;
 - .2 reimburse the *Construction Manager* for the costs of all steps taken pursuant to paragraph 9.2.5;
 - .3 extend the *Contract Time* for such reasonable time as the *Consultant* may recommend in consultation with the *Construction Manager* and the expert referred to in paragraph 9.2.6 and reimburse the *Construction Manager* for reasonable costs incurred as a result of the delay; and
 - .4 indemnify the *Construction Manager* as required by GC 12.1 – INDEMNIFICATION.
- 9.2.8 If the *Owner* and *Construction Manager* agree or if the expert referred to in paragraph 9.2.6 determines that the toxic or hazardous substances were brought onto the *Place of the Work* by the *Construction Manager* or anyone for whom the *Construction Manager* is responsible, the *Construction Manager* shall promptly at the *Construction Manager's* own expense:
- .1 take all necessary steps, in accordance with applicable legislation in force at the *Place of the Work*, to safely remove and dispose the toxic or hazardous substance;

- .2 make good any damage to the *Work*, the *Owner's* property or property adjacent to the place of the *Work* as provided in paragraph 9.1.3 of GC 9.1 – PROTECTION OF WORK AND PROPERTY;
- .3 reimburse the *Owner* for reasonable costs incurred under paragraph 9.2.6; and
- .4 indemnify the *Owner* as required by GC 12.1 – INDEMNIFICATION.

9.2.9 If either party does not accept the expert's findings under paragraph 9.2.6, the disagreement shall be settled in accordance with Part 8 of the General Conditions – DISPUTE RESOLUTION. If such disagreement is not resolved promptly, the parties shall act immediately in accordance with the expert's determination and take the steps required by paragraph 9.2.7 or 9.2.8 it being understood that by so doing, neither party will jeopardize any claim that party may have to be reimbursed as provided by GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES.

33. GC 9.3

Delete and replace with the following:

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

34. GC 9.5

Delete and replace with the following:

- 9.5.1 If the *Construction Manager* or *Owner* observes or reasonably suspects the presence of mould at the *Place of the Work*, the remediation of which is not expressly part of the *Work*,
 - .1 the observing party shall promptly report the circumstances to the other party in writing;
 - .2 the *Construction Manager* shall promptly take all reasonable steps, including stopping the *Work* if necessary, to ensure that no person suffers injury, sickness or death and that no property is damaged as a result of exposure to or the presence of the mould; and
 - .3 if the *Owner* and *Construction Manager* do not agree on the existence, significance or cause of the mould or as to what steps need be taken to deal with it, the *Owner* shall retain and pay for an independent qualified expert to investigate and determine such matters. The expert's report shall be delivered to the *Owner* and *Construction Manager*.
- 9.5.2 If the *Owner* and *Construction Manager* agree, or if the expert referred to in paragraph 9.5.1.3 determines that the presence of mould was caused by the *Construction Manager's* operations under the *Contract*, the *Construction Manager* shall promptly, at the *Construction Manager's* own expense:
 - .1 take all reasonable and necessary steps to safely remediate or dispose of the mould, and
 - .2 make good any damage to the *Work*, the *Owner's* property or property adjacent to the *Place of the Work* as provided in paragraph 9.1.3 of GC 9.1 – PROTECTION OF WORK AND PROPERTY, and
 - .3 reimburse the *Owner* for reasonable costs incurred under paragraph 9.5.1.3, and
 - .4 indemnify the *Owner* as required by GC 12.1 – INDEMNIFICATION.
- 9.5.3 If the *Owner* and *Construction Manager* agree, or if the expert referred to in paragraph 9.5.1.3 determines that the presence of mould was not caused by the *Construction Manager's* operations under the *Contract*, the *Owner* shall promptly, at the *Owner's* own expense:
 - .1 take all reasonable and necessary steps to safely remediate or dispose of the mould;
 - .2 reimburse the *Construction Manager* for the cost of taking the steps under 9.5.1.2 and making good any damage to the *Work* as provided in paragraph 9.1.4 of GC 9.1 – PROTECTION OF WORK AND PROPERTY;
 - .3 extend the *Contract Time* for such reasonable time as the *Consultant* may recommend in consultation with the *Construction Manager* and the expert referred to in paragraph 9.5.1.3 and reimburse the *Construction Manager* for reasonable costs incurred as a result of the delay; and
 - .4 indemnify the *Construction Manager* as required by GC 12.1 – INDEMNIFICATION.

- 9.5.4 If either party does not accept the expert's finding under paragraph 9.5.1.3, the disagreement shall be settled in accordance with Part 8 of the General Conditions – DISPUTE RESOLUTION. If such disagreement is not resolved promptly, the parties shall act immediately in accordance with the expert's determination and take the steps required by paragraphs 9.5.2 or 9.5.3, it being understood that by so doing neither party will jeopardize any claim the party may have to be reimbursed as provided by GC 9.5 – MOULD.

35. **GC 10.1**

Delete and replace with the following:

- 10.1.1 The *Contract Price* shall include all taxes and customs duties in effect at the time of the bid closing except for *Value Added Taxes* payable by the *Owner* to the *Construction Manager* as stipulated in Article A-8 of the Agreement – CONTRACT PRICE.
- 10.1.2 Any increase or decrease in costs to the *Construction Manager* due to changes in such included taxes and duties after exercising the stipulated price option shall increase or decrease the *Contract Price* accordingly.

36. **GC 10.2**

Delete and replace with the following:

- 10.2.1 The laws of the *Place of the Work* shall govern the *Work*.
- 10.2.2 The *Owner* shall obtain and pay for development approvals, building permit, permanent easements, rights of servitude, and all other necessary approvals and permits, except for the permits and fees referred to in paragraph 10.2.3 or which the *Contract Documents* specify as the responsibility of the *Construction Manager*.
- 10.2.3 The *Construction Manager* shall be responsible for the procurement of permits, licences, inspections and certificates which are necessary for the performance of the *Work* and customarily obtained by contractors in the jurisdiction of the *Place of the Work* after the issuance of the building permit. The *Contract Price* includes the cost of these permits, licences, inspections and certificates, and their procurement.
- 10.2.4 The *Construction Manager* shall give the required notices and comply with the laws, ordinances, rules, regulations, or codes which are or become in force during the performance of the *Work* and which relate to the *Work*, to the preservation of the public health, and to construction safety.
- 10.2.5 The *Construction Manager* shall not be responsible for verifying that the *Contract Documents* are in compliance with the applicable laws, ordinances, rules, regulations or codes relating to the *Work*. If the *Contract Documents* are at variance therewith, or if, subsequent to the time of bid closing, changes are made to the applicable laws, ordinances, rules, regulations or codes which require modification to the *Contract Documents*, the *Construction Manager* shall advise the *Consultant* in writing requesting direction immediately upon such variance or change becoming known. The *Consultant* will make the changes required to the *Contract Documents* as provided in GC 6.1 – OWNER'S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER and GC 6.3 – CHANGE DIRECTIVE.
- 10.2.6 If the *Construction Manager* fails to advise the *Consultant* in writing, fails to obtain direction as required in paragraph 10.2.5, and performs work knowing it to be contrary to any laws, ordinances, rules, regulations or codes; the *Construction Manager* shall be responsible for and shall correct the violations thereof; and shall bear the costs, expenses and damages attributable to the failure to comply with the provisions of such laws, ordinances, rules, regulations or codes.

37. **GC 10.3**

Delete and replace with the following:

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

38. **GC 11.2**

Delete and replace with the following:

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

39. **GC 12.1**

Delete and replace with the following:

- 12.1.1 Without restricting the parties' obligation to indemnify as described in paragraphs 12.1.4 and 12.1.5, the *Owner* and the *Construction Manager* shall each indemnify and hold harmless the other from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings whether in respect to losses suffered by them or in respect to claims by third parties that arise out of, or are attributable in any respect to, their involvement as parties to this *Contract*, provided such claims are:

- .1 caused by:
 - (1) the negligent acts or omissions of the party from whom indemnification is sought or anyone for whose acts or omissions that party is liable, or
 - (2) a failure of the party to the *Contract* from whom indemnification is sought to fulfill its terms or conditions; and
- .2 made by *Notice in Writing* within a period of 6 years from the date of *Substantial Performance of the Work* as set out in the certificate of *Substantial Performance of the Work* issued pursuant to paragraph 5.5.2.2 of GC 5.5 – SUBSTANTIAL PERFORMANCE OF THE WORK or within such shorter period as may be prescribed by any limitation statute of the province or territory of the *Place of the Work*.

The parties expressly waive the right to indemnity for claims other than those provided for in this *Contract*.

- 12.1.2 The obligation of either party to indemnify as set forth in paragraph 12.1.1 shall be limited as follows:

- .1 In respect to losses suffered by the *Owner* and the *Construction Manager* for which insurance is to be provided by either party pursuant to GC 11.1 – INSURANCE, the insurance limit for the loss so covered as prescribed in GC 11.1 – INSURANCE.
- .2 In respect to losses suffered by the *Owner* and the *Construction Manager* for which insurance is not required to be provided by either party in accordance with GC 11.1 – INSURANCE, the greater of the *Contract Price* or \$2,000,000, but in no event shall the sum be greater than \$20,000,000.
- .3 In respect to claims by third parties for direct loss resulting from bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, the obligation to indemnify is without limit. In respect to all other claims for indemnity as a result of claims advanced by third parties, the limits of indemnity set forth in paragraphs 12.1.2.1 and 12.1.2.2 shall apply.

- 12.1.3 The obligation of either party to indemnify the other as set forth in paragraphs 12.1.1 and 12.1.2 shall be inclusive of interest and all legal costs.

- 12.1.4 The *Owner* and the *Construction Manager* shall indemnify and hold harmless the other from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of their obligations described in GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES.

- 12.1.5 The *Owner* shall indemnify and hold harmless the *Construction Manager* from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings:

- .1 as described in GC 10.3 – PATENT FEES, and
- .2 arising out of the *Construction Manager's* performance of the *Contract* which are attributable to a lack of or defect in title or an alleged lack of or defect in title to the *Place of the Work*.

- 12.1.6 In respect to any claim for indemnity or to be held harmless by the *Owner* or the *Construction Manager*:

- .1 *Notice in Writing* of such claim shall be given within a reasonable time after the facts upon which such claim is based became known;
- .2 should either party be required as a result of its obligation to indemnify the other pay or satisfy a final order, judgment or award made against the party entitled by this contract to be indemnified, then the indemnifying party upon assuming all liability for any costs that might result shall have the right to appeal in the name of the party against whom such final order or judgment has been made until such rights of appeal have been exhausted.

40. **GC 12.3**

Delete and replace with the following:

- 12.3.1 Except for extended warranties as described in paragraph 12.3.6, the warranty period under this *Contract* is one year from the date of *Substantial Performance of the Work*.
- 12.3.2 The *Construction Manager* shall be responsible for the proper performance of the *Work* to the extent that the design and the *Contract Documents* permit such performance.
- 12.3.3 The *Owner*, through the *Consultant*, shall promptly give the *Construction Manager Notice in Writing* of observed defects and deficiencies which occur during the one year warranty period.
- 12.3.4 Subject to paragraph 12.3.2, the *Construction Manager* shall correct promptly, at the *Construction Manager's* expense, defects or deficiencies in the *Work* which appear prior to and during the one year warranty period.
- 12.3.5 The *Construction Manager* shall correct or pay for damage resulting from corrections made under the requirements of paragraph 12.3.4.
- 12.3.6 Any extended warranties required beyond the one year warranty period as described in paragraph 12.3.1, shall be as specified in the *Contract Documents*. Extended warranties shall be issued by the warrantor to the benefit of the *Owner*. The *Construction Manager's* responsibility with respect to extended warranties shall be limited to obtaining any such extended warranties from the warrantor. The obligations under such extended warranties are solely the responsibilities of the warrantor.

**SUPPLEMENTARY CONDITIONS
TO THE
CONSTRUCTION MANAGEMENT CONTRACT
FOR SERVICES AND CONSTRUCTION
CCDC 5B**

GENERAL

These Supplementary General Conditions amend Standard Construction Document CCDC 5B 2010 Construction Management Contract for Services and Construction Manager and Owner for the 759 Winston Churchill Development

A. BACKGROUND

KEN Aidan CONTRACTING LTD. (**Kenaidan**) has been selected by 759 Winston Churchill L.P. the Owner (the "**Owner**") of the Project, to enter into a Construction Management Contract (the "**Agreement**" or "**Prime Contract**") with the Owner for the development of 759 Winston Churchill (the "**Project**").

ARTICLE A-5 CONSTRUCTION MANAGER'S FEE

1. Delete 5.2.2
2. Delete 5.3.2

ARTICLE A-7 COST OF THE WORK

1. With reference to 7.1, after the words in performing the *Work*, and before and is limited to insert "specifically excluding only the Project Support Services"

ARTICLE A-9 RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING

1. With reference to 9.3.1 (1) revise "2%" to "1%"
2. With reference to 9.3.1 (2) Revised "4%" to "1%"

GENERAL CONDITIONS

PART 1 GENERAL PROVISIONS

GC 1.1 CONTRACT DOCUMENTS

1. Insert new GC 1.1.10 as follows:

“This Contract may be executed and delivered by the parties in one or more counterparts, each of which will be an original, and each of which may be delivered by facsimile, e-mail or other functionally equivalent electronic means of transmission and those counterparts will together constitute one and the same instrument.”

PART 2 ADMINISTRATION OF THE CONTRACT

GC 2.1 OWNER’S RESPONSIBILITY

1. With reference to GC 2.1.1, delete 2.1.1.5

GC 2.3 COUNSULTANT’S RESPOSIBILITY

1. Delete GC 2.3.15,

PART 8 DISPUTE RESOLUTION

GC 8.1 AUTHORITY OF THE CONSULTANT

1. With reference to GC 8.1.1. after the words, CONSULTANT’S RESPONSIBILITIES, shall and prior to be settled in accordance, insert “subject to mutual agreement of the parties”

PART 10 GOVERNING REGULATIONS

GC 10.2 LAWS, NOTICES, PERMITS and FEES

1. With reference to GC 10.2.2, Replace *Owner* with *Construction Manager*.

PART 11 INSURANCE – CONTRACT SECURITY

GC 11.1 INSURANCE

1. Add GC 11.1.1.8:

“11.1.1.8 The Construction Manager shall procure project specific professional liability insurance

APPENDIX 1**PROJECT SUPPORT SERVICES**

Site Supervision and Co-ordination
Site Survey Equipment - Site Staff Use
Preconstruction Surveys
Progress Photographs
Shop Drawing Review and Management
O & M Manuals, Warranty Manuals
Publish Substantial Performance
KCL Site Office Mobilization
KCL Site Office - Monthly Rental
Photocopier & Mainten.
Temporary Sanitary Facilities
Internet Service for Site Office
Site Office Coffee / Bottled Water
Office Cleaning (once per week)
Printing Services
Office Supplies
Courier Services
First Aid Equipment & Supplies
Safety & Environmental Auditor
Safety Signage,
Fall Arrest Equipment
Fire Extinguishers
Rent / Purchase - Small Tools & Consumables
Deliveries from KCL Shop (Shop Labour)
KCL Project Signage
Lunchroom and Office Waste Disposal

APPENDIX 2

COST of the WORKS

Mobile Construction Surveyor - Site Work	\$51,600
Registered Land Surveyor	\$6,000
As-Built Drawing Record	\$10,000
Design Lead - Permits	\$72,250
Architectural Designer Bldg 1	\$102,150
Architectural Designer Bldg 2	\$103,000
Architectural Designer Bldg 3	\$158,000
Structural Designer Bldg 1	\$33,000
Structural Designer Bldg 2	\$35,000
Structural Designer Bldg 3	\$35,000
M & E Designer Bldg 1	\$46,000
M & E Designer Bldg 2	\$45,000
M & E Designer Bldg 3	\$45,000
Civil Engineer	\$28,700
Geotechnical Engineer	\$12,500
Environmental Consultant	\$0
Commissioning Agent	\$0
Site Plan Application - total bldg footprint	\$97,665
Building Permit - Bldg 1	\$263,946
Building Permit - Bldg 2	\$315,791
Building Permit - Bldg 3	\$341,568
Miscellaneous Permits	\$51,674
Tenant Fit Out Permit	\$0
Permit Expeditor	\$20,000
Deposits	\$0
Traffic Study	\$11,500
Hydrant Flow Test	\$1,425
Wrap Up - CGL Insurance Project Specific	\$22,400
Builders Risk Insurance	\$19,350
Professional Liability Project Specific	\$55,000
Insurance deductibles	\$0
Security and Bonds	\$0
Subcontractor Bonds	\$108,000
General Labour Allowance	\$86,770
Temp protection materials / tarps to excavation	\$0
Wheel Wash Station	\$5,000
Snow Clearing to Structures	\$7,500
Testing Laboratory Services	\$30,000
Site Inspection Services	\$20,000
Cut Fill Monitoring Services	\$36,000
Mock-Ups & Field Samples	\$0
Install / Set-Up Electrical Utility	\$35,000
Electrical Service/Monthly Usage	\$10,500
Water Service / Monthly Usage	\$2,100
Site Perimeter Enclosures, Gates	\$37,820
Site Security and Alarm Systems	\$0

Temporary Erosion Control Fence Maintenance	\$1,000
Winter Protections / Temp. Heating	\$35,000
Fuel for Winter Heating during Construction	\$10,000
Locate Existing Underground Services and Utilities	\$5,000
Access Roads & Parking (construction)	\$25,000
Access Roads & Parking (maintenance)	\$10,000
Snow Removal for Access Roads	\$2,500
Street Cleaning	\$3,000
Erosion Control - Silt Fencing on Snow Fence	\$125,000
Temporary Dewatering Equipment	\$3,000
Generators, Portable Lights	\$1,500
Material Handling Equipment	\$2,000
Fuel for Site Equipment	\$600
Traffic Regulation	\$0
Use of Permanent Utilities	\$2,500
Final Clean-Up - New Structures	\$25,000
Final Clean-Up - New Pavement/Sidewalks	\$25,000
Any items not specifically listed in Appendix 1	\$0
SUBTOTAL: DIVISION 2	\$12,657,605
SUBTOTAL: DIVISION 3	\$6,245,303
SUBTOTAL: DIVISION 4	\$374,250
SUBTOTAL: DIVISION 5	\$3,882,950
SUBTOTAL: DIVISION 6	\$92,015
SUBTOTAL: DIVISION 7	\$3,107,903
SUBTOTAL: DIVISION 8	\$1,373,231
SUBTOTAL: DIVISION 9	\$548,000
SUBTOTAL: DIVISION 10	\$71,250
SUBTOTAL: DIVISION 11	\$0
SUBTOTAL: DIVISION 12	\$0
SUBTOTAL: DIVISION 13	\$0
SUBTOTAL: DIVISION 14	\$0
SUBTOTAL: DIVISION 15	\$1,167,400
SUBTOTAL: DIVISION 16	\$633,877
Total	\$32,792,092

Court File No. CV-24-00714543-00CL

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

KINGSETT MORTGAGE CORPORATION
Applicant

-and- **759 WINSTON CHURCHILL GP INC., et al.**
Respondents

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

PROCEEDING COMMENCED AT
TORONTO

**AFFIDAVIT OF GIAN FORTUNA
(SWORN APRIL 24, 2025)**

NORTON ROSE FULBRIGHT CANADA LLP
222 Bay Street
Suite 3000, P.O. Box 53
Toronto, Ontario M5K 1E7

Evan Cobb LSO #: 55787N
evan.cobb@nortonrosefulbright.com
Tel: 416.216.1929

Meghan Fougere LSO#: 66623B
meghan.fougere@nortonrosefulbright.com
Tel: 613.780.1555

Lawyers for Kenaidan Contracting Limited

TAB 3

Court File No. CV-24-00714543-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)	MONDAY, THE 28TH
)	
JUSTICE)	DAY OF APRIL, 2025

BETWEEN:

KINGSETT MORTGAGE CORPORATION

Applicant

- AND -

759 WINSTON CHURCHILL GP INC., 759 WINSTON CHURCHILL L.P., 688 SOUTHDOWN
GP INC., 688 SOUTHDOWN LP, 2226 ROYAL WINDSOR GP INC. and 2226 ROYAL
WINDSOR LP

Respondents

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

ORDER

THIS MOTION, made by Kenaidan Contracting Limited (“**KCL**”) for an order amending the Amended and Restated Order (Amending the Order Appointing Receiver dated May 30, 2024) granted on November 15, 2024 in this proceeding (the “**Appointment Order**”) and certain other relief, was heard this day via Zoom in Toronto, Ontario.

ON READING the Notice of Motion of KCL and the Affidavit of Gian Fortuna, sworn ●, filed, and on hearing the submissions of respective counsel for KCL, KSV Restructuring Inc., as

Receiver, and Kingsett Mortgage Corporation, and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit of Service of ● sworn ●, filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and Motion Record of KCL is here by abridge and validated so that this Motion is properly returnable today, and hereby dispenses with further service thereof.

AMENDMENT

2. **THIS COURT ORDERS** that Paragraph 9 of the Appointment Order is hereby deleted and replaced with the following:

9. **THIS COURT ORDERS** that no Proceeding against or in respect of any of the Debtors or the Property, or by or against Kenaidan Contracting Limited (“**KCL**”) solely in connection with any supplies of goods or services to the Property, shall be commenced or continued except with the written consent of the Receiver (other than in the case of claims against KCL) or leave of this Court and any and all Proceedings currently under way against or in respect of any of the Debtors or the Property, or by or against KCL solely in connection with any supplies of goods or services to the Property, are hereby stayed and suspended pending further order of this Court.

GENERAL

3. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

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

KINGSETT MORTGAGE CORPORATION
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-and- **759 WINSTON CHURCHILL GP INC., et al.**
Respondents

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

PROCEEDING COMMENCED AT
TORONTO

ORDER

NORTON ROSE FULBRIGHT CANADA LLP
222 Bay Street
Suite 3000, P.O. Box 53
Toronto, Ontario M5K 1E7

Evan Cobb LSO #: 55787N
evan.cobb@nortonrosefulbright.com
Tel: 416.216.1929

Meghan Fougere LSO#: 66623B
meghan.fougere@nortonrosefulbright.com
Tel: 613.780.1555

Lawyers for Kenaidan Contracting Limited

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

KINGSETT MORTGAGE CORPORATION
Applicant

-and- **759 WINSTON CHURCHILL GP INC., et al.**
Respondents

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

PROCEEDING COMMENCED AT
TORONTO

MOTION RECORD

NORTON ROSE FULBRIGHT CANADA LLP
222 Bay Street
Suite 3000, P.O. Box 53
Toronto, Ontario M5K 1E7

Evan Cobb LSO #: 55787N
evan.cobb@nortonrosefulbright.com
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