

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

**AND IN THE MATTER OF *THE COMPANIES' CREDITORS ARRANGEMENT
ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF First Leaside Wealth Management Inc., First Leaside Finance Inc., First Leaside Securities Inc., FL Securities Inc., First Leaside Management Inc., First Leaside Accounting and Tax Services Inc., First Leaside Holdings Inc., 2086056 Ontario Inc., First Leaside Realty Inc., First Leaside Capital Inc., First Leaside Realty II Inc., First Leaside Investments Inc., 965010 Ontario Inc., 1045517 Ontario Inc., 1024919 Ontario Inc., 1031628 Ontario Inc., 1056971 Ontario Inc., 1376095 Ontario Inc., 1437290 Ontario Ltd., 1244428 Ontario Ltd., PrestonOne Development (Canada) Inc., PrestonTwo Development (Canada) Inc., PrestonThree Development (Canada) Inc., PrestonFour Development (Canada) Inc., 2088543 Ontario Inc., 2088544 Ontario Inc., 2088545 Ontario Inc., 1331607 Ontario Inc., Queenston Manor General Partner Inc., 1408927 Ontario Ltd., 2107738 Ontario Inc., 1418361 Ontario Ltd., 2128054 Ontario Inc., 2069212 Ontario Inc., 1132413 Ontario Inc., 2067171 Ontario Inc., 2085306 Ontario Inc., 2059035 Ontario Inc., 2086218 Ontario Inc., 2085438 Ontario Inc., First Leaside Visions Management Inc., 1049015 Ontario Inc., 1049016 Ontario Inc., 2007804 Ontario Inc., 2819418 Ontario Inc., FL Research Management Inc., 970877 Ontario Inc., 1031628 Ontario Inc., 1045516 Ontario Inc., 2004516 Ontario Inc., 2192341 Ontario Inc., and First Leaside Fund Management Inc. (collectively, the "Applicant" or "Applicants")

MOTION RECORD

April 2, 2012

WAGNER SIDLOFSKY LLP
316-100 Richmond Street West
Toronto, Ontario M5H 3K6

Gregory M. Sidlofsky #43579C
Tel: (416) 601-9279
Fax: (416) 364-6579

Lawyers for the Moving Party
792873 Ontario Limited, c.o.b. as
H&S Equipment

TO: THE SERVICE LIST

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First Leaside Visions Management Inc., 1049015 Ontario Inc., 1049016 Ontario
Inc., 2007804 Ontario Inc., 2819418 Ontario Inc., FL Research Management
Inc., 970877 Ontario Inc., 1031628 Ontario Inc., 1045516 Ontario Inc., 2004516
Ontario Inc., 2192341 Ontario Inc., and First Leaside Fund Management Inc.
(collectively, the "Applicant" or "Applicants")

NOTICE OF MOTION

**792873 ONTARIO LIMITED, carrying on business as H&S
EQUIPMENT ("H&S Equipment")**, will make a motion to the Court on a date to be
fixed at a 9:30 a.m. appointment on the Commercial List, at the Court House located at
330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion will be heard orally.

THE MOTION IS FOR:

1. A declaration that the First Leaside Expansion Limited Partnership ("FLEX") is holding a \$100,000 "performance security deposit" in trust for H&S Equipment;
2. An order that FLEX pay the \$100,000 performance security deposit to H&S Equipment;
3. costs of this motion on a substantial indemnity basis; and
4. such further and other Order as to this Honourable Court seems just.

THE GROUNDS FOR THE MOTION ARE:

1. H&S Equipment is a subcontractor that provided erosion and sedimentation control, soil remediation, site services and excavation work at a development for the First Leaside Group of Companies;
2. As part of the contract, FLEX required H&S Equipment to provide a "performance security deposit" in the amount of \$100,000. The deposit was to be held by FLEX until 98% of H&S Equipment's work was completed, and then returned to H&S Equipment. H&S Equipment provided the deposit;
3. In November, 2011, after H&S Equipment completed over 98% of the work as stipulated in the contract, the First Leaside Group of Companies, of which FLEX is a member, voluntarily ceased trading and ceased all distributions in order to reconfigure their business under the direction of the Ontario Securities Commission;

4. All work on the development stopped and various trades including H&S Equipment registered construction liens on title;
5. FLEX still retained the \$100,000 security deposit that H&S Equipment had provided to it. H&S Equipment therefore brought a motion to preserve the \$100,000 deposit that was returnable February 24, 2012 (a date requested by the lawyers for the First Leaside Group of Companies);
6. On February 23, 2012, the day before the preservation motion, the First Leaside Group of Companies obtained the stay order in the within proceeding;
7. The \$100,000 security deposit does not belong to FLEX or the First Leaside Group of Companies. The deposit belongs to H&S Equipment and always has. H&S Equipment states that the deposit constitute trust funds that are being held by FLEX in favour of H&S Equipment;
8. There is a real risk that the deposit will be dissipated if FLEX is permitted to retain the funds;
9. Section 67(1)(a) of the *Bankruptcy and Insolvency Act*; and
10. Sections 2 and 19 of the *Companies' Creditors Arrangement Act*.

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

1. The affidavit of Allen Waichenberg affirmed April 2, 2012; and

2. Such further and other material as counsel may advise and this Honourable Court may permit.

April 3, 2012

WAGNER SIDLOFSKY LLP
100 Richmond Street West
Suite 316
Toronto, Ontario
M5H 3K6

Gregory M. Sidlofsky #43579C
Tel: (416) 601 9279
Fax: (416) 364 6579

Lawyers for the Moving Party
792873 Ontario Limited, c.o.b. as
H&S Equipment

TO: THE SERVICE LIST

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c.C-36, AS AMENDED AND IN THE
MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF FIRST LEASIDE WEALTH MANAGEMENT INC., et al

Court File No. CV-12-9617-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceedings commenced at Toronto

NOTICE OF MOTION

WAGNER SIDLOFSKY LLP
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M5H 3K6

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Tel: (416) 601-9279
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Lawyers for the Moving Party
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AFFIDAVIT OF ALLEN WAICHENBERG

I, ALLEN WAICHENBERG, of the Town of Thornhill, in the Province of Ontario, **AFFIRM AND SAY:**

1. I am an officer of the moving party, 792873 Ontario Limited, carrying on business as H&S Equipment ("H&S") and as such I have knowledge of the matters to which I hereinafter depose.

A. BACKGROUND

2. H&S is an Ontario company that is in the business of providing erosion and sedimentation control, soil remediation, site services and excavation services.

3. On July 13, 2010, H&S contracted with the First Leaside Expansion Limited Partnership (the "Limited Partnership") to perform erosion and sedimentation control, soil remediation, site services and excavation services on properties that were owned by related entities of the Limited Partnership (the "contract"). Attached hereto as **Exhibit "A"** is a copy of the contract entered into between H&S and the Limited Partnership.

4. The related entities that owned the properties were First Leaside Realty II Inc., 2067171 Ontario Inc. and 1132413 Ontario Inc. The properties are located on the corner of Victoria Drive and Brock Street West in Uxbridge, Ontario, and included the properties municipally known as 4 Victoria Drive, 144 Brock Street West and 168 Brock Street West (collectively, the "properties").

5. The contract price for H&S's services was \$1,130,682 plus approved changes totaling \$401,607.67 plus H.S.T. for a total of \$1,731,487.33.

B. THE SECURITY DEPOSIT

6. It was a requirement of the contract that H&S provide to the Limited Partnership a "performance security deposit" in the amount of \$100,000 (the "performance security").

7. It was also a term of the contract that the performance security be held pending 98% completion of the work, at which time the performance security would be returned to H&S.

8. H&S provided the Limited Partnership with the performance security. Attached hereto as **Exhibit "B"** is a copy of the bank draft dated November 10, 2010 payable to the Limited Partnership in the amount of \$100,000.

9. It is the position of H&S that the performance security constituted trust funds and that the Limited Partnership was required to treat it as such.

10. From July 21, 2010 to November 17, 2011, H&S provided the services required as set out in the contract.

C. FIRST LEASIDE VOLUNTARY CEASE TRADE

11. On or about November 17, 2011, H&S discovered that the First Leaside Group of Companies, for whom the Limited Partnership was overseeing the construction, had voluntarily ceased trading and stopped all construction. According to the news reports that I have read, the Ontario Securities Commission ("OSC") had ordered a third party assessment of the viability of First Leaside and its investments.

12. By the time that we discovered that First Leaside had ceased trading, approximately 98% of the work that H&S was contracted to do for the Limited Partnership had been completed, and therefore the performance security deposit should have been returned to H&S.

13. H&S retained the law offices of Wagner Sidlofsky LLP and registered construction liens against the properties for the balance of the monies owed to H&S including the performance security. Attached hereto as **Exhibit "C"** is a copy of the registered construction lien claim.

14. At the same time, my lawyers wrote to First Leaside to request confirmation that the performance security was still being held in a segregated trust account. Attached hereto as **Exhibit "D"** is a copy of the letter.

15. I am advised by my lawyer, Gregory M. Sidlofsky, and believe that his office never received a specific response to the letter dated December 22, 2011.

16. I was concerned that the performance security was not being held in a segregated trust account, and given the circumstances surrounding the viability of First Leaside, I was concerned that the performance security could be lost or paid to other parties.

D. MOTION TO PRESERVE PERFORMANCE SECURITY DEPOSIT

17. Given H&S's concerns, H&S brought a motion to preserve the \$100,000 performance security.

18. Mr. Sidlofsky sought to clear dates for the preservation motion and wrote to counsel for the First Leaside Group of Companies, Ms. Kovach, requesting her available dates for the first two weeks of February. On February 2, 2012, Ms. Kovach advised that she was unavailable until February 24, 2012. Attached hereto as **Exhibit "E"** is a copy of the email correspondence between Mr. Sidlofsky and Ms. Kovach.

19. On February 2, 2012, Ms. Kovach was served with H&S's statement of claim and a copy of the motion record returnable on February 24, 2012 (the first date that Ms. Kovach was available). Attached as **Exhibit "F"** is a copy of the letter from Mr. Sidlofsky to Ms. Kovach without enclosures.

20. Attached hereto as **Exhibit "G"** is a copy of the notice of motion returnable February 24, 2012.

E. CCAA APPLICATION

21. On February 17, 2012, Mr. Sidlofsky requested Ms. Kovach's position with respect to the preservation motion. On February 21, 2012, Ms. Kovach advised that there would be an application under the CCAA that would be brought on February 23, 2012, the day before the return of H&S's preservation motion. Attached hereto as **Exhibit "H"** is a copy of the email correspondence between Mr. Sidlofsky and Ms. Kovach.

22. On February 23, 2012, the Honourable Mr. Justice Brown granted a stay order sought by the applicants pursuant to the CCAA. Attached hereto as **Exhibit "I"** is a copy of the order of Justice Brown dated February 23, 2012. I understand that the stay was subsequently extended by court order.

F. MONEY HELD BY THE LIMITED PARTNERSHIP

23. Attached hereto as **Exhibit "J"** is a spreadsheet from the first report of the monitor disclosing that the Limited Partnership is holding, as of this date, \$777,093.70 in the bank account to which the performance security would have been deposited.

24. It was always H&S's understanding that the performance security would be held as trust funds by the Limited Partnership. The \$100,000 was never the Limited Partnership's money and it never belonged to any of the other entities comprising the First Leaside Group of Companies. The money belongs to H&S and we seek its return.

AFFIRMED before me this 2nd day of)
April, 2012 in the City of Toronto,)
Province of Ontario.)


A Commissioner, etc.

ULIANA FERREIRA



ALLEN WAICHENBERG

CCDC 17

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

2010

First Lease Head Office

THIS IS EXHIBIT "A" REFERRED TO IN THE
AFFIDAVIT OF Allen Waichenberg
SWORN BEFORE ME THIS 2nd DAY OF
April 2012

This agreement is protected by
copyright and is intended by the
parties to be an unaltered version of
CCDC 17 - 2010 except to the extent
that any alterations, additions or
modifications are set forth in
supplementary conditions.



Michael J. [Signature]
A Commissioner, etc.

CANADIAN CONSTRUCTION DOCUMENTS COMMITTEE
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CANADIAN CONSTRUCTION DOCUMENTS COMMITTEE

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- 2. Change Order
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- 5. Consultant
- 6. Contract
- 7. Contract Documents
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- 9. Contract Time
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- GC 1.2 Law of the Contract
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CCDC 17 and CCDC 5A 'Construction Management Contract-For Services' are complimentary documents. CCDC 17 is the product of a consensus-building process aimed at balancing the interests of all parties on the construction project. It reflects recommended industry practices. CCDC 17 can have important consequences. The CCDC and its constituent member organizations do not accept any responsibility or liability for loss or damage which may be suffered as a result of the use or interpretation of CCDC 17.

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

This Agreement made on the 13 day of July in the year 2010 .

by and between the parties

First Leaside Expansion Limited Partnership

hereinafter called the *Owner*

and

792873 Ontario Limited, carrying on business as H & S Equipment

hereinafter called the *Trade Contractor*

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

ARTICLE A-1 THE WORK

The *Trade Contractor* shall:

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

Soil Remediation , Site Services and Excavation Work Package

insert above the description of the Work

for the *Project*

First Leaside Head Office

insert above the title of the Project

located at

2 Victoria Drive, Uxbridge, Ontario

insert above the Place of the Project

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

Kenaidan Contracting Ltd.

insert above the name of the Construction Manager

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

Rounthwaite Dick & Hadley Architects Inc. (RDH)

insert above the name of the Consultant

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

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

CCDC 17 – 2010

Note: This contract is protected by copyright. Use of a CCDC 17 document not containing a CCDC 17 copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 17 copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 17 – 2010 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

[Handwritten signature]

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

ARTICLE A-2 AGREEMENTS AND AMENDMENTS

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

ARTICLE A-3 CONTRACT DOCUMENTS

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

- Agreement Between *Owner* and *Trade Contractor*
- Definitions
- The General Conditions of the *Contract*

*
-Refer to attached "Appendix A", Kenaidan's Letter of Intent, dated July 13, 2010, signed and accepted by H & S Equipment and Kenaidan July 20, 2010;
-Refer to attached "Appendix C", First Lease Financial Office Headquarters, Construction Stage Proposal, Kenaidan Contracting Ltd., 07APR11 Update Baseline, 07APR11 Data Date.

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

ARTICLE A-4 CONTRACT PRICE

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

One Million, One Hundred & Thirty Thousand, Six Hundred & Eighty-Two Dollars-----00 /100 dollars \$ 1,130,682.00

4.2 *Value Added Taxes* (at 5 %) payable by the *Owner* to the *Trade Contractor* are:

Fifty-Six Thousand, Five Hundred & Thirty-Four Dollars-----10 /100 dollars \$ 56,534.10

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

One Million, One Hundred & Eighty-Seven Thousand, Two Hundred & Sixteen Dollars-10 /100 dollars \$ 1,187,216.10

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

4.5 All amounts are in Canadian funds.

ARTICLE A-5 PAYMENT

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

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

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

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

5.3 Interest

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

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

the Royal Bank of Canada to the most credit-worthy borrows

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

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

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

ARTICLE A-6 COMMUNICATION

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

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

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

CCDC 17 – 2010

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

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

Owner

First Leaside Expansion Limited Partnership

*name of Owner**

430 Regional Road #8, Uxbridge, Ontario, L9P 1R1

address

(905) 852-0273

facsimile number

joan@firstleaside.com

email address

Trade Contractor

792873 Ontario Limited, carrying on business as H & S Equipment

*name of Trade Contractor**

8171 Yonge Street, Suite 303, Thornhill, Ontario, L3T 2C6

address

(888) 831-5497

facsimile number

handscat22@gmail.com

email address

Construction Manager

Kenaidan Contracting Ltd.

*name of Construction Manager**

1275 Cardiff Boulevard, Mississauga, Ontario, L5S 1R1

address

(905) 670-9172

facsimile number

balves@kenaidan.com

email address

R. J. W.

Consultant

Rounthwaite Dick & Hadley Architects Inc. (RDH)

*name of Consultant **

225 Richmond Street West, Suite 201, Toronto, Ontario, M5V 1W2

address

(416) 204-1321

facsimile number

info@rdharch.com

email address

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

ARTICLE A-8 LANGUAGE OF THE CONTRACT

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

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

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

ARTICLE A-9 SUCCESSION

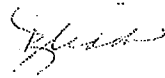
9.1 The *Contract* shall enure to the benefit of and be binding upon the parties hereto, their respective heirs, legal representatives, successors, and assigns.

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

SIGNED AND DELIVERED

In the presence of:

WITNESS


signature of witness
Marie Gladon
name of person signing

signature of witness

name of person signing

WITNESS

signature of witness
name of person signing

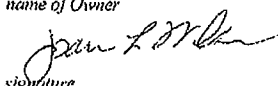
signature of witness

name of person signing

OWNER

First Leaside Expansion Limited Partnership

name of Owner


signature
Joan Wilson, Director of Real Estate
name and title of person signing

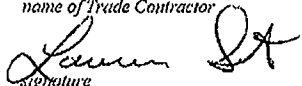
signature

name and title of person signing

TRADE CONTRACTOR

792873 Ontario Limited, carrying on business
as H & S Equipment

name of Trade Contractor

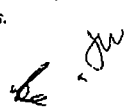

signature
Lawrence S. H. President
name and title of person signing

signature

name and title of person signing

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

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



DEFINITIONS

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

Change Directive

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

Change Order

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

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

Construction Equipment

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

Construction Manager

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

Consultant

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

Contract

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

Contract Documents

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

Contract Price

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

Contract Time

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

Drawings

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

Notice in Writing

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

Owner

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

Payment Certifier

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

Place of the Project

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

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Product

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

Project

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

Project In-Use Date

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

Provide

Provide means to supply and install.

Shop Drawings

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

Specifications

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

Substantial Performance of the Work

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

Supplemental Instruction

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

Supplier

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

Temporary Work

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

Trade Contractor

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

Trade Subcontractor

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

Value Added Taxes

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

Work

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

Working Day

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

GENERAL CONDITIONS OF THE CONTRACT

PART 1 GENERAL PROVISIONS

GC 1.1 CONTRACT DOCUMENTS

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

GC 1.2 LAW OF THE CONTRACT

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

GC 1.3 RIGHTS AND REMEDIES

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

GC 1.4 ASSIGNMENT

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

PART 2 ADMINISTRATION OF THE CONTRACT

GC 2.1 AUTHORITY OF THE CONSTRUCTION MANAGER AND THE CONSULTANT

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

GC 2.2 ROLES OF THE CONSTRUCTION MANAGER AND THE CONSULTANT

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

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- .2 give interpretations and make findings that relate to the *Work*. Such interpretations and findings shall be provided in writing within a reasonable time, and unless otherwise agreed with the *Owner* and the *Trade Contractor*, no later than 5 *Working Days* of a request. In making such interpretations and findings the *Construction Manager* and the *Consultant* will not show partiality to either the *Owner* or the *Trade Contractor*.
- 2.2.4 The *Construction Manager* and the *Consultant* will not:
- .1 be responsible for the *Trade Contractor's* failure to carry out the *Work* in accordance with the *Contract Documents*; and
 - .2 have control over, charge of or be responsible for, the acts or omissions of the *Trade Contractor*, *Trade Subcontractors*, *Suppliers*, or their agents, employees, or any other persons performing portions of the *Work*.

GC 2.3 REVIEW AND INSPECTION OF THE WORK

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

GC 2.4 DEFECTIVE WORK

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

PART 3 EXECUTION OF THE WORK

GC 3.1 CONTROL OF THE WORK

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

GC 3.2 CONSTRUCTION BY OWNER, CONSTRUCTION MANAGER OR OTHER CONTRACTORS

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

GC 3.3 TEMPORARY WORK

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

GC 3.4 DOCUMENT REVIEW

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

GC 3.5 CONSTRUCTION SCHEDULE

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

GC 3.6 SUPERVISION

- 3.6.1 The *Trade Contractor* shall provide all necessary supervision and appoint a competent representative who shall be in attendance at the *Place of the Project* while work is being performed. The appointed representative shall not be changed except for valid reason.
- 3.6.2 The appointed representative shall represent the *Trade Contractor* at the *Place of the Project*. Information and instructions provided in accordance with the *Contract* by the *Construction Manager* to the appointed representative shall be deemed to have been received by the *Trade Contractor*, except with respect to Article A-7 of the Agreement – RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING.

GC 3.7 TRADE SUBCONTRACTORS AND SUPPLIERS

- 3.7.1 The *Trade Contractor* shall preserve and protect the rights of the parties under the *Contract* with respect to work to be performed under subcontract, and shall:
- .1 enter into contracts or written agreements with *Trade Subcontractors* and *Suppliers* to require them to perform their work as provided in the *Contract Documents*;
 - .2 incorporate the terms and conditions of the *Contract Documents* into all contracts or written agreements with *Trade Subcontractors* and *Suppliers*; and
 - .3 be as fully responsible to the *Owner* for acts and omissions of *Trade Subcontractors*, *Suppliers* and of persons directly or indirectly employed by them as for acts and omissions of persons directly employed by the *Trade Contractor*.
- 3.7.2 The *Trade Contractor* shall indicate in writing, if requested by the *Construction Manager*, those *Trade Subcontractors* or *Suppliers* whose bids have been received by the *Trade Contractor* which the *Trade Contractor* would be prepared to accept for the performance of a portion of the *Work*. Should the *Owner* not object before signing the *Contract*, the *Trade Contractor* shall employ those *Trade Subcontractors* or *Suppliers* so identified by the *Trade Contractor* in writing for the performance of that portion of the *Work* to which their bid applies.
- 3.7.3 The *Owner* may, for reasonable cause, at any time before the *Owner* has signed the *Contract*, object to the use of a proposed *Trade Subcontractor* or *Supplier* and require the *Trade Contractor* to employ one of the other trade subcontract bidders.



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

GC 3.8 LABOUR AND PRODUCTS

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

GC 3.9 DOCUMENTS AT THE SITE

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

GC 3.10 SHOP DRAWINGS

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

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

GC 3.11 USE OF THE SITE

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

GC 3.12 CUTTING AND REMEDIAL WORK

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

GC 3.13 CLEANUP

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

PART 4 ALLOWANCES

GC 4.1 CASH ALLOWANCES

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

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

GC 4.2 CONTINGENCY ALLOWANCE

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

PART 5 PAYMENT

GC 5.1 FINANCING INFORMATION REQUIRED OF THE OWNER

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

GC 5.2 APPLICATIONS FOR PAYMENT

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

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

GC 5.3 PROGRESS PAYMENT

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

GC 5.4 SUBSTANTIAL PERFORMANCE OF THE WORK

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

GC 5.5 PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK

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

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

GC 5.6 PROGRESSIVE RELEASE OF HOLDBACK

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

GC 5.7 FINAL PAYMENT

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

GC 5.8 WITHHOLDING OF PAYMENT

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

GC 5.9 NON-CONFORMING WORK

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

PART 6 CHANGES IN THE WORK

GC 6.1 OWNER'S RIGHT TO MAKE CHANGES

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

GC 6.2 CHANGE ORDER

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

GC 6.3 CHANGE DIRECTIVE

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

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- .3 travel and subsistence expenses of the *Trade Contractor's* personnel described in 6.3.7.1;
 - .4 all *Products* including the cost of transportation thereof;
 - .5 materials, supplies, *Construction Equipment*, *Temporary Work*, and hand tools not owned by the workers, including transportation and maintenance thereof, which are consumed in the performance of the *Work*; and cost less salvage value on such items used but not consumed, which remain the property of the *Trade Contractor*;
 - .6 all tools and *Construction Equipment*, exclusive of hand tools used in the performance of the *Work*, whether rented from or provided by the *Trade Contractor* or others, including installation, minor repairs and replacements, dismantling, removal, transportation and delivery cost thereof;
 - .7 all equipment and services required for the *Trade Contractor's* field office;
 - .8 deposits lost, provided that they are not caused by negligent acts or omissions of the *Construction Manager* and the *Services* are performed in accordance with this *Contract*.
 - .9 the amounts of all subcontracts;
 - .10 quality assurance such as independent inspection and testing services;
 - .11 charges levied by authorities having jurisdiction at the *Place of the Project*;
 - .12 royalties, patent license fees and damages for infringement of patents and cost of defending suits therefor subject always to the *Trade Contractor's* obligations to indemnify the *Owner* as provided in paragraph 10.3.1 of GC 10.3 – PATENT FEES;
 - .13 any adjustment in premiums for all bonds and insurance which the *Trade Contractor* is required, by the *Contract Documents*, to purchase and maintain;
 - .14 any adjustment in taxes, other than *Value Added Taxes*, and duties for which the *Trade Contractor* is liable;
 - .15 charges for long distance communications, courier services, expressage, printing, and reproduction incurred in relation to the performance of the *Work*;
 - .16 removal and disposal of waste products and debris; and
 - .17 safety measures and requirements.
- 6.3.8 Notwithstanding any other provisions contained in the General Conditions of the *Contract*, it is the intention of the parties that the cost of any item under any cost element referred to in paragraph 6.3.7 shall cover and include any and all costs or liabilities attributable to the *Change Directive* other than those which are the result of or occasioned by any failure on the part of the *Trade Contractor* to exercise reasonable care and diligence in the *Trade Contractor's* attention to the *Work*. Any cost due to failure on the part of the *Trade Contractor* to exercise reasonable care and diligence in the *Trade Contractor's* attention to the *Work* shall be borne by the *Trade Contractor*.
- 6.3.9 The *Trade Contractor* shall keep full and detailed accounts and records necessary for the documentation of the cost of performing the work attributable to the *Change Directive* and shall provide the *Construction Manager* with copies thereof when requested.
- 6.3.10 For the purpose of valuing *Change Directives*, the *Owner* and the *Construction Manager* shall be afforded reasonable access to all of the *Trade Contractor's* pertinent documents related to the cost of performing the *Work* attributable to the *Change Directive*.
- 6.3.11 Pending determination of the final amount of a *Change Directive*, the undisputed value of the *Work* performed as the result of a *Change Directive* is eligible to be included in progress payments.
- 6.3.12 If the *Owner* and the *Trade Contractor* do not agree on the proposed adjustment in the *Contract Time* attributable to the change in the *Work*, or the method of determining it, the adjustment shall be referred to the *Construction Manager* for finding.
- 6.3.13 When the *Owner* and the *Trade Contractor* reach agreement on the adjustment to the *Contract Price* and to the *Contract Time*, this agreement shall be recorded in a *Change Order*.

GC 6.4 CONCEALED OR UNKNOWN CONDITIONS

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

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

GC 6.5 DELAYS

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

GC 6.6 CLAIMS FOR A CHANGE IN CONTRACT PRICE

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

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

PART 7 DEFAULT NOTICE

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

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

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

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

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

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

PART 8 DISPUTE RESOLUTION

GC 8.1 AUTHORITY OF THE CONSTRUCTION MANAGER AND THE CONSULTANT

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

CCDC 17 – 2010

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GC 8.2 NEGOTIATION, MEDIATION AND ARBITRATION

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

GC 8.3 RETENTION OF RIGHTS

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

PART 9 PROTECTION OF PERSONS AND PROPERTY

GC 9.1 PROTECTION OF WORK AND PROPERTY

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

GC 9.2 TOXIC AND HAZARDOUS SUBSTANCES

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

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

GC 9.3 ARTIFACTS AND FOSSILS

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

GC 9.4 CONSTRUCTION SAFETY

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

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GC 9.5 MOULD

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

PART 10 GOVERNING REGULATIONS

GC 10.1 TAXES AND DUTIES

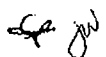
- 10.1.1 The *Contract Price* shall include all taxes and customs duties in effect at the time of the bid closing except for *Value Added Taxes* payable by the *Owner* to the *Trade Contractor* as stipulated in Article A-4 of the Agreement – CONTRACT PRICE.
- 10.1.2 Any increase or decrease in costs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

GC 10.2 LAWS, NOTICES, PERMITS, AND FEES

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

CCDC 17 – 2010

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

GC 10.3 PATENT FEES

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

GC 10.4 WORKERS' COMPENSATION

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

PART 11 INSURANCE AND CONTRACT SECURITY

GC 11.1 INSURANCE

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

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

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

GC 11.2 CONTRACT SECURITY

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

PART 12 INDEMNIFICATION, WAIVER OF CLAIMS AND WARRANTY

GC 12.1 INDEMNIFICATION

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

- .3 In respect to claims by third parties for direct loss resulting from bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, the obligation to indemnify is without limit. In respect to all other claims for indemnity as a result of claims advanced by third parties, the limits of indemnity set forth in paragraphs 12.1.2.1 and 12.1.2.2 shall apply.
- 12.1.3 The obligation of either party to indemnify the other as set forth in paragraphs 12.1.1 and 12.1.2 shall be inclusive of interest and all legal costs.
- 12.1.4 The *Owner* and the *Trade Contractor* shall indemnify and hold harmless the other from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of their obligations described in GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES.
- 12.1.5 The *Owner* shall indemnify and hold harmless the *Trade Contractor* from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings:
 - .1 as described in paragraph 10.3.2 of GC 10.3 – PATENT FEES, and
 - .2 arising out of the *Trade Contractor's* performance of the *Contract* which are attributable to a lack of or defect in title or an alleged lack of or defect in title to the *Place of the Project*.
- 12.1.6 In respect to any claim for indemnity or to be held harmless by the *Owner* or the *Trade Contractor*:
 - .1 *Notice in Writing* of such claim shall be given within a reasonable time after the facts upon which such claim is based became known;
 - .2 should either party be required, as a result of its obligation to indemnify the other, pay or satisfy a final order, judgment or award made against the party entitled by this contract to be indemnified, then the indemnifying party upon assuming all liability for any costs that might result shall have the right to appeal in the name of the party against whom such final order or judgment has been made until such rights of appeal have been exhausted.

GC 12.2 WAIVER OF CLAIMS

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

Handwritten signature/initials

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

GC 12.3 WARRANTY

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

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

BOW



FIRST LEASIDE EXPANSION LIMITED PARTNERSHIP



430 Durham Rd. #8
Uxbridge, ON, Canada L9P 1R1
905-852-1430 Toll Free: 1-866-661-9247
Fax: 905-862-3232

792873 Ontario Limited,
carrying on business as H & S Equipment
71 Delta Park Drive, Unit #4
Brampton, Ontario
L6T 5E7

July 13, 2010
File 08-547-4-2-1
Letter of Intent

Phone 416 200-0960
Fax
Email: lawrence@bellblackberry.net

Attention: Mr. Lawrence Scott, President

Re: First Leaside Head Office	(the "Project")
4 Victoria Drive, 144 & 168 Brock St. West	(the "Site")
Uxbridge, Ontario	
First Leaside Expansion LP	(the "Owner")
Kenaidan Contracting Ltd.	(the "Construction Manager")
Erosion & Sedimentation Control,	(the "Work")
Soil Remediation, Site Services	
and Excavation Work Package	

Subject: Letter of Intent

Dear Mr. Scott,

We confirm our intent to award 792873 Ontario Limited, carrying on business as H & S Equipment a subcontract to provide the Erosion & Sedimentation Control, Soil Remediation, Site Services and Excavation Work Package (the "Work") for the Project, as outlined below, and as described and detailed on drawings and specifications issued by Routhwaite Dick and Hadley Architects Inc., prepared for First Leaside Expansion Limited Partnership, including addendum 1 to 3, for the Lump Sum Price of ✓ \$1,130,682.00, which includes PST and excludes only GST.

Ontario Limited, carrying on business as H & S Equipment has nominated that PST in the amount of \$23,950.05 is included in the Lump Sum Price listed herein. The PST

Mr. Lawrence Scott, Initials

Dated

LS
July 12/2010

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JS
20 Jul 10

792873 Ontario Limited, carrying on business as H & S Equipment
Mr. Lawrence Scott, President
First Leaside Head Office

July 13, 2010
File 08-547-4-2-1
Letter of Intent

contained within the Lump Sum Price, if deducted due to upcoming Tax Changes as of July 1, 2010, shall be subject to review and agreement with the Owner.

It is a condition of this Letter of Intent that 792873 Ontario Limited, carrying on business as H & S Equipment provides Performance Security in the form of a Certified Cheque or ^{or h.o.c.} with a value of \$100,000.00, made payable to the Owner, the cost of which is included in the value of this agreement. The Certified Cheque shall ~~not expire until the Project achieves Total Completion.~~ ^{be returned when this contract reaches 98% completion.} _{10/3}
The security is to be issued to the Owner within 5 business days from issue of this Letter of Intent.

Payments shall not be made to 792873 Ontario Limited, carrying on business as H & S Equipment until the Owner has received the required Certified Cheque from 792873 Ontario Limited, carrying on business as H & S Equipment. ^{or h.o.c. 7/3}

Scope of Supply (the "Work")

With reference to the specifications, the scope of this agreement shall include all supervision, labour, material and equipment to supply and install the Excavation and Site Services Work for the office structure, as outlined in

- Division 2 Site Works
- Section 01352 LEED General Leed Requirements
- Section 03155 LEED Waste Management Disposal
- Section 01359 LEED Indoor Air Quality Management
- Section 01611 LEED Product Requirements
- Section 02370 LEED Schedule B - ESC - Weekly Inspection Log
- Section 02370 LEED Erosion & Sedimentation Control

Geotechnical Investigation reports include:

- Phase I and II Environmental Site Assessment Report, Prepared by Geo-Logic and Dated September 2008 (4 Victoria Drive)
- Phase II Environmental Site Assessment Report, Prepared by Geo-Logic and Dated April 2009 (144-168 Brock Drive West)
- Designated Substances Survey Report, Prepared by Geo-Logic and Dated September 2008 (4 Victoria Drive)
- Remedial Action Plan Report, Prepared by Geo-Logic and Dated May 2009, rev. August 2009 (144-168 Brock Street West)
- Phase I and Phase II Environmental Site Assessment, Prepared by CRA and Dated February 2009 (144 Brock Drive West)
- Phase I and Phase II Environmental Site Assessment, Prepared by CRA (169 Brock Drive West)
- Geotechnical Investigation Report, Prepared by Inspecsol and Dated December 11,

Mr. Lawrence Scott, Initials

Dated

LS
July 13, 2010

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JS

792873 Ontario Limited, carrying on business as H & S Equipment
Mr. Lawrence Scott, President
First Leaside Head Office

July 13, 2010
File 08-547-4-2-1
Letter of Intent

2007

- Brock Drive at Victoria Drive Geotechnical Investigation, Prepared by Inspecsol and Dated December 20, 2007 (144 Brock Drive West and 4 Victoria Drive)

as indicated on the drawings, all complete, and as otherwise governed by Division 1.

The plans and specifications of this project must be read as a whole and reference to other sections of the documents may be required to properly identify the scope and requirements of this agreement.

Without limiting the requirements of the above, the Work specifically includes for ALL supervision, labour, material and equipment to supply and install the Site Work Package as detailed in scope outlines 1 to 4 below, drawings and specifications for both 168 Brock Drive West and 4 Victoria Drive sites, including:

1. Erosion and Sedimentation Control
2. Soil Remediation
3. Site Services
4. Excavation

1. Erosion and Sedimentation Control Work

1. Installation of Paige Wire Silt Fence Detail around perimeter of site ✓
2. Installation of Paige Wire Silt Fence Detail around proposed stockpile locations (if required) as indicated on the drawings ✓
3. Installation of Paige Wire Silt Fence Detail along entrance mats, both sides, as indicated on the drawings ✓
4. Excavate and place 100-200mm entrance construction mats on both sites complete with geotextile fabric. Supply material as required. ✓
5. Removal of all silt fencing and entrance mats as instructed by the Site Supervisor ✓
6. Cover any existing manholes with filter fabric and maintain throughout the course of excavation ✓
7. Prior to remediation on west side install silt fence along creek line edge to the full extent of the work ✓
8. Layout and surveying as required for this work ✓
9. All locates for existing services ✓
10. Adjustment of existing temporary fencing to carry out this work ✓

2. Soil Remediation Work

1. Under direction of the geo-environmental consultant, remove and dispose of legally at a registered facility all material exceeding Table 2 criteria on the 168 Brock Drive site (West Parking Lot Side) as identified in the Geotechnical and Environmental reports listed above. ✓
2. Extent of remediation is as per all soils and geo-environmental report relating to

Mr. Lawrence Scott, Initials

Dated

LS
July 19 / 2010

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792873 Ontario Limited, carrying on business as H & S Equipment
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- 168 Brock Drive Site (West Parking), remediation has already been completed on the 4 Victoria Drive Site (East Building Site) ✓
3. All material exceeding Table 1 but not exceeding Table 2 must be legally disposed of offsite to a location accepting this material ✓
 4. Trade Contractor is responsible for managing location of stockpiles and moving of material in order to accommodate construction on site. ✓
 5. Coordinate and track amount of material being moved on site or off of site and provide supporting documentation that will be required for the Record of Site Condition ✓
 6. Dewater excavation as required during the course of remediation and pump water into sanitary system as directed by on site consultant *no site dewatering* ✓
 7. Maintain erosion and sedimentation control fencing during the course of remediation activities ✓
 8. Provide for all surveying and layout requirements. Elevation monument will be identified and provided for use of this scope of work ✓
 9. All trucking on site and off of site is the responsibility of this Trade Contractor ✓
 10. Provide tire wash down station and road cleaning as required for this section of work ✓
 11. Coordinate inspections and testing with Kenaidan and the Owner's on site Geotechnical Engineer ✓
 12. Separate any debris encountered during remediation excavation and sort on site for recycling ✓
 13. During remediation, continue to grade site to capture and pump surface runoff to prevent infiltration into the existing creek ✓
 14. Protect during the remediation process the existing monitoring wells that are clearly identified on site ✓

The Soil Remediation Work excludes only,

15. TCLP required for the soil to be moved from the site will be provided by the owner
 16. Costs for soil sampling and analysis
- deep dewatering not indicated in reports
3. Site Services Work
1. Storm sewer and watermain services complete with all supporting appurtenances as required ✓
 2. Precast catch basins and catchbasin leads, manholes and covers as per the specifications ✓
 3. Allow for additional mobilizations to reset and adjust manhole covers when exterior paving works are being completed. Coordinate final elevations with the paving contractor ✓
 4. Supply and installation of Atlantis Tanks complete c/w all supporting appurtenances ✓

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5. Protection of existing MH6 and modify structure c/w custom cover to match ramp slope ✓
6. Obtain and pay for all necessary road crossing and sidewalk encroaching permits. Coordinate work with the Region of Durham and Township of Uxbridge and repair all concrete sidewalks and asphalt roadways as per Durham Region Standards. ✓
7. Include for all shift premium work and staging as may be required for the road crossing ✓
8. Under the direction of Site Supervisor establish site water supply for a standard hose bib on the 4 Victoria Drive Site ✓
9. Supply and install all curb stops as indicated on the drawings ✓
10. Thrust block supply and installation where noted on the drawings and specifications ✓
11. Mill and lap joint asphalt as required by the Regional Standards ✓
12. HDPE Liner and other specified geotextile liners where indicated on the drawings ✓
13. Excavation, contouring and placing and compacting all granular materials to create flood plain pools and French drains as indicated on the drawings ✓
14. Supply, grade, place and compact granular materials for site service trenching. Supply, grade, place and compact (as required by the specifications) 300mm layer of clear stone and sand fill for the floodplain pool work ✓
15. Supply, place and grade topsoil complete and seeded with native grasses for floodplain pool work as indicated on the drawings ✓
16. Supply, place, grade and compact proposed pathway complete with screenings and cedar log edge as indicated on the drawings ✓
17. Supply of all granular materials required to bring the work up to subgrade elevation inclusive of pipe bedding, pipe cover, and Granular materials ✓
18. Supply and installation of retaining wall as per details on C-11, complete with pedestrian barricade fencing and as per OPSD standards. This includes the concrete work for this scope item. *excludes parking lot curb* ✓
19. Installation of all piping and pulling of tubing associated with the Automatic Water Sampling Mechanical Control system as indicated on C-01 ✓
20. Allow for handwork to cleaning trenches as required for the site service installation and hand pressing into place all required riverstone for flood plain pools ✓
21. Brick repair, parging and grouting as required for the site service work ✓
22. Site service piping (domestic water, sanitary piping, gas piping only, bring water service to a valve within the building. Bring sanitary sewer to a point 1.0 meter inside Building ✓
23. Capping/Plugging and/or removal of existing services as noted on the drawings ✓
24. Insulate piping as specified ✓
25. Tie-in to existing site services, including provision for temporary access roadways, vehicle and pedestrian protection ✓
26. Flagging and Signal Men are provided by this Trade Contractor ✓

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- floodplain pools as well as the engineered fill layer on the site for the West Parking area. ✓
13. Strip and stockpile topsoil suitable for re-use to a location designated by the Site Supervisor, excess material to be legally disposed off from the site. ✓
 14. Excavate, place and compact a 300mm layer the extent of the 4 Victoria Drive (Building Side) for a permanent access road that will be build up with sub-base materials for the asphalt pavements. Provide access ramps into the excavations as required for this work including removal and disposal upon completion and or as instructed by the site supervisor. ✓
 15. Supply, place, compact and complete grading for all landscaping concrete, sidewalks, curbs, concrete parking and asphalt parking lot areas. Ensure that tolerances are met so these areas are ready to receive final paving requirement as noted on the drawings. Coordinate this work with the Concrete and Asphalt paving subcontractors ✓
 16. Remove and legally dispose existing concrete curbs, sidewalks and asphalt pavements ✓
 17. Obtain and pay for curb cut permits as required ✓
 18. Grade landscape areas ready to receive topsoil which will be completed by others ✓
 19. Grade all pavement areas ready to receive concrete, asphalt or curbs ✓
 20. Maintain access roads and entrance mats during the course of excavation and site service work on site ✓
 21. Remove and dispose on site into bins any remaining concrete/cinder blocks from the existing foundation in the North East corner of the 4 Victoria Drive Site as indicated ✓
 22. Make good the grade and ballast along the track behind the crash wall as a result of this work. Handwork may be required. ✓ *on soils rep*
 23. Machine a flat grade for Caisson Drill rig access along the crash wall ✓
 24. Load and dispose of Caisson Drill rig spoils which will be stockpiled in an area designated by the KCL Site Supervisor ✓
 25. Coordinate excavation with shoring contractor to ensure a continuous uninterrupted operation ✓
 26. Remove and dispose rock, boulders, or construction debris encountered when excavating, to a legal dump site and in accordance to the geotechnical report ✓
 27. Dispose of all surplus material off of site legally ✓
 28. Excavate for tower crane foundation and backfill crane foundation upon removal of tower crane. Remove and dispose of offsite all excess excavated material from the tower crane excavation ✓
 29. Excavation for drainage along the perimeter of basement including weeper supply and installation ✓
 30. Stockpile and manage excavated fill considered suitable for re-use ✓
 31. Provide trenches, pits to lower the water table if required ✓
 32. Provide a pitman to control equipment operations ✓
 33. Coordinate excavation work with Geothermal Contractor and all other trades ✓

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27. All excess spoil material from excavation work to be legally disposed off of the site. ✓
28. Terminate all watermain lines 6" A.F.F. inside building c/w flange. Flange to be capped ✓
29. Connection to incoming services at 300 mm outside of exterior wall. Mark and locate terminations to the satisfaction of the Site Supervisor ✓
30. All final cleaning, testing and permits for the work ✓
31. Dust control during completion of this work. ✓
32. Restoration of any sod disturbed during installation of the site services ✓
33. Develop all surface drainage control ditches and swales, maintain the site as free draining during construction, drain the site away from the main building excavation ✓
34. Removal and disposal on site of surplus materials ✓
35. Frost protection ✓
36. Frost removal ✓
37. Barrier protection around the work as it progresses through the site ✓
38. Layout and control of lines and levels ✓
39. Expose, maintain and protect existing utilities, support if required for this Work ✓
40. Provide all co-ordination required for the delivery and unloading of materials ✓

4. Excavation Work

1. Excavation and backfill placement and compaction for building structure and surrounding parking and sidewalk areas complete as indicated on the drawings including all bulk and detailed excavation requirements ✓
2. Supply of all engineered fill and granular materials ✓
3. All locates for existing services ✓
4. Manage to balance quantities for cut/fill operations and also for backfill requirements ✓
5. Coordinate work with mechanical and electrical contractors for tie-ins ✓
6. In 300 flat plate areas, non-granular material may be utilized, compaction will still be required and material can be reclaimed from the site. ✓
7. Clear and grub plant material, and existing materials required to accommodate the new construction, separate debris for recycling and dispose off of site (refer to LEED sections in general requirements) ✓
8. All shrub and tree material to be chipped and shredded on site and spread in a location provided by the owner. ✓
9. Supply, place and grade topsoil complete and seeded with native grasses for floodplain pool work as indicated on the drawings ✓
10. Supply, place, grade and compact proposed pathway complete with screenings and cedar log edge as indicated on the drawings ✓
11. Decommission of all wells and water monitoring locations as instructed by the geo-environmental consultant *excluding deep wells* ✓ *Sh. 7*
12. Save and stockpile existing topsoil and granular materials to be utilized in the

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- 34. Auguring for bollards and removal of spoils where noted on the drawings ✓
- 35. Protect existing construction including buildings, plantings, surface finishes from damage and in accordance to the project specifications. ✓
- 36. Expose, maintain and protect existing utilities, support if required for this work ✓
- 37. Labour and equipment for surface dewatering of excavations until concrete work commences in the area, dewatering is for excavations only ✓
- 38. All Layout and control of lines and levels ✓
- 39. Clean-up of public roadways and provision of wheel wash station as required ✓
- 40. Provide barrier protection around the work as it progresses through the site ✓
- 41. Provide traffic and pedestrian control as required to complete your scope of work and for your forces ✓
- 42. Access and hoisting as required for this work ✓
- 43. Snow removal and stockpiling during winter season if required ✓
- 44. Include for all costs associated with increases in labour rates, fuel charges, tipping fees and all other costs other than taxes as it applies to your scope of work. ✓
- 45. Permits as required for this work ✓
- 46. Disposal bins as required for the work ✓
- 47. General Labour for hand digging and cleanup ✓

The Excavation Work excludes only,

- 48. Excavation and granulars for electrical and mechanical work only ✓
- 49. Fine grading of topsoil and supply *20* ✓
- 50. Drilling for Calsons ✓
- 51. Topsoil, sod and plant materials excluding topsoil required at floodplain area ✓

- deep site dewatering - 8

The Work generally requires,

- mobilizations as required to meet the project schedule ✓
- prices to remain firm for duration of project ✓
- sufficient resources to provide this work during normal business hours ✓
- winter work as may be required by the schedule ✓
- provide all necessary labour and equipment to maintain the project schedule including all costs associated with work to be completed after hours ✓ *unless delay caused by others.*
- all materials, products and accessories as specified, without substitution *unless approved. 2* ✓
- hardware and accessories as required for a complete installation ✓
- installation of specified products to be as per manufacturer's requirements ✓
- store and protect all materials in environmental conditions as recommended by the manufacturer ✓
- provide sufficient resources and manpower to meet the project schedule ✓
- mobilizations as required to co-ordinate with the other trades, and as instructed by the Site Supervisor ✓
- coordination of interconnecting details with adjacent trade work ✓
- provide all labour, materials and equipment to protect adjacent work areas ✓

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- supply and installation of signage and protection where necessary ✓
- site equipment to have up to date certifications ✓
- handling and hoisting required for this work ✓
- ~~-access scaffolding as required for this work~~ ✓
- daily clean-up and disposal of construction generated garbage debris, separated into LEED requirements in owner supplied bins ✓
- provide for dust control as required ✓
- clean up mud off of public roadways if caused by the Work ✓
- ~~-final cleaning and touch-up of finishes, if required~~ ✓
- clean adjacent materials and surfaces of foreign material resulting from the work ✓
- delivery of this work to satisfy the project schedule requirements ✓
- coordinate your work with that of other trades as required ✓
- protection of the work of other trades ✓
- flagperson for work of this trade as required ✓
- attendance at safety and co-ordination meetings as requested ✓
- comply with all safety codes while undertaking the Work ✓
- perform all work to comply with Ministry of Labour requirements ✓
- provide all work to meet or exceed industry standards ✓
- quality assurance requirements as noted in the specifications ✓
- duties, customs charges, royalties, freight, transportation, and insurance during transportation ✓
- delivery, storage, handling and protection of materials ✓
- submissions, product data, engineered shop drawings, samples, mock-ups, certificates and reports ✓
- testing inspections and reports as specified ✓
- ~~-submit colour charts for approval~~ ✓
- maintenance manual information as specified ✓
- maintain and provide As Built drawings as specified ✓
- supply of materials for maintenance as specified ✓
- arrange and pay for all required permits to carry out the work ✓
- warranties and guarantees as specified ✓
- insurance certificates ✓
- Performance Security in the value of \$100,000.00 in the form of a Certified Cheque or LOC. & ✓

Without limiting the requirements of the above, the Work for the LEED requirements generally includes,

- provide submittals, product data, and information relevant to LEED on specified products
- LEED Action Plan submission to fulfil requirements specification section 01352, in compliance to achieving LEED MR 2.1 and MR 2.2, MR 4.1 and MR 4.2, MR 5.1 and MR 5.2, MR 7, as applicable to the Work

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-LEED documentation submittals which support LEED Action Plan

-LEED Waste Management Plan:

- develop and submit waste management plan consisting of waste identification, waste reduction and includes cost / revenue analysis
- include separate sections of the plan for demolition and construction waste.
- indicate estimated quantities of waste prior to actual work onsite and provide documentation of actual progress by weight.
- complete with reduction progress reports as specified complete with: materials category, generation point of waste, total quantity of waste in tonnes, quantity of waste salvaged, quantity of waste recycled, quantity of waste recovered (salvage plus recycled), and quantity of waste recovered as a percentage of total waste
- waste reduction calculations for salvage, recycling, and disposal of a percentage of total waste generated by the Work diverting 75% of total waste by weight and 100% for uncontaminated packaging by weight

-LEED waste reduction / management progress report submission with the monthly basis with progress billing applications

-include in material and equipment purchasing agreements of waste reduction provisions requesting that materials and equipment be delivered in packing made of recyclable material, that they reduce the amount of packaging, the packaging be taken back for reuse or recycling, and that all unused product is taken back.

-records of donations

-records of sales

-recycling and process facility records

-landfill and incinerator disposal records

-list of proposed materials with recycled content

-list of proposed materials extracted, processed, and manufactured regionally

-list of certified wood products (if applicable to this Work)

-certificates of chain-of-custody (if applicable to this Work)

-construction indoor air quality management plan during construction and before occupancy (if applicable to this Work)

-attend LEED pre-construction meetings and monthly meetings thereafter (as applicable to this Work)

-LEED Facility Commissioning as Applicable to the Work

The Work excludes only,

-cost of building permit

Price Breakdown

Item No.	Description	Tender Amount (including PST)
1.	Erosion and Sedimentation Control	\$28,000.00

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\$	Soil Remediation	\$75,000.00
3.	Site Services	\$521,112.00
4.	Excavation and Backfill	\$506,570.00

Unit Prices

The following Unit Prices shall be used to determine the value of Work performed by this Agreement. The Work shall be measured and verified by the Site Supervisor based on the actual quantity of Work satisfactorily completed. Payments will also be based on the same basis.

The Unit Prices listed below are intended to be a full and complete scope of Work as outlined in the referenced specification section, and include all labour, material and equipment to complete the Work unless specifically identified otherwise.

Item No.	Description	Amount
1.	Soil Remediation exceeding table #2 -- unit rate cost for disposal (tipping) fee excluding haulage which is part of the scope	\$1,200.00/tri-axle

Hourly Rate -- Personnel & Equipment

Item No.	Description	Hourly Rate
1.	Labourer	\$55.00/hr
2.	Rubber tire backhoe - Operated	\$110.00/hr
3.	Skidsteer - Operated	\$100.00/hr
4.	Tri-Axle - Operated	\$105.00/hr

Alternates -- Value Engineering Items

Item	Amount
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1. Purchase Atlantis tanks	\$55,000.00
2. Purchase Retaining Wall	\$14,000.00

Schedule

Meeting the schedule dates for the Project is a fundamental requirement of this agreement.

Schedule and deliver this work to ensure the project will achieve Substantial Performance as defined by the Construction Lien Act, by September 30, 2011.

The sequence of work is as follows:

1. Install erosion and sedimentation control on the both sides of the project
2. Soil remediation of west side (Parking lot side) including all backfilling to rough Granular A, site servicing, retaining walls and floodplain work.
3. Grade site on 4 Victoria Drive for access road and caisson installation and tower crane base. Can only be completed when well capping operations have been completed.
4. Install site services on 4 Victoria Drive.
5. Proceed with balance of excavation work for building once Caisson work is completed.

Immediately upon receipt of this letter, proceed to complete all shop drawing submissions for the Site Servicing, Floodplain and Retaining wall portions of the Work by July 26, 2010, or earlier if required to meet the Project schedule.

Be prepared to commence Work on Site July 21, 2010, or as otherwise instructed by the Site Supervisor.

The above dates are subject to the development of a detailed schedule and may be adjusted as needed.

Provide a list of key activity durations for use to develop the Project schedule.
Provide a detailed work plan for the Erosion & Sedimentation Control, Soil Remediation, Site Services and Excavation Work for review.
The above noted submissions are required to be submitted and accepted by Kenaidan prior to submission of the first payment application.

Provide a three-week look ahead schedule on the Monday of each week when 792873 Ontario Limited, carrying on business as H & S Equipment is on Site. Provide manpower/equipment and progress reports as requested by the Site Supervisor.
A detailed project schedule will be provided shortly for your review.

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The subcontract Work is to be co-ordinated with the Kenaidan Site Supervisor and schedule changes are subject to the terms and conditions of the Prime Contract for the Project.

The Drawings and Specifications are available at the following link:

- <https://extranet.kenaidan.com/ftp/leadSideOffice/default.aspx>
 - Accept any security certificates and security warnings
 - Login Name: Kenaidan\leasideRO
 - Password: 5pr!@X
 - The Drawings and Specifications for this Work Package are deposited in the Folders titled:
 "003. Issued for Tender – Excavation and Site Services Work Package, dated April 28, 2010"
- The first time you log in it may take a few minutes to install some Java scripts. You may be prompted to permit the installation of these scripts.
- If you have any technical difficulties, please contact Kenaidan IT Support at ISupport@kenaidan.com or #905.670.2660 ext.2706

Reference Drawings and Specifications (the "Project Documents")

DRAWINGS

ARCHITECTURAL DRAWINGS: prepared by Routhwalte Dick and Hadley Architects Inc. dated October 2, 2009 (Issue for Pricing)			
A0.00	Cover Sheet		
A0.01	General Notes and Wall Partition Schedule	01	Oct 02/09
A0.02	Fire Separation plans	01	Oct 02/09
A1.01	Survey Conjoined	02	Oct 02/09
A1.02	Site Plan Conjoined	02	Oct 02/09
A1.03	Site Plan - Building Site	02	Oct 02/09
A1.04	Site Plan - West Site	02	Oct 02/09
A1.05	Site Podium, Planters and Bench Details	01	Oct 02/09
A2.00	Foundation Plan	01	Oct 02/09
A2.01	100 Level Plan	02	Oct 02/09
A2.02	200 Level Plan	02	Oct 02/09
A2.03	300 Level Plan	02	Oct 02/09
A2.04	400 Level Plan	02	Oct 02/09
A2.05	Roof Level Plan	02	Oct 02/09
A.206	100 Level - Floor Finish Plan	02	Oct 02/09
A.207	200 Level - Floor Finish Plan	02	Oct 02/09
A.208	300 Level - Floor Finish Plan	02	Oct 02/09

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A.209	400 Level - Floor Finish Plan	02	Oct 02/09
A2.11	100 Level Enlarged Floor Plans	01	Oct 02/09
A2.21	200 Level Enlarged Floor Plans	01	Oct 02/09
A2.31	300 Level Enlarged Floor Plans	01	Oct 02/09
A2.41	400 Level Enlarged Floor Plans	01	Oct 02/09
A3.01	100 Level Reflected Ceiling Plan	-	Not Issued
A3.02	200 Level Reflected Ceiling Plan	-	Not Issued
A3.03	300 Level Reflected Ceiling Plan	-	Not Issued
A3.04	400 Level Reflected Ceiling Plan	-	Not Issued
A4.01	Northwest & Southwest Building Elevations	02	Oct 02/09
A4.02	South & Southeast Building Elevations	02	Oct 02/09
A4.03	North & East Building Elevations	02	Oct 02/09
A5.01	Building Sections	02	Oct 02/09
A5.02	Building Sections	02	Oct 02/09
A5.03	Building Sections	02	Oct 02/09
A5.04	Building Sections	02	Oct 02/09
A6.01	Stair 4 Layout (Deleted)	-	Not Issued
A6.11	Stair 1 and Vestibule Enlarged Plans	01	Oct 02/09
A6.12	Stair 1 Plan and Section Details	01	Oct 02/09
A6.21	Stair 2 Enlarged Plans	01	Oct 02/09
A6.22	Stair 2 Section	01	Oct 02/09
A6.23	Stair 2 Section	01	Oct 02/09
A6.24	Stair 2 Plan details	01	Oct 02/09
A6.25	Stair 2 Section Details	01	Oct 02/09
A6.31	Stair 3 and 5 Enlarged Plans	01	Oct 02/09
A6.32	Stair 3 Plan and Section Details	01	Oct 02/09
A7.11	100 Level Plan Details	01	Oct 02/09
A7.21	200 Level Plan Details	-	Not Issued
A7.31	300 Level Plan Details	-	Not Issued
A7.41	400 Level Plan Details	-	Not Issued
A8.11	100 Level Interior Elevations	-	Not Issued
A8.21	200 Level Interior Elevations	-	Not Issued
A8.31	300 Level Interior Elevations	-	Not Issued
A8.41	400 Level Interior Elevations	-	Not Issued
A9.11	Section Details - East Wing - Ground Floor	01	Oct 02/09
A9.12	Section Details - East Wing - Ground Floor (Deleted)	-	Not Issued
A9.13	Section Details - West Wing - Ground Floor (Deleted)	-	Not Issued
A9.14	Section Details - West Wing - Ground Floor (Deleted)	-	Not Issued
A9.21	Section Details	01	Oct 02/09
A9.22	Section Details	01	Oct 02/09
A10.01	Section Details (Deleted)	-	Not Issued
A10.02	Section Details (Deleted)	-	Not Issued
CIVIL DRAWINGS: prepared by The Walterfedy Partnership dated October 2, 2009 (Issued for Pricing)			

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C-01	Existing Conditions			Oct 02/09
C-02	Existing Catchment Areas			Oct 02/09
C-03	Proposed Conditions			Oct 02/09
C-04	Proposed Catchment Areas			Oct 02/09
C-05	Grading and Drainage Plan			Oct 02/09
C-06	Proposed Regional Floodplain			Oct 02/09
C-07	Site Servicing - Plan			Oct 02/09
C-08	Floodplain Pool Sections			Oct 02/09
C-09a	Sections 1 of 2			Oct 02/09
C-09b	Sections 2 of 2			Oct 02/09
C-10	Sediment and Erosion Control Plan			Oct 02/09
C-11	Details			Oct 02/09
RETAINING WALL DRAWINGS: prepared by Lock & Load Retaining Wall Systems dated December 01, 2008 (Issued for Pricing)				
				Dec 01/08
First-Con-001	Partial Site Plan (South)			Dec 01/08
First-Con-002	Partial Site Plan (North)			Dec 01/08
First-Con-003	Profile @ Sections			Dec 01/08
First-Con-004	Section 'A-A' & 'B-B'			Dec 01/08
First-Con-005	Section 'C-C'			Dec 01/08
First-Con-006	Section 'D-D' & 'E-E'			Dec 01/08
First-Con-007	Technical Specification			Dec 01/08
First-Con-008	Technical Specification			Dec 01/08
LANDSCAPE DRAWINGS: prepared by Martin Wade Landscape Architects dated October 1, 2009 (Issued for Pricing)				
L1	Landscape Plan Part 1 - Building Site	05		Oct 01/09
L2	Landscape Plan Part 2 - West Site	05		Oct 01/09
L3	Detailed Plan - Planter A & B	05		Oct 01/09
L4	Detailed Plan - Planters C,D,E	05		Oct 01/09
L5	Plant Lists	05		Oct 01/09
L6	Floodplain Area: Pond Planting Ponds A,B & C	02		Oct 01/09
L7	Floodplain Area: Pond Planting Ponds D,E & F	02		Oct 01/09
L8	Planting Details	02		Oct 01/09

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STRUCTURAL DRAWINGS: prepared by Carruthers & Wallace (part of the Trow Group of Companies) dated October 2, 2009 (Issued for Pricing)			
S1.0	General Notes & Typical Details	02	Oct 02/09
S1.1	Typical Details	02	Oct 02/09
S1.2	Typical Details	02	Oct 02/09
S1.3	Typical Details	02	Oct 02/09
S2.0	Foundation Plan	02	Oct 02/09
S2.1	Ground Floor Framing Plan	02	Oct 02/09
S2.2	Second Floor Framing Plan	02	Oct 02/09
S2.3	Third Floor Framing Plan	02	Oct 02/09
S2.4	Fourth Floor Framing Plan	02	Oct 02/09
S2.5	Roof Framing Plan	02	Oct 02/09
S3.0	Concrete Wall Typical Details	02	Oct 02/09
S3.2	Concrete Wall Plans	02	Oct 02/09
S4.0	Sections	02	Oct 02/09
S4.1	Sections	02	Oct 02/09
S5.0	Column & Footing Schedule	02	Oct 02/09
S6.0	Beam Schedule	02	Oct 02/09
MECHANICAL DRAWINGS: prepared by Jain and Associated Ltd. Dated October 2, 2009 (Issued for Pricing)			
M1.1	100 Level Plan - Plumbing	02	Oct 02/09
M1.2	200 Level Plan - Plumbing	02	Oct 02/09
M1.3	300 Level Plan - Plumbing	02	Oct 02/09
M1.4	400 Level Plan - Plumbing	02	Oct 02/09
M2.0	Site Plan - HVAC	02	Oct 02/09
M2.1	100 Level Plan - HVAC Ducting Layout	02	Oct 02/09
M2.2	200 Level Plan - HVAC Ducting Layout	02	Oct 02/09
M2.3	300 Level Plan - HVAC Ducting Layout	02	Oct 02/09
M2.4	400 Level Plan - HVAC Ducting Layout	02	Oct 02/09
M2.5	400 Level Ceiling Level - HVAC Ducting Layout	02	Oct 02/09
M2.6	100 Level Plan - HVAC Piping Layout	02	Oct 02/09
M2.7	200 Level Plan - HVAC Piping Layout	02	Oct 02/09
M2.8	300 Level Plan - HVAC Piping Layout	02	Oct 02/09
M2.9	400 Access Floor Level Plan - HVAC Piping Layout	02	Oct 02/09
M2.10	400 Ceiling Level - HVAC Piping Layout	02	Oct 02/09
M2.11	Mechanical Room Layout - HVAC	02	Oct 02/09
M2.12	Mechanical Sections - HVAC	02	Oct 02/09
M2.13	Schematic - HVAC	02	Oct 02/09
M2.14	Details - HVAC	02	Oct 02/09
M2.15	Mechanical Schedule - HVAC	02	Oct 02/09
M3.1	100 Level Plan - Sprinklers	02	Oct 02/09

Mr. Lawrence Scott, Initials

Dated: July 14/2010

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792873 Ontario Limited, carrying on business as H & S Equipment
 Mr. Lawrence Scott, President
 First Leaside Head Office

July 13, 2010
 File 08-647-4-2-1
 Letter of Intent

M3.2	200 Level Plan - Sprinklers	02	Oct 02/09
M3.3	300 Level Plan - Sprinklers	02	Oct 02/09
M3.4	400 Level Plan - Sprinklers	02	Oct 02/09
ELECTRICAL DRAWINGS: prepare by Jain and Associated Ltd. dated October 2, 2009 (Issued For Pricing)			
E001	Legend - Electrical	02	Oct 02/09
E101	Site Plan - Electrical	02	Oct 02/09
E201A	100 Level Plan - Lighting	02	Oct 02/09
E201B	100 Level Plan - Power & Systems	02	Oct 02/09
E202A	200 Level Plan - Lighting	02	Oct 02/09
E202B	200 Level Plan - Power & Systems	02	Oct 02/09
E203A	300 Level Plan - Lighting	02	Oct 02/09
E203B	300 Level Plan - Power & Systems	02	Oct 02/09
E204A	400 Level Plan - Lighting	02	Oct 02/09
E204B	Roof Plan - Electrical	02	Oct 02/09
E301	Power System Riser	02	Oct 02/09
E302	Fire Alarm System Riser and Schedule	02	Oct 02/09
E303	TEL/CATV & Security System Riser	02	Oct 02/09
E401	Details - Electrical	02	Oct 02/09

SPECIFICATIONS

Geo-Environmental and Soils Reports			
N/A	Phase I and II Environmental Site Assessment Report, Prepared by Geo-Logic and Dated September 2008 (4 Victoria Street)		September 2008
N/A	Phase II Environmental Site Assessment Report, Prepared by Geo-Logic and Dated April 2009 (144-168 Brock Street West)		April 2009
N/A	Designated Substances Survey Report, Prepared by Geo-Logic and Dated September 2008 (4 Victoria Street)		September 2008
N/A	Remedial Action Plan Report, Prepared by Geo-Logic and Dated May 2009, rev. August 2009 (144-168 Brock Street West)		May 2009, rev. August 2009
N/A	Phase I and Phase II Environmental Site Assessment, Prepared by CRA and Dated February 2009 (144 Brock Street West)		February 2009
N/A	Phase I and Phase II Environmental Site Assessment, Prepared by CRA (169 Brock Street West)		No date
N/A	Geotechnical Investigation Report, Prepared by Inspecof and Dated December 11, 2007		Dec 11/07

Mr. Lawrence Scott, Initials

Dated July 19/2010

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792873 Ontario Limited, carrying on business as H & S Equipment
 Mr. Lawrence Scott, President
 First Leaside Head Office

July 13, 2010
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N/A	Brock Street at Victoria Drive Geotechnical Investigation, Prepared by Inspecsol and Dated December 20, 2007 (144 Brock Street West and 4 Victoria Street)			Dec 20/07
	Division 1 Specifications			
00050	List of Contents			Apr 26/10
00080	Directory			Apr 26/10
00100	Kenaidan Instruction to Bidders			Apr 26/10
00025	Geotechnical Investigation Reports			Apr 26/10
00300	Kenaidan Tender Form			Apr 26/10
00700	Kenaidan General Conditions of the Contracts			Apr 26/10
00800	Kenaidan Supplementary General Conditions			Apr 26/10
00600	List Drawings			Apr 26/10
	Division 1 - Architectural General Requirements			
01000	General Instructions			Apr 26/10
01016	Examination, Protection & Restoration of Property			Apr 26/10
01020	Allowances			Apr 26/10
01026	Application of Payment			Apr 26/10
01027	Valuation of Changes			Apr 26/10
01028	Change Order Procedure			Apr 26/10
01040	Co-Ordination			Apr 26/10
01042	Mechanical & Electrical Co-Ordination			Apr 26/10
01045	Cutting and Patching			Apr 26/10
01050	Layout Dimension			Apr 26/10
01060	Regulatory Requirements			Apr 26/10
01200	Meeting and Progress Records			Apr 26/10
01293	Payment Procedures			Apr 26/10
00300	Submittals			Apr 26/10
01311	Construction Schedules			Apr 26/10
01340	Shop Drawings and Product Data			Apr 26/10
01341	Samples			Apr 26/10
01352	Leed-General Leed Requirements			Apr 26/10
01355	Leed-Waste Management Disposal			Apr 26/10
01359	Leed - Indoor Air Quality Management			Apr 26/10
01359A	Leed-IAQ Management Schedule			Apr 26/10
01400	Quality Control			Apr 26/10
01510	Temporary Facilities			Apr 26/10
01520	Leed-Indoor Air Quality Management			Apr 26/10
01530	Hoardings and Barriers			Apr 26/10
01545	Construction Safety			Apr 26/10
01550	Safety Requirements			Apr 26/10
01600	Parking			Apr 26/10
01600	Product & Workmanship			Apr 26/10
01611	Leed - Leed Requirements			Apr 26/10
01611A	Leed Product Requirements Schedule			Apr 26/10

Mr. Lawrence Scott, Initials

Dated

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792873 Ontario Limited, carrying on business as H & S Equipment
 Mr. Lawrence Scott, President
 First Leaside Head Office

July 13, 2010
 File 08-547-4-2-1
 Letter of Intent

01630	Contractors Options		Apr 26/10
01660	Equipment Start-up Procedures		Apr 26/10
01661	Testing Systems		Apr 26/10
01700	Project Close-out		Apr 26/10
01710	Cleaning		Apr 26/10
01730	Operations & Maintenance Data		Apr 26/10
01740	Warranties		Apr 26/10
	Division 1 - Civil General Requirements		
01100	Summary		Apr 26/10
01200	Price & Payment Procedures		Apr 26/10
01351	Health & Safety		Apr 26/10
01400	Quality Requirement		Apr 26/10
01600	Product Requirements		Apr 26/10
01700	Execution Requirements		Apr 26/10
	Division 2 - Site Construction		
02200	Excavating, Backfilling & Rough Grading		Apr 26/10
02205	Site Preparation		Apr 26/10
02210	Site Grading		Apr 26/10
02230	Site Servicing		Apr 26/10
02370	Leed - Schedule A & B		Apr 26/10
02500	Utility Services		Apr 26/10
02510	Asphalt Paving		Apr 26/10
02514	Concrete Sidewalk, Ramps, Curbs & Gutters		Apr 26/10
02710	Foundation Drainage		Apr 26/10
02901	Tree and Serb Preservation		Apr 26/10
02906	Planting of Trees, Shrubs & Ground Covers		Apr 26/10
02911	Topsoils & Finish Grading		Apr 26/10
02922	Hydraulic Seeding		Apr 26/10
	Division 2 - Civil Site Construction		
02074	Geotextile		Apr 26/10
02110	Excavation of Contaminated Soil		Apr 26/10
02120	Off-site Transportation & Disposal		Apr 26/10
02200	Site Preparation		Apr 26/10
02316	Fill		Apr 26/10
02317	Excavation of Contaminated Soil		Apr 26/10
02373	Rock Lining		Apr 26/10
02501	Buried Utilities		Apr 26/10
02740	Flexible Pavement		Apr 26/10
02776	Curbs and Sidewalk		Apr 26/10
02834	Retaining Wall		Apr 26/10

Mr. Lawrence Scott, Initials

Dated

LS
 July 19/10

Page 19 of 23

J

792873 Ontario Limited, carrying on business as H & S Equipment
Mr. Lawrence Scott, President
First Leaside Head Office

July 13, 2010
File 08-547-4-2-1
Letter of Intent

Administration

Your Contract Number for this project is 08-547-4-2-1. Please refer to this number on all correspondence and payment applications. A schedule for performance of the subcontract Work will be enclosed with the subcontract documents.

Please provide a breakdown of the Lump Sum Price, for progress billing purposes, within 5 business days from the date of this letter, for our review. This breakdown shall be by Section and by material and installation, and be in sufficient detail to measure and monitor the progress of your Work. This breakdown shall be agreed to prior to processing the first payment application.

An amount of \$10,000.00 will be set aside until the Operation and Maintenance Manual Information, Warranties, and As Built drawings required by this scope are submitted and accepted by the Owner.

Payments will be made in accordance with the Prime Contract Documents, which include applicable retention for the Statutory Holdback, the ~~Maintenance Security and the Completion Retention.~~ *LS*

Submit all additional Work quotations in sufficient detail to assess the cost and to identify the mark-up allowed by the Prime Contract. Provide supporting documentation for review to substantiate additional Work quotations with the initial submission.

In compliance with Ontario Regulation 102 and 103, the Subcontractor is to submit a Waste Reduction Plan prior to release of its first payment and written assurance that the waste produced by the Work has been disposed of at a licensed facility. Assistance in the development of the project specific Waste Reduction Plan may be provided by Kenaidan upon request. The Subcontractor shall submit copies of all waste haulage tickets (with material breakdown details) on a monthly basis as part of the monthly payment application. Submission of a completed Waste Reduction Plan for the Work shall be a Project closeout requirement and satisfactorily completed prior to release of the final payment to the Subcontractor.

All waste produced by your construction activities is to be removed off Site and legally disposed by 792873 Ontario Limited, carrying on business as H & S Equipment on a regular basis. Arrangements for waste removal may be made with the Kenaidan Site Supervisor and any costs associated will be applied to your account.

Submit proof of General Liability in the amount of \$5.0 million and Auto Insurance in the amount of \$2.0 million with Kenaidan Contracting Ltd. as additionally insured prior to mobilising onto the Project.

Mr. Lawrence Scott, Initials *LS*

Dated *July 16, 2010*

Page 20 of 23 *W*

792873 Ontario Limited, carrying on business as H & S Equipment
Mr. Lawrence Scott, President
First Leaside Head Office

July 13, 2010
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Submit proof of Contractor's Equipment Insurance in the amount equal to the value of equipment on the job Site, including rented equipment.

Submit a valid WSIB Clearance Certificate and a Statutory Declarations that all accounts have been paid in full with payment applications.

Payments shall not be made without proof of Liability Insurance, receipt of the WSIB Clearance Certificate and any required Statutory Declarations.

Project Staff

792873 Ontario Limited, carrying on business as H & S Equipment shall assign a Site Supervisor for the Work, who shall be responsible and authorised to supervise the Work provided by this agreement. This person shall also enforce compliance with all safety regulations required in the performance of this Work. This person shall be on the Site at all times when 792873 Ontario Limited, carrying on business as H & S Equipment has Work being carried out on Site.

A safety orientation will be required for each new subcontractor and for all new workers on this Site. This orientation will be administered by the Site Supervisor. Please make arrangements for this orientation before mobilising the jobsite. A safety policy shall be submitted prior to mobilizing on-site. A complete list of all equipment required to complete the job must be submitted for review.

792873 Ontario Limited, carrying on business as H & S Equipment is required, when requested by the Site Supervisor, to have a representative attend a weekly safety and co-ordination meeting. Be advised that failure to attend these meetings by your representative may result in termination of this agreement. Provide to the Site Supervisor copies of the minutes of any tailgate safety meetings held by your workers.

The Site Supervisor for this Project is Mr. Marcello Zanon, and he may be reached at (416) 574-4725. Please co-ordinate your work on site with the Site Supervisor directly.

The Project Administrator for this Project is Ms. Elisa Lui and she may be reached at the Mississauga office (905) 670-2660. Please contact the Project Administrator, regarding the status of your payment applications. Please forward all submissions for your Work to the attention of the Project Administrator at the Mississauga office. Contact the Project Administrator directly concerning the status of your submissions, samples and reports.

The Project Manager for this project is Mr. Benjamin Alves, and he may be reached at (416) 919-1537. Please direct schedule, design, cost and contractual issues concerning this project to the Project Manager's attention at our Mississauga Office.

Mr. Lawrence Scott, Initials

Dated

LS
July 13 / 2010

Page 21 of 23

JS

792873 Ontario Limited, carrying on business as H & S Equipment
Mr. Lawrence Scott, President
First Leaside Head Office

July 13, 2010
File 08-547-4-2-1
Letter of Intent

Quality Control

Provide all equipment and materials for this Project in conformance with the Reference Documents. Correct all deficient Work on detection and without prompting by Kenaidan or the Owner. Ensure that the end product is a quality installation, which meets or exceeds industry standards.

A warranty for the Work supplied by this agreement shall be provided in accordance with the Prime Contract requirements.

It is understood that this agreement requires the use of Qualified Personnel, the cost of which is included in the total price.

Successful Closeout

Achieving a successful project closeout is a critical contributor to developing long-term relationships with satisfied clients and Suppliers. As part of the team on this project, your help is encouraged and welcomed. Your participation in the planning and effort needed to reach these milestones is key. Closeout milestones are included in the schedule and must be included in your schedules. Please place a specific emphasis on the following items included in your scope of Work:

- As-built Drawings
- Maintenance Manual Information
- Specified Warranties
- Commissioning Reports
- Owner training Records
- Spare parts
- Closeout Documents required by the Specifications

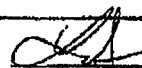
The scope and terms of this Letter of Intent supersedes all prior negotiations, representations, or agreements, either written or oral, relating in any manner to this Work.

Kindly acknowledge receipt and acceptance of this Letter of Intent by signing below and returning a copy by fax to the attention of the undersigned by the end of business on July 16, 2010.

Should you have any questions regarding the above please contact the undersigned.

Mr. Lawrence Scott, Initials

Dated


July 14/2010

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792873 Ontario Limited, carrying on business as H & S Equipment
Mr. Lawrence Scott, President
First Leaside Head Office

July 13, 2010
File 08-547-4-2-1
Letter of Intent

We look forward to working with you and your company toward a successful completion of this Project.

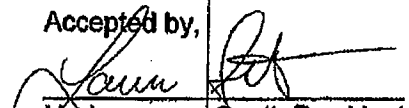
Yours truly,
**FIRST LEASIDE EXPANSION
LIMITED PARTNERSHIP**



Joan L. Wilson, CA
Director of Special Projects

cc: Mr. Gian Fortuna (VP Contracts)
Mr. Benjamin Alves (PM)
Mr. Marcello Zanon (Site Supervisor)

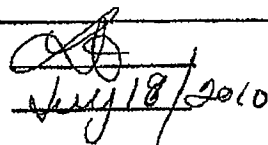
Accepted by,



Mr. Lawrence Scott, President
792873 Ontario Limited,
carrying on business as H & S
Equipment
Authorised Signing Officer

Mr. Lawrence Scott, Initials

Dated



July 18/2010

Page 23 of 23



Bank of Toronto-Dominion Bank

Yonge Street
Toronto, ON M5T 2C4

Customer's record of Draft purchased

54213982

DATE

2010-11-10

YYYYMMDD

Transit-Serial No.

316-54213982

to the
order of

FIRST LEASING EXPANSION LIMITED PARTNERSHIP

\$ 999,100.00

Signature required for amounts over CAD \$5,000.00

1000000 Canadian Dollars

Bank of Toronto-Dominion Bank
Toronto, Ontario
Canada M5K 1A2

Authorized Officer

Number

Countersigned

Receipt Only - Non Negotiable

Please retain for presentation in event Original lost

THIS IS EXHIBIT "B" REFERRED TO IN THE
AFFIDAVIT OF Allen Waichenberg
SWORN BEFORE ME THIS 2nd DAY OF
April, 2012

[Signature]

A Commissioner, etc.

Properties

PIN 26850 - 0058 LT
Description LTS 294, 295 & PT LTS 296, 297, 298, 299, 300, 301 & 302, BLK GG, PL 83 AS IN D527125 ; UXBRIDGE
Address 170 BROCK ST W
UXBRIDGE

PIN 26850 - 0059 LT
Description PT LTS 296, 300, 301 & 302, BLK GG, PL 83, PT 1, 40R18184 :: TOWNSHIP OF UXBRIDGE
Address UXBRIDGE

PIN 26850 - 0062 LT
Description LT 307, PT LTS 304, 305, 306, 308, 309, 311 & 312, BLK HH, PL 83, PT 1, 40R15228 :: TOWNSHIP OF UXBRIDGE
Address 4 VICTORIA ST
UXBRIDGE

PIN 26850 - 0060 LT
Description PT LTS 303 & 304, BLK HH, PL 83 & PT MARY ST, AS IN C075874; TOWNSHIP OF UXBRIDGE
Address 144 BROCK ST W
UXBRIDGE

Consideration

Consideration \$ 364,028.23

Claimant(s)

Name 792873 ONTARIO LIMITED
Address for Service c/o Wagner Sidlofsky LLP
100 Richmond Street West
Suite 316
Toronto, Ontario
M5H 3K6

I, Allen Waichenberg, am the agent of the lien claimant and have informed myself of the facts stated in the claim for lien and believe them to be true.

I, Allen Waichenberg, have the authority to bind the corporation.

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

Statements

The lien claimant claims a lien against the interest of every person identified as an owner of the premises described in said PIN to this lien

Schedule: See Schedules

Signed By

Norman Winter

801-1 St. Clair Av. East
Toronto
M4T 2V7

acting for
Applicant(s)

First Signed 2011 12 23

Tel 416-964-0325

Fax 416-964-2494

THIS IS EXHIBIT "....." REFERRED TO IN THE
AFFIDAVIT OF Allen Waichenberg
SWORN BEFORE ME THIS 2nd DAY OF

..... April 2012

.....
A Commissioner, etc.

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 2 of 6

Signed By

Norman Winter

801-1 St. Clair Av. East
Toronto M4T 2V7acting for
Applicant(s)

Last Signed 2011 12 28

Tel 416-964-0325

Fax 416-964-2494

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

Submitted By

NORMAN WINTER

801-1 St. Clair Av. East
Toronto
M4T 2V7

2011 12 28

Tel 416-964-0325

Fax 416-964-2494

Fees/Taxes/Payment

Statutory Registration Fee \$60.00

Total Paid \$60.00

File Number

Claimant Client File Number :

8215.11.32

CONSTRUCTION LIEN ACT, R.S.O. 1990, c. C.30

CLAIM FOR LIEN

Under Section 34 of the Act

Name of Lien Claimant: 792873 ONTARIO LIMITED, carrying on business as H & S
EQUIPMENT

Address for service: c/o Wagner Sidlofsky LLP
100 Richmond Street West, Suite 316
Toronto, Ontario, M5H 3K6

Attention: Gregory M. Sidlofsky

Name of owner: First Leaside Realty II Inc
2067171 Ontario Inc.
1132413 Ontario Inc.

Address of owner: 430 Regional Road #8
Uxbridge, Ontario, L9P 1R1

Name of person to whom lien claimant supplied services or materials:

First Leaside Expansion Limited Partnership

Address: 430 Regional Road #8
Uxbridge, Ontario, L9P 1R1

Time within which services or materials were supplied:

From July 21, 2010 to November 17, 2011

Short description of services or materials supplied:

To supply labour, material and equipment to complete erosion and sedimentation
control, soil remediation, site services and excavation work.

Invoice price:	\$1,130,682.00
Approved changes:	\$401,607.67
HST	<u>\$199,197.66</u>
TOTAL	\$1,731,487.33

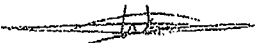
Performance Security Held in Trust:	\$100,000.00
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Amount claimed as owing for services or materials that have been supplied:	\$364,028.23
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- A. The Lien Claimant, 792873 ONTARIO LIMITED, carrying on business as H & S EQUIPMENT, claims a lien against the interest of every person identified above as an owner of the premises described in Schedule "A".
- B. The lien claimant claims a charge against the holdbacks required to be retained under the Act and any additional amount owed by a payer to the contractor or to any subcontractor whose contract or subcontract was in whole or in part performed by the services or materials that have been supplied by the lien claimant in relation to the premises described in Schedule "A".

792873 ONTARIO LIMITED, carrying on
business as H & S EQUIPMENT

Dated: December 22, 2011



Allen Waichenberg
I have authority to bind the Corporation

C/S

CONSTRUCTION LIEN ACT, R.S.O. 1990, c. C.30

SCHEDULE A

To the claim for lien of: 792873 Ontario Limited, carrying on business as H & S Equipment

Description of premises:

See Schedule "B" attached.

AFFIDAVIT OF VERIFICATION OF LIEN CLAIM
UNDER SECTION 34 OF THE ACT

I, Gregory M. Sidlofsky make oath and say (or affirm) as follows:

A. ~~1. I am the president of the lien claimant named in the attached claim for lien;~~

~~2. The facts stated in the claim for lien are true.~~

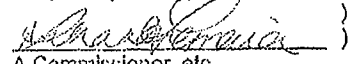
B. 1. I am the agent of the lien claimant named in the attached claim for lien;

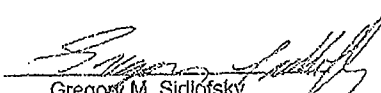
2. I have informed myself of the facts stated in the claim for lien, and I believe those facts to be true.

C. ~~1. I am a trustee of the workers' trust fund which is named as the lien claimant in the attached claim for lien;~~

~~2. I have informed myself of the facts stated in the claim for lien, and I believe those facts to be true.~~

Sworn before me at
the City of Toronto,
this 22. day of December 2011


A Commissioner, etc.
LILIANA FERREIRA


Gregory M. Sidlofsky
WAGNER SIDLOFSKY LLP

SCHEDULE B

PIN 26850-0058 (LT)

LTS 294, 295, & PT LTS 296, 297, 298, 299, 300, 301 & 302, BLK GG, PL 83 AS IN D527125; UXBRIDGE

PIN 26850-0059 (LT)

PT LOTS 296, 300, 301, & 302, BLK GG, PL 83, PT 1 40R18184; TOWNSHIP OF UXBRIDGE

PIN 26850-0062(LT)

LT 307, PT LTS 304, 305, 306, 308, 309, 311, & 312, BLK HH, PL 83, PT 1, 40R15228; TOWNSHIP OF UXBRIDGE

PIN 26850-0060 (LT)

PT LOTS 303 & 304, BLK HH, PL 83 & PT MARY ST, AS IN C075874; TOWNSHIP OF UXBRIDGE

WagnerSidlofsky LLP
BARRISTERS

Gregory M. Sidlofsky
*Certified by the Law Society of Upper Canada
as a Specialist in Civil Litigation*

Direct: 416.601.9279
Email: gmsidlofsky@wagnersidlofsky.com

December 22, 2011

**VIA FACSIMILE: 905.862.3232
AND REGULAR MAIL**

First Leaside Expansion Limited Partnership
430 Durham Rd. #8
Uxbridge, ON L9P 1R1

Attention: Joan Wilson
Director of Real Estate

Dear Ms. Wilson:

**Re: 792873 Ontario Limited, carrying on business as H & S
Equipment and First Leaside Expansion Limited Partnership
Project: First Leaside Head Office (the "project")**

We are the lawyers for 792873 Ontario Limited, carrying on business as H & S Equipment ("H & S Equipment").

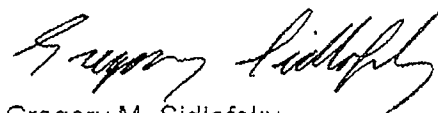
On July 13, 2010, First Leaside Expansion Limited Partnership ("First Leaside") awarded H & S Equipment a subcontract for it to provide site services for the project (the "contract"). As a condition of the contract, H & S Equipment was required to, and did, provide a performance security deposit of \$100,000.00 to First Leaside. Such performance security was to be held in trust by First Leaside and is refundable upon H & S Equipment completing 90% of the contracted services.

Kindly immediately confirm that the performance security is still being held in trust in a segregated account.

Yours very truly,

WAGNER SIDLOFSKY LLP

Per:



Gregory M. Sidlofsky
cc: client

THIS IS EXHIBIT ".....^D....." REFERRED TO IN THE
AFFIDAVIT OFAllen Waichenberg.....
SWORN BEFORE ME THIS^{2nd}..... DAY OF
.....April....., 20¹².....

.....
A Commissioner, etc.

WagnerSidlofsky LLP

BARRISTERS

Gregory M. Sidlofsky

*Certified by the Law Society of Upper Canada
as a Specialist in Civil Litigation*

Direct: 416.601.9279

Email: gmsidlofsky@wagnersidlofsky.com

December 22, 2011

**VIA FACSIMILE: 905-862-3232
AND REGULAR MAIL**

First Leaside Expansion Limited Partnership
430 Durham Rd. #8
Uxbridge, ON L9P 1R1

Attention: David Phillips, President

Dear Mr. Phillips:

**Re: 792873 Ontario Limited, carrying on business as H & S
Equipment and First Leaside Expansion Limited Partnership
Project: First Leaside Head Office (the "project")**

We are the lawyers for 792873 Ontario Limited, carrying on business as H & S Equipment ("H & S Equipment").

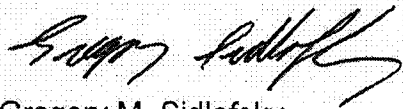
On July 13, 2010, First Leaside Expansion Limited Partnership ("First Leaside") awarded H & S Equipment a subcontract for it to provide site services for the project (the "contract"). As a condition of the contract, H & S Equipment was required to, and did, provide a performance security deposit of \$100,000.00 to First Leaside. Such performance security was to be held in trust by First Leaside and is refundable upon H & S Equipment completing 90% of the contracted services.

Kindly immediately confirm that the performance security is still being held in trust in a segregated account.

Yours very truly,

WAGNER SIDLOFSKY LLP

Per:



Gregory M. Sidlofsky

cc: client

Richmond Tower, Sheraton Centre, Suite 316, 100 Richmond Street West, Toronto, Canada M5H 3K6
Tel: 416.366.6743 Fax: 416.364.6579 www.wagnersidlofsky.com

Aileen Chua

From: Gregory Sidlofsky
Sent: January-31-12 4:20 PM
To: 'jkovach@casselsbrock.com'
Subject: H&S Equipment v. First Leaside Group

Janine,

Further to our telephone discussion today, I confirm that I have instructions to bring a motion to preserve the \$100,000 performance security deposit that H&S provided to the First Leaside Limited Partnership.

I have given the issue of service more thought and I do not believe that I am required to give notice to the parties on the distribution list to your January 26, 2012 letter. The \$100,000 H&S seeks to preserve are not holdback funds, they are trust funds arising from the contract between H&S and First Leaside. In my view it is an issue between First Leaside and H&S only.

Kindly advise of your available dates for a motion in Oshawa the weeks of February 6 or 13. Please also confirm that you will accept service of the claim and motion record. The motion record will be ready to serve tomorrow.

Gregory M. Sidlofsky
*Certified Specialist in Civil Litigation

WagnerSidlofsky LLP
100 Richmond Street West | Suite 316 | Toronto, Ontario M5H 3K6
T 416 601 9279 | F 416 364 6579 | www.wagnersidlofsky.com

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THIS IS EXHIBIT ".....^E....." REFERRED TO IN THE
AFFIDAVIT OFAllen Waichenberg.....
SWORN BEFORE ME THIS2nd.....DAY OF
.....April.....2012.....

.....
A Commissioner, etc.

Aileen Chua

From: Gregory Sidlofsky
Sent: February-01-12 3:52 PM
To: jkovach@casselsbrock.com
Subject: First Leaside

Janine,

Further to my voicemail message earlier today, I am advised that the Oshawa court hears motions every Tuesday and Friday. Kindly get back to me with your availability. If I do not hear from you shortly then I will have to unilaterally choose a date.

Gregory M. Sidlofsky
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Aileen Chua

From: Gregory Sidlofsky
Sent: February-02-12 9:29 AM
To: Aileen Chua
Subject: FW: First Leaside

From: Kovach, Janine [<mailto:jkovach@CasselsBrock.com>]
Sent: February-02-12 9:05 AM
To: Gregory Sidlofsky
Cc: Reynal de St. Michel, Soizic
Subject: RE: First Leaside

Hi Greg. If we are restricted to Tuesdays and Fridays, the earliest I can attend a motion in Oshawa is Friday Feb. 24. I can accept service of your motion record.

Thanks.

	Janine Kovach Direct: 416 869 5714 • Fax: 416 640 3159 • jkovach@casselsbrock.com 2100 Scotia Plaza, 40 King Street West, Toronto, Ontario, Canada M5H 3C2 www.casselsbrock.com
--	---

From: Gregory Sidlofsky [<mailto:GMSidlofsky@wagnersidlofsky.com>]
Sent: Wednesday, February 01, 2012 3:52 PM
To: Kovach, Janine
Subject: First Leaside

Janine,

Further to my voicemail message earlier today, I am advised that the Oshawa court hears motions every Tuesday and Friday. Kindly get back to me with your availability. If I do not hear from you shortly then I will have to unilaterally choose a date.

Gregory M. Sidlofsky
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or have received this message in error, please notify us immediately by reply email and permanently delete the original transmission from us, including any attachments, without making a copy.

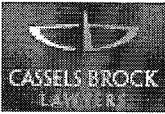
Liliana Ferreira

From: Gregory Sidlofsky
Sent: Thursday, February 02, 2012 10:30 AM
To: Aileen Chua
Subject: FW: First Leaside

From: Kovach, Janine [mailto:jkovach@CasselsBrock.com]
Sent: February-02-12 10:20 AM
To: Gregory Sidlofsky
Subject: RE: First Leaside

Greg it's only one week longer than the latest date you proposed (Feb. 17). Our client will want me to attend. When I see your materials I will advise of our position.

Thanks.

 **Janine Kovach**
Direct: 416 869 5714 • Fax: 416 640 3159 • jkovach@casselsbrock.com
2100 Scotia Plaza, 40 King Street West, Toronto, Ontario, Canada M5H 3C2
www.casselsbrock.com

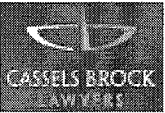
From: Gregory Sidlofsky [mailto:GMSidlofsky@wagnersidlofsky.com]
Sent: Thursday, February 02, 2012 9:31 AM
To: Kovach, Janine
Subject: RE: First Leaside

Feb. 24 is pretty long delay. Do you expect to be opposing the relief? Is there anyone else in your office who can speak to it?

From: Kovach, Janine [mailto:jkovach@CasselsBrock.com]
Sent: February-02-12 9:05 AM
To: Gregory Sidlofsky
Cc: Reynal de St. Michel, Soizic
Subject: RE: First Leaside

Hi Greg. If we are restricted to Tuesdays and Fridays, the earliest I can attend a motion in Oshawa is Friday Feb. 24. I can accept service of your motion record.

Thanks.

 **Janine Kovach**
Direct: 416 869 5714 • Fax: 416 640 3159 • jkovach@casselsbrock.com
2100 Scotia Plaza, 40 King Street West, Toronto, Ontario, Canada M5H 3C2
www.casselsbrock.com

From: Gregory Sidlofsky [mailto:GMSidlofsky@wagnersidlofsky.com]
Sent: Wednesday, February 01, 2012 3:52 PM
To: Kovach, Janine
Subject: First Leaside

3/29/2012

Janine,

Further to my voicemail message earlier today, I am advised that the Oshawa court hears motions every Tuesday and Friday. Kindly get back to me with your availability. If I do not hear from you shortly then I will have to unilaterally choose a date.

Gregory M. Sidlofsky

*Certified Specialist in Civil Litigation

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3/29/2012

WagnerSidlofsky LLP
BARRISTERS

Gregory M. Sidlofsky

*Certified by the Law Society of Upper Canada
as a Specialist in Civil Litigation*

Direct: 416.601.9279

Email: gmsidlofsky@wagnersidlofsky.com

February 2, 2012

VIA Courier

Cassels Brock & Blackwell LLP
2100 Scotia Plaza
40 King Street West
Toronto, Ontario M5H 3C2

Attention: Janine Kovach

Dear Ms. Kovach:

**Re: 792873 Ontario Limited, carrying on business as H & S Equipment and
First Leaside Expansion Limited Partnership
Our file: 111088; Your file: 33695-22**

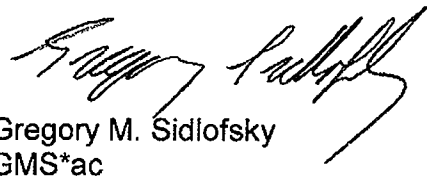
Further to our telephone discussion and exchange of e-mails, please find enclosed my client's motion record returnable February 24, 2012, in Oshawa. I confirm that you will accept service of the motion record on behalf of the defendants. Also enclosed is a copy of the statement of claim perfecting the lien. I ask that you specifically accept service of the claim as well.

I look forward to hearing from you as soon as possible concerning what position your clients will take on the motion.

Yours very truly,

WAGNER SIDLOFSKY LLP

Per:


Gregory M. Sidlofsky
GMS*ac

Encl.

THIS IS EXHIBIT ".....^F....." REFERRED TO IN THE
AFFIDAVIT OFAllen Waichenberg.....
SWORN BEFORE ME THIS2nd.....DAY OF
.....April....., 20 12.

A Commissioner, etc.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF *The Construction
Lien Act*, R.S.O. 1990, Chapter C. 30**

BETWEEN:

**792873 ONTARIO LIMITED, carrying on business as
H&S EQUIPMENT**

Plaintiff

-and-

**FIRST LEASIDE EXPANSION LIMITED PARTNERSHIP,
FIRST LEASIDE REALTY II INC., 2067171 ONTARIO INC.
and 1132412 ONTARIO INC.**

Defendants

NOTICE OF MOTION

The plaintiff will make a motion to the Court on Friday, the 24th of February, 2012 at 10:00 a.m. or as soon after that time as the motion can be heard, at the Court House at 150 Bond Street East, Oshawa, Ontario.

PROPOSED METHOD OF HEARING:

The motion will be heard orally.

THIS IS EXHIBIT ".....G1....." REFERRED TO IN THE
AFFIDAVIT OFAllen Waichenberg.....
SWORN BEFORE ME THIS2nd..... DAY OF
.....April..... 2012

.....*Guaranteed*.....
A Commissioner, etc.

THE MOTION IS FOR:

1. An order that the defendants pay a \$100,000 "performance security deposit" provided by the plaintiff into court pending further order of the court;
2. costs of this motion on a substantial indemnity basis; and
3. such further and other Order as to this Honourable Court seems just.

THE GROUNDS FOR THE MOTION ARE:

1. The plaintiff, 792873 Ontario Limited, carrying on business as H&S Equipment ("H&S") is a subcontractor that provided erosion and sedimentation control, soil remediation, site services and excavation work at a development for the defendants;
2. As part of the contract, the defendants required H&S to provide a "performance security deposit" in the amount of \$100,000. The deposit was to be held by the defendants until 90% of H&S's work was completed, and then returned to H&S. H&S provided the performance deposit;
3. On or about November, 2011, after H&S completed over 90% of the work as stipulated in the contract, H&S discovered that the defendants had voluntarily ceased trading and would be ceasing all distributions in order to reconfigure their business under the direction of the Ontario Securities Commission;
4. All work on the development stopped and various trades including the plaintiff have registered constructions liens on title;

5. H&S states that the deposit funds are trust funds. It is unclear whether the defendants held the \$100,000 in a segregated trust account in favour of H&S;
6. There is a real risk that the funds have been or will be comingled with other funds and dissipated;
7. The rights of the parties to a specific fund is in question; and
8. Rule 45.02 of the *Rules of Civil Procedure*.

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

1. The affidavit of Allen Waichenberg affirmed January 27, 2012; and
2. Such further and other material as counsel may advise and this Honourable Court may permit.

February 2, 2012

WAGNER SIDLOFSKY LLP
100 Richmond Street West
Suite 316
Toronto, Ontario
M5H 3K6

Gregory M. Sidlofsky # 43579C
Tel: (416) 601 9279
Fax: (416) 364 6579

Lawyers for the Plaintiff

**TO: FIRST LEASIDE EXPANSION
LIMITED PARTNERSHIP**
430 Regional Road #8
Uxbridge, Ontario
L9P 1R1

AND TO: FIRST LEASIDE REALTY II INC.
430 Regional Road #8
Uxbridge, Ontario
L9P 1R1

AND TO: 2067171 ONTARIO INC.
430 Regional Road #8
Uxbridge, Ontario
L9P 1R1

AND TO: 1132413 ONTARIO INC.
430 Regional Road #8
Uxbridge, Ontario
L9P 1R1

792873 ONTARIO LIMITED, carrying on
business as H&S EQUIPMENT
Plaintiff

- and -

FIRST LEASIDE EXPANSION LIMITED PARTNERSHIP et al
Defendants

Court File No. 76647/12

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceedings commenced at Oshawa

NOTICE OF MOTION

WAGNER SIDLOFSKY LLP
100 Richmond Street West
Suite 316
Toronto, Ontario
M5H 3K6

Gregory M. Sidlofsky #43579C
Tel: (416) 601-9279
Fax: (416) 364-6579

Lawyers for the Plaintiff

Aileen Chua

From: Gregory Sidlofsky
Sent: February-17-12 5:03 PM
To: 'jkovach@casselsbrock.com'
Subject: First Leaside

Categories: Green Category

Janine,

I have to confirm the motion on Tuesday. Please advise what position you will be taking, if any.

Gregory M. Sidlofsky
*Certified Specialist in Civil Litigation

WagnerSidlofsky LLP
100 Richmond Street West | Suite 316 | Toronto, Ontario M5H 3K6
T 416 601 9279 | F 416 364 6579 | www.wagnersidlofsky.com

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AFFIDAVIT OFAllen Waichenberg.....
SWORN BEFORE ME THIS2nd.....DAY OF
.....April....., 20 12

..........
A Commissioner, etc.

Aileen Chua

From: Gregory Sidlofsky [GMSidlofsky@wagnersidlofsky.com]
Sent: February-21-12 9:00 AM
To: achua@wagnersidlofsky.com
Subject: FW: First Leaside

From: Kovach, Janine [mailto:jkovach@CasselsBrock.com]
Sent: February-21-12 8:08 AM
To: Gregory Sidlofsky
Cc: Birch, John
Subject: Re: First Leaside

Greg a CCAA application is scheduled for Thursday. As you know if the relief is granted your motion is stayed. At this point we have no reason to believe that the court will not grant the order we are seeking.

From: Gregory Sidlofsky [mailto:GMSidlofsky@wagnersidlofsky.com]
Sent: Friday, February 17, 2012 05:02 PM
To: Kovach, Janine
Subject: First Leaside

Janine,

I have to confirm the motion on Tuesday. Please advise what position you will be taking, if any.

Gregory M. Sidlofsky
*Certified Specialist in Civil Litigation
WagnerSidlofsky LLP

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Liliana Ferreira

From: Gregory Sidlofsky [GMSidlofsky@wagnersidlofsky.com]

Sent: Tuesday, February 21, 2012 9:09 AM

To: Kovach, Janine

Subject: RE: First Leaside

Janine,

To think I could have been in court on my client's preservation motion two weeks ago...

Regardless of whether your client obtains an order staying proceedings, kindly ensure that the \$100,000 does not go anywhere. If the CCAA order is obtained I expect to get instructions to bring a motion for an order granting a constructive trust over the \$100,000 in favour of my client (see DSLC v. Credifinance). Further, we will pursue your clients' principals for breach of trust should the funds be dissipated.

Kindly serve me with the order as soon as it is obtained. In the interim I will confirm my client's motion as proceeding.

Gregory M. Sidlofsky

*Certified Specialist in Civil Litigation

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Sent: February-21-12 8:08 AM

To: Gregory Sidlofsky

Cc: Birch, John

Subject: Re: First Leaside

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From: Gregory Sidlofsky [mailto:GMSidlofsky@wagnersidlofsky.com]

Sent: Friday, February 17, 2012 05:02 PM

To: Kovach, Janine

Subject: First Leaside

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Gregory M. Sidlofsky

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WagnerSidlofsky LLP

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3/29/2012

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Court File No. CV-12-9617-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.
JUSTICE DAVID M. BROWN

)
)
)

THURSDAY, THE 23RD
DAY OF FEBRUARY, 2012

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF First Leaside Wealth Management Inc., First Leaside Finance Inc., First
Leaside Securities Inc., FL Securities Inc., First Leaside Management Inc.,
First Leaside Accounting and Tax Services Inc., First Leaside Holdings
Inc., 2086056 Ontario Inc., First Leaside Realty Inc., First Leaside Capital
Inc., First Leaside Realty II Inc., First Leaside Investments Inc., 965010
Ontario Inc., 1045517 Ontario Inc., 1024919 Ontario Inc., 1031628 Ontario
Inc., 1056971 Ontario Inc., 1376095 Ontario Inc., 1437290 Ontario Ltd.,
1244428 Ontario Ltd., PrestonOne Development (Canada) Inc., PrestonTwo
Development (Canada) Inc., PrestonThree Development (Canada) Inc.,
PrestonFour Development (Canada) Inc., 2088543 Ontario Inc., 2088544
Ontario Inc., 2088545 Ontario Inc., 1331607 Ontario Inc., Queenston Manor
General Partner Inc., 1408927 Ontario Ltd., 2107738 Ontario Inc., 1418361
Ontario Ltd., 2128054 Ontario Inc., 2069212 Ontario Inc., 1132413 Ontario
Inc., 2067171 Ontario Inc., 2085306 Ontario Inc., 2059035 Ontario Inc.,
2086218 Ontario Inc., 2085438 Ontario Inc., First Leaside Visions
Management Inc., 1049015 Ontario Inc., 1049016 Ontario Inc., 2007804
Ontario Inc., 2019418 Ontario Inc., FL Research Management Inc., 970877
Ontario Inc., 1031628 Ontario Inc., 1045516 Ontario Inc., 2004516 Ontario
Inc., 2192341 Ontario Inc., and First Leaside Fund Management Inc. (each,
an "Applicant" and collectively, the "Applicant")

INITIAL ORDER

THIS IS EXHIBIT ".....I....." REFERRED TO IN THE
AFFIDAVIT OFAlien Waichenberg.....
SWORN BEFORE ME THIS2nd..... DAY OF
.....April....., 2012.....

.....
A Commissioner, etc.

THIS APPLICATION, made by the Applicant, pursuant to the Companies'
Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard
this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Gregory MacLeod sworn February 22, 2012 (the "MacLeod Affidavit") and the Exhibits thereto, and the Pre-filing Report of Grant Thornton Limited as the Proposed Monitor, and on hearing the submissions of counsel for the Applicant, the proposed Monitor, the proposed Representative Counsel, the Ontario Securities Commission, the Investment Industry Regulatory Organization of Canada, the Toronto-Dominion Bank, the Canadian Imperial Bank of Commerce, and KingSett Capital, no one appearing for the other parties on the service list although duly served as appears from the affidavit of service of Patricia Hoogenband sworn February 22, 2012 and on reading the consent of Grant Thornton Limited to act as the Monitor,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. THIS COURT ORDERS AND DECLARES that the Applicant is a company to which the CCAA applies. Although not an Applicant, the limited partnerships listed in Schedule "A" to this Order (the "LPs") shall enjoy the benefits of and the protections provided to the Applicant by this Order. (The Applicant and the LPs are hereinafter referred to collectively as "First Leaside".)

3. THIS COURT ORDERS that, for greater certainty, the terms of this order shall not apply to the following limited partnerships (collectively, the "Excluded LPs"):

- (a) First Leaside Retirement Residences (Ottawa) Limited Partnership
- (b) First Leaside Retirement Residences (Okanagan) Limited Partnership
- (c) Cherry Park Retirement Residences Limited Partnership
- (d) Orchard Valley Retirement Residences Limited Partnership
- (e) The Shores Retirement Residences Limited Partnership

(f) Redwood Retirement Residences (Ottawa) Limited Partnership

(g) 100 Isabella Street (Ottawa) Limited Partnership and

(h) 480 Metcalfe Street (Ottawa) Limited Partnership

(hereafter, the Excluded LPs identified in (a), (f), (g), and (h) above shall be referred to as the "Ottawa Excluded LPs" and the Excluded LPs identified in (b), (c), (d), and (e) above shall be referred to as the "Okanagan Excluded LPs").

4. THIS COURT ORDERS that the provisions of this order shall not extend to any general partner of the Excluded LPs to the extent that such general partner exercises powers for or on behalf of the Excluded LPs, holds property on behalf of the Excluded LPs, or owes liabilities in respect of the Excluded LPs

5. THIS COURT ORDERS that, for greater certainty, Canadian Imperial Bank of Commerce ("CIBC"), KingSett Mortgage Corporation ("KingSett") and Toronto-Dominion Bank ("TD") shall be unaffected creditors and not stayed by or otherwise subject to the terms of this Order in respect of the Excluded LPs.

6. THIS COURT ORDERS that that no payments, funds or other transfers of value shall be accepted or received by First Leaside from the Excluded LPs, save and except to the extent approved by agreement in writing by CIBC and KingSett with respect to the Ottawa Excluded LPs and by TD with respect to the Okanagan Excluded LPs.

7. THIS COURT ORDERS that the Applicant is at liberty, at any time, on seven days' notice to CIBC, KingSett, and TD, to seek an order extending the scope of these proceedings and the provisions of this order to include the Excluded LPs.

PLAN OF ARRANGEMENT

8. THIS COURT ORDERS that the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan or plans of compromise or arrangement (hereinafter referred to as the "Plan").

POSSESSION OF PROPERTY AND OPERATIONS

9. THIS COURT ORDERS that First Leaside shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property"). Subject to further Order of this Court, First Leaside shall continue to carry on its business in a manner consistent with the preservation of its business (the "Business") and Property. First Leaside shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "Assistants") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

10. THIS COURT ORDERS that First Leaside shall be entitled to implement a central cash management system as described in the MacLeod Affidavit or replace it with another substantially similar central cash management system (the "Cash Management System") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by First Leaside of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than First Leaside, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System. The bank accounts of First Leaside Securities Inc. ("FLSI") shall not form part of the Cash Management System.

11. THIS COURT ORDERS that First Leaside shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
- (b) the fees and disbursements of any Assistants retained or employed by First Leaside in respect of these proceedings, at their standard rates and charges.

12. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, First Leaside shall be entitled but not required to pay all reasonable expenses incurred by First Leaside in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services;
- (b) payment for goods or services actually supplied to First Leaside following the date of this Order; and
- (c) payments of principal and interest in respect of real property mortgages.

13. THIS COURT ORDERS that First Leaside shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by First Leaside in connection with the sale of

goods and services by First Leaside, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and

- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by First Leaside.

14. THIS COURT ORDERS that until a real property lease is disclaimed in accordance with the CCAA, First Leaside shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between First Leaside and the landlord from time to time ("Rent"), for the period commencing from and including the date of this Order, in equal monthly payments on the first day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

15. THIS COURT ORDERS that, except as specifically permitted herein, First Leaside is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by First Leaside to any of its creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

16. THIS COURT ORDERS that First Leaside shall, subject to such requirements as are imposed by the CCAA, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding \$50,000 in any one transaction or \$250,000 in the aggregate;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate;
- (c) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing; and
- (d) pursue all avenues for the potential sale of the Business or Property, in whole or part, subject to further approval of such sale by this Court,

all of the foregoing to permit First Leaside to proceed with an orderly restructuring of the Business (the "Restructuring").

17. THIS COURT ORDERS that First Leaside shall provide each of the relevant landlords with notice of First Leaside's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes First Leaside's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and First Leaside, or by further Order of this Court upon application by First Leaside on at least two (2) days notice to such landlord and any such secured creditors. If First Leaside disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to First Leaside's claim to the fixtures in dispute.

18. THIS COURT ORDERS that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective

tenants during normal business hours, on giving First Leaside and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against First Leaside in respect of such lease or leased premises and such landlord shall be entitled to notify First Leaside of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST FIRST LEASIDE OR THE PROPERTY

19. THIS COURT ORDERS that until and including March 23, 2012, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of First Leaside or the Monitor, or affecting the Business or the Property, except with the written consent of First Leaside and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of First Leaside or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

20. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of First Leaside or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of First Leaside and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower First Leaside to carry on any business which First Leaside is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

21. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by First Leaside, except with the written consent of First Leaside and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

22. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with First Leaside or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or First Leaside, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by First Leaside, and that First Leaside shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by First Leaside in accordance with normal payment practices of First Leaside or such other practices as may be agreed upon by the supplier or service provider and each of First Leaside and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

23. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to First Leaside. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

24. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of First Leaside with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

CHIEF RESTRUCTURING OFFICER

25. THIS COURT ORDERS that the appointment of G.S. MacLeod & Associates Inc. as chief restructuring officer of First Leaside (the "CRO") is hereby confirmed and approved and the CRO is hereby authorized and empowered to operate and manage the affairs of First Leaside during the pendency of these CCAA proceedings.

26. THIS COURT ORDERS that the CRO shall be paid its fees and disbursements (the "CRO Fees") in accordance with the CRO's engagement letter with First Leaside dated December 21, 2011.

27. THIS COURT ORDERS that the CRO and its officers, directors, employees, and servants shall incur no liability or obligation as a result of the appointment of the CRO or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on their part.

TRANSFER OF CLIENT ACCOUNTS

28. THIS COURT ORDERS that, to the extent that any client of FLSI ("FLSI Client") holds a "security" as defined in section 253 of the *Bankruptcy and Insolvency Act* and/or cash in an account or accounts with Penson Financial Services Canada Inc. (each, a "Client Account"), such FLSI Client shall immediately have the right to transfer any such

security or cash or the entire Client Account with Penson Financial Services Canada Inc. to another licensed securities dealer (an "FLSI Client Account Transfer").

29. THIS COURT ORDERS that FLSI and Penson Financial Services Canada Inc. shall take all reasonable steps to facilitate an FLSI Client Account Transfer.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

30. THIS COURT ORDERS that the Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

31. THIS COURT ORDERS that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "Directors' Charge") on the Property, which charge shall not exceed an aggregate amount of \$250,000, as security for the indemnity provided in paragraph 30 of this Order as well as the fees and disbursements of counsel to the Independent Committee of the Board of Directors ("Independent Committee Counsel") to the extent that such fees and disbursements relate to services provided in respect of First Leaside. The Directors' Charge shall have the priority set out in paragraphs 50 and 52 herein. The Applicant is hereby authorized and directed to pay a \$50,000 retainer to Independent Committee Counsel.

32. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 30 of this Order.

APPOINTMENT OF MONITOR

33. THIS COURT ORDERS that Grant Thornton Limited is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of First Leaside with the powers and obligations set out in the CCAA or set forth herein and that First Leaside and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by First Leaside pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

34. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor First Leaside's receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) advise First Leaside in its preparation of First Leaside's cash flow statements;
- (d) advise and assist First Leaside concerning the potential sale of the Property and an orderly wind-down of the Business;
- (e) advise First Leaside in its development of the Plan and any amendments to the Plan;
- (f) assist First Leaside, to the extent required by First Leaside, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of First Leaside, to the extent that is necessary to adequately assess First

Leaside's business and financial affairs or to perform its duties arising under this Order;

- (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (i) perform such other duties as are required by this Order or by this Court from time to time; and
- (j) consult with and assist First Leaside in its negotiations and discussions with investors, creditors, and other stakeholders.

35. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

36. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to

be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

37. THIS COURT ORDERS that the Monitor shall provide any creditor of First Leaside with information provided by First Leaside in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by First Leaside is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and First Leaside may agree.

38. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

39. THIS COURT ORDERS that the Monitor, counsel to the Monitor, and counsel to First Leaside shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by First Leaside as part of the costs of these proceedings. First Leaside is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for First Leaside on a bi-weekly basis and, in addition, First Leaside is hereby authorized to pay retainers of \$150,000 to the Monitor, \$100,000 to counsel to the Monitor, and \$150,000 to counsel to First Leaside, to be held by each of them as security for payment of their respective fees and disbursements outstanding from time to time.

40. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

41. THIS COURT ORDERS that the Monitor, counsel to the Monitor, First Leaside's counsel, and Representative Counsel (defined below) shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property, which charge shall not exceed an aggregate amount of \$1,000,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 50 and 52 hereof.

APPOINTMENT OF REPRESENTATIVE COUNSEL

42. THIS COURT ORDERS that Fraser Milner Casgrain LLP ("Representative Counsel") is appointed as representative counsel in these proceedings to represent the interests of clients of FLSI (the "Clients"), unless and until written notice is provided by a particular Client to Representative Counsel that such Client does not wish to be represented by Representative Counsel.

43. THIS COURT ORDERS that First Leaside shall provide to Representative Counsel the last known e-mail addresses (to the extent available) or other available contact information for each Client and, within ten days of the date of this Order, Representative Counsel shall provide the Clients with a copy of this Order, which shall constitute sufficient notice to Clients of this Order and the appointment of Representative Counsel and such step shall relieve the Monitor of its duty to provide notice to such Clients under section 23 of the CCAA.

44. THIS COURT ORDERS that Representative Counsel shall be paid its reasonable fees and disbursements by First Leaside, up to an initial maximum amount of \$150,000 (the "Representative Counsel Allowance") with any subsequent increases to the Representative Counsel Allowance being determined by further Order of this Court. Representative Counsel shall be paid by First Leaside in a timely manner for fulfilling its mandate in accordance with this Order, upon the provision of invoices to First Leaside, subject to such redactions to the invoices as are necessary to maintain solicitor-client privilege between Representative Counsel and the Clients.

45. THIS COURT ORDERS that First Leaside shall pay to Representative Counsel a retainer of \$25,000 to be held by it as security for payment of its fees and disbursements outstanding from time to time.

46. THIS COURT ORDERS that Representative Counsel is hereby authorized to take all steps and do all acts necessary or desirable to carry out the terms of this Order.

47. THIS COURT ORDERS that Representative Counsel shall be at liberty, and is hereby authorized, at any time, to apply to this Court for advice and directions in respect of its appointment or the fulfillment of its duties in carrying out the provisions of this Order or any variation of the powers and duties of Representative Counsel, which shall be brought on notice to First Leaside, the Monitor, and other interested parties, unless the Court orders otherwise.

48. THIS COURT ORDERS that Representative Counsel shall have no personal liability or obligations as a result of the performance of its duties in carrying out the provisions of this Order, save and except for liability arising out of gross negligence or wilful misconduct.

49. THIS COURT ORDERS that no action or other proceeding may be commenced against Representative Counsel in respect of the performance of its duties under this Order without leave of the Court on seven days' notice to Representative Counsel.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

50. THIS COURT ORDERS that the priorities of the Directors' Charge and the Administration Charge, as between them, shall be as follows:

First – Administration Charge (to the maximum amount of \$1,000,000);

Second – Directors' Charge (to the maximum amount of \$250,000).

51. THIS COURT ORDERS that the filing, registration or perfection of the Directors' Charge or the Administration Charge (collectively, the "Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to

the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

52. THIS COURT ORDERS that each of the Directors' Charge and the Administration Charge (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any Person, provided, however, that

- (a) the Directors' Charge shall not attach to any monies or other Property of FLSI ("FLSI Property") including, without limitation, property which constitutes "risk adjusted capital" plus the \$250,000 "minimum capital requirement" in accordance with applicable securities laws and regulations; and
- (b) the Administration Charge shall not attach to the FLSI Property in an amount exceeding the lesser of (A) \$1 million and (B) the portion of costs secured by the Administration Charge which are attributable to, or for the benefit of, FLSI.

53. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, First Leaside shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Directors' Charge, or the Administration Charge, unless First Leaside also obtains the prior written consent of the Monitor and the beneficiaries of the Directors' Charge and the Administration Charge and further Order of this Court.

54. THIS COURT ORDERS that the Directors' Charge and the Administration Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "Chargees") shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e)

any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds First Leaside, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by First Leaside of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by the creation of the Charges; and
- (c) the payments made by First Leaside pursuant to this Order, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

55. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in First Leaside's interest in such real property leases.

56. THIS COURT ORDERS that the CRO Fees and the professional fees and expenses of the Monitor, counsel to the Monitor, First Leaside's counsel and Representative Counsel paid or incurred in accordance with the provisions of this Order shall be allocated by First Leaside with the assistance of the Monitor to the various business units pursuant to a protocol to be proposed by First Leaside with the assistance of the Monitor, which protocol shall be approved upon motion to this Court. First Leaside and the Monitor shall endeavour to make recommendations in respect of a protocol on or before March 30, 2012.

SERVICE AND NOTICE

57. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in the national edition of the *Globe and Mail* a notice containing the information prescribed

under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against First Leaside of more than \$1000, and (C) prepare a list showing the aggregate amounts owed to equity investors, debt investors, and employees, but not names and addresses of those creditors, and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

58. THIS COURT ORDERS that First Leaside, Representative Counsel, and the Monitor be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to First Leaside's creditors or other interested parties at their respective addresses as last shown on the records of First Leaside and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

59. THIS COURT ORDERS that First Leaside, Representative Counsel, and the Monitor, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Monitor may post a copy of any or all such materials on its website at www.grantthornton.ca/firstleaside.

GENERAL

60. THIS COURT ORDERS that First Leaside or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

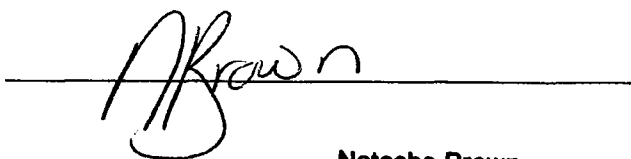
61. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of First Leaside, the Business or the Property.

62. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist First Leaside, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to First Leaside and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist First Leaside and the Monitor and their respective agents in carrying out the terms of this Order.

63. THIS COURT ORDERS that each of First Leaside and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

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

65. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard Time on the date of this Order.



Natasha Brown
Registrar

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

FEB 24 2012



SCHEDULE "A"—PARTNERSHIPS ENTITLED TO THE BENEFIT OF THIS ORDER

Mill Street Limited Partnership
Development Notes Limited Partnerships
Special Notes LP
First Leaside Properties LP
First Leaside Realty LP
First Leaside Real Estate LP
First Leaside Global LP
First Leaside Income LP
First Leaside Investors LP
First Leaside Optimal LP
First Leaside Preferred LP
First Leaside Premier LP
First Leaside Progressive LP
First Leaside Quality LP
First Leaside Real Estate LP
First Leaside Realty II LP
First Leaside Retirement Residences LP
First Leaside Superior LP
First Leaside Ultimate LP
First Leaside Universal LP
Uxbridge Development LP
First Leaside Retirement Residences Limited Partnership
First Leaside Venture Limited Partnership
Wimberly Apartments LP
The Shores LP
Old Mill Pond LP

The Bluffs of Lakewood LP
First Leaside Spring Valley LP
First Leaside Partners LP
First Leaside Opportunities LP
Preston Racquet Club Real Estate Limited Partnership Series 910 PA
Preston Racquet Club Real Estate Limited Partnership Series 910 PB
Preston Racquet Club Real Estate Limited Partnership Series 910 PC
Preston Racquet Club Real Estate Limited Partnership Series 910 PD
FL Master Texas Ltd.
FLW Pond Master Ltd.
FLW Shores Master Ltd.
First Leaside Acquisitions LP
Queenston Manor LP
First Leaside Acquisitions 2000 LP
First Leaside Advantage LP
First Leaside Developments LP
First Leaside Elite LP
First Leaside Select LP
First Leaside Enterprises LP
B&W LP
First Leaside Entities LP
First Leaside Expansion LP
First Leaside Growth LP
First Leaside Operations LP
First Leaside Unity LP

First Leaside Visions I LP
First Leaside Visions II LP
First Leaside Visions III LP
First Leaside Visions IV LP
Metabacus LP
Greencore LP
Marksman Cellject LP
OMISA LP
Dossierview LP
eSight LP
Tyromer LP
Place Concorde East LP
Place Concorde West LP
First Leaside Wealth Management LP
First Leaside Technologies LP
F.L. Beverages Group Limited

Partnership
F.L. Retirement Residences Limited Partnership
First Leaside Global Limited Partnership
First Leaside Ventures Limited Partnership
Special U.S. Notes Limited Partnership
FLWM Holdings Limited Partnership

First Leasehold Group of Companies
First Leasehold Expansion
United Partnership ("FLEX")
Combined
Cash Flow Projection
As at March 22, 2012 (unaudited)
For the period March 19, 2012 -
June 29, 2012

Week Ended	1 Forecast 03/23/2012	2 Forecast 03/30/2012	3 Forecast 04/06/2012	4 Forecast 04/13/2012	5 Forecast 04/20/2012	6 Forecast 04/27/2012	7 Forecast 05/04/2012	8 Forecast 05/11/2012	9 Forecast 05/18/2012
Opening bank balance	818,540.60	777,093.70	763,720.70	848,865.70	845,710.70	809,513.70	832,814.70	906,067.70	899,601.70
Receipts	-	300.00	89,068.00	4,660.00	-	29,914.00	95,668.00	7,864.00	9,312.00
Disbursements									
Operating	27,003.00	13,673.00	2,923.00	7,815.00	36,197.00	6,613.00	22,415.00	14,330.00	5,915.00
Professional Fees	14,543.90	-	-	-	-	-	-	-	-
Salaries	-	-	-	-	-	-	-	-	-
Intercompany Transfers	-	-	-	-	-	-	-	-	-
Capital	-	-	1,000.00	-	-	-	-	-	-
Mortgage payment	-	-	-	-	-	-	-	-	-
Total Disbursements	41,546.90	13,673.00	3,923.00	7,815.00	36,197.00	6,613.00	22,415.00	14,330.00	5,915.00
Net cash flows	(41,546.90)	(13,373.00)	85,145.00	(3,155.00)	(36,197.00)	23,301.00	73,253.00	(6,466.00)	3,397.00
Closing bank balance	777,093.70	763,720.70	848,865.70	845,710.70	809,513.70	832,814.70	906,067.70	899,601.70	902,998.70

- Notes:
- 1 Receipts include rental revenue earned at Queenston Manor, 168 Brock Street, Brampton
 - 2 The cash flow may be positively impacted from the closing of certain properties or sale transactions, but due to the imprecision of a closing date and the requirement for Court approval, these sales have not been reflected in this cash flow
 - 3 Operating expenses for Queenston, Brampton, 168 Brock - significant amounts are utilities, repairs, property taxes
 - 4 No mortgage payments are projected to be made (interest to be accrued)

THIS IS EXHIBIT "J" REFERRED TO IN THE
AFFIDAVIT OF Allen Waichenberg
SWORN BEFORE ME THIS 2nd DAY OF
April, 2012

Anna K. Kerner
A Commissioner, etc.

First Leasehold Group of Companies
First Leasehold Expansion
Limited Partnership ("FLEX")
Consolidated
Cash Flow Projection
As at March 31, 2012 (unaudited)
For the period March 19, 2012 -
June 29, 2012

Week Ended	10 Forecast 05/25/2012	11 Forecast 06/01/2012	12 Forecast 06/08/2012	13 Forecast 06/15/2012	14 Forecast 06/22/2012	15 Forecast 06/29/2012	Total Forecast
Opening bank balance	902,998.70	918,169.70	981,248.70	1,007,833.70	991,918.70	986,918.70	818,640.60
Receipts	29,914.00	69,132.00	29,385.00	-	-	28,914.00	394,131.00
Disbursements							
Operating	13,243.00	6,053.00	2,800.00	15,915.00	4,000.00	1,743.00	180,638.00
Professional Fees	-	-	-	-	-	-	14,543.90
Salaries	-	-	-	-	-	-	-
Intercompany Transfers	-	-	-	-	-	-	-
Capital	1,500.00	-	-	-	1,000.00	-	3,500.00
Mortgage payment	-	-	-	-	-	-	-
Total Disbursements	14,743.00	6,053.00	2,800.00	15,915.00	5,000.00	1,743.00	198,681.90
Net cash flows	15,171.00	63,079.00	26,585.00	(15,915.00)	(5,000.00)	27,171.00	195,449.10
Closing bank balance	918,169.70	981,248.70	1,007,833.70	991,918.70	986,918.70	1,014,089.70	1,014,089.70

Notes:

- 1 Receipts include rental revenue earned at Queenston Manor, 168 Brock Street, Brampton
- 2 The cash flow may be positively impacted from the closing of certain properties or sale transactions, but due to the imprecision of a closing date and the requirement for Court approval, these sales have not been reflected in this cash flow
- 3 Operating expenses for Queenston, Brampton, 168 Brock - significant amounts are utilities, repairs, property taxes
- 4 No mortgage payments are projected to be made (interest to be accrued)

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C 1985, c.C-36, AS AMENDED AND IN THE
MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF FIRST LEASIDE WEALTH MANAGEMENT INC., et al

Court File No. CV-12-9617-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceedings commenced at Toronto

MOTION RECORD

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