

Appendix A

GUARANTEE AND POSTPONEMENT OF CLAIMS

DATE: [◆], 2021

TO: **ONTARIO INFRASTRUCTURE AND LANDS CORPORATION** (the “**Creditor**”)
(1 Dundas Street West, 20th Floor, Toronto, Ontario M5G 1Z3)

FROM: **THE BOARD OF MANAGEMENT FOR THE DISTRICT OF NIPISSING EAST**
(the “**Debtor**”)

AND FROM: **THE CORPORATION OF THE CITY OF NORTH BAY** (“**City of North Bay**”)

-and-

THE CORPORATION OF THE TOWNSHIP OF EAST FERRIS (“**Township of East Ferris**”)

-and-

THE CORPORATION OF THE TOWNSHIP OF SOUTH ALGONQUIN (“**Township of South Algonquin**”)

-and-

THE CORPORATION OF THE TOWNSHIP OF BONFIELD (“**Township of Bonfield**”)

-and-

THE CORPORATION OF THE TOWNSHIP OF PAPINEAU-CAMERON (“**Township of Papineau-Cameron**”)

-and-

THE CORPORATION OF THE TOWNSHIP OF CHISHOLM (“**Township of Chisholm**”)

-and-

THE CORPORATION OF THE TOWNSHIP OF CALVIN (“**Township of Calvin**”)

-and-

THE CORPORATION OF THE TOWN OF MATTAWA (“**Town of Mattawa**”)

-and-

THE CORPORATION OF THE TOWNSHIP OF MATTAWAN (“**Township of Mattawan**”)

(City of North Bay, Township of East Ferris, Township of South Algonquin, Township of Bonfield, Township of Papineau-Cameron, Township of Chisholm, Township of Calvin, Town of Mattawa, and Township of Mattawan collectively, the “**Guarantors**” and each, a “**Guarantor**”)

WHEREAS the Debtor owns the land and premises (the "**Premises**") described in Schedule A, and intends to re-develop and expand the existing 240-bed long-term care facility located on the Premises (the "**Project**") on the Premises in accordance with the plans and specifications ("**Plans and Specifications**") and upon terms and conditions that have been approved by the Creditor;

AND WHEREAS the Creditor has entered into an Agreement (the "**Financing Agreement**") to provide certain financing (the "**Financing**") to the Debtor to finance a portion of the costs of construction of the Project, and the Debtor has granted a first ranking charge against the Premises (the "Charge") to secure the repayment of the Financing;

AND WHEREAS the Guarantors understand that under the terms and conditions of the Financing Agreement, it is a condition of the Creditor providing the Financing that the Guarantors guarantee the obligations of the Debtor under the Financing Agreement as set out herein;

AND WHEREAS all capitalized terms not defined herein are as defined in the Financing Agreement;

THEREFORE, in order to induce the Creditor to provide the Financing and to satisfy the conditions of the Financing Agreement with respect thereto, the Guarantors undertake and agree as follows:

ARTICLE 1 **INTERPRETATION**

1.1 Defined Terms

As used in this Guarantee the following terms have the following meanings:

"**Construction Funding Subsidy**" means the monthly payments in respect of the *Construction Funding Subsidy Policy* under the Development Agreement.

"**Development Agreement**" means the LTC Development Agreement dated as of September 8, 2020 [♦, as amended on [♦] and as is further amended from time to time,] between MLTC and the Debtor.

"**Financing Documents**" has the meaning ascribed thereto in the Financing Agreement.

"**Guaranteed Proportion**", for each Guarantor as set out in column (1) of Schedule B, means the respective per cent enumerated in column (2) of Schedule B, which shall be equivalent to each Guarantor's proportionate contribution to the Debtor's expenses to operate the Premises.

"**Guarantors' Representative**" means the City of North Bay, which shall act as the representative for all Guarantors in the event that the Creditor seeks to enforce its rights under this Guarantee.

"**Maximum Amount**", for each Guarantor, means its Guaranteed Proportion of the aggregate Obligations.

"**MLTC**" means Her Majesty the Queen in Right of Ontario as represented by the Minister of Long-Term Care

"**Obligations**" means (i) all debts, liabilities and obligations, present or future, direct or indirect, absolute or contingent, at any time or from time to time due or accruing, due and owing by, or otherwise payable by, the Debtor to the Creditor, in any currency, under or in connection with or pursuant to the Financing Agreement and any other Financing Document to which the Debtor is a party and whether incurred by the Debtor alone or jointly with another or others and whether

as principal, guarantor or surety, and (ii) the due performance and compliance by the Debtor with all of the terms and conditions of the Financing Agreement and the other Financing Documents, as such debts, liabilities and obligations may be varied from time to time;

"Other Taxes" means present and future excise and property taxes, charges, financial institutions duties, debits taxes and similar levies which arise from any payment made by the Guarantor under this Guarantee or under any of the other Financing Documents or from the execution, delivery or registration of, or otherwise with respect to, this Guarantee or any of the Financing Documents, in each case, including any interest, additions to tax or penalties applicable thereto.

"Taxes" means all taxes, levies, deductions, charges or withholdings and all related liabilities imposed by any political subdivision or taxing authority of Canada, including any interest, additions to tax or penalties applicable thereto.

1.2 **Interpretation**

- (a) Capitalized terms used in this Guarantee but not defined have the meanings given to them in the Financing Agreement.
- (b) In this Guarantee the words **"including"**, **"includes"** and **"include"** mean **"including (or includes or include) without limitation"**. The phrase **"the aggregate of"**, **"the total of"**, **"the sum of"**, or a phrase of similar meaning means **"the aggregate (or total or sum), without duplication, of"**. The expression **"Article"**, **"Section"** or other subdivision followed by a number mean and refer to the specified Article, Section or other subdivision of this Guarantee.
- (c) Any reference in this Guarantee to gender includes all genders. Words importing the singular number only include the plural and vice versa.
- (d) The division of this Guarantee into Articles, Sections and other subdivisions and the insertion of headings are for convenient reference only and are not to affect its interpretation.
- (e) The schedules attached to this Guarantee form an integral part of it for all purposes of it.
- (f) Any reference to any document refers to such document as the same may have been or may from time to time be amended, modified, extended, renewed, restated, replaced or supplemented and includes all schedules to it. Except as otherwise provided in this Guarantee, any reference in this Guarantee to a statute refers to such statute and all rules and regulations made under it as the same may have been or may from time to time be amended or re-enacted.
- (g) All references in this Guarantee to dollars, unless otherwise specifically indicated, are expressed in Canadian dollars.

ARTICLE 2 **GUARANTEE**

2.1 **Guarantee**

Each Guarantor irrevocably and unconditionally guarantees to the Creditor the due and punctual payment, and the due performance, whether at stated maturity, by acceleration or otherwise,

of the Obligations provided that the maximum aggregate liability of each Guarantor hereunder shall not exceed its Maximum Amount. Each Guarantor agrees that the Obligations, up to its Maximum Amount, will be paid to the Creditor strictly in accordance with their terms and conditions, subject to Section 3.3 hereof.

2.2 Indemnity

If any or all of the Obligations are not duly performed by the Debtor and are not performed by the Guarantors under Section 2.1 for any reason whatsoever, each Guarantor will, as a separate and distinct obligation, indemnify and save harmless the Creditor from and against all losses resulting from the failure of the Debtor to duly perform such Obligations, up to its Maximum Amount.

2.3 Primary Obligation

If any or all of the Obligations are not duly performed by the Debtor and are not performed by the Guarantors under Section 2.1 or the Creditor is not indemnified under Section 2.2, in each case, for any reason whatsoever, such Obligations will, as a separate and distinct obligation, be performed by the Guarantors as primary obligor, up to its respective Maximum Amount.

2.4 Absolute Liability

Each Guarantor agrees that its liability under Section 2.1 and Section 2.3 and, for greater certainty, under Section 2.2, is absolute and unconditional irrespective of:

- (a) the lack of validity or enforceability of any terms of any of the Financing Documents;
- (b) any contest by the Debtor or any other Person as to the amount of the Obligations, the validity or enforceability of any terms of the Financing Documents or the perfection or priority of any security granted to the Creditor;
- (c) any defence, counter claim or right of set-off available to the Debtor;
- (d) any release, compounding or other variance of the liability of the Debtor or any other Person liable in any manner under or in respect of the Obligations or the extinguishment of all or any part of the Obligations by operation of law;
- (e) any change in the time or times for, or place or manner or terms of payment or performance of the Obligations or any consent, waiver, renewal, alteration, extension, compromise, arrangement, concession, release, discharge or other indulgences which the Creditor may grant to the Debtor or any other Person;
- (f) any amendment or supplement to, or alteration or renewal of, or restatement, replacement, refinancing or modification or variation of (including any increase in the amounts available thereunder), or other action or inaction under, the Financing Agreement, the other Financing Documents or any other related document or instrument, or the Obligations;
- (g) any discontinuance, termination, reduction, renewal, increase, abstention from renewing or other variation of any credit or credit facilities to, or the terms or conditions of any transaction with, the Debtor or any other Person;
- (h) any change in the ownership, control, name, objects, businesses, assets, capital structure or constitution of the Debtor, any Guarantor, or any reorganization (whether by way of reconstruction, consolidation, amalgamation, merger, transfer, sale, lease or otherwise) of the Debtor or any Guarantor or their respective businesses;

- (i) any dealings with the security which the Creditor holds or may hold pursuant to the terms and conditions of the Financing Documents, including the taking, giving up or exchange of securities, their variation or realization, the accepting of compositions and the granting of releases and discharges;
- (j) any limitation of status or power, disability, incapacity or other circumstance relating to the Debtor, a Guarantor or any other Person, including any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation, winding-up or other like proceeding involving or affecting the Debtor, a Guarantor or any other Person or any action taken with respect to this Guarantee by any trustee or receiver, or by any court, in any such proceeding, whether or not the Guarantors shall have notice or knowledge of any of the foregoing;
- (k) the assignment of all or any part of the benefits of this Guarantee;
- (l) any impossibility, impracticability, frustration of purpose, force majeure or illegality of any Financing Document, or the occurrence of any change in the laws, rules, regulations or ordinances of any jurisdiction or by any present or future action of (i) any governmental entity that amends, varies, reduces or otherwise affects, or purports to amend, vary, reduce or otherwise affect, any of the Obligations or the obligations of the Guarantors under this Guarantee, or (ii) any court order that amends, varies, reduces or otherwise affects any of the Obligations;
- (m) any taking or failure to take security, any loss of, or loss of value of, any security, or any invalidity, non-perfection or unenforceability of any security held by the Creditor, or any exercise or enforcement of, or failure to exercise or enforce, security, or irregularity or defect in the manner or procedure by which the Creditor realizes on such security;
- (n) any application of any sums received to the Obligations, or any part thereof, and any change in such application; and
- (o) any other circumstances which might otherwise constitute a defence available to, or a discharge of, a Guarantor, the Debtor or any other Person in respect of the Obligations or this Guarantee.

2.5 Liability for Apportioned Costs

NTD: to be removed upon satisfactory negotiation and insertion of cash reserve fund equal to a minimum of 3 months of term loan payments acceptable to IO in FA with Casselhome

ARTICLE 3 ENFORCEMENT

3.1 Remedies

The Creditor is not bound to exhaust its recourse against the Debtor or any other Person or realize on any security it may hold in respect of the Obligations before being entitled to (i) enforce payment and performance under this Guarantee or (ii) pursue any other remedy against a Guarantor, and each Guarantor renounces all benefits of discussion and division.

3.2 Amount of Obligations

Any account settled or stated by or between the Creditor and the Debtor, or if any such account has not been settled or stated immediately before demand for payment under this Guarantee, any account stated by the Creditor shall, in the absence of manifest mathematical error, be accepted by each Guarantor as conclusive evidence of the amount of the Obligations which is due by the Debtor to the Creditor or remains unpaid by the Debtor to the Creditor.

3.3 Payment

Notwithstanding, and without limiting, any other rights of the Creditor under this Guarantee, each Guarantor acknowledges and agrees that:

- (a) If the Creditor intends to enforce its rights against the Guarantors under this Guarantee, the Creditor will deliver notice in writing ("**Notice of Enforcement**") to the Guarantors' Representative (which by virtue of Section 5.1 hereof shall be deemed to be notice to all Guarantors);
- (b) Upon delivery of a Notice of Enforcement, all Guarantors shall pay (up to its respective Maximum Amount) and perform their Guaranteed Proportion of the Obligations and all other amounts payable by the Guarantors (up to its respective Maximum Amount) to the Creditor under this Guarantee (the "**Total Obligations**") within thirty (30) days following the delivery of such Notice of Enforcement;
- (c) All Guarantors must unanimously choose to proceed under such Section 3.3(b), and where the Guarantors choose to do so, the Guarantors' Representative shall deliver notice in writing to the Creditor of such decision within thirty (30) days of receiving a Notice of Enforcement. If the Guarantors do not unanimously choose to proceed under Section 3.3(b) hereof, all Guarantors shall be required to proceed under Section 3.3(c) hereof;
- (d) If payment of the Total Obligations is not received by the Creditor in full in accordance with Section 3.3(b) hereof, each Guarantor shall assume its Guaranteed Proportion of the Total Obligations up to its respective Maximum Amount ("**Proportionate Obligations**") such that they become the primary obligations of such Guarantor, and each Guarantor shall repay its Proportionate Obligations (up to its respective Maximum Amount) through the issuance of a debenture to the Creditor ("**Debenture**") in the principal amount equal to its Proportionate Obligations. Such Debenture shall be issued by such Guarantor in form and substance satisfactory to the Creditor and on a date (the "**Debenture Issue Date**") not later than sixty (60) days after the delivery of the Notice of Enforcement. Each Guarantor shall do all things necessary and within its power to enable it to issue such Debenture in accordance with the *Municipal Act* (Ontario) and all other Applicable Law;
- (e) In respect of any Debenture issued by a Guarantor pursuant to Section 3.3(c) hereof:
 - (i) Payments of principal and interest due on such Debenture shall be made by pre-authorized debit from an account of such Guarantor maintained with a deposit-taking institution, such account to be designated by the execution and delivery of a notice in writing to OILC in form and substance satisfactory to the Creditor, together with such other authorizations, voided cheques and other documentation as the deposit-taking institution and the rules of the Canadian Payments Association may require for such pre-authorized debit, and such Guarantor undertakes to notify the Creditor immediately in writing of any changes in its designated account for the purposes of pre-authorized debits;

- (ii) Pursuant to Section 25 of the *Ontario Infrastructure and Lands Corporation Act, 2011* (Ontario), as amended from time to time hereafter, the Minister of Finance is entitled, without notice to such Guarantor, to deduct from money appropriated by the Legislative Assembly of Ontario for payment to such Guarantor, amounts not exceeding the amounts that such Guarantor fails to pay to the Creditor on account of such Debenture and to pay such amounts to the Creditor from the Consolidated Revenue Fund; and
- (iii) Such Guarantor shall deliver to the Creditor the following, in form and substance satisfactory to the Creditor, prior to the Debenture Issue Date:
 - (A) a Treasurer's Certificate dated as of the Debenture Issue Date; and
 - (B) a legal opinion from such Guarantor's external legal counsel, dated as of the Debenture Issue Date, addressed to the Creditor;
- (f) The liability of each Guarantor bears interest from the date of Notice of Enforcement at the rate or rates of interest then applicable to the Obligations under and calculated in the manner provided in the Financing Documents (including any adjustment to give effect to the provisions of the *Interest Act* (Canada));
- (g) If the Creditor has an assignment of the Construction Funding Subsidy, and to the extent that Construction Funding Subsidy remains payable to the Creditor (by way of assignment by the Debtor to the Creditor) following the delivery by the Creditor of a Notice of Enforcement, the Guarantors will not be required under this Section 3.3 to repay amounts equivalent to the remaining amounts payable under the Construction Funding Subsidy; however if at any point during the term of the Development Agreement the payments under the Construction Funding Subsidy cease before the Obligations and all other amounts payable by the Guarantors to the Creditor under this Guarantee are repaid in full, the Guarantors shall remain liable to pay such amounts to the Creditor (up to its respective Maximum Amount), and the obligation to pay such amounts shall arise immediately following the cessation of the Construction Funding Subsidy payments.

3.4 Costs and Expenses

Each Guarantor is liable for and will pay on demand by the Creditor its Guaranteed Proportion of any and all expenses, costs and charges incurred by or on behalf of the Creditor in connection with this Guarantee, including all legal fees, courts costs, receivers or agent's remuneration and other expenses in connection with enforcing any of their rights under this Guarantee.

3.5 Assignment and Postponement

- (a) All obligations, liabilities and indebtedness of the Debtor to any Guarantor of any nature whatsoever and all security therefor (the "**Intercorporate Indebtedness**") are assigned and transferred to the Creditor as continuing and collateral security for such Guarantor's obligations under this Guarantee and postponed to the payment in full of all Obligations. The Guarantors will not assign all or any part of the Intercorporate Indebtedness to any Person other than the Creditor.
- (b) Upon the occurrence and during the continuation of an Event of Default, all Intercorporate Indebtedness will be held in trust for the Creditor and will be collected, enforced or proved subject to, and for the purpose of, this Guarantee. In such event, any payments received by a Guarantor in respect of the Intercorporate Indebtedness will be held in trust for the Creditor and segregated from other funds and property held by such Guarantor and immediately paid to the Creditor on account of the Obligations.

- (c) In the event of any insolvency, bankruptcy or other proceeding involving the liquidation, arrangement, compromise, reorganization or other relief with respect to the Debtor or its debts, each Guarantor will, upon the request of the Creditor, make and present a proof of claim or commence such other proceedings against the Debtor on account of the Intercorporate Indebtedness as may be necessary to establish each Guarantor's entitlement to payment of any Intercorporate Indebtedness. Such proof of claim or other proceeding must be made or commenced prior to the earlier of (i) the day which is 30 days after notice requesting such action is delivered by or on behalf of the Creditor to a Guarantor and (ii) the day which is 10 days preceding the date when such proof of claim or other proceeding is required by applicable law to be made or commenced. Such proof of claim or other proceeding must be in form and substance acceptable to the Creditor.
- (d) If a Guarantor fails to make and file such proof of claim or commence such other proceeding in accordance with this Section, the Creditor is irrevocably authorized, empowered and directed and appointed the true and lawful attorney of such Guarantor (but is not obliged) with the power to exercise for and on behalf of such Guarantor the following rights, upon the occurrence and during the continuance of an Event of Default: (i) to make and present for and on behalf of such Guarantor proofs of claims or other such proceedings against the Debtor on account of the Intercorporate Indebtedness, (ii) to demand, sue for, receive and collect any and all dividends or other payments or disbursements made in respect of the Intercorporate Indebtedness in whatever form the same may be paid or issued and to apply the same on account of the Obligations, and (iii) to demand, sue for, collect and receive each such payment and distribution and give acquittance therefor and to file claims and take such other actions, in its own name or in the name of such Guarantor or otherwise, as the Creditor may deem necessary or advisable to enforce its rights under this Guarantee.
- (e) Each Guarantor will execute all subordinations, postponements, assignments and other agreements as the Creditor may reasonably request to more effectively subordinate and postpone the Intercorporate Indebtedness to the payment and performance of the Obligations on the terms set out herein.
- (f) The provisions of this Section 3.5 survive the termination of this Guarantee and remain in full force and effect until (i) the Obligations and all other amounts owing under the Financing Documents are repaid in full; and (ii) the Creditor has no further obligations under any of the Financing Documents.

3.6 Suspension of Guarantor Rights

So long as there are any Obligations, the Guarantors will not exercise any rights which it may at any time have by reason of the performance of any of its obligations under this Guarantee (i) to be indemnified by the Debtor, (ii) to claim contribution from any other guarantor of the debts, liabilities or obligations of the Debtor, or (iii) subject to Section 3.8, to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Creditor under any of the Financing Documents.

3.7 No Prejudice to Creditor

The Creditor is not prejudiced in any way in the right to enforce any provision of this Guarantee by any act or failure to act on the part of the Debtor or the Creditor. The Creditor may, at any time and from time to time, in such manner it determines is expedient, without any consent of, or notice to, the Guarantors and without impairing or releasing the obligations of the Guarantors (i) change the manner, place, time or terms of payment or performance of the Obligations, (ii) renew or alter the Obligations, (iii) amend, vary, modify, supplement or replace any Financing Document or any other related document or instrument, (iv) discontinue, reduce, renew, increase, abstain from renewing or otherwise

vary any credit or credit facilities to, any transaction with, the Debtor or any other Person, (v) release, compound or vary the liability of the Debtor or any other Person liable in any manner under or in respect of the Obligations, (vi) take or abstain from taking securities or collateral from any other Person, or from perfecting securities or collateral of any other Person, (vii) exercise or enforce or refrain from exercising or enforcing any right or security against the Debtor, the Guarantors or any other Person, (viii) accept compromises or arrangement from any Person, (ix) apply any sums from time to time received to the Obligations, or any part thereof, and change any such application in whole or in part from time to time or (x) otherwise deal with, or waiver or modify their right to deal with, any Person and security. In their dealings with the Debtor, the Creditor need not enquire into the authority or power of any Person purporting to act for or on behalf of the Debtor.

3.8 No Subrogation

Each Guarantor irrevocably waives any claim, remedy or other right which it may now have or hereafter acquire against the Debtor that arises from the existence, payment, performance or enforcement of such Guarantor's obligations under this Guarantee, including any right of subrogation, reimbursement, exoneration, indemnification or any right to participate in any claim or remedy of the Creditor against the Debtor or any collateral which the Creditor now has or may hereafter acquire, whether or not such claim, remedy or other right is reduced to judgment or is liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured, and whether or not such claim, remedy or other right arises in equity or under contract, statute or common law. Each Guarantor further agrees that the Debtor is an intended third party beneficiary of each Guarantor's waiver contained in this Section 3.8. If any amount is paid to a Guarantor in violation of this Section and, at such time, the Creditor's claims against the Debtor in respect of the Obligations have not been irrevocably, indefeasibly and unconditionally paid in full, any amount paid to a Guarantor is deemed to have been paid to such Guarantor for the benefit of, and held in trust for the Creditor and will immediately be paid to the Creditor to be credited and applied to such Obligations. Each Guarantor acknowledges that it will receive direct and indirect benefits from the transactions contemplated by this Guarantee and that the waiver in this Section 3.8 is knowingly made in contemplation of such benefits.

3.9 No Set-off

To the fullest extent permitted by law, each Guarantor makes all payments under this Guarantee without regard to any defence, counter-claim or right of set-off available to it.

3.10 Successors of the Debtor

This Guarantee will not be revoked by any change in the constitution of the Debtor.

3.11 Continuing Guarantee and Continuing Obligations

The obligation of each Guarantor under Section 2.1 is a continuing guarantee, and the obligations of each Guarantor under Section 2.3 and Section 2.4 are continuing obligations. Each of Section 2.1, Section 2.3 and Section 2.4 extends to all present and future Obligations, applies to and secures the ultimate balance of the Obligations due or remaining due to the Creditor and is binding as a continuing obligation of each Guarantor until the Creditor releases each Guarantor. This Guarantee will continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Obligations is rescinded or must otherwise be returned by the Creditor upon the insolvency, bankruptcy or reorganization of the Debtor or otherwise, all as though the payment had not been made.

3.12 Supplemental Security

This Guarantee is in addition and without prejudice to and supplemental to all other guarantees, indemnities, obligations and security now held or which may hereafter be held by the Creditor.

3.13 Security for Guarantee

Each Guarantor acknowledges that this Guarantee is intended to secure payment and performance of the Obligations and that the payment and performance of the Obligations and the other obligations of each Guarantor under this Guarantee are secured pursuant to the terms and provisions of the other Financing Documents.

3.14 Right of Set-off

Upon the occurrence and during the continuance of any Event of Default, the Creditor is authorized by each Guarantor at any time and from time to time and may, to the fullest extent permitted by law, set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by the Creditor to or for the credit or the account of the Guarantors against any and all of the obligations of the Guarantors now or hereafter existing irrespective of whether or not (i) the Creditor has made any demand under this Guarantee, or (ii) any of the obligations comprising the Obligations are contingent or unmatured. The rights of the Creditor under this Section 3.14 are in addition and without prejudice to and supplemental to other rights and remedies which the Creditor may have.

3.15 Interest Act (Canada)

Each Guarantor acknowledges that certain of the rates of interest applicable to the Obligations may be computed on the basis of a year of 360 days or 365 days, as the case may be and paid for the actual number of days elapsed. For purposes of the *Interest Act* (Canada), whenever any interest is calculated using a rate based on a year of 360 days or 365 days, as the case may be, such rate determined pursuant to such calculation, when expressed as an annual rate is equivalent to (i) the applicable rate based on a year of 360 days or 365 days, as the case may be, (ii) multiplied by the actual number of days in the calendar year in which the period for such interest is payable (or compounded) ends, and (iii) divided by 360 or 365, as the case may be.

3.16 Taxes

- (a) All payments to the Creditor by the Guarantors under this Guarantee or under any of the other Financing Documents will be made free and clear of and without deduction or withholding for any and all Taxes, unless such Taxes are required by applicable law to be deducted or withheld. If a Guarantor is required by applicable law to deduct or withhold any such Taxes from or in respect of any amount payable under this Guarantee or under any of the other Financing Documents (i) the amount payable shall be increased (and for greater certainty, in the case of interest, the amount of interest shall be increased) as may be necessary so that after making all required deductions or withholdings (including deductions or withholdings applicable to any additional amounts paid under this Section 3.16), the Creditor receives an amount equal to the amount it would have received if no such deduction or withholding had been made, (ii) such Guarantor will make such deductions or withholdings, and (iii) such Guarantor will immediately pay the full amount deducted or withheld to the relevant governmental authority in accordance with applicable law.
- (b) Each Guarantor agrees to immediately pay any Other Taxes.
- (c) Each Guarantor will indemnify the Creditor for the full amount of Taxes and Other Taxes (including, without limitation, any Taxes or Other Taxes imposed by any jurisdiction on amounts payable by the Guarantors under this Section 3.16) paid by the Creditor and any liability (including penalties, interest and expenses) arising from or with respect to such Taxes and Other Taxes, whether or not they were correctly or legally asserted. Payment under this indemnification will be made within 30 days from

the date the Creditor makes written demand for it. A certificate as to the amount of such Taxes and Other Taxes submitted to a Guarantor by the Creditor is conclusive evidence, absent manifest error, of the amount due from such Guarantor to the Creditor.

- (d) Each Guarantor will furnish to the Creditor the original or a certified copy of a receipt evidencing payment of any Taxes or Other Taxes made by such Guarantor within 30 days after the date of any payment of such Taxes or Other Taxes.
- (e) The provisions of this Section 3.16 survive the termination of this Guarantee.

ARTICLE 4 **REPRESENTATIONS AND WARRANTIES**

4.1 General

Each Guarantor represents and warrants, acknowledging and confirming that the Creditor is relying on such representations and warranties, that:

- (a) **Creation, Existence, Power and Capacity.** It is a valid and subsisting corporation under the laws of its jurisdiction of existence and has all necessary power and capacity to own its properties and assets and carry on its business and to enter into and perform its obligations under the Financing Documents to which it is party.
- (b) **Valid Authorization and Enforceability.** It has taken all necessary action to authorize the execution and delivery of, and performance of its obligations under, all Financing Documents to which it is party and each of the Financing Documents to which it is a party have been duly executed and delivered. Each of the Financing Documents to which it is a party constitutes legal, valid and binding obligations of such Guarantor enforceable against it in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors rights generally and the discretion exercisable by courts of competent jurisdiction in respect of the availability of equitable remedies and general equitable principles.
- (c) **Non-Conflict.** The execution or delivery by it of, and the performance of its obligations under, the Financing Documents to which it is a party: (i) does not and will not require any shareholder consent or approval which has not been obtained, (ii) does not and will not violate, breach or conflict with or constitute a default under any provision of its constating documents or any applicable law and (iii) does not and will not violate, contravene, breach or constitute a default under any material agreement or undertaking to which it is a party or by which it or any of its properties is bound or affected.

ARTICLE 5 **GENERAL**

5.1 Notices, etc.

Any notice, direction or other communication (each a "**Notice**") given regarding the matters contemplated by this Guarantee must be in writing, sent by personal delivery, courier or facsimile (but not by electronic mail) and addressed:

(a) to the Guarantors' Representative at:

[Name]
[Address]

Attention: [◆]
E-mail: [◆]

with a copy to:

[Name]
[Address]

Attention: [◆]
E-mail: [◆]

(b) to the Creditor at:

1 Dundas Street West, Suite 2000
Toronto, ON M5G 1Z3 Canada

Attention: Manager, Loan Administration
Email: Jennifer.tang@infrastructureontario.ca

A Notice is deemed to be delivered and received (i) if sent by personal delivery, on the date of delivery if it is a Business Day and the delivery was made prior to 4:00 p.m. (local time in place of receipt) and otherwise on the next Business Day, (ii) if sent by same-day service courier, on the date of delivery if sent on a Business Day and delivery was made prior to 4:00 p.m. (local time in place of receipt) and otherwise on the next Business Day, or (iii) if sent by overnight courier, on the next Business Day. A party may change its address for service from time to time by providing a Notice in accordance with the foregoing. Any subsequent Notice must be sent to the party at its changed address. Any element of a party's address that is not specifically changed in a Notice will be assumed not to be changed.

The Guarantors acknowledge and agree that: (i) any Notice required to be delivered by the Creditor to the Guarantors in accordance with this Guarantee, can be delivered, at the Creditor's sole discretion, exclusively to the Guarantors' Representative on behalf of all Guarantors, and (ii) any Notice delivered by the Creditor to the Guarantors' Representative, and received by the Guarantors' Representative in accordance with the provisions hereof, shall be deemed to be delivered to and received by all Guarantors, and that such Notice shall be deemed to be sufficient notice under this Guarantee.

The Guarantors' Representative acknowledges and agrees that it will deliver any Notice received by it to the other Guarantors forthwith upon receipt of such Notice, and that any liability for its failure to do so shall remain solely with the Guarantors' Representative.

5.2 No Merger, Survival of Representations and Warranties

The representations, warranties and covenants of the Guarantors in this Guarantee survive the execution and delivery of this Guarantee and each advance under the Financing Agreement. Notwithstanding any investigation made by or on behalf of the Creditor, the representations, warranties and covenants in this Guarantee continue in full force and effect.

5.3 Further Assurances

- (a) Each Guarantor will do all acts and things and execute and deliver, or cause to be executed and delivered, all documents and instruments that the Creditor may request to give full effect to this Guarantee and to perfect and preserve the rights and powers of the Creditor under this Guarantee, including any acknowledgements and confirmations of this Guarantee and the other Financing Documents.
- (b) Each Guarantor acknowledges and confirms that it itself has established its own adequate means of obtaining from the Debtor on a continuing basis all information desired by it concerning the financial condition of the Debtor and that each Guarantor will look to the Debtor and not to the Creditor, in order for it to keep adequately informed of changes in the Debtor's financial condition.

5.4 Successors and Assigns

This Guarantee is binding upon each Guarantor, its successors and assigns, and enures to the benefit of the Creditor and its successors and assigns. This Guarantee may be assigned by the Creditor without the consent of, or notice to, the Guarantors, to such Person as the Creditor may determine and, in such event, such Person will be entitled to all of the rights and remedies of the Creditor as set forth in this Guarantee or otherwise. In any action brought by an assignee to enforce any such right or remedy, the Guarantors will not assert against the assignee any claim or defence which the Guarantors now have or may have against the Creditor. The Guarantors may not assign, transfer or delegate any of its rights or obligations under this Guarantee without the prior written consent of the Creditor which may be unreasonably withheld.

5.5 Amendment

This Guarantee may only be amended, supplemented or otherwise modified by written agreement executed by the Creditor and the Guarantors.

5.6 Waivers, etc.

- (a) No consent or waiver by the Creditor in respect of this Guarantee is binding unless made in writing and signed by an authorized officer of the Creditor. Any consent or waiver given under this Guarantee is effective only in the specific instance and for the specific purpose for which given. No waiver of any of the provisions of this Guarantee constitutes a waiver of any other provision.
- (b) A failure or delay on the part of the Creditor in exercising a right under this Guarantee does not operate as a waiver of, or impair, any right of the Creditor however arising. A single or partial exercise of a right on the part of the Creditor does not preclude any other or further exercise of that right or the exercise of any other right by the Creditor.

5.7 Severability

If any court of competent jurisdiction from which no appeal exists or is taken, determines that any provision of this Guarantee is illegal, invalid or unenforceable, that provision will be severed from this Guarantee and the remaining provisions will remain in full force and effect.

5.8 Application of Proceeds

All monies collected by the Creditor under this Guarantee will be applied as provided in the Financing Agreement or as otherwise determined by the Lender. To the extent any other Financing Document requires proceeds of collateral under such Financing Document to be applied in accordance

with the provisions of this Guarantee, the Creditor or holder under such other Financing Document shall apply such proceeds in accordance with this Section.

5.9 Governing Law

- (a) This Guarantee will be governed by, interpreted and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.
- (b) Each Guarantor irrevocably attorns and submits to the exclusive jurisdiction of any court of competent jurisdiction of the Province of Ontario sitting in Toronto in any action or proceeding arising out of or relating to this Guarantee and the other Financing Documents to which it is a party. Each Guarantor irrevocably waives objection to the venue of any action or proceeding in such court or that such court provides an inconvenient forum. Nothing in this Section limits the right of the Creditor to bring proceedings against the Guarantors in the courts of any other jurisdiction.

[Signature Pages Follow]

DRAFT

IN WITNESS WHEREOF each Guarantor has executed this Guarantee on the [♦] day of [♦], 2021.

THE CORPORATION OF THE CITY OF NORTH BAY

By: _____
Authorized Signing Officer

THE CORPORATION OF THE TOWNSHIP OF EAST FERRIS

By: _____
Authorized Signing Officer

THE CORPORATION OF THE TOWNSHIP OF SOUTH ALGONQUIN

By: _____
Authorized Signing Officer

THE CORPORATION OF THE TOWNSHIP OF BONFIELD

By: _____
Authorized Signing Officer

THE CORPORATION OF THE TOWNSHIP OF PAPINEAU-CAMERON

By: _____
Authorized Signing Officer

THE CORPORATION OF THE TOWNSHIP OF CHISHOLM

By: _____
Authorized Signing Officer

**THE CORPORATION OF THE TOWNSHIP OF
CALVIN**

By: _____
Authorized Signing Officer

**THE CORPORATION OF THE TOWN OF
MATTAWA**

By: _____
Authorized Signing Officer

**THE CORPORATION OF THE TOWNSHIP OF
MATTAWAN**

By: _____
Authorized Signing Officer

DRAFT

SCHEDULE A

Description of Premises

PIN: 49150-0629 (LT)

LEGAL DESCRIPTION: PT SHAW ST PL M45 & M165 BTN CASSELLS ST & PT 9 36R8349 EXCEPT PT 4, 36R12603; PT LANE ABUTTING LTS 240 TO 272 PL M186 & LTS 853 TO 856 & P972 TO 976 PL M165 EXCEPT PT 6, 36R-12603; LTS 853, 854, 855 & 856 PL M165 EXCEPT PT 1, 36R8349; LT 242 TO 251 & 261 TO 272 INCL PL M186; LTS 967 TO 989 PL M165 EXCEPT PTS 9 & 10 36R7416; LT 2 M45 EXCEPT PT 3, NR1929 & PT 1, 36R12603; LTS 144 TO 150 PL M45 EXCEPT PT 3, NR1929 & PT 3 36R12603; NORTH BAY; DISTRICT OF NIPISSING.

MUNICIPAL ADDRESS: 400 Olive Street West, North Bay, Ontario

DRAFT

SCHEDULE B

Guarantee Proportions

(1)	(2)
<u>Municipality</u>	<u>Per Cent</u>
City of North Bay	79.84%
Township of East Ferris	7.45%
Township of South Algonquin	3.28%
Township of Bonfield	3.07%
Township of Papineau-Cameron	1.66%
Township of Chisholm	1.56%
Township of Calvin	1.44%
Town of Mattawa	1.39%
Township of Mattawan	0.31%

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