

Meridian™ Environmental Undertaking And Indemnity Agreement

This Environmental Undertaking and Indemnity Agreement (this “Agreement”) is made as of _____, by _____ and _____

(collectively, the “**Indemnitor**”) in favour of Meridian Credit Union Limited (the “**Lender**”).

WHEREAS:

- A. The Lender has made or will make a loan or loans available to _____ (the “**Borrower**”) from time to time pursuant to the terms of a credit agreement made between the Borrower and the Lender (as amended, amended and restated, extended, supplemented, replaced or otherwise modified from time to time, the “**Credit Agreement**”);
- B. _____ has granted, or has agreed to grant, a charge/mortgage of land against the Property in favour of the Lender to secure the obligations under and in connection with the Credit Agreement (the “**Mortgage**”);
- C. To induce the Lender to enter into the Credit Agreement, the Indemnitor has agreed to indemnify the Lender from any liability which the Lender may become subject to or responsible for before or after repayment of the Loan Indebtedness as a result of any Hazardous Substance affecting the Property or otherwise in accordance with the terms hereof.

NOW THEREFORE, in consideration of the Lender entering into the Credit Agreement and making the Loan, the Indemnitor hereby agrees as follows:

1. Definitions:

- (a) “**Governmental Authority**” means (a) any government, parliament or legislature, any regulatory or administrative authority, agency, commission or board and any other statute, rule or regulation making entity having jurisdiction in the relevant circumstances, (b) any Person acting within and under the authority of any of the foregoing or under a statute, rule or regulation thereof; and (c) any judicial, administrative or arbitral court, authority, tribunal or commission having jurisdiction in the relevant circumstances.
- (b) “**Hazardous Substance**” means and includes, without limitation, any substance (including petroleum product) which is prohibited, controlled or regulated by any Governmental Authority or becomes designated under any Law as “**toxic**”, “**hazardous**”, “**biomedical waste**”, “**effluent**”, “**refuse**” or a “**contaminant**”, a “**pollutant**”, a “**dangerous good**” or any “**waste**” which is or becomes similarly designated under any Law.
- (c) “**Indemnified Costs**” means all losses, costs and/or damages (including foreseeable and unforeseeable consequential damages), expenses, fines, penalties and costs in connection with any legal action, reference or arbitration or mediation hearing or any investigation of site conditions or any remedial or restoration work of the Property or properties to which Hazardous Substances have migrated, including sums paid in settlement of claims and all consultant, expert and legal fees, including the expenses of the Lender’s counsel, incurred by any Indemnified Party for any claim or cause of action as against such Indemnified Party of any kind by any person arising out of:
- (i) any Hazardous Substance being present or released in, on, under or around or which migrated from the Property, whether or not the presence of such Hazardous Substance is known or unknown by the parties hereto at the time this Agreement is executed; or
 - (ii) the failure to comply with any Law, judgment, order or directive relating to any Hazardous Substance in, on, under or around the Property or any property to which the Hazardous Substance has migrated; or
 - (iii) the failure to protect public health and safety that is or may be threatened by any Hazardous Substance being present or released in, on, under or around the Property or any property to which the Hazardous Substance has migrated; or
 - (iv) the enforcement of the terms of this Agreement; or
 - (v) the Requirements of Environmental Law:
- (d) “**Indemnified Parties or Party**” means, the Lender, its parent, subsidiaries and affiliated companies, and the officers, directors, employees, agents and representatives of each of them.
- (e) “**Law**” or “**Laws**” includes all common law and any and all federal, provincial, municipal or local law, regulation or ordinance, or any rule, order or directive issues by any Governmental Authority, governmental department, regulatory agency or court of law in Canada governing or applicable to any Hazardous Substance, waste disposal, waste removal or waste storage, or any other law impacting the environment of the Property, including those requiring disclosures to prospective and actual buyers, lessors or tenants of all or any portion of the Property.
- (f) “**Loan Indebtedness**” means all amounts owing to the Lender under the Credit Agreement or any Security delivered pursuant thereto.

- (g) **"Property"** means the lands and premises municipally known as _____, and more particularly described in Schedule "A" attached hereto, together with all buildings, structures and improvements now or hereafter located thereon and includes the soil, ground water or soil, vapour on or under such premises.
- (h) **"Requirements of Environmental Law(s)"** means all requirements of the common law or of statutes, regulations, by-laws, ordinances, treaties, judgments and decrees, and (to the extent that they have the force by law) rules, policies, guidelines, orders, approvals, notices, permits, directives, and the like, of any Governmental Authority relating to environmental or occupational health and safety matters (as they relate to exposure to or the existence of a Hazardous Substance in, on, under or around the Property or any property to which the Hazardous Substance has migrated) and the assets and undertaking of such person and the intended uses thereof in connection with such matters, including all such requirements relating to: (a) the protection, preservation or remediation of the natural environment (the air, land, surface water or groundwater); (b) solid, gaseous or liquid waste generation, handling, treatment, storage, disposal or transportation; (c) consumer, occupational or public safety and health (as they relate to exposure to a Hazardous Substance); and (d) Hazardous Substances or conditions (matters that are prohibited, controlled or otherwise regulated, including without limitation contaminants, pollutants, toxic substances, dangerous goods, wastes, hazardous wastes, liquid industrial wastes, hazardous materials, petroleum and other materials such as urea formaldehyde and polyurethane foam insulation, asbestos or asbestos-containing materials, polychlorinated biphenyls (PCBs) or PCB contaminated fluids or equipment, lead based paint, explosives, radioactive substances, petroleum and associated products, above ground and underground storage tanks or surface impoundments).
- (i) **"Security"** means all such security granted to the Lender as general and continuing security for the payment and performance of the obligations under and in connection with the Credit Agreement, including, but not limited to, the Mortgage.
2. All of the obligations of the Indemnitor under this Agreement, including any Indemnified Costs incurred by any Indemnified Party, shall be added to the amount of the Loan Indebtedness and secured by the Security and shall bear interest at the rate of interest set out in the Credit Agreement. Notwithstanding any provision of the Credit Agreement, the rights of the Indemnified Party under this Agreement shall not be affected by any provision of the Credit Agreement or any Security limiting the Lender's recourse or limiting the Indemnitor's liability for the Loan Indebtedness.
3. (a) The Indemnitor indemnifies and holds each of the Indemnified Parties harmless from and against any and all Indemnified Costs.
- (b) The Indemnitor shall take or cause to be taken any and all necessary remedial or clean-up action in response to the presence, storage, use, disposal, transportation, release or discharge of any Hazardous Substance in, on, under or around the Property or any property to which the Hazardous Substances may have migrated:
- (i) in compliance with all applicable Laws and the Requirements of Environmental Law(s); and
- (ii) in accordance with the orders or directions of any Governmental Authority.
4. Upon the written demand by any Indemnified Party, the Indemnitor shall defend any action or proceeding involving any Indemnified Costs which is brought or commenced against any Indemnified Party, all at the Indemnitor's own cost and by counsel to be approved by the Indemnified Party, which approval shall not be unreasonably withheld or delayed. In the alternative, any Indemnified Party may elect, at its sole discretion, to conduct its own defence at the sole expense of the Indemnitor provided such expense is reasonable.
5. (a) The Indemnitor hereby represents and warrants that:
- (i) they have researched and inquired into the previous uses and owners of the Property;
- (ii) the Indemnitor has complied, and shall cause the Borrower to comply and cause all tenants and other persons who may come upon the Property to comply, with all Laws and the Requirements of Environmental Law; and
- (iii) the Indemnitor has complied and shall comply with the recommendations of any qualified environmental engineer or other expert which apply or pertain to the Property.
- (b) The Indemnitor hereby represents and warrants that to the best of its knowledge, no Hazardous Substance has been released or disposed of, or otherwise exists, in, on, under or around the Property, except as the Indemnitor has disclosed to the Lender in writing as at the date of this Agreement or was disclosed to the Lender in any reports delivered to the Lender prior to the first advance of the Loan.
6. The Indemnitor shall promptly notify the Lender if the Indemnitor knows, suspects or believes there may be any Hazardous Substance in, on, under or around the Property or that the Indemnitor or the Property may be subject to any threatened or pending investigation by any governmental or other agency under any Law or the Requirements of Environmental Law.
7. The Indemnified Parties shall have the right, but not the duty, at any reasonable time on reasonable prior written notice to enter and visit the Property for the purposes of observing the Property, taking property samples, including soil, ground water and vapour samples, and conducting tests on any part of the Property if they have a reasonable basis for believing that Hazardous Substances are present. In no event shall any site visit or testing by any Indemnified Party be a representation that Hazardous Substances are or are not present in, on or under the Property or that there has been or shall be compliance with any Law and neither the Indemnitor nor any other parties shall be entitled to rely on any site visit or testing by any Indemnified Party. The Indemnified Parties owe no duty of care to protect the Indemnitor or any other party against, or to inform the Indemnitor or any other party of, any Hazardous Substances or any other adverse condition affecting the Property.

8. The undersigned's obligations and liability for any loss to the Lender and for the Indemnified Costs shall survive the repayment of the Loan Indebtedness and all other moneys outstanding from time to time hereunder or under the Credit Agreement and shall survive this indemnity and are not satisfied by foreclosure of the Mortgage forming part of the Security and shall continue in effect after any transfer of the Property including transfer pursuant to foreclosure proceedings (whether judicial or non-judicial) or any transfer in lieu of foreclosure.
9. Nothing in this Agreement shall be construed to limit any claim or right which any Indemnified Party may otherwise have at any time against the Indemnitor or any other party arising from any source other than this Agreement and the obligations of the undersigned are independent of the obligations of the Borrower.
10. If any Indemnified Party delays in exercising or fails to exercise any right or remedy against the Indemnitor, that alone shall not be construed as a waiver of that right or remedy. All remedies of any Indemnified Party against the Indemnitor are cumulative.
11. This Agreement and Indemnity shall not be subject to any non-recourse or other limitation of liability provisions in the Loan Documents, and the Indemnitors acknowledge that their obligations under this Agreement and Indemnity are not limited by any such non-recourse or similar limitation or liability provisions.
12. Each Indemnitor understands that a default of its obligations under this Agreement that is not cured after the expiration of all applicable notice and cure periods, if any, shall be an Event of Default under the Credit Agreement and Security, and that in addition to any remedies specified in this Agreement, the Lender shall be entitled to exercise all of its rights and remedies under the Credit Agreement and the Security.
13. Every provision of this Agreement is intended to be severable and in the event any part of this Agreement is declared to be illegal or invalid, such illegality or invalidity shall not affect the other parts of this Agreement which shall remain binding and enforceable.
14. This Agreement is the entire agreement between the parties with respect to the subject matter of this Agreement.
15. This Agreement shall bind and benefit the heirs, executors, administrators, legal representatives, successors and assigns of all of the parties hereto provided, however, that the Indemnitor may not assign this Agreement without the prior written consent of the Lender.
16. Where there is more than one Indemnitor under this Agreement then each Indemnitor shall be jointly and severally liable under this Agreement.
17. This Agreement shall be governed by the laws of the Province of Ontario and the laws of Canada and the undersigned consents to the jurisdiction of the Courts of Ontario and agree that subject to the Lender's election in its sole discretion, all actions shall be litigated in such courts.
18. Any notice or other communication to be made in connection with this Agreement shall be made in accordance with the Credit Agreement.
19. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

Borrower(s):

Per: _____

Name: _____

Title: _____

Per: _____

Name: _____

Title: _____

Per: _____

Name: _____

Title: _____

Per: _____

Name: _____

Title: _____

I/We have authority to bind the corporation.

Corporate Guarantor(s):

Per: _____

Name: _____

Title: _____

Per: _____

Name: _____

Title: _____

Per: _____

Name: _____

Title: _____

Per: _____

Name: _____

Title: _____

I/We have authority to bind the corporation.

Individual Guarantor(s):

Per: _____

Name: _____

Per: _____

Name: _____

Per: _____

Name: _____

Per: _____

Name: _____

Per: _____

Name: _____