

CONSTRUCTION ACT

Quick Reference Forms

**** INFORMATION IS CURRENT AS OF SEPTEMBER 25, 2019, THE MOST UP TO DATE FORMS CAN BE FOUND AT:
<http://ontariocourtforms.on.ca/en/construction-lien-act-forms/>. USERS SHALL BE RESPONSIBLE FOR CHECKING THE WEBSITE
IN ORDER TO ENSURE THAT THE MOST RECENT VERSION OF THE FORM IS BEING USED.

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FORM 1
WRITTEN NOTICE OF LIEN UNDER SUBSECTION 1(1) OF THE ACT
Construction Act

Name of person having a lien: _____

Address for service: _____

Name of payer: _____

Address: _____

Name of person to whom person having a lien supplied services or materials: _____

Address: _____

Time within which services or materials were supplied:

_____ to _____
(date supply commenced) (date of most recent supply)

Short description of services or materials that have been supplied:

Description of premises: _____

Contract price or subcontract price: \$ _____

Amount claimed as owing in respect of services or materials that have been supplied: \$ _____

Date: _____

(signature of person having a lien)

FORM 1.1
OWNER NOTICE OF NON-PAYMENT (SUBSECTION 6.4(2) OF THE ACT)
Construction Act

Name of owner: _____

Address: _____

Description of premises:

Name of contractor: _____

Address: _____

Address for service, if known _____

The owner disputes the proper invoice dated _____, 20_____, submitted to the owner by the contractor in respect of the improvement. The owner will not pay the following amount payable under the invoice:

(Use A or B, whichever is applicable)

A. The full amount of the proper invoice, being \$ _____.

B. A portion of the amount of the proper invoice, being \$ _____.

The reasons for non-payment are as follows:

Date: _____

(owner)

FORM 1.2
CONTRACTOR NOTICE OF NON-PAYMENT WHERE OWNER DOES NOT PAY
(SUBSECTION 6.5(5) OF THE ACT)
Construction Act

Name of contractor: _____

Address: _____

Description of the premises:

Name of subcontractor: _____

Address: _____

Address for service, if known: _____

The contractor submitted a proper invoice to the owner in respect of the improvement on _____, 20_____.

The contractor has not received payment from the owner and will not pay the subcontractor the amount under the subcontract that was included in the proper invoice within the time specified in subsection 6.5(1) of the *Construction Act*.

Amount that will not be paid:

(Use A or B, whichever is applicable)

- A. The full amount of the services or materials supplied by the subcontractor, being \$ _____.
- B. A portion of the amount of the services or materials supplied by the subcontractor, being \$ _____.

The contractor hereby undertakes to refer the matter to adjudication under Part II.1 of the *Construction Act*, no later than 21 days after giving this notice of non-payment to the subcontractor.

A copy of the Notice of Non-Payment under Subsection 6.4(2) of the Act is enclosed.

Date: _____

(Contractor)

FORM 1.3
CONTRACTOR NOTICE OF NON-PAYMENT IF DISPUTE (SUBSECTION 6.5(6) OF
THE ACT)
Construction Act

Name of contractor: _____

Address: _____

Description of the premises:

Name of subcontractor: _____

Address: _____

Address for service, if known: _____

The contractor submitted a proper invoice to the owner in respect of the improvement on _____, 20_____.

The contractor disputes the entitlement of the subcontractor to payment of an amount under the subcontract that was included in the proper invoice. The contractor will not pay the following amount:

(Use A or B, whichever is applicable)

- A. The full amount of the services or materials supplied by the subcontractor, being \$ _____.
- B. A portion of the amount of the services or materials supplied by the subcontractor, being \$ _____.

The reasons for non-payment are as follows:

Date: _____

(Contractor)

FORM 1.4
SUBCONTRACTOR NOTICE OF NON-PAYMENT WHERE CONTRACTOR DOES NOT PAY (SUBSECTION 6.6(6) OF THE ACT)

Construction Act

Name of subcontractor: _____

Address: _____

Description of the premises:

Name of contractor: _____

Address: _____

(Complete for the subcontractor who supplied services or materials to an improvement in relation to the proper invoice)

Name of subcontractor: _____

Address: _____

Address for service, if known: _____

The contractor submitted a proper invoice to the owner in respect of the improvement on _____, 20____.

(Use A or B, whichever is applicable)

- A. The subcontractor has not received payment from the contractor and will not pay the subcontractor the amount under the subcontract that was included in the proper invoice within the time specified in subsection 6.6(1) of the *Construction Act*.
- B. *[Non-payment to a subcontractor who is entitled to payment from a subcontractor in accordance with subsection 6.6(11) of the Construction Act]*. The subcontractor has not received payment from the subcontractor and will not pay another subcontractor the amount payable under the subcontract that was included in the proper invoice within the time specified in subsection 6.6(1) of the *Construction Act*.

Amount that will not be paid:

(Use A or B, whichever is applicable)

- A. The full amount of the services or materials supplied by the subcontractor, being \$ _____.
- B. A portion of the amount of the services or materials supplied by the subcontractor, being \$ _____.

(Include the following where applicable)

The subcontractor hereby undertakes to refer the matter to adjudication under Part II.1 of the *Construction Act*, no later than 21 days after giving this notice of non-payment to the subcontractor.

A copy of any notice of non-payment received by the subcontractor is enclosed.

Date: _____

(Subcontractor)

FORM 1.5
SUBCONTRACTOR NOTICE OF NON-PAYMENT IF DISPUTE (SUBSECTION 6.6(7)
OF THE ACT)

Construction Act

Name of subcontractor: _____

Address: _____

Description of the premises:

Name of contractor: _____

Address: _____

(Complete for the subcontractor who supplied services or materials to an improvement in relation to the proper invoice)

Name of subcontractor: _____

Address: _____

Address for service, if known: _____

The contractor submitted a proper invoice to the owner in respect of the improvement on _____, 20____.

The subcontractor disputes the entitlement of another subcontractor to payment of an amount under the subcontract that was included in the proper invoice in accordance with subsection 6.6(7) of the *Construction Act* or subsection 6.6(11) of the *Construction Act*. The subcontractor will not pay the following amount:

(Use A or B, whichever is applicable)

- A. The full amount of the services or materials supplied by the subcontractor, being \$ _____.
- B. A portion of the amount of the services or materials supplied by the subcontractor, being \$ _____.

The reasons for non-payment are as follows:

Date: _____

(Subcontractor)

FORM 2
NOTICE TO CONTRACTOR UNDER SECTION 18 OF THE ACT
Construction Act

TO: _____, contractor.

FROM: _____, a joint owner or owner in common with
_____ of the following premises:

(address of premises)

The joint owner or owner in common assumes no responsibility for the improvements to the premises, to be made by you under a contract between you and: _____ .
(name of owner)

Date: _____

(joint owner or owner in common or agent)

FORM 3
NOTICE TO LIEN CLAIMANT UNDER SUBSECTION 19(3) OF THE ACT
Construction Act

TO: _____, lien claimant.

FROM: _____, the landlord of the following premises:

(address of premises)

The landlord intends to

(Use A or B, whichever is applicable)

- A. enforce forfeiture against the lease of the premises;
- B. terminate the lease of the premises

for non-payment of rent.

In order to protect your lien rights against the interest of the tenant, the amount of the unpaid rent as stated below must be paid to the landlord within ten days of your receiving this notice. If you pay this amount, you may add it to your claim for lien.

Amount of unpaid rent: \$ _____

Payment of this amount may be made on: _____ between the hours of
(days)

_____ and _____, at _____
(address for payment)

Date: _____

(landlord or agent)

FORM 4
LETTER OF CREDIT UNDER SUBSECTION 22(4) OF THE ACT
Construction Act

Draft Irrevocable Letter of Credit regarding Holdback Repayment

[Insert name of financial institution]

Date of Issue:

Irrevocable Standby Letter of Credit
No.:

Financial Institution Branch No.:

Amount: Not exceeding CAD \$

Date of Expiry:

Applicant:

Name of contractor:

Address of the contractor:

Description of the improvement:

Address of the improvement:

To:

Pursuant to the request of _____ (hereinafter called "the Applicant"), we, the bank of, [insert name and address of financial institution] hereby establish and give to you an irrevocable standby letter of credit no. _____ in your favour in the total amount of \$ _____ (Canadian dollars) which may be drawn on by you at any time and from time to time upon written demand for payment made upon us by you which demand we shall honour without enquiring whether you have a right as between yourself and the said applicant to make such demand, and without recognizing any claim of the said applicant for objection by it to payment by us.

Your drawing by written demand for payment must bear reference to this letter of credit no. _____ and be accompanied by:

- (a) A Certificate signed by two officers of the beneficiary certifying that the Applicant is in default of its contractual obligation having failed to make a holdback reimbursement and that you are entitled to draw on this irrevocable standby letter of credit and that an amount of up to \$ _____ (Canadian dollars) be paid; and
- (b) Presentation of the original of this letter of credit.

Partial drawings are permitted under this letter of credit.

This irrevocable standby letter of credit no. _____ shall expire on the _____ day of _____
subject to the following:

This letter of credit shall be deemed to be automatically extended, without amendment for successive one year periods from the present day or any future expiration date, unless cancelled upon receipt of this original letter of credit accompanied by your written authorization to us to cancel same;

[Add any additional commercial conditions]

The drawings under this irrevocable standby letter of credit are to state that they are drawn under [insert name of financial institution] irrevocable standby letter of credit no. _____.

Yours very truly,

Authorization/Signature of
Financial Institution

Authorization/Signature of
Financial Institution

FORM 5
HOLDBACK REPAYMENT BOND UNDER SUBSECTION 22(4) OF THE ACT
Construction Act

No. _____ (the “**Bond**”)

_____, as a principal, hereinafter called the “**Contractor**”, and
(name of the contractor*)

_____, a corporation created and existing under the laws of
(name of the surety company**)

_____, as a surety, and duly authorized to transact the
(place of incorporation)

business of Suretyship in the Province of Ontario and hereinafter called the “**Surety**”, are held and firmly bound unto
_____ as obligee, hereinafter for the purposes of this Bond
(name of the owner***)

called the “**Owner**”, in the amount of 10% of the price of the Original Contract (defined below), or, as such price is adjusted in accordance with the terms of the Original Contract and Performance Bond No. _____, hereinafter called the “**Bond Amount**”, for the payment of which sum the Contractor and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally in accordance with the provisions of this Bond (the “**Obligation**”).

WHEREAS the Contractor has entered into a written contract with the Owner dated the _____ day of _____
(name of month)

in the year _____ for _____
(title or description of the contract)

(the “**Original Contract**”) and, for the purpose of specifying the conditions of the Obligation, this contract together with amendments made in accordance with its terms are by reference made part hereof and are hereinafter referred to collectively as the “**Contract**”;

AND WHEREAS the Contract allows for the Owner to make payments to the Contractor without retaining the holdback, as defined in the Construction Act (the “**Act**”), in the form of funds;

AND WHEREAS the Act provides that the Owner may satisfy its obligation to retain the holdback in the form of this Bond;

AND WHEREAS the Act provides that the Owner shall maintain the holdback until all liens that may be claimed against the holdback have expired or been satisfied, discharged or otherwise provided for under the Act;

NOW THEREFORE the condition of this Obligation is such that if all liens in respect of the Contract that may be claimed against the holdback have expired or been satisfied, discharged or otherwise provided for under the Act, then this Obligation shall be null and void; otherwise it shall remain in full force and effect, subject to the following terms and conditions:

1. Whenever a lien or liens against the holdback in respect of the Contract have not expired or been satisfied, discharged or otherwise provided for under the Act but is or are preserved, the Owner may make demand on this Bond for an amount necessary for the Owner to comply with its holdback obligations under the Act, substantially in the form set out at Schedule A executed by two (2) officers of the Owner (a “**Demand**”). For greater clarity, the Demand may include amounts required for security for costs. Partial and multiple Demands not exceeding the Bond Amount in the aggregate may be made. The Demand shall certify the amount of the lien or liens against the holdback in respect of the Contract and that such liens have not expired or been satisfied, discharged or otherwise provided for under the Act.
2. This Bond shall be irrevocable and payment will be made within ten (10) business days of receipt of a Demand, notwithstanding any objection by the Contractor. The Demand shall be accepted by the Surety as conclusive evidence that a Default has occurred and that the amount set out in the Demand is an appropriate amount, and the Surety shall not assert as a defense or grounds for not paying the Bond Amount, in whole or in part, pursuant to such Demand that a

default has not occurred, that the amount set out in the Demand is not appropriate, warranted or otherwise not in accordance with the Contract or that the Owner is in default under the Contract. The Surety's liability under this Bond is unconditional and shall not be discharged or released or affected by any arrangements made between the Owner and the Contractor, or by any dispute between the Surety and the Contractor, or the taking or receiving of security by the Owner from the Contractor, or by any alteration, change, addition, modification, or variation in the Contractor's obligations under the Contract, or by the exercise by the Owner of any of the rights or remedies reserved to it under the Contract or by any forbearance to exercise any such rights or remedies whether as to payment, time, performance or otherwise (whether or not any arrangement, alteration or forbearance is made without the Surety's knowledge or consent). All payments by the Surety shall be made free and clear without deduction, set-off or withholding. The Surety's obligation to pay a Demand arises solely upon the Owner delivering a Demand in the prescribed form to the Surety, and the Surety shall not assert as a defence that the lien is invalid and shall not seek relief in any court to avoid this payment or assert any other defence other than the Demand has not been delivered in accordance with this Bond.

3. Notwithstanding any other provision in this Bond, the Surety's total liability under this Bond shall be limited to the lesser of the amount of holdback paid to the Contractor in respect of the Contract or the Bond Amount.
4. As a condition precedent to any suit or action under the Bond, a Demand must be received by the Surety on or before a period of one hundred and twenty (120) calendar days from the last date on which a lien arising from the Contract could have been preserved under the Act.
5. The parties to this Bond agree that any suit or action under the Bond is to be made to a court of competent jurisdiction in Ontario and agree to submit to the jurisdiction of such court notwithstanding any terms to the contrary in the Contract.
6. No right of action shall accrue on this Bond, to or for the use of, any person or corporation other than the Owner named herein, or the heirs, executors, administrators or successors of the Owner.
7. All Demands and notices under this Bond shall be delivered by facsimile or registered mail to the Surety, with a copy to the Contractor, at the addresses set out below, subject to any change of address in accordance with this Section. All other correspondence may be delivered by any of facsimile, regular mail, registered mail, email or courier. A change of address for the Surety is publicly available on the Financial Services Commission of Ontario website (see: https://www5.fSCO.gov.on.ca/Licensing/LicClass/eng/lic_companies_class.aspx). The address for the Contractor may be changed by giving notice to the other parties setting out the new address in accordance with this Section.

The Surety:

[Surety corporate name]
 [address]
 [fax]
 [email]

The Contractor:

[Contractor proper name]
 [address]
 [fax]
 [email]

8. This Bond shall be governed by the laws of the Province of Ontario.

IN WITNESS WHEREOF, the Contractor and the Surety have Signed and Sealed this Bond this _____ day of _____ in the year _____ .

[Contractor proper name]

Witnessed by :

By: _____

Name: _____

Name of Witness: _____

Title: _____

Address of Witness: _____

I have authority to bind the corporation.

[Surety corporate name]

By: _____

Name: _____

Attorney-in-fact

*** IF THERE ARE TWO OR MORE COMPANIES IN PARTNERSHIP OR JOINT VENTURE, JOINTLY AND SEVERALLY BOUND, INSERT THE NAME OF EACH PARTNER OR JOINT VENTURE PARTY, AND INSERT THE WORD "COLLECTIVELY" AFTER THE WORD "HEREINAFTER" IN THE FIRST LINE.**

**** IF THERE ARE TWO OR MORE SURETY COMPANIES, JOINTLY AND SEVERALLY BOUND, INSERT THE “[Name of the surety company], a corporation created and existing under the laws of [Place of incorporation],” FOR EACH SURETY, FOLLOWED BY “each as a surety and each duly authorized to transact the business of Suretyship in the Province of Ontario and hereinafter collectively called the “Surety””.**

***** INSERT THE CROWN, A MUNICIPALITY OR A BROADER PUBLIC SECTOR ORGANIZATION, AS APPLICABLE, OR SUCH OTHER PARTY DEEMED TO BE THE OWNER UNDER THE ACT, AND ENTERING INTO THE PUBLIC CONTRACT WITH THE CONTRACTOR.**

SCHEDULE A
Demand

[date]
[Surety name]
[Surety address]
[Surety address]
[Surety's electronic/email address]
[Attention]

Re: _____

Holdback Repayment Bond No: _____

Contractor: _____ JV

Contract: _____

We hereby certify that a lien or liens against the holdback in the amount of \$ _____, in respect of the Contract, have not expired or been satisfied, discharged or otherwise provided for under the *Construction Act* and that we are entitled to make Demand on the captioned Holdback Repayment Bond.

We hereby demand payment of *(insert here the lesser of the amount of the lien or liens, plus the amount of the statutory security for costs, and the amount of the holdback)* \$ _____ within ten (10) business days of your receipt of this Demand.

Payment should be made by cheque to our address at _____,

or by bank wire transfer as follows:

Beneficiary: _____

Credit account number: _____

Bank name: _____

Bank address: _____

SWIFT/IBAN code: _____

Executed this _____ day of _____, 20____, on behalf of

[Owner's full corporate title]

By: _____

Name: _____

Title: _____

Phone: _____

Email address: _____

I have authority to make this certification and to bind the
[Owner].

By: _____

Name: _____

Title: _____

Phone: _____

Email address: _____

I have authority to make this certification and to bind the
[Owner].

cc: [Contractor]

FORM 6
NOTICE OF NON-PAYMENT OF HOLDBACK UNDER SECTION 27.1 OF THE ACT
Construction Act

Name: _____
(Name of owner, contractor or subcontractor)

Address: _____

Description of the premises:

Name of [contractor/subcontractor (choose one)]: _____

Address: _____

Address for service, if known: _____

The [owner/contractor/subcontractor (choose one)] will not pay the following amount required to be paid under sections 26 and 27 of the *Construction Act*.

(Use A or B, whichever is applicable)

- A. The full amount of the holdback, being \$ _____ .
- B. A portion of the amount of the holdback, being \$ _____ .

[If applicable] A copy of any notice of non-payment of holdback from the [contractor/subcontractor (choose one)] is enclosed.

Date: _____

(Owner)

FORM 7
DECLARATION OF LAST SUPPLY UNDER SUBSECTION 31(5) OF THE ACT
Construction Act

.....
(name of supplier)

a supplier of services or materials to an improvement being made to:

.....
(address of premises)

declares that:

1. The following services or materials were supplied:
(description of services or materials)
2. These services or materials were supplied under a contract (or subcontract) with
(name of payer)
dated the day of , 20 .
3. The last supply of services or materials made by the supplier to the improvement under contract (or subcontract) was made on
(date of last supply)
4. No further services or materials will be supplied under the contract (or subcontract).

Declared before me at the

of in the

of

.....
(supplier)

on the day of , 20

.....
A Commissioner, etc.

FORM 8
NOTICE OF TERMINATION UNDER SUBSECTION 31(6) OF THE ACT
Construction Act

.....
(name of owner, contractor or other person whose lien is subject to expiry)

Description of the premises:

(Use A or B, whichever is appropriate)

A. Identification of premises for preservation of liens:

.....
(if a lien attaches to the premises, a legal description of the premises,
including all property identifier numbers and addresses for the premises)

B. Office to which claim for lien must be given to preserve lien:

.....
(if the lien does not attach to the premises, the name and address of the person or body to whom the claim for lien must be given)

Termination of contract or subcontract:

The contract or subcontract with dated the
(name of contractor or subcontractor)

....., 20, is terminated on the day of, 20

Date:

.....
(owner, contractor or other person)

FORM 9
CERTIFICATE OF SUBSTANTIAL PERFORMANCE OF THE
CONTRACT UNDER SECTION 32 OF THE ACT

Construction Act

.....
(County/District/Regional Municipality/Town/City in which premises are situated)

.....
(street address and city, town, etc., or, if there is no street address, the location of the premises)

This is to certify that the contract for the following improvement:

.....
(short description of the improvement)

to the above premises was substantially performed on
(date substantially performed)

Date certificate signed:

.....
(payment certifier where there is one)

.....
(owner and contractor, where there is no payment certifier)

Name of owner:

Address for service:

Name of contractor:

Address for service:

Name of payment certifier (where applicable):

Address:

(Use A or B, whichever is appropriate)

A. Identification of premises for preservation of liens:

.....
(if a lien attaches to the premises, a legal description of the premises,
including all property identifier numbers and addresses for the premises)

B. Office to which claim for lien must be given to preserve lien:

.....
(if the lien does not attach to the premises, a concise description of the premises, including addresses,
and the name and address of the person or body to whom the claim for lien must be given)

FORM 10
CERTIFICATE OF COMPLETION OF SUBCONTRACT
UNDER SUBSECTION 33(1) OF THE ACT
Construction Act

This is to certify the completion of a subcontract for the supply of services or materials between

_____ and _____,
(name of subcontractor)

dated the _____ day of _____, 20_____.

The subcontract provided for the supply of the following services or materials:

to the following improvement:

(short description of the improvement)

of premises at _____.

(street address, or if there is none, the location of the premises)

Date of certification _____

(payment certifier where there is one)

(owner and contractor)

Name of owner: _____

Address for service: _____

Name of contractor: _____

Address for service: _____

Name of payment certifier (where applicable): _____

Address: _____

(Use A or B, whichever is appropriate)

A. Identification of premises for preservation of liens:

(if a lien attaches to the premises, a legal description of the premises,
including all property identifier numbers and addresses for the premises)

B. Office to which claim for lien must be given to preserve lien:

(if the lien does not attach to the premises, the name and address of the person or body to whom the claim for lien must be given)

FORM 11
NOTICE OF INTENTION TO REGISTER A CONDOMINIUM IN ACCORDANCE WITH
THE *CONDOMINIUM ACT, 1998* UNDER SECTION 33.1 OF THE ACT

Construction Act

Name of declarant:

Address for service:

Concise overview of the land (include reference to the lot and plan number and the parcel number(s)):

(Complete for each contractor who supplied services or materials to an improvement during the 90-day period preceding the date on which the description is to be submitted for approval under subsection 9 (3) of the *Condominium Act, 1998*)

Name of contractor:

Address:

Address for service (if known):

(Add the name, address and address for service of other contractors if applicable)

FORM 12
CLAIM FOR LIEN UNDER SECTION 34 OF THE ACT

Construction Act

Name of lien claimant: (In the case of a claim on behalf of a worker by a workers' trust fund, the name of the trustee)

Address for service:

Name of owner:

Address:

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

Address:

Time within which services or materials were supplied:

from _____ to _____
(date supply commenced) (date of most recent supply)

Short description of services or materials that have been supplied:

Contract price or subcontract price: \$ _____

Amount claimed as owing in respect of services or materials that have been supplied: \$ _____

(Use A where the lien attaches to the premises; use B where the lien does not attach to the premises)

- A. The lien claimant (if claimant is personal representative or assignee, this must be stated) claims a lien against the interest of every person identified above as an owner of the premises described in Schedule A to this claim for lien.
- B. The lien claimant (if claimant is personal representative or assignee, this must be stated) 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 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 at:

(address or other identification of the location of the premises)

Date: _____

(signature of claimant or agent)

SCHEDULE A

To the claim for lien of _____

Description of premises:

(Where the lien attaches to the premises, provide a description of the premises and address sufficient for registration under the *Land Titles Act* or the *Registry Act*, as the case may be. Where the lien does not attach to the premises, the address or other identification of the premises)

FORM 13
NOTICE OF PRESERVATION OF LIEN UNDER SUBSECTION 34(9) OF THE ACT
Construction Act

Name of lien claimant: _____

Address for service: _____

(Use A or B, whichever is appropriate)

- A. Owner of a unit in the corporation under the *Condominium Act, 1998*.
- B. Owner of a parcel of land mentioned in subsection 139(1) of the *Condominium Act, 1998* to which a common interest is attached and which is described in the declaration of the corporation.

Name of owner: _____

Description of the premises:

Short description of services or materials that have been supplied:

The amount claimed in respect of services or materials that have been provided: \$ _____ .

Date: _____

_____ (lien claimant)

FORM 14
CERTIFICATE OF ACTION UNDER SECTION 36 OF THE ACT

Construction Act

.....
Court File No.

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN

Plaintiff(s)

(court seal)

.....
and
.....

Defendant(s)

CERTIFICATE OF ACTION

I certify that an action has been commenced in the Superior Court of Justice under the *Construction Act* between the above parties in respect of the premises described in Schedule A to this certificate, and relating to the claim(s) for lien bearing the following registration numbers:

Date:

.....
(registrar or local registrar)

.....
SCHEDULE A
.....

Description of premises:

.....
(The description of the premises must be the same as in the statement of claim, and must be sufficient for registration under the *Land Titles Act* or the *Registry Act*, as the case may be.)
.....

FORM 15
NOTICE GIVEN BY DEFENDANT UNDER SUBSECTION 36(4) OF THE ACT

Construction Act

.....
Court File No.

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN

.....
Plaintiff(s)

and

(court seal)

.....
Defendant(s)

TO:, a lien claimant,

FROM:, a defendant in the above-named action.

This action has been commenced to realize a claim for lien in respect of an improvement to the following premises:

.....
(address)

and you may be entitled to realize your lien in this action.

You are required to furnish the above-named defendant with particulars of your claim and, specifically, the following facts alleged in your claim for lien:

.....
(set out facts)

Date:

.....
(defendant, lawyer or agent)

Address for service:

FORM 16
NOTICE OF CROSS-EXAMINATION UNDER CLAUSE 40(3)(a) OF THE ACT

Construction Act

TO: _____, a person who is liable to be cross-examined
(name of lien claimant, agent or assignee of lien claimant or trustee of the workers' trust fund)

on a claim for lien dated _____ with respect to the following premises:

(street address of premises)

YOU ARE REQUIRED TO ATTEND TO BE CROSS-EXAMINED ON OATH respecting the claim for lien on

_____, at _____, at the office of
(date) (time)

(name, address and telephone number of examiner)

and to bring with you all documents relating to the claim.

If you fail, without due cause, to attend your lien may be discharged or you may be liable for any legal costs arising from your non-attendance.

Date: _____

(name, address and telephone number of person or lawyer requiring cross-examination)

FORM 17
NOTICE OF CROSS-EXAMINATION UNDER CLAUSE
40(3)(b), (c) OR (d) OF THE ACT
Construction Act

TO: _____
(a person named in the claim for lien as having an interest in the premises, the contractor or the payer of the lien claimant or the lawyer of any of the foregoing)

This is notice that _____, a person who is liable to be cross-examined
(name of lien claimant, agent or assignee of lien claimant
or trustee of the workers' trust fund)

on the claim for lien in respect of an improvement to the following premises:

(street address of premises)

will be cross-examined regarding that claim on _____, at _____, at the office of
(date) (time)

(name, address and telephone number of examiner)

You are entitled to be present at the cross-examination either personally or by a lawyer and to participate in the cross-examination. Only one cross-examination may be held in respect of this claim for lien.

Date: _____

(name, address and telephone number of person or lawyer requiring cross-examination)

FORM 18
WITHDRAWAL OF WRITTEN NOTICE OF LIEN
UNDER SUBSECTION 41(2) OF THE ACT
Construction Act

Name of person having a lien: _____

Address for service: _____

Description of premises:

The person having a lien withdraws the written notice of lien dated the _____ day of _____, 20____, in respect of an improvement to the premises owned by _____.

Date: _____

(person having a lien)

FORM 19
DISCHARGE OF LIEN UNDER SECTION 41 OR 42 OF THE ACT
Construction Act

Name of lien claimant: _____

Address of lien claimant: _____

1. The lien claimant discharges the lien claimed in the claim for lien dated the _____ day of _____, 20 _____, in respect of an improvement to the premises owned by _____ and described in Schedule A to this discharge.

2. *(complete where lien attaches to the premises)*

The registration number of the claim for lien is _____.

The amount claimed in respect of services or materials that have been provided: \$ _____

Date: _____

(witness)

(lien claimant)

NOTE: Where the lien claimant is not a corporation, the discharge must be verified by an affidavit of a subscribing witness.

SCHEDULE A

(Where the lien attaches to the premises, provide a description of the premises sufficient for registration under the *Land Titles Act*, or the *Registry Act*, as the case may be. Where the lien does not attach to the premises, provide the address, or, where there is none, the location of the premises.)

FORM 20
NOTICE OF POSTPONEMENT OF LIEN UNDER SECTION 43 OF THE ACT
Construction Act

Name of lien claimant:

Address of lien claimant:

The lien claimant postpones the lien claimed in the claim for the lien dated _____, 20 _____, registered as Instrument No. _____ to Instrument No. _____, in respect of the lands described in Schedule A upon the following terms and conditions:

Date:

(witness)

(signature of lien claimant)

NOTE: Where the lien claimant is not a corporation, the postponement must be verified by the affidavit of a subscribing witness.

SCHEDULE A

(Where the lien attaches to the premises, provide a description of the premises sufficient for registration under the *Land Titles Act*, or the *Registry Act*, as the case may be. Where the lien does not attach to the premises, provide the street address, or, where there is none, the location of the premises.)

FORM 22
ORDER DIRECTING A REFERENCE FOR
TRIAL UNDER SECTION 58 OF THE ACT
Construction Act

.....
Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

.....
(name of judge)

.....
(day and date)

BETWEEN

.....
Plaintiff(s)

and

(court seal)

.....
Defendant(s)

ORDER

On motion of the plaintiff made under subsection 58(1) of the *Construction Act* in the presence of the lawyer for the plaintiff(s) and defendant(s), and on reading the pleadings in this action and on hearing what was alleged by the lawyer for the parties (or the parties by their lawyer consenting to judgment, or as the case may be),

1. THIS COURT ORDERS that this action be referred to the master, case management master or person agreed on by the parties at Toronto (or other place) for trial.
2. AND THIS COURT ORDERS that the parties found liable forthwith after confirmation of the report of the master, case management master or person agreed on by the parties pay to the parties the respective amounts due them.
3. AND THIS COURT ORDERS that the master, case management master or person agreed on by the parties determine all questions arising in this action and on the reference and all questions arising under the *Construction Act* and that the findings of the master, case management master or person agreed on by the parties be effective on the confirmation of the report.
4. AND THIS COURT ORDERS that the master, case management master or person agreed on by the parties determine the question of costs in this action and of the reference, and the costs be assessed and paid as the master shall direct.

Date:

Signed by:
(judge)

FORM 23
ORDER DIRECTING A REFERENCE FOR TRIAL UNDER
SECTION 58 OF THE ACT (UNDER \$25,000)

Construction Act

ONTARIO

SUPERIOR COURT OF JUSTICE

.....
(name of judge)

.....
(day and date)

BETWEEN

.....
Plaintiff(s)

.....
and

(court seal)

.....
Defendant(s)

ORDER

On motion of the plaintiff made under subsection 58(1) of the *Construction Act* in the presence of the lawyer for the plaintiff(s) and defendant(s), and on reading the pleadings in this action and on hearing what was alleged by the lawyer for the parties (or the parties by their lawyer consenting to judgment, or as the case may be),

1. THIS COURT ORDERS that this action be referred to either a deputy judge of the Small Claims Court or to the Small Claims Court Administrative Judge, sitting as a referee, for trial.
2. AND THIS COURT ORDERS that the parties found liable forthwith after confirmation of the report of the referee pay to the parties the respective amounts due them.
3. AND THIS COURT ORDERS that the referee determine all questions arising in this action and on the reference and all questions arising under the *Construction Act* and that the findings of the referee be effective on the confirmation of the report.
4. AND THIS COURT ORDERS that the referee determine the question of costs in this action and of the reference, and the costs be assessed and paid as the referee shall direct.

Date:

Signed by:

(Judge)

FORM 24
JUDGMENT AT TRIAL UNDER SECTION 62 OF
THE ACT IF LIEN ATTACHES TO PREMISES

Construction Act

.....
Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

.....
(name of judge)

.....
(day and date)

BETWEEN

.....
Plaintiff(s)

and

(court seal)

.....
Defendant(s)

JUDGMENT

THIS ACTION was heard on, at,
(date) (place)

in the presence of all parties (or the lawyers for identified parties,
appearing in person, no one appearing for, or as the case may be).

ON READING THE PLEADINGS AND HEARING THE EVIDENCE and the submissions of the lawyers for the parties
(or, appearing in person or as the case may be).

(Use the appropriate paragraphs)

1. THIS COURT DECLARES AND ADJUDGES that the persons named in Column 1 of Schedule A to this judgment are respectively entitled to a lien under the *Construction Act*, upon the interest of the owner,
(name of owner), in the premises described in Schedule B of this judgment for the amounts set opposite their respective names in Column 5 in Schedule A, and the primary debtors of those persons respectively are as set out in Column 6 in Schedule A.
2. AND THIS COURT DECLARES AND ADJUDGES that the persons mentioned in Column 1 of Schedule C to this judgment are entitled to some charge or encumbrance other than a lien under this Act on the interest of the owner in the premises for the amounts set opposite their respective names in Column 4 of Schedule C.
3. AND THIS COURT ORDERS AND ADJUDGES that the personal liability of the owner to the persons named in Column 1 of Schedule E in respect of the holdbacks the owner was required to retain is \$, and writs of execution may be issued forthwith for the amounts set out opposite their respective names in Column 2 of Schedule E.
4. AND THIS COURT ORDERS AND ADJUDGES that upon the defendant
(the owner) paying into court to the credit of this action the amount of \$ on or before the day of, 20, the liens mentioned in Schedule A are discharged and the registration of those liens and the certificates of action in relation to those liens are vacated and the money paid into court is to be paid in payment of the persons entitled to a lien.

5. AND THIS COURT ORDERS AND ADJUDGES that if the defendant _____
(owner)
makes default in payment of the money into Court that the owner's interest in the premises be sold under the supervision of the master of this court and that the purchase money be paid into court to the credit of this action.
6. AND THIS COURT ORDERS AND ADJUDGES that the purchase money be applied in or towards payment of the claims mentioned in Schedule(s) A (and C) as the master directs, with subsequent interest and subsequent costs to be computed and assessed by the master.
7. AND THIS COURT ORDERS AND ADJUDGES that if the purchase money paid into court is insufficient to pay in full the proven claims of the persons mentioned in Column 1 of Schedule A, the primary debtor of each of those persons, as set out in Column 6 of Schedule A, shall pay the amount remaining due to those persons forthwith after the amount has been ascertained by the master.
8. AND THIS COURT ORDERS AND ADJUDGES that the persons named in Column 1 of Schedule F have not proved any lien under the *Construction Act*, and orders and adjudges that the claims for lien registered by them and the certificates of action related to those claims as set out in Column 2 of Schedule F are vacated against the premises described in Schedule B.
9. AND THIS COURT ORDERS AND ADJUDGES that the persons whose names are set out in Column 1 of Schedule D to this judgment, although they have not proven their claims for lien, are entitled to personal judgment for the amounts set opposite their respective names in Column 4 of Schedule D against their respective debtors as set out in Column 5 opposite their names and the respective debtors shall forthwith pay to their respective judgment creditors the amount found due.
10. AND THIS COURT ORDERS AND ADJUDGES that since the owner's interest in the premises has been sold by _____, a mortgagee, and it has been determined by this court that the liens were entitled to priority over the mortgage under subsection 78 (2) [or subsection 78 (5) as the case may be] of the Act, therefore the mortgagee shall pay to the persons named in Schedule E the amount set out opposite each of their respective names on or before the _____ day of _____, 20 _____.

(signature of judge)

SCHEDULE A

COLUMN 1	COLUMN 2	COLUMN 3	COLUMN 4	COLUMN 5	COLUMN 6
Names of persons entitled to construction lien	Registration numbers of claims for lien and certificates of action	Amount of debt and interest (if any)	Costs	Total	Names of primary debtors
		\$	\$	\$	

SCHEDULE B

The premises in respect of which this action is brought is as follows:

(set out a description sufficient for registration purposes)

SCHEDULE C

COLUMN 1	COLUMN 2	COLUMN 3	COLUMN 4
Names of persons entitled to encumbrances other than construction liens	Amount of debt and interest (if any)	Costs	Total
	\$	\$	\$

SCHEDULE D

COLUMN 1	COLUMN 2	COLUMN 3	COLUMN 4	COLUMN 5
Judgment creditors not entitled to liens	Amount of debt and interest (if any)	Costs	Total	Names of debtors
	\$	\$	\$	

SCHEDULE E

COLUMN 1	COLUMN 2
Names of persons entitled to share in holdback	Amount to be paid
	\$

SCHEDULE F

COLUMN 1	COLUMN 2
Names of persons not entitled to lien	Registration numbers of claims for lien and certificates of action

FORM 25
JUDGMENT AT TRIAL UNDER SECTION 62 OF
THE ACT IF LIEN DOES NOT ATTACH TO PREMISES

Construction Act

.....
Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

.....
(name of judge)

.....
(day and date)

BETWEEN

Plaintiff(s)

.....
and

(court seal)

.....
Defendant(s)

JUDGMENT

THIS ACTION was heard on, at,
(date) (place)

in the presence of all parties (or the lawyers for identified parties,

appearing in person, no one appearing for, or as the case may be).

ON READING THE PLEADINGS AND HEARING THE EVIDENCE and the submissions of the lawyers for the parties (or as the case may be),

(Use the appropriate paragraphs)

1. THIS COURT DECLARES AND ADJUDGES that the amount for which the defendant-owner
....., is liable under section 21 [or subsection 17 (4)] of
(owner)
the *Construction Act* is \$
2. AND THIS COURT DECLARES AND ADJUDGES that the persons named in Column 1 of Schedule A to this judgment are respectively entitled to a lien under the *Construction Act* which lien is a charge under section 21 upon the amount for which the defendant-owner is liable; for the amounts set opposite their respective names in Column 4 and the primary debtors of those persons are set out in Column 5 of Schedule A.
3. AND THIS COURT ORDERS AND ADJUDGES that upon the defendant-owner
..... paying into court to the credit of this action the amount
(owner)
of \$ for which the owner is liable on or before the,
(day) (date)
that the liens mentioned in Schedule A are discharged, that the money paid into court is paid in payment of the persons entitled to a lien.
4. AND THIS COURT ORDERS AND ADJUDGES that if the money paid into court is insufficient to pay in full the proven claims of the persons mentioned in Column 1 of Schedule A, the primary debtor of each of those persons as set out in Column 5 of Schedule A shall pay the amount remaining due to those persons forthwith after this amount has been ascertained by the master.

5. AND THIS COURT ORDERS AND ADJUDGES that the following persons have not proved any lien under the *Construction Act*.

 (names of persons)

and are not entitled to a personal judgment against any of the parties to this action.

6. AND THIS COURT DECLARES AND ADJUDGES that the persons whose names are set out in Column 1 of Schedule B to this judgment, although they have not proven their claims for lien, are entitled to personal judgment for the amounts set opposite their respective names in Column 4 of Schedule B against their respective debtors as set out in Column 5 opposite their names and the respective debtors shall forthwith pay to their respective judgment creditors the amount found due.

 (signature of judge)

SCHEDULE A

COLUMN 1	COLUMN 2	COLUMN 3	COLUMN 4	COLUMN 5
Names of persons entitled to construction lien	Amount of debt and interest (if any)	Costs	Total	Names of primary debtors
	\$	\$	\$	

SCHEDULE B

COLUMN 1	COLUMN 2	COLUMN 3	COLUMN 4	COLUMN 5
Judgment creditors not entitled to liens	Amount of debt and interest (if any)	Costs	Total	Names of debtors
	\$	\$	\$	

FORM 26
REPORT UNDER SECTION 62 OF THE ACT
IF LIEN ATTACHES TO PREMISES

Construction Act

Court File No. _____

ONTARIO
SUPERIOR COURT OF JUSTICE

_____ (name of master or case management master)

_____ (day and date)

BETWEEN

Plaintiff(s)

and

(court seal)

Defendant(s)

REPORT

In accordance with an order of reference dated _____, trial of this action was heard on _____, at _____, (date) _____ (place),

in the presence of all parties (or the lawyers for identified parties, _____ appearing in person, no one appearing for _____, or as the case may be).

ON READING THE PLEADINGS AND HEARING THE EVIDENCE and the submissions of the lawyers for the parties (or as the case may be),

(Use the appropriate paragraphs)

1. I FIND AND DECLARE THAT the persons named in Column 1 of Schedule A to this report are respectively entitled to a lien under the *Construction Act*, upon the interest of the owner, _____ (name of owner), in the premises described in Schedule B of this report for the amounts set opposite their respective names in Column 5 in Schedule A, and the primary debtors of those persons respectively are as set out in Column 6 in Schedule A.
2. I FIND AND DECLARE THAT the persons mentioned in Column 1 of Schedule C to this report are entitled to some charge or encumbrance other than a lien under this Act on the interest of the owner in the premises for the amounts set opposite their respective names in Column 4 of Schedule C.
3. AND I FIND AND DECLARE AND DIRECT THAT the personal liability of the owner _____ to the persons named in Column 1 of Schedule E in respect of the holdbacks the owner was required to retain is \$ _____, and writs of execution may be issued forthwith after confirmation of this report for the amounts set out opposite their respective names in Column 2 of Schedule E.
4. AND I DIRECT that upon the defendant _____ (the owner) paying into court to the credit of this action the amount of \$ _____ on or before the _____ day of _____, 20 _____, the liens mentioned in Schedule A are discharged and the registration of those liens and the certificates of action in relation to those liens are vacated and the money paid into court is to be paid in payment of the persons entitled to a lien.

5. AND I DIRECT that if the defendant _____ (owner) makes default in payment of the money into court that the owner's interest in the premises be sold under the supervision of the master of this court and that the purchase money be paid into court to the credit of this action.
6. AND I DIRECT that the purchase money be applied in or towards payment of the claims mentioned in Schedule(s) A (and C) as the master directs, with subsequent interest and subsequent costs to be computed and assessed by the master.
7. AND I DIRECT that if the purchase money paid into court is insufficient to pay in full the proven claims of the persons mentioned in Column 1 of Schedule A, the primary debtor of each of those persons, as set out in Column 6 of Schedule A, shall pay the amount remaining due to those persons forthwith after the amount has been ascertained by the master.
8. AND I FIND AND DECLARE THAT the persons named in Column 1 of Schedule F have not proved any lien under the *Construction Act*, and I direct that the claims for lien registered by them and the certificates of action related to those claims as set out in Column 2 of Schedule F be vacated against the premises described in Schedule B.
9. AND I FIND AND DECLARE THAT that the persons whose names are set out in Column 1 of Schedule D to this report, although they have not proven their claims for lien, are entitled to personal judgment for the amounts set opposite their respective names in Column 4 of Schedule D against their respective debtors as set out in Column 5 opposite their names and the respective debtors shall forthwith after confirmation of this report pay to their respective judgment creditors the amount found due.
10. AND I DIRECT that since the owner's interest in the premises has been sold by _____, a mortgagee, and it has been determined by this court that the lien claimants were entitled to priority over the mortgagee under subsection 78 (2) [or subsection 78 (5) as the case may be] of the Act, therefore the mortgagee shall pay to the persons named in Schedule E the amount set out opposite each of their respective names on or before the _____ day of _____, 20_____.

(signature of master)

SCHEDULE A

COLUMN 1	COLUMN 2	COLUMN 3	COLUMN 4	COLUMN 5	COLUMN 6
Names of persons entitled to construction lien	Registration numbers of claims for lien and certificates of action	Amount of debt and interest (if any)	Costs	Total	Names of primary debtors
		\$	\$	\$	

SCHEDULE B

The premises in respect of which this action is brought is as follows:

(set out a description sufficient for registration purposes)

SCHEDULE C

COLUMN 1	COLUMN 2	COLUMN 3	COLUMN 4
Names of persons entitled to encumbrances other than construction liens	Amount of debt and interest (if any)	Costs	Total
	\$	\$	\$

SCHEDULE D

COLUMN 1	COLUMN 2	COLUMN 3	COLUMN 4	COLUMN 5
Judgment creditors not entitled to liens	Amount of debt and interest (if any)	Costs	Total	Names of debtors
	\$	\$	\$	

SCHEDULE E

COLUMN 1	COLUMN 2
Names of persons entitled to share in holdback	Amount to be paid
	\$

SCHEDULE F

COLUMN 1	COLUMN 2
Names of persons not entitled to lien	Registration numbers of claims for lien and certificates of action

FORM 27
REPORT UNDER SECTION 62 OF
THE ACT IF LIEN DOES NOT ATTACH TO PREMISES
Construction Act

.....
Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

.....
(master or case management master)

.....
(day and date)

BETWEEN

.....
Plaintiff(s)

and

.....
Defendant(s)

REPORT

In accordance with an order of reference dated, trial of this action was heard on
, at,
(date) (place)

in the presence of all parties (or the lawyers for identified parties,
appearing in person, no one appearing for, or as the case may be).

ON READING THE PLEADINGS AND HEARING THE EVIDENCE and the submissions of the lawyers for the parties (or as the case may be),

(Use the appropriate paragraphs)

1. I FIND AND DECLARE that the amount for which the defendant-owner
....., is liable under section 21 [or subsection 17 (4)] of
(owner)
the *Construction Act* is \$
2. I FIND AND DECLARE that the persons named in Column 1 of Schedule A to this report are respectively entitled to a lien under the *Construction Act* which lien is a charge under section 21 of the Act upon the amount for which the defendant-owner is liable; for the amounts set opposite their respective names in Column 4 and the primary debtors of those persons are set out in Column 5 of Schedule A.
3. AND I DIRECT that upon the defendant-owner
(owner)
paying into court to the credit of this action the amount of \$ for which the owner is liable on or
before the , the liens mentioned in Schedule A are discharged,
(day) (date)
and that the money paid into court is paid in payment of the persons entitled to a lien.
4. AND I DIRECT that if the money paid into court is insufficient to pay in full the proven claims of the persons mentioned in Column 1 of Schedule A, the primary debtor of each of those persons as set out in Column 5 of Schedule A shall pay the amount remaining due to those persons forthwith after this amount has been ascertained by the master.

5. AND I FIND AND DECLARE that the following persons have not proved any lien under the *Construction Act*:

.....
(names of persons)

and are not entitled to a personal judgment against any of the parties to this action.

6. AND I FIND AND DECLARE that the persons whose names are set out in Column 1 of Schedule B to this report, although they have not proven their claims for lien, are entitled to personal judgment for the amounts set opposite their respective names in Column 5 after confirmation of this report and the respective debtors shall forthwith after confirmation of this report pay to their respective judgment creditors the amount found due.

(signature of master)

SCHEDULE A

COLUMN 1	COLUMN 2	COLUMN 3	COLUMN 4	COLUMN 5
Names of persons entitled to construction lien	Amount of debt and interest (if any)	Costs	Total	Names of primary debtors
	\$	\$	\$	

SCHEDULE B

COLUMN 1	COLUMN 2	COLUMN 3	COLUMN 4	COLUMN 5
Judgment creditors not entitled to liens	Amount of debt and interest (if any)	Costs	Total	Names of debtors
	\$	\$	\$	

FORM 28
REPORT UNDER SECTION 62 OF THE ACT
IF LIEN ATTACHES TO PREMISES (UNDER \$25,000)

Construction Act

SUPERIOR COURT OF JUSTICE

.....
(day and date)

BETWEEN

.....
Plaintiff(s)

and

(court seal)

.....
Defendant(s)

REPORT

In accordance with a judgment of reference dated, trial of this action was heard on
....., at,
(date) (place)

in the presence of all parties (or the lawyers for identified parties,
appearing in person, no one appearing for, or as the case may be).

ON READING THE PLEADINGS AND HEARING THE EVIDENCE and the submissions of the lawyers for the parties (or
as the case may be),

(Use the appropriate paragraphs)

1. I FIND THAT the persons named in Column 1 of Schedule A to this report are respectively entitled to a lien under the *Construction Act*, upon the interest of the owner,
....., in the premises described in Schedule B of this
(name of owner)
report for the amounts set opposite their respective names in Column 5 in Schedule A, and the primary debtors of those persons respectively are as set out in Column 6 in Schedule A.
2. I FIND THAT the persons mentioned in Column 1 of Schedule C to this report are entitled to some charge or encumbrance other than a lien under this Act on the interest of the owner in the premises for the amounts set opposite their respective names in Column 4 of Schedule C.
3. AND I FIND AND DIRECT THAT the personal liability of the owner
..... to the persons named in Column 1 of Schedule E in respect of the
holdbacks the owner was required to retain is \$, and writs of execution may be issued forthwith
after confirmation of this order for the amounts set out opposite their respective names in Column 2 of Schedule E.
4. AND I DIRECT that upon the defendant,
(the owner)
paying into court to the credit of this action the amount of \$ on or before the
day of, 20, the liens mentioned in Schedule A are discharged and the registration
of those liens and the certificates of action in relation to those liens are vacated and the money paid into court is to
be paid in payment of the persons entitled to a lien.
5. AND I DIRECT that if the defendant,
(owner)

makes default in payment of the money into court that the owner's interest in the premises be sold under the supervision of a master of the Superior Court of Justice and that the purchase money be paid into court to the credit of this action.

6. AND I DIRECT that the purchase money be applied in or towards payment of the claims mentioned in Schedule(s) A (and C) as the master directs, with subsequent interest and subsequent costs to be computed and assessed by the master.
7. AND I DIRECT that if the purchase money paid into court is insufficient to pay in full the proven claims of the persons mentioned in Column 1 of Schedule A, the primary debtor of each of those persons, as set out in Column 6 of Schedule A, shall pay the amount remaining due to those persons forthwith after the amount has been ascertained by the master.
8. AND I FIND THAT the persons named in Column 1 of Schedule F have not proved any lien under the *Construction Act*, and I direct that the claims for lien registered by them and the certificates of action related to those claims as set out in Column 2 of Schedule F be vacated against the premises described in Schedule B.
9. AND I FIND THAT that the persons whose names are set out in Column 1 of Schedule D to this report, although they have not proven their claims for lien, are entitled to personal judgment for the amounts set opposite their respective names in Column 4 of Schedule D against their respective debtors as set out in Column 5 opposite their names and the respective debtors shall forthwith after confirmation of this report pay to their respective judgment creditors the amount found due.
10. AND I DIRECT that since the owner's interest in the premises has been sold by _____, a mortgagee, and it has been determined by this court that the lien claimants were entitled to priority over the mortgagee under subsection 78 (2) [or subsection 78 (5) as the case may be] of the Act, therefore the mortgagee shall pay to the persons named in Schedule E the amount set out opposite each of their respective names on or before the _____ day of _____, 20_____.

Signature of Referee

SCHEDULE A

COLUMN 1	COLUMN 2	COLUMN 3	COLUMN 4	COLUMN 5	COLUMN 6
Names of persons entitled to construction lien	Registration numbers of claims for lien and certificates of action	Amount of debt and interest (if any)	Costs	Total	Names of primary debtors
		\$	\$	\$	

SCHEDULE B

The premises in respect of which this action is brought is as follows:

(set out a description sufficient for registration purposes)

SCHEDULE C

COLUMN 1	COLUMN 2	COLUMN 3	COLUMN 4
Names of persons entitled to encumbrances other than construction liens	Amount of debt and interest (if any)	Costs	Total
	\$	\$	\$

SCHEDULE D

COLUMN 1	COLUMN 2	COLUMN 3	COLUMN 4	COLUMN 5
Judgment creditors not entitled to liens	Amount of debt and interest (if any)	Costs	Total	Names of debtors
	\$	\$	\$	

SCHEDULE E

COLUMN 1	COLUMN 2
Names of persons entitled to share in holdback	Amount to be paid
	\$

SCHEDULE F

COLUMN 1	COLUMN 2
Names of persons not entitled to lien	Registration numbers of claims for lien and certificates of action

FORM 29
REPORT UNDER SECTION 62 OF THE ACT IF LIEN
DOES NOT ATTACH TO PREMISES (UNDER \$25,000)
Construction Act

ONTARIO
SUPERIOR COURT OF JUSTICE

.....
(day and date)

BETWEEN

.....
Plaintiff(s)

and

.....
Defendant(s)

REPORT

In accordance with a judgment of reference dated, trial of this action was heard on
....., at,
(date) (place)

in the presence of all parties (or the lawyers for identified parties,
appearing in person, no one appearing for, or as the case may be).

ON READING THE PLEADINGS AND HEARING THE EVIDENCE and the submissions of the lawyers for the parties (or as the case may be),

(Use the appropriate paragraphs)

1. I FIND that the amount for which the defendant-owner
....., is liable under section 21 [or subsection 17 (4)] of
(owner)
the *Construction Act* is \$
2. I FIND that the persons named in Column 1 of Schedule A to this report are respectively entitled to a lien under the *Construction Act* which lien is a charge under section 21 of the Act upon the amount for which the defendant-owner is liable; for the amounts set opposite their respective names in Column 4 and the primary debtors of those persons are set out in Column 5 of Schedule A.
3. AND I DIRECT that upon the defendant-owner
(owner)
paying into court to the credit of this action the amount of \$ for which the owner is liable on or before the , the liens mentioned in Schedule A are discharged,
(day) (date)
and that the money paid into court is paid in payment of the persons entitled to a lien.
4. AND I DIRECT that if the money paid into court is insufficient to pay in full the proven claims of the persons mentioned in Column 1 of Schedule A, the primary debtor of each of those persons as set out in Column 5 of Schedule A shall pay the amount remaining due to those persons forthwith after this amount has been ascertained by the Deputy Judge.

5. AND I FIND that the following persons have not proved any lien under the *Construction Act*:

.....
(names of persons)

and are not entitled to a personal judgment against any of the parties to this action.

6. AND I FIND that the persons whose names are set out in Column 1 of Schedule B to this report, although they have not proven their claims for lien, are entitled to personal judgment for the amounts set opposite their respective names in Column 5 after confirmation of this report and the respective debtors shall forthwith after confirmation of this report pay to their respective judgment creditors the amount found due.

Signature of Referee

SCHEDULE A

COLUMN 1	COLUMN 2	COLUMN 3	COLUMN 4	COLUMN 5
Names of persons entitled to construction lien	Amount of debt and interest (if any)	Costs	Total	Names of primary debtors
	\$	\$	\$	

SCHEDULE B

COLUMN 1	COLUMN 2	COLUMN 3	COLUMN 4	COLUMN 5
Judgment creditors not entitled to liens	Amount of debt and interest (if any)	Costs	Total	Names of debtors
	\$	\$	\$	

FORM 30
FINANCIAL GUARANTEE BOND UNDER SUBSECTION 78(10) OF THE ACT
Construction Act

The surety of this bond is _____, an insurer licensed under the *Insurance Act* to write surety and fidelity insurance.

The principal of this bond is _____, a mortgagee of the interest of the owner _____ in the premises described in Schedule A to this bond.

The obligees of this bond are all persons having liens whose liens are entitled to priority over the interest of the principal under subsection 78 (2) or (5) of the Act.

WHEREAS it is the intention of the principal to sell the interest of the owner under a power of sale.

THEREFORE, subject to the conditions contained in this bond, the surety and the principal bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally to the obligees as follows:

1. The principal shall, on or before the date set out in the judgment or report for payment, pay to each obligee who has proved a lien the amount determined by the court to be owing to that obligee under subsection 78 (2) or (5) of the Act by the principal as a mortgagee, unless in the meantime an appeal has been taken from the judgment or report in which case payment is not required until the final disposition of all appeals.
2. The surety, in default of payment by the principal, shall pay to each obligee the amount owing to him or her by the principal, but the surety is not liable to pay more than a total maximum amount of \$ _____ (an amount equal to 20 per cent of the amount stated to be the contract price in the affidavit attached as Schedule B to this bond).

The bond is subject to the following conditions:

1. An obligee shall not make a claim against the surety unless the principal is in default of the principal's obligations under this bond.
2. An obligee shall give the surety thirty days written notice of the claim prior to commencing an action against the surety.
3. The surety is released from its obligation to an obligee unless the obligee has given written notice of the claim to the surety within one year after the default by the principal.
4. The total amount of this bond is reduced by and to the extent of any payment made under the bond.
5. The surety is entitled to an assignment of the rights of an obligee against the principal to the extent of the payment made by the surety.

Signed and sealed by the principal and the surety on the _____ day of _____, 20 _____, and registration of this bond on the title to the premises constitutes delivery of this bond to each obligee.

SIGNED AND SEALED

in the presence of: _____ (principal) (seal)

in the presence of: _____ (surety) (seal)

NOTE: Where the principal is not a corporation, the principal's signature must be verified by an affidavit of a subscribing witness.

SCHEDULE A

FINANCIAL GUARANTEE BOND

(provide a description of the premises sufficient for registration under the *Land Titles Act* or *Registry Act*, as the case may be)

SCHEDULE B

FINANCIAL GUARANTEE BOND

AFFIDAVIT OF GOOD FAITH BY MORTGAGEE

I, _____, make oath and say (or affirm) as follows:

1. I am a mortgagee of the interest of _____ described in Schedule A to
(name of owner)
the attached bond.
2. Under the terms of the mortgage, or under the *Mortgages Act*, I am entitled to exercise a power of sale with respect to that interest.
3. It is my intention to exercise that power of sale, even though there are claims for lien registered against the interest of the owner under the *Construction Act* that may have priority to the mortgage under the Act.
4. I have inquired of the contractor and the owner with respect to the contract price of the contract to which that improvement relates, and to the best of my information and belief the amount of the contract price (including the price of all services and materials supplied under all amendments to that contract) is _____.
5. The attached bond has been obtained by me in good faith, without any intention of depriving any lien claimant of their rights under the *Construction Act*.

Sworn (or affirmed) before me at the

_____ of _____

in the _____ of _____

this _____ day of _____, 20

(deponent)

A Commissioner, etc.

FORM 31
LABOUR AND MATERIAL PAYMENT BOND UNDER SECTION 85.1 OF THE ACT
Construction Act

No. _____ (the “**Bond**”) Bond Amount \$ _____

(name of the contractor*)

as a principal, hereinafter [collectively] called the “**Contractor**”, and

(name of the surety company**)

a corporation created and existing under the laws of _____
(place of incorporation)

as a surety, and duly authorized to transact the business of Suretyship in the Province of Ontario and hereinafter called the “**Surety**”, are held and firmly bound unto _____
(name of the owner***)

as obligee, hereinafter called the “**Owner**”, in the amount of \$ _____ hereinafter called the “**Bond Amount**”,
(Bond Amount in figures)

for the payment of which sum the Contractor and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally in accordance with the provisions of this Bond (the “**Obligation**”).

WHEREAS the Contractor has entered into a written contract with the Owner dated the _____ day of _____
(name of month)

in the year _____ for _____
(title or description of the contract)

(the “**Original Contract**”) and, for the purpose of specifying the conditions of the Obligation, this contract together with amendments made in accordance with its terms are by reference made part hereof and are hereinafter referred to collectively as the “**Contract**”;

NOW THEREFORE the condition of this Obligation is such that if the Contractor shall make payment to all Claimants as hereinafter defined in accordance with the terms of their respective subcontracts or sub-subcontracts for all labour and material used or reasonably required for use in the performance of the Contract then this Obligation shall be null and void, otherwise it shall remain in full force and effect subject to the following conditions:

1. Every corporate or natural person, including a union or workers trust fund on behalf of unionized workers, having a direct contract with the Contractor (hereinafter called a “Subcontractor”) or with any Subcontractor (hereinafter called a “Sub-subcontractor”) for labour, material or both used or reasonably required for use in the performance of the Contract is a “Claimant” under this Bond. The entitlement under this Bond of any Sub-subcontractor, however, is limited to such amounts as the Contractor would have been obligated to pay to the Sub-subcontractor under the *Construction Act* (the “Act”). The entitlement under this Bond of any union or workers trust fund is limited to wages and monetary supplementary benefits, as defined in the Act. The terms “labour” and “material” include that part of water, gas, power, light, heat, oil, gasoline, telephone or digital service or rental equipment directly applicable to the Contract provided that a Claimant who rents equipment to the Contractor or a Subcontractor to be used in the performance of the Contract under a contract which provides that all or any part of the rent is to be applied towards the purchase price thereof shall only be a Claimant to the extent of the prevailing industrial rental value of such equipment for the period during which the equipment was used in the performance of the Contract. The prevailing industrial rental value of equipment shall be determined, insofar as it is practical to do so, by the prevailing rates in the equipment marketplace in which the work is taking place.
2. The Owner is not obligated to do or take any action or proceeding against the Surety on behalf of the Claimant to enforce the bond.

3. Every Claimant who has not been paid for labour, material or both used or reasonably required for use in the performance of the Contract, after the date on which payment was due and payable under the terms of its subcontract or sub-subcontract may demand payment under this Bond by giving the Surety, with a copy to the Contractor and the Owner, a written Notice of Claim, substantially in the form prescribed in Schedule A for a Subcontractor or Schedule B for a Sub- subcontractor, hereinafter called the “**Notice of Claim**”.
4. Where the Surety includes two or more companies a Notice of Claim may be delivered to the first listed Surety on behalf of all Sureties. The first listed Surety is hereby authorized to respond to a Notice of Claim on behalf of the Surety, and a Claimant is not required to make separate Notices of Claim to each Surety and is entitled to correspond with the first listed Surety on behalf of all Sureties.
5. It is a condition precedent to the liability of the Surety under this Bond that a Claimant shall have submitted a Notice of Claim
 - a) in respect of any amount required to be held back from the Claimant by the Contractor, or by a Subcontractor, under either the terms of the Claimant’s contract with the Contractor or Subcontractor or under the *Act*, whichever is the greater, hereinafter and for the purposes of this Bond called the “Holdback”, within one hundred and twenty (120) calendar days after the Claimant should have been paid in full under its contract with the Contractor or with a Subcontractor; and
 - b) in respect of any amount other than for Holdback within one hundred and twenty (120) calendar days after the date on which the Claimant last performed labour or provided materials for which the Notice of Claim was given.
6. For each Notice of Claim provided by a **Subcontractor**:
 - a) No later than three (3) business days after receipt by the Surety of a Notice of Claim the Surety shall acknowledge receipt of the Notice of Claim, substantially in the form prescribed at Schedule C, and request from the Claimant any information and documentation the Surety requires to determine the Claimant’s entitlement under this Bond (hereinafter called the “**Information**”); and
 - b) No later than the earlier of: (a) ten (10) business days after receipt by the Surety of the Information, (b) twenty-five (25) business days after receipt by the Surety of a Notice of Claim, or (c) such longer time as agreed by the Surety and the Subcontractor, the Surety shall provide a position in response to the Notice of Claim, substantially in the form prescribed at Schedule D, hereinafter called the “**Surety’s Position**”.
7. For each Notice of Claim provided by a **Sub-subcontractor**:
 - a) No later than three (3) business days after receipt by the Surety of a Notice of Claim the Surety shall acknowledge receipt of the Notice of Claim, substantially in the form prescribed at Schedule C, and request from the Claimant any information and documentation the Surety requires to determine the Claimant’s entitlement under this Bond (hereinafter called the “**Information**”); and
 - b) No later than the earlier of: (a) fifteen (15) business days after receipt by the Surety of the Information, (b) thirty-five (35) business days after receipt by the Surety of a Notice of Claim, or (c) such longer time as agreed by the Surety and the Sub-subcontractor, the Surety shall provide a position in response to the Notice of Claim, substantially in the form prescribed at Schedule D, hereinafter called the “**Surety’s Position**”.
8. No later than ten (10) business days after the Surety’s Position being provided to any Claimant the Surety shall pay such amounts included in the Notice of Claim that are undisputed by the Surety, except to the extent that the Surety makes an application to the Court with respect to such amounts in accordance with Section 12 below. This payment of undisputed amounts shall be without prejudice to the Surety’s position regarding any disputed portions of a Notice of Claim.
9. If the subject matter of a notice of adjudication which is delivered in accordance with the *Act* by the Contractor or a Claimant (the “**Notice of Adjudication**”) is substantially the same as that contained in a Notice of Claim, the obligations of the Surety under this Bond shall be stayed until the Surety receives a copy of the adjudicator’s determination or there is otherwise a failure to complete or a termination of the adjudication under Section 13.14 of the Act.
10. By submitting a claim under this Bond, a Claimant agrees that, in the event of an adjudication between itself and the Surety pursuant to which the Surety pays the Claimant pursuant to an adjudicator’s interim binding determination, the Surety shall be entitled to bring an action against the Claimant to obtain a final and binding decision in respect of the Claimant’s entitlement under this Bond.
11. The Surety shall not in any circumstances be liable for a greater sum than the Bond Amount.
12. The Bond Amount shall be reduced by and to the extent of any payment or payments made under this Bond. If the aggregate of all Notices of Claim exceed, or the aggregate of amounts for which Notices of Claim might be given are believed by the Surety to exceed, the Bond Amount then the Surety may apply to the Court for direction in the interest of all Claimants.

13. Upon payment to a Claimant under this Bond in respect of any indebtedness of the Contractor or Subcontractor to the Claimant, the Surety shall be subrogated to all of the rights of the Claimant in respect of any and all claims, causes of action and rights to recovery which the Claimant may have against any person, firm or corporation because of or in connection with or arising out of such indebtedness, and the Claimant undertakes to extend to the Surety or the Surety's designee any warranties and/or guarantees under the Contract in respect of all labour and materials for which the Claimant has been paid.
14. As a condition precedent, any suit or action under this Bond must be commenced within one (1) year after the date on which the Contractor last performed work on the Contract, including work performed under any warranty or guarantees provided in the Contract.
15. The parties to this Bond and a Claimant by providing a Notice of Claim agree that any suit or action is to be made to a court of competent jurisdiction in Ontario and agree to submit to the jurisdiction of such court notwithstanding any terms to the contrary in the Contract.
16. The rights and obligations of the Owner, the Contractor, and the Surety under this Bond are in addition to their respective rights and obligations at common law and in equity.
17. This Bond shall be governed by the laws of the Province of Ontario.
18. All notices ("Notices") under this Bond shall be delivered by registered mail, facsimile, or electronic mail at the addresses set out below, subject to any change of address in accordance with this Section. Any Notice given by facsimile or electronic mail shall be deemed to have been received on the next business day or, if later, on the date actually received if the person to whom the Notice was given establishes that he or she did not, acting in good faith, receive the Notice until that later date. Any Notice given by registered mail shall be deemed to have been received five (5) days after the date on which it was mailed, exclusive of Saturdays and holidays or, if later, on the date actually received if the person to whom the Notice was mailed establishes that he or she did not, acting in good faith, receive the Notice until that later date. A change of address for the Surety shall be publicly available on the Financial Services Commission of Ontario website (see: https://www5.fscso.gov.on.ca/Licensing/LicClass/eng/lic_companies_class.aspx). The address for the Owner or the Contractor may be changed by giving Notice to the other parties setting out the new address in accordance with this Section.

The Surety:

[Surety corporate name]
 [address]
 [fax]
 [email]

The Owner:

[Owner proper name]
 [address]
 [fax]
 [email]

The Contractor:

[Contractor corporate name]
 [address]
 [fax]
 [email]

IN WITNESS WHEREOF, the Contractor and the Surety have Signed and Sealed this Bond this _____ day of _____ in the year _____ .

[Contractor proper name]

Witnessed by :

By: _____

Name: _____

Name of Witness: _____

Title: _____

Address of Witness: _____

I have authority to bind the corporation.

[Surety corporate name]

By: _____

Name:

Attorney-in-fact

*** IF THERE ARE TWO OR MORE COMPANIES IN PARTNERSHIP OR JOINT VENTURE, JOINTLY AND SEVERALLY BOUND, INSERT THE NAME OF EACH PARTNER OR JOINT VENTURE PARTY, AND INSERT THE WORD "COLLECTIVELY" AFTER THE WORD "HEREINAFTER" IN THE FIRST LINE.**

**** IF THERE ARE TWO OR MORE SURETY COMPANIES, JOINTLY AND SEVERALLY BOUND, INSERT THE "[Name of the surety company], a corporation created and existing under the laws of [Place of incorporation]," FOR EACH SURETY, FOLLOWED BY "each as a surety and each duly authorized to transact the business of Suretyship in the Province of Ontario and hereinafter collectively called the "Surety"".**

***** INSERT THE CROWN, A MUNICIPALITY OR A BROADER PUBLIC SECTOR ORGANIZATION, AS APPLICABLE, OR SUCH OTHER PARTY DEEMED TO BE THE OWNER UNDER THE ACT, AND ENTERING INTO THE PUBLIC CONTRACT WITH THE CONTRACTOR.**

SCHEDULE A
Notice of Claim
[Subcontractor]

[date]

[Surety name]

[Surety address]

[Surety address]

[Surety's electronic/email address]

Attention:

Re: _____

Bond No: _____

Contractor: _____

Owner: _____

Contract: _____

Dear Sir/Madam,

We have a subcontract with the Contractor for _____
(title or description of the Contract)

(our "Subcontract") related to the Contract between the Owner and the Contractor for
_____ in _____
(town/city, province)

We have given notice to the Contractor as required under our Subcontract that an amount is due and payable under the Subcontract and remains unpaid contrary to the terms of the Subcontract.

For Holdback amounts we hereby demand payment of \$ _____ under the captioned Bond.

For amounts other than Holdback we hereby demand payment of \$ _____ under the captioned Bond for all labour and material used or reasonably required for use in the performance of the Contract.

To assist in your evaluation of this Notice of Claim we invite you to contact our representative as follows:

[Name]

[Title]

[Company address]

[Phone (mobile)]

[Email address]

We also enclose the following documents supporting our Notice of Claim:

[The following is a suggested list of documents to be considered for delivery to the Surety. Please check off the documents (if any) that you are providing with this Notice of Claim.]

- Copy of full, executed Subcontract [or Purchase Order or Collective Bargaining Agreement], including approved changes and pending changes relevant to this Notice of Claim
- Copy of the prime contract between the Contractor and the Owner
- Copy of original schedule and latest approved schedule for the Subcontract
- Copies of all invoices submitted to the Contractor
- Copies of all payments from the Contractor to the Claimant

- Summary reconciliation of all invoices issued under the Subcontract
- Summary reconciliation of all payments received under the Subcontract
- Confirmation from the Owner or Contractor that the Claimant has completed all of its work including rectification of all identified deficiencies and the delivery of all required close-out documents
- Copy of any notice or correspondence to and from the Contractor relevant to this Notice of Claim
- Confirmation of the last day the Claimant performed work pursuant to the Subcontract including proof thereof
- Copy of any claim for lien, legal proceeding or other documents to enforce your entitlement to payment
- Copy of the executed Labour and Material Payment Bond under which this Notice of Claim is being made
- [additional documents]

We look forward to receiving your acknowledgment of this Notice of Claim within three (3) business days of receipt and your request for any additional documentation or information you require to meet your obligations under the Bond.

Yours truly;

[Full corporate title]

By:

[Name]
[Title]
[Phone]
[Email address]

CC: **[Contractor]**

SCHEDULE B
Notice of Claim
[Sub-subcontractor]

[date]

[Surety name]

[Surety address]

[Surety address]

[Surety's electronic/email address]

Attention:

Re:

Bond No:

Contractor:

Subcontractor

Owner:

Contract:

Dear Sir/Madam,

We have a written subcontract with (the "Subcontractor") for
(name of the subcontractor)

..... (our "Subcontract") related to the Contract
(title or description of the Sub-subcontract)

between the Owner and the Contractor for in
(title or description of the Contract)

.....
(town/city, province)

We have given notice under our Sub-subcontract to the Subcontractor that an amount is due and payable under the Sub-subcontract and remains unpaid contrary to the terms of the Sub-subcontract. A copy of that notice has also been provided to the Contractor.

We hereby demand payment of \$ under the captioned Bond.

To assist in your evaluation of this Notice of Claim we invite you to contact our representative as follows:

[Name]

[Title]

[Company address]

[Phone (mobile)]

[Email address]

We also enclose the following documents supporting our Notice of Claim:

[The following is a suggested list of documents to be considered for delivery to the Surety. Please check off the documents (if any) that you are providing with this Notice of Claim.]

- Copy of full, executed Sub-subcontract [or Purchase Order or Collective Bargaining Agreement], including approved changes and pending changes relevant to this Notice of Claim
- Copy of the prime contract between the Subcontractor and the Contractor
- Copy of original schedule and latest approved schedule for the Sub-subcontract
- Copies of all invoices submitted to the Subcontractor

- Copies of all payments from the Subcontractor to the Claimant
- Summary reconciliation of all invoices issued under the Sub-subcontract
- Summary reconciliation of all payments received under the Sub-subcontract
- Confirmation from the [Owner, Contractor or Subcontractor] that the Claimant has completed all of its work including rectification of all identified deficiencies and the delivery of all required close-out documents
- Copy of any notice or correspondence to and from the Subcontractor or Contractor relevant to this Notice of Claim
- Confirmation of the last day the Claimant performed work pursuant to the Sub-subcontract including proof thereof
- Copy of any claim for lien, legal proceeding or other documents to enforce your entitlement to payment
- Copy of the executed Labour and Material Payment Bond under which this Notice of Claim is being made
- [additional documents]

We look forward to receiving your acknowledgment of this Notice of Claim under the Bond and your request for any additional documentation or information you require to meet your obligations under the Bond.

Yours truly;

[Full corporate title]

By: _____

[Name]
[Title]
[Phone]
[Email address]

CC: **[Contractor and Subcontractor]**

SCHEDULE C
Acknowledgement of Notice of Claim

[date]

[Name/corporate title of the Subcontractor or Sub-subcontractor]

[Address]

[Address]

[E-mail address (if provided in the Notice of Claim)]

Attention:

Re:

Bond No:

Contractor:

Owner:

Contract:

Dear Sir/Madam,

We acknowledge receipt on of your Notice of Claim dated
(date of receipt)

Subject to a full reservation of all of our rights pursuant to the Bond and at law and to assist us in evaluating your Notice of Claim we ask that you provide the following information and/or documentation promptly:

This request for information is not an acknowledgement of the validity of your claim. We look forward to hearing from you.

Yours truly;

[Corporate name of the Surety]

By:

[Name]

[Title]

[Phone]

[Email address]

CC: [Contractor]

SCHEDULE D
Surety's Position

[date]

[Name/corporate title of the Subcontractor or Sub-subcontractor]

[Address]

[Address]

[E-mail address (if provided in the Notice of Claim)]

Attention:

Re:

Bond No:

Contractor:

Owner:

Contract:

Dear Sir/Madam,

Having reviewed the information and documentation provided to us in support of your Claim, we can advise as follows:

A – Disputed Amount(s)

The following amounts in your Claim are disputed at the present time for the reasons indicated:

With respect to any disputed amounts we invite you to contact us promptly with further information or documentation in support of your Claim.

B – Undisputed Amount(s)

The following amounts in your Claim are not disputed at the present time, however we reserve the right to dispute any amount should an ultimate determination find that amounts included in your Claim were not payable by the Contractor:

We continue to reserve all of our rights pursuant to the Bond and at law.

If you have any questions or concerns, please do not hesitate to contact us.

Yours truly;

[Corporate name of the Surety]

By:

[Name]

[Title]

[Phone]

[Email address]

CC: [Contractor]

FORM 32
PERFORMANCE BOND UNDER SECTION 85.1 OF THE ACT

Construction Act

No. _____ (the “**Bond**”) Bond Amount \$ _____

(name of the contractor*)

as a principal, hereinafter [collectively] called the “**Contractor**”, and

(name of the surety company**)

a corporation created and existing under the laws of _____
(place of incorporation)

as a surety, and duly authorized to transact the business of Suretyship in the Province of Ontario and hereinafter called the “**Surety**”, are held and firmly bound unto _____

(name of the owner***)

as obligee, hereinafter called the “**Owner**”, in the amount of \$ _____ hereinafter called the “**Bond Amount**”,
(Bond Amount in figures)

for the payment of which sum the Contractor and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally in accordance with the provisions of this Bond (the “**Obligation**”).

WHEREAS the Contractor has entered into a written contract with the Owner dated the _____ day of _____
(name of month)

in the year _____ for _____
(title or description of the contract)

(the “**Original Contract**”) and, for the purpose of specifying the conditions of the Obligation, this contract together with amendments made in accordance with its terms are by reference made part hereof and are hereinafter referred to collectively as the “**Contract**”;

NOW THEREFORE the condition of this Obligation is such that if the Contractor shall promptly and faithfully perform the Contract then this Obligation shall be null and void; otherwise it shall remain in full force and effect, subject to the following terms and conditions:

1. Written Notice

- 1.1 The Owner may make a written demand on the Surety in accordance with this Bond, by giving notice to the Surety substantially in the form attached as Schedule A (the “**Notice**”). Except for a Pre-Notice Meeting in accordance with Section 2.1, the Surety shall have no obligation under this Bond until it receives a Notice.
- 1.2 Where the Surety includes two or more companies, the Notice may be delivered to the first listed Surety on behalf of all Sureties. The first listed Surety is hereby authorized to respond to the Notice on behalf of the Sureties, and the Owner is not required to give separate Notice to each Surety and is entitled to correspond with the first listed Surety on behalf of all Sureties.

2. Pre-Notice Meeting

- 2.1 The Owner may, at its sole discretion and acting reasonably, request a pre-Notice conference by notifying the Surety and the Contractor in writing that it is considering declaring the Contractor to be in default under the Contract (the “Pre-Notice Meeting”). This notice and request for a Pre-Notice Meeting by the Owner does not constitute a Notice under this Bond, nor under the Contract, nor is it a precondition to the giving of a Notice. Upon receipt of such request the Surety shall propose a face-to-face meeting, a telephone conference call or a meeting by any other form of electronic media between the Contractor, the Owner and the Surety to take place

at a time and place mutually convenient for all parties within seven (7) business days (or such longer time as agreed by all parties) after the Surety's receipt of the Owner's request for a Pre-Notice Meeting in accordance with this Section. The Owner, the Contractor and the Surety shall make reasonable efforts to arrange and attend the Pre-Notice Meeting. In the event that the Owner delivers a Notice prior to the Pre-Notice Meeting, then the Pre-Notice is deemed to be retracted.

- 2.2 The purpose of a Pre-Notice Meeting is to allow the Owner, prior to exercising its other rights under this Bond, to express any concerns about the Contractor's performance pursuant to the Contract and to allow the Contractor to respond to such concerns. The participation of the parties in one or more Pre-Notice Meetings shall be without prejudice to their respective rights and obligations under the Contract, this Bond or applicable law, and neither the participation by any party in any Pre-Notice Meeting, nor any statement or position taken or information provided by any party during any Pre-Notice Meeting, may be relied on by any other party as a waiver or compromise of the rights or obligations of the Owner, the Surety or the Contractor under the Contract, this Bond or applicable law; including, but not limited to the Owner's right to declare the Contractor in default under the Contract and give Notice under this Bond.

3. Surety's Investigation and Response

- 3.1 Upon receipt of a Notice from the Owner, the Surety shall promptly initiate an investigation of the Notice (the "**Investigation**"), using its best efforts, to determine if the Conditions Precedent have been satisfied and to determine its liability, if any, under the Bond.
- 3.2 Within the four (4) business days following receipt of the Notice, the Surety shall provide the Owner with an acknowledgement, substantially in the form set out as Schedule B (the "**Acknowledgement**"), identifying the date on which the Notice was received and requesting from the Owner the information and documentation (the "**Information**") the Surety requires to continue the Investigation and, if necessary, request access to personnel who are knowledgeable about the circumstances of the Notice and to the Contract work site(s) where the work is being performed. Upon receipt of the Surety's Acknowledgement, the Owner shall promptly, and in accordance with terms of the Contract, provide the Surety with the requested Information and access to personnel and the work site(s) within its possession or control.
- 3.3 The Surety shall within a reasonable time conduct the Investigation, but in any event no later than twenty (20) business days after receipt by the Surety of a Notice (or such longer period as may be agreed between the Surety and Owner), the Surety shall provide the Owner with its written response to the Notice, substantially in the form set out at Schedule C (the "**Surety's Position**"), advising either that:
- a) The Surety accepts liability under the Bond and proposes to satisfy its Obligation by performing one of the options set out in Section 6.1; or
 - b) The Surety does not accept liability, providing its specific reasons; or
 - c) The Surety is unable to determine whether or not one or more of the Conditions Precedent has been satisfied and, in the Surety's sole discretion, the Surety may propose a process for collaborating with the Owner in the advancement of the completion of the work so as to attempt to mitigate the Owner's cost to complete the Contract.
- 3.4 The Surety shall also, if requested by the Owner to do so, meet with the Owner to discuss the status of the Investigation within five days following receipt of the request. This meeting may take place via a face-to-face meeting, a telephone conference call or a meeting by any other form of electronic media as may be mutually agreed to by the Owner and Surety.

4. Necessary Interim Work

- 4.1 Prior to and during the Investigation, if the Owner must take action which is necessary to:
- a) ensure public or worker safety,
 - b) preserve or protect the work under the Contract from deterioration or damage, or
 - c) comply with applicable law,

(the "**Necessary Interim Work**")

the Owner may, acting with due diligence and provided written notice is subsequently provided to the Surety within three (3) Business Days of the commencement of such Necessary Interim Work, undertake such

Necessary Interim Work provided that:

- i. Owner shall allow the Surety and/or its consultant(s) reasonable access to the Contract work site(s) during the course of the Necessary Interim Work for the purpose of monitoring the progress of the Necessary Interim Work;
 - ii. any such Necessary Interim Work shall be undertaken without prejudice to the rights of the Owner, the Contractor or the Surety under the Contract, this Bond or applicable law; and
 - iii. the reasonable costs incurred by the Owner in undertaking such Necessary Interim Work (to the extent they are not deducted in the calculation of the Balance of Contract Price in Section 9.1) shall be reimbursed by the Surety, subject to the Surety's liability being subsequently established and subject to such expenses being covered by this Bond. Any payments made by the Surety in respect of the Necessary Interim Work shall reduce the Bond Amount by the amount of any such payments.
- 4.2 Nothing in this section is intended to limit the ability of an Owner to take whatever steps are reasonably necessary in the public interest.
- 4.3 Subject to the foregoing provisions in Section 4.1, the Surety shall not raise the mere fact that the Necessary Interim Work proceeded as a defence to any claim by the Owner hereunder.

5. Post-Notice Conference

- 5.1 Upon receipt of a Notice, the Surety shall propose a face-to-face meeting, telephone conference call or a meeting by any other form of electronic media (a "**Post-Notice Conference**") with the Owner at a mutually convenient time and place within five (5) business days (or such longer period as may be agreed between the Surety and Owner). The Contractor may participate in a Post-Notice Conference at the invitation of the Surety.
- 5.2 The purpose of the Post-Notice Conference shall be to determine what actions or work, if any, the Owner believes must be done while the Surety is conducting the Investigation in order to effectively mitigate the costs for which the Owner is seeking recovery under this Bond (the "**Mitigation Work**"). Mitigation Work may be performed after Necessary Interim Work and throughout the period of investigation by the Surety.
- 5.3 Provided the Owner provides reasonable evidence to the Surety that Mitigation Work is necessary during the Investigation and that the anticipated costs are reasonable, the Owner may proceed with the Mitigation Work subject to the following conditions:
- a) Owner shall pay the reasonable costs of the Mitigation Work;
 - b) Owner shall keep separate records of all amounts related to the Mitigation Work for which it intends to seek recovery under this Bond, including amounts to be set off against the Balance of Contract Price;
 - c) Owner shall allow the Surety and/or its consultant(s) reasonable access to the Contract work site(s) during the course of the Mitigation Work for the purpose of monitoring the progress of the Mitigation Work; and
 - d) the Mitigation Work shall be without prejudice to the rights or obligations of the Owner, the Contractor or the Surety under the Contract, this Bond or applicable law.
- 5.4 If the Surety objects to any part of the Mitigation Work, including without limitation the Owner's proposed Mitigation Work contractor(s), scope of work, cost or method of work, it shall immediately advise the Owner in writing of its objections and the reasons therefor. The Owner may still proceed with the Mitigation Work and the Surety's objections will be addressed through negotiation with the Owner or at the trial of any action brought pursuant to this Bond.
- 5.5 The reasonable costs incurred by the Owner in undertaking the Mitigation Work shall be reimbursed by the Surety, subject to the Surety's liability being subsequently established. Any payments made by the Surety in respect of the Mitigation Work shall form part of its Obligation under this Bond and shall reduce the Bond Amount by the amount of any such payments.
- 5.6 For greater clarity, any Necessary Interim Work being performed by the Owner pursuant to Section 4 may continue to be performed pending an agreement, if any, as to the Mitigation Work.
- 5.7 Subject to the foregoing provisions in this Section 5, the Surety shall not raise the mere fact that the Mitigation

Work proceeded as a defence to any claim by the Owner hereunder.

6. Surety's Options

- 6.1 If the Surety has accepted liability pursuant to this Bond, the Surety shall promptly select and commence one of the following options:
- a) remedy the default; or
 - b) complete the Contract in accordance with its terms and conditions; or
 - c) obtain a bid or bids for submission to the Owner for completing the Contract in accordance with its terms and conditions and, upon determination by the Owner and the Surety of the lowest responsible bidder:
 - i. arrange for a contract between such bidder and the Owner; and
 - ii. make available as work progresses (even if there should be a default, or a succession of defaults, under the contract or contracts of completion, arranged under this paragraph) sufficient funds to complete the Contractor's obligations in accordance with the terms and condition of the Contract including any applicable value-added taxes for which the Surety may be liable, less the Balance of Contract Price; or
 - d) pay the Owner the lesser of: (1) the Bond Amount, or (2) without duplication, the Owner's Direct Expenses plus the Owner's proposed cost of completion of the Contract and any applicable value-added taxes for which the Surety may be liable, less the Balance of Contract Price.
- 6.2 The option selected by the Surety is referred to in this Bond and the Schedules as the "**Surety Option**".

7. Owner's Direct Expenses

- 7.1 Where the Surety is liable under this Bond, then the Surety shall be liable for the following fees and expenses, without duplication (the "**Owner's Direct Expenses**"):
- a) reasonable professional fees incurred by the Owner to complete the Contract which are a direct result of the Contractor's default and which would not have been incurred but for the default of the Contractor;
 - b) reasonable external legal fees incurred by the Owner to complete the Contract, which are a direct result of the Contractor's default and which would not have been incurred but for the default of the Contractor, with the exception of legal fees incurred by the Owner in defending a claim or action by the Contractor, or incurred by the Owner in pursuing an action against the Contractor;
 - c) reasonable, miscellaneous and out-of-pocket expenses incurred by the Owner to complete the Contract which are a direct result of the default of the Contractor and which would not have been incurred but for the default of the Contractor;
 - d) direct costs incurred as a result of an extension of the duration of the supply of services or materials used or reasonably required for use in the performance of the Contract, which are a direct result of the default of the Contractor and which would not have been incurred but for the default of the Contractor;
 - e) reasonable costs of the Necessary Interim Work;
 - f) reasonable costs of the Mitigation Work; and
 - g) any additional fees and expenses agreed to by the Obligee, the Principal and the Surety.
- 7.2 For the purpose of Section 7.1(d), the "direct costs" incurred are the reasonable costs of performing the Contract during the extended period of time, including costs related to the additional supply of services or materials (including equipment rentals), insurance and surety bond premiums, and costs resulting from seasonal conditions, that, but for the extension, would not have been incurred.
- 7.3 Subject to any agreement to the contrary, between the Owner, the Principal and the Surety, the Surety shall not be liable under this Bond for:
- a) any liquidated damages under the Contract;
 - b) if no liquidated damages are specified in the Contract, any damages caused by delayed performance or non-performance of the Contractor, except as provided in Section 7.1(d); or

- c) any indirect or consequential damages, including but not limited to costs of financing, extended financing, hedging arrangements, loss of or deferral of profit, productivity or opportunity, or head office overhead costs.

7.4 If the Surety is liable under this Bond then, at the Owner's option, Owner's Direct Expenses may be deducted by the Owner from the Balance of the Contract Price as defined hereinafter or will be promptly reimbursed by the Surety subject to the other terms, conditions and limitations of this Bond and will reduce the Bond Amount.

8. Conditions Precedent

- 8.1 The Surety shall have no liability or Obligations under this Bond unless all of the following conditions precedent (the "**Conditions Precedent**") have been satisfied:
- a) The Contractor is, and is declared by the Owner to be, in default under the Contract;
 - b) The Owner has given such notice to the Contractor of a default of the Contractor, as may be required under the terms of the Contract;
 - c) The Owner has performed the Owner's obligations under the Contract; and
 - d) The Owner has agreed to pay the Balance of Contract Price to the Surety or as directed by the Surety.

9. Balance of Contract Price

- 9.1 The term "**Balance of Contract Price**" means the total amount payable by the Owner to the Contractor under the Contract, including any adjustments to the price in accordance with the terms and conditions of the Contract, or other amounts to which the Contractor is entitled, reduced by any amounts deducted by the Owner for the Owner's Direct Expenses under Section 7.4 and all valid and proper payments made to or on behalf of the Contractor under the Contract.
- 9.2 The Balance of Contract Price shall be used by the Owner to first mitigate against any potential loss to the Surety under this Bond and then under the Labour & Material Payment Bond, and the Owner shall assert all rights and remedies available to the Owner to the Balance of Contract Price and make payment of the Balance of Contract Price as directed by the Surety.

10. Limitations on the Surety's Liability

- 10.1 Notwithstanding anything to the contrary contained in this Bond or in the Contract, the Surety shall not be liable for a greater sum than the Bond Amount under any circumstances.
- 10.2 The Surety's responsibility to the Owner under this Bond in respect of any Surety Option or Owner's Direct Expenses shall not be greater than that of the Contractor under the Contract.

11. Right of Action

- 11.1 No right of action shall accrue on this Bond to or for the use of any person or corporation other than the Owner named herein, or the heirs, executors, administrators or successors of the Owner.

12. Commencement of Action

- 12.1 It is a condition of this Bond that any suit or action must be commenced before the expiration of two (2) years from the earlier of: (a) the date of substantial performance of the Contract as defined under the *Construction Act* (the "**Act**"); or (b) the date on which a Notice in respect of the default that is the subject of such suit or action is received by the Surety under this Bond.
- 12.2 The Owner, the Contractor and the Surety agree that any suit or action is to be made to a court of competent jurisdiction in Ontario and agree to submit to the jurisdiction of such court notwithstanding any terms to the contrary in the Contract.

13. Common Law Rights

- 13.1 The rights and obligations of the Owner, the Contractor, and the Surety under this Bond are in addition to their respective rights and obligations at common law and in equity.

14. Applicable Law

- 14.1 This Bond is governed by the laws of the Province of Ontario.

15. Notices

15.1 All notices under this Bond shall be delivered by registered mail, facsimile, or electronic mail at the addresses set out below, subject to any change of address in accordance with this Section. Any notice given by facsimile or electronic mail shall be deemed to have been received on the next business day or, if later, on the date actually received if the person to whom the notice was given establishes that he or she did not, acting in good faith, receive the notice until that later date. Any notice given by registered mail shall be deemed to have been received five (5) days after the date on which it was mailed, exclusive of Saturdays and holidays or, if later, on the date actually received if the person to whom the notice was mailed establishes that he or she did not, acting in good faith, receive the notice until that later date. A change of address for the Surety is publicly available on the Financial Services Commission of Ontario website (see: https://www5.fSCO.gov.on.ca/Licensing/LicClass/eng/lic_companies_class.aspx). The address for the Owner or the Contractor may be changed by giving notice to the other parties setting out the new address in accordance with this Section.

The Surety:

[Surety corporate name]
[address]
[fax]
[email]

The Owner:

[Owner proper name]
[address]
[fax]
[email]

The Contractor:

[Contractor corporate name]
[address]
[fax]
[email]

16. Headings for Reference Only

16.1 The headings and references to them in this Bond are for convenience only, shall not constitute a part of this Bond, and shall not be taken into consideration in the interpretation of this Bond.

IN WITNESS WHEREOF, the Contractor and the Surety have Signed and Sealed this Bond this _____ day of _____ in the year _____ .

[Contractor proper name]

By: _____
Name: _____
Title: _____

I have authority to bind the corporation.

Witnessed by :

Name of Witness: _____
Address of Witness: _____

[Surety corporate name]

By: _____
Name: _____
Attorney-in-fact

* IF THERE ARE TWO OR MORE COMPANIES IN PARTNERSHIP OR JOINT VENTURE, JOINTLY AND SEVERALLY BOUND, INSERT THE NAME OF EACH PARTNER OR JOINT VENTURE PARTY, AND INSERT THE WORD "COLLECTIVELY" AFTER THE WORD "HEREINAFTER" IN THE FIRST LINE.

** IF THERE ARE TWO OR MORE SURETY COMPANIES, JOINTLY AND SEVERALLY BOUND, INSERT THE "[Name of the surety company], a corporation created and existing under the laws of [Place of incorporation]," FOR EACH SURETY, FOLLOWED BY "each as a surety and each duly authorized to transact the business of Suretyship in the Province of Ontario and hereinafter collectively called the "Surety"".

*** INSERT THE CROWN, A MUNICIPALITY OR A BROADER PUBLIC SECTOR ORGANIZATION, AS APPLICABLE, OR SUCH OTHER PARTY DEEMED TO BE THE OWNER UNDER THE ACT, AND ENTERING INTO THE PUBLIC CONTRACT WITH THE CONTRACTOR.

SCHEDULE A
Form of Notice

[date]

[Surety name]

[Surety address]

[Surety address]

[Surety's electronic/email address]

Attention:

Re:

Bond No:

Contractor:

Owner:

Contract:

Dear Sir/Madam,

We hereby notify you that the Contractor is in default of the captioned Contract. In general terms the details of the default are as follows:

[insert description of the Contractor Default]

We have given such notice of this default to the Contractor as is required under the Contract and enclose a copy for your records, and confirm that we have honoured our obligations under the Contract.

We call on you as Surety to honour your obligations under the Bond. We represent and warrant that we have in our possession the original, executed Performance Bond and herein enclose a copy.

Please provide us with potential dates and times to conduct the Post-Notice Conference under Section 5.1 of the Bond.

OPTIONAL: In the circumstances we plan to proceed with work and incur expenses necessary in the circumstances to ensure public safety or to preserve or protect the work under the Contract from deterioration or damage, referred to as the Necessary Interim Work under Section 4.1 of the Bond, and will provide you with information and access to discuss and observe this work. In the interim the following is a general description of the anticipated Necessary Interim Work:

OPTIONAL: To assist you in your Investigation we enclose with this Notice the documents and information indicated in Appendix A to this Notice. *[In addition to Appendix A, the Owner is encouraged to provide any information or material that may expedite the Investigation.]*

We look forward to receiving your acknowledgment of this Notice no later than four (4) business days of receipt and your request for any additional documentation or information you require to meet your obligations under the Bond.

Your truly,

[Full corporate title]

By:

[Name]

[Title]

[Phone]

[Email address]

CC: **[Contractor]**

Appendix A to Form of Notice

The following checked documents and information are enclosed with this Notice:

- Copy of full, executed Contract (with letter of award), including approved changes and pending changes relevant to this Notice (along with a copy of the Change Order log)
- Copy of original schedule and latest approved schedule for the Contract including actual progress and the order to commence work
- Specifications and drawings, including tender and post tender addenda, if any, applicable to the Contractor's scope of work
- Copies of and summary reconciliation of all invoices received under the Contract
- Copies of and summary reconciliation of all payments made and holdback of any kind retained under the Contract
- Copy of the most recent approved or certified payment application including the applicable Schedule of Values and copies of all unpaid payment applications
- A detailed list of all outstanding work in the Contractor's scope of work (including any deficiencies identified to date)
- Any issued or pending backcharges from the Owner to the Contractor
- Copy of any notice or correspondence to and from the Contractor related to the Contract and relevant to this Notice
- Copy of any claim for lien, legal proceeding or other documents received on the Contract
- Copy of any correspondence from subcontractors, suppliers or others indicating claims for unpaid amounts related to the Contract
- Copy of the executed and delivered Performance Bond
- [\[Additional documents or information\]](#)

SCHEDULE B
Surety's Acknowledgement of a Notice

[date]

[Name/corporate title of the Owner]

[Address]

[Address]

[E-mail address (if provided in the Notice of Claim)]

Attention:

Re:

Bond No:

Contractor:

Owner:

Contract:

Dear Sir/Madam,

On behalf of the Surety defined in the captioned Bond we acknowledge receipt on of your Notice
(date of receipt)

under the captioned Performance Bond.

Please advise as soon as possible which of the following proposed dates and times and logistics are convenient to conduct the Post-Notice Conference:

Proposed Date	Proposed Time	Meeting or conference/video conference logistics

To enable our Investigation of the Notice please provide us promptly with the information and/or documentation identified in Appendix A to this Acknowledgement (and as necessary with access for our staff or appointed representatives to attend the place where the Contract is being performed to inspect the condition and progress of the work), hereinafter the Information.

We will provide you with the Surety's Position to the Notice no later than twenty (20) business days of our receipt of the Notice based on the information, documentation and access you have provided.

We continue to reserve all of our rights pursuant to the Bond and at law.

Yours truly;

[Corporate name of the Surety]

By:

[Name]

[Title]

[Phone]

[Email address]

CC: [Contractor]

Appendix A to Surety's Acknowledgement
Surety's Request for Information

Please identify and provide contact information for a person who is knowledgeable about the circumstances of the Notice and any Necessary Interim Work and Mitigation Work, and who can speak for the Owner.

Please identify and provide contact information for a person with whom arrangements can be made for access to the site where the work under the Contract is being performed.

Please provide copies of the following documentation in digital or hard copy format:

- Copy of full, executed Contract (with letter of award), including approved changes and pending changes relevant to this Notice (along with a copy of the Change Order log)
- Copy of original schedule and latest approved schedule for the Contract including actual progress and the order to commence work
- Specifications and drawings, including tender and post tender addenda, if any, applicable to the Contractor's scope of work
- Copies of and summary reconciliation of all invoices received under the Contract
- Copies of and summary reconciliation of all payments made and holdback of any kind retained under the Contract
- Copy of the most recent approved or certified payment application including the applicable Schedule of Values and copies of all unpaid payment applications
- A detailed list of all outstanding work in the Contractor's scope of work (including any deficiencies identified to date)
- Any issued or pending backcharges from the Owner to the Contractor
- Copy of any notice or correspondence to and from the Contractor related to the Contract and relevant to this Notice
- Copy of any Notice of Non-payment issued under the Act
- Copy of any Notice of Adjudication issued under the Act
- Copy of any claim for lien, legal proceeding or other documents received on the Contract
- Copy of any correspondence from subcontractors, suppliers or others indicating claims for unpaid amounts related to the Contract
- Copy of the executed and delivered Performance Bond
- [\[Additional documents or information\]](#)

SCHEDULE C
Surety's Position

[date]

[Name/corporate title of the Owner]

[Address]

[Address]

[E-mail address (if provided in the Notice of Claim)]

Attention:

Re:

Bond No:

Contractor:

Owner:

Contract:

Dear Sir/Madam,

Based on the Information you have provided and given the current status of our Investigation, we can advise that [use only one of these Options]:

OPTION A

The Surety accepts liability under the Bond. To satisfy our Obligation we propose, under Section 6.1 of the Bond, to:
[Select 1 and delete the others]

- a) Promptly remedy the Contractor Default. *[Describe proposal and timelines.]*
or
- b) Complete the Contract in accordance with its terms but only on the condition that the Owner undertakes to pay or to make available to the Surety the Balance of the Contract Price. *[Describe proposal and timelines.]*
or
- c) Obtain a bid or bids for submission to the Owner for completing the Contract in accordance with its terms and conditions and, upon determination by the Owner and the Surety of the lowest responsible bidder:
 - i. arrange for a contract between such bidder and the Owner; and
 - ii. make available as work progresses (even if there should be a default, or a succession of defaults, under the contract or contracts of completion, arranged under this paragraph) sufficient funds to complete the Contractor's obligations in accordance with the terms and conditions of the Contract including any applicable value-added taxes for which the Surety may be liable, less the Balance of Contract Price.
*[Describe proposal and timelines.]***or**
- d) pay the Owner the lesser of : (1) the Bond Amount, or (2) without duplication, the Owner's Direct Expenses plus the Owner's proposed cost of completion of the Contract and any applicable value-added taxes for which the Surety may be liable; less the Balance of Contract Price. *[Describe proposal and timelines.]*

OPTION B

The Surety disputes the Notice. The reasons are as follows:

OPTION C

Based on the Information you have provided and the time available for our Investigation

[if applicable] and taking into account genuine disputed issues as between the Owner and the Contractor that have not been resolved according to the terms of the Contract as outlined generally below,

the Surety is unable to determine whether or not one or more of the Conditions Precedent has been satisfied and, therefore, is not able to accept liability under the Bond.

In particular we have been unable to determine that

[delete those that do not apply]

- a) the Contractor is, in fact, in default of its obligations under the Contract. *[Provide further explanation as appropriate.]*
and/or
- b) the Owner has performed its obligations under the Contract. *[Provide further explanation as appropriate.]*
and/or
- c) the Owner has given the notice to the Contractor of a Contractor Default as required under the terms of the Contract. *[Provide further explanation as appropriate.]*
and/or
- d) the Owner has agreed to apply the Balance of Contract Price as necessary to enable the Surety to exercise the Surety Option under the Bond. *[Provide further explanation as appropriate.]*

With your agreement and assistance we are willing to extend our Investigation in an effort to resolve outstanding issues. Should this extended Investigation allow us to provide you with an alternative Surety's Position we will do so promptly.

[If applicable] Under a full reservation of all of our rights under the Bond and the applicable law, and without prejudice to the rights and obligations of the Owner, the Contractor or the Surety under the Bond we propose to proceed as follows:

We continue to reserve all of our rights pursuant to the Bond and at law.

If you have any questions or concerns, please do not hesitate to contact us.

Yours truly;

[Corporate name of the Surety]

By:

[Name]
[Title]
[Phone]
[Email address]

CC: **[Contractor]**

**FORM 33
NOTICE OF TRIAL**

Construction Act

.....
Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN

.....
Plaintiff(s)

and

.....
Defendant(s)

NOTICE

(Use A or B, whichever is applicable)

A. The Superior Court of Justice has directed that this action shall be tried on,
(day)

....., at, at,
(date) (time) (place)

B. This action has been set down for trial by the Superior Court of Justice, at the non-jury sittings commencing

on, at, at,
(day) (date) (time)

.....
(place)

If you do not appear at the trial, proceedings may be taken in your absence and you may be deprived of all benefit of the action and your rights may be disposed of in your absence.

All parties are required to be prepared to proceed with the trial, and to bring with them on the trial day all evidence and witnesses necessary to prove their respective claims or defences. If any person fails to comply with these directions, the costs of the day may be given against that party should it be necessary to adjourn the trial of this action.

This is an action to enforce a construction lien arising from an improvement of the following premises:

.....
(concise description sufficient to identify premises)

This notice is served by

Date:

To:

FORM 34
NOTICE OF SETTLEMENT MEETING

Construction Act

.....
Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN

.....
Plaintiff(s)

and

.....
Defendant(s)

NOTICE

The Superior Court of Justice has directed that the settlement meeting in respect to the above action shall be held

on , at , at , at
(day) (date) (time)
.....
(place)

(Use A or B, whichever is applicable)

A. The Superior Court of Justice has also directed that this action shall be tried on ,
(day)
..... , at , at
(date) (time) (place)

B. In addition, this action has been set down for trial by the Superior Court of Justice, at the non-jury sittings
commencing on , at , at
(day) (date) (time)
.....
(place)

Any settlement reached at a settlement meeting is binding upon every person served with notice of the settlement meeting, regardless of whether the person attends the settlement meeting, and orders may be made by the court affecting your rights.

(Use where applicable)

If you do not appear at the trial, proceedings may be taken in your absence and you may be deprived of all benefit of the action and your rights may be disposed of in your absence.

All parties are required to be prepared to proceed with the trial, and to bring with them on the trial day all evidence and witnesses necessary to prove their respective claims or defences. If any person fails to comply with these directions, the costs of the day may be given against that party should it be necessary to adjourn the trial of this action.

This is an action to enforce a construction lien arising from an improvement of the following premises:

.....
(concise description sufficient to identify premises)

This notice is served by

Date:

To: