

SCHEDULE 9
COMPENSATION ON TERMINATION
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SCHEDULE 9

COMPENSATION ON TERMINATION

1. INTERPRETATION

1.1 Definitions

In this Schedule, in addition to the definitions set out in Schedule 1 [Definitions and Interpretation] to this Agreement:

"Deemed Corporate Project Co" has the meaning set out in Section 5.1 (Income Tax Gross-Up - Partnership Project Co) of this Schedule;

"Employee Information" means written details related to employees employed by Project Co, the Design-Builder, or any of the Sub-Contractors whose work (or any part of it) is work undertaken for the purposes of the Project, including:

- (a) the staffing plan and total number of such employees;
- (b) the employment costs for such employees;
- (c) the amount or severance payable to such employees used in the calculation of any Employee Payment and all relevant information used in determining such amounts; and
- (d) any other information that the Authority may reasonably require in relation to the calculation of Employee Payments in respect of Project Co, the Design-Builder, or any relevant Sub-Contractors;

"Project Co Default Termination Sum" means any amount payable by Project Co to the Authority pursuant to Section 3.1 (Termination for Project Co Event of Default) of this Schedule;

"Senior Debt Termination Amount" has the meaning set out in Section 2.1(a)(1) (Calculation) of this Schedule;

"Taxable Shareholder Portion" has the meaning set out in Section 5.1 (Income Tax Gross-Up - Partnership Project Co) of this Schedule;

"Termination Payment" means the amount owing by the Authority to Project Co pursuant to this Schedule; and

"Termination Payment Date" means the date on which the Authority must pay the Termination Payment to Project Co, or Project Co must pay the Project Co Default Termination Sum to the Authority, as provided for in Section 6.1 (Termination Payment Date) of this Schedule.

2. TERMINATION FOR AUTHORITY EVENT OF DEFAULT OR AT AUTHORITY'S OPTION

2.1 Calculation

If either the Authority or Project Co terminates this Agreement pursuant to Section 2.1(a) (Term and Termination), Section 6.6 (Authority Election Not to Reinstate), Section 6.7(d) (Insufficient Insurance), or Section 13.3 (Project Co's Options), the Authority will pay to Project Co, on the Termination Payment Date, a Termination Payment equal to:

- (a) the aggregate amount, without double counting, of:
 - (1) the Senior Debt as at the Termination Date, with per diem interest on amounts falling within paragraph (a) of the definition of Senior Debt calculated at the non-default interest rate provided for such amounts in the Senior Financing Agreements for the period from (but excluding) the Termination Date until (and including) the Termination Payment Date (the "**Senior Debt Termination Amount**");
 - (2) the Employee Payments and the Design-Builder Breakage Costs;
 - (3) any accrued but unpaid amounts owing and payable by the Authority to Project Co under this Agreement; and
 - (4) any Insurance Receivables, if and to the extent Project Co has assigned them to the Authority,

LESS

- (b) to the extent it is a positive amount, the aggregate, without double counting, of:
 - (1) the aggregate of all credit balances on any bank accounts held by or on behalf of Project Co on the Termination Date that are secured in favour of the Senior Lenders;
 - (2) the value of any amounts due and payable from third parties (but only when received from third parties), but excluding any claims under the Design-Build Agreement or claims against other third parties which have not been determined or have been determined but not yet paid, provided that in such case Project Co will assign any such rights and claims under the Design-Build Agreement or claims against other third parties to the Authority and give the Authority reasonable assistance in prosecuting such claims;
 - (3) to the extent not taken into account in calculating the amount under Section 2.1(a)(2) of this Schedule, the amount of any Contingent Funding Liabilities that are triggered as a result of or in relation to a termination of this Agreement;
 - (4) the market value of any other assets and rights of Project Co (other than those transferred to the Authority pursuant to this Agreement), less liabilities of Project

Co properly incurred in carrying out its obligations under this Agreement as at the Termination Date, to the extent realized before the Termination Payment Date, provided that no account will be taken of any liabilities and obligations of Project Co arising out of:

- (A) agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in connection with Project Co's obligations in relation to the Project; or
- (B) agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in the ordinary course of business and on commercial arm's length terms;
- (5) any amounts, including hedging termination amounts and other breakage costs, payable by the Senior Lenders to Project Co as a result of a prepayment under the Senior Financing Agreements;
- (6) any amounts received by the Senior Lenders (or on their behalf) on or after the Termination Date and before the Termination Payment Date as a result of enforcing any other rights or security the Senior Lenders may have under the Senior Financing Agreements in respect of Senior Debt (net of the reasonable and proper costs incurred in such enforcement); and
- (7) any other amounts that the Authority is entitled to set-off or deduct under this Agreement.

To the extent that the assets and rights referred to in Section 2.1(b)(4) of this Schedule are not realized and applied pursuant to that Section, Project Co will, on payment of the amount due under this Section 2.1, assign such assets and rights to the Authority.

If the aggregate of the amount calculated above is less than the Senior Debt Termination Amount plus the amount referred to in Section 2.1(a)(2), then the Termination Payment will be increased so that it is equal to the aggregate of the Senior Debt Termination Amount plus the amount referred to in Section 2.1(a)(2).

2.2 Notice to the Authority

As soon as practicable after termination of this Agreement as contemplated by this Section 2, Project Co will, acting reasonably, notify the Authority of the Termination Payment as of an estimated Termination Payment Date and include in such notice the details and calculations of each component thereof, including a revised and up to date Financial Model and certificates from the Senior Lenders as to the amounts owed to them. Project Co will provide to the Authority all such documents and information as may be reasonably required by the Authority to confirm the amount of the Termination Payment, including Employee Information.

3. TERMINATION FOR PROJECT CO EVENT OF DEFAULT

3.1 Calculation

If the Authority terminates this Agreement pursuant to Section 12.4 (Authority Termination Right), Project Co shall pay to the Authority (to the extent it is a negative amount) or the Authority will pay to Project Co (to the extent it is a positive amount), on the Termination Payment Date, an amount equal to:

- (a) the aggregate amount, without double counting, of:
 - (1) the Contract Price; and
 - (2) any sums not forming part of the Contract Price that have become due and payable from the Authority to Project Co prior to the Termination Date in accordance with this Agreement but which remain unpaid as at the Termination Date, to the extent that such sums have not subsequently been paid before the Termination Payment Date,

LESS:

- (b) the aggregate, without double counting, of:
 - (1) any amounts in respect of the Contract Price paid by the Authority to Project Co on or before the Termination Date;
 - (2) the Authority's estimate of the cost to complete the Design and the Construction, including the cost to remedy any defective or deficient work, determined on a reasonable basis in consultation with the Independent Certifier and the Authority's other consultants, and including all reasonable and proper costs incurred by the Authority in re-tendering the Design and the Construction or any portion thereof;
 - (3) the Authority's estimate of the aggregate of all Direct Losses suffered, sustained, or incurred by the Authority as a result of, in respect of, or arising out of the event or events which resulted in the termination of this Agreement and arising out of the termination, together with all costs of entering into a new design and construction contract to complete the Design and the Construction, including any warranty obligations in place and to be performed, on substantially the same terms and conditions as this Agreement; and
 - (4) any other amounts that the Authority is entitled to set off or deduct under this Agreement,

provided that:

- (c) the calculation of the Termination Payment will take into account the amount of any holdback or Letter of Credit held by the Authority at the Termination Date pursuant to this Agreement, such that any such amounts are not double counted in determining the Termination Payment.

3.2 Notice to Project Co

As soon as practicable after termination of this Agreement as contemplated by this Section 3, the Authority will, acting reasonably, notify Project Co of the Termination Payment or the Project Co Default Termination Sum, as applicable, as of an estimated Termination Payment Date and include in such notice the details and calculations of each component thereof. Project Co will provide to the Authority all such documents and information as may be reasonably required by the Authority to assist the Authority in determining the amount of the Termination Payment or the Project Co Default Termination Sum, as applicable.

4. NO FAULT TERMINATION

4.1 Calculation

If Project Co or the Authority terminates this Agreement pursuant to Section 6.7(e) (Insufficient Insurance), Section 6.8 (Uncollectible Insurance Receivables), Section 6.14 (Consequences of Risks Becoming Uninsurable), Section 8.4 (Project Co's Entitlements Upon Occurrence of a Relief Event), or Section 8.5 (Parties' Entitlements Upon Occurrence of a Force Majeure Event), the Authority will pay to Project Co, on the Termination Payment Date, a Termination Payment equal to:

- (a) the aggregate amount, without double counting, of:
 - (1) the Senior Debt Termination Amount;
 - (2) the Employee Payments and the Design-Builder Breakage Costs;
 - (3) any accrued but unpaid amounts owing and payable by the Authority to Project Co under this Agreement; and
 - (4) any Insurance Receivables, if and to the extent Project Co has assigned them to the Authority,

LESS:

- (b) to the extent it is a positive amount, the aggregate, without double counting, of:
 - (1) the aggregate of all credit balances on any bank accounts held by or on behalf of Project Co on the Termination Date that are secured in favour of the Senior Lenders;
 - (2) the value of any amounts due and payable from third parties (but only when received from third parties), but excluding any claims under the Design-Build Agreement or claims against other third parties which have not been determined or have been determined but not yet paid, provided that in such case Project Co will assign any such rights and claims under the Design-Build Agreement or claims against other third parties to the Authority and give the Authority reasonable assistance in prosecuting such claims;

- (3) to the extent not taken into account in calculating the amount under Section 4.1(a)(2) of this Schedule, the amount of any Contingent Funding Liabilities that are triggered as a result of or in relation to a termination of this Agreement;
- (4) the market value of any other assets and rights of Project Co (other than those transferred to the Authority pursuant to this Agreement), less liabilities of Project Co properly incurred in carrying out its obligations under this Agreement as at the Termination Date, to the extent realized before the Termination Payment Date, provided that no account will be taken of any liabilities and obligations of Project Co arising out of:
 - (A) agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in connection with Project Co's obligations in relation to the Project; or
 - (B) agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in the ordinary course of business and on commercial arm's length terms;
- (5) any amounts, including hedging termination amounts and other breakage costs, payable by the Senior Lenders to Project Co as a result of a prepayment under the Senior Financing Agreements;
- (6) any amounts received by the Senior Lenders (or on their behalf) on or after the Termination Date and before the Termination Payment Date as a result of enforcing any other rights or security the Senior Lenders may have under the Senior Financing Agreements in respect of Senior Debt (net of the reasonable and proper costs incurred in such enforcement); and
- (7) any other amounts that the Authority is entitled to set off or deduct under this Agreement.

To the extent that the assets and rights referred to in Section 4.1(b)(4) of this Schedule are not realized and applied pursuant to that Section, Project Co will, on payment of the amount due under this Section 4.1, assign such assets and rights to the Authority.

If the aggregate of the amount calculated above is less than the Senior Debt Termination Amount, then the Termination Payment will be increased so that it is equal to the aggregate of the Senior Debt Termination Amount.

4.2 Notice to the Authority

As soon as practicable after termination of this Agreement as contemplated by this Section 4, Project Co will, acting reasonably, notify the Authority of the Termination Payment as of an estimated Termination Payment Date and include in such notice the details and calculations of each component thereof, including a revised and up to date Financial Model and certificates from the Senior Lenders as to the amounts owed to them. Project Co will provide to the Authority all such documents and information as

may be reasonably required by the Authority to confirm the amount of the Termination Payment, including Employee Information.

5. ADJUSTMENTS AND DISPUTES

5.1 Income Tax Gross-Up - Partnership Project Co

For the purpose of this Section 5.1:

"Deemed Corporate Project Co" means a fictional fully taxable single purpose British Columbia resident corporation that (i) is, and has since the date of this Agreement been, a subsidiary of a public corporation carrying on an active business with the same fiscal year end as Project Co; and (ii) has had the same revenues and expenses as Project Co and has taken all exemptions, relief, allowances, deductions, set offs and credits permitted under laws relating to Income Taxes (including any that would be available in relation to the Project) since the date of this Agreement so as to minimize its Income Tax payable; and

"Taxable Shareholder Portion" means:

- (a) 100% if Project Co is a taxable entity with respect to Income Tax; or
- (b) that percentage, measured as at the Termination Date, of the total equity interests of Project Co that are not owned, directly or indirectly, by Persons (1) described in Section 149 of the *Income Tax Act* (Canada), or the equivalent section if there are changes to the *Income Tax Act* (Canada). and (2) not subject to the payment of Income Tax in respect of payments by Project Co from proceeds of the Termination Payment.

If a Termination Payment is payable by the Authority under Section 2 (Termination for Authority Event of Default or at Authority's Option) or Section 4 (No Fault Termination) of this Schedule and such Termination Payment would, in the hands of a Deemed Corporate Project Co (if the Deemed Corporate Project Co were being paid the Termination Payment), be subject to Income Tax payable to a Governmental Authority within Canada that would not have been payable but for the fact that such amount is payable as compensation on termination, then the Authority will pay to Project Co the Taxable Shareholder Portion of the additional amount that would be required to be paid to the Deemed Corporate Project Co (if the Deemed Corporate Project Co were being paid the Termination Payment) to put it in the same position after Income Tax as it would have been in had the Termination Payment (or portion thereof) not been subject to any such Income Tax, taking account of any exemption, relief, allowances, deduction, setting off or credit in respect of Income Tax (whether available by choice or not) which would be available to the Deemed Corporate Project Co to reduce the Tax to which the Termination Payment, or any portion thereof, would be subject.

5.2 Time Related Adjustments

It is understood that the calculations of the Termination Payment pursuant to Section 2 (Termination for Authority Event of Default or at Authority's Option), Section 3 (Termination for Project Co Event of Default), and Section 4 (No Fault Termination) of this Schedule are as of an estimated Termination Payment Date and that such estimated date may not be the actual Termination Payment Date, including for reasons of the existence of a Dispute. The parties will act reasonably in adjusting the amount of such calculated Termination Payment to reflect the actual Termination Payment Date.

5.3 Senior Debt

The Authority will be entitled to rely on one or more certificates of officers of the Senior Lenders or the Agent as conclusive evidence of the amount of the Senior Debt Termination Amount. The receipt of this amount by Project Co, the Senior Lenders or the Agent will discharge the Authority's obligation to pay any portion of compensation due to Project Co that is attributable to the Senior Debt.

5.4 Disputes

If:

- (a) the Authority does not agree with Project Co's determination of the Termination Payment under Section 2 (Termination for Authority Event of Default or at Authority's Option) or Section 4 (No Fault Termination) of this Schedule, the Authority may, within 20 Business Days of the notice referred to in Section 2.2 (Notice to the Authority) or Section 4.2 (Notice to the Authority) of this Schedule as the case may be, refer the matter to the Dispute Resolution Procedure; or
- (b) Project Co does not agree with the Authority's determination of the Termination Payment under Section 3 (Termination for Project Co Event of Default) of this Schedule, Project Co may, within 20 Business Days of the notice referred to in Section 3.2 (Notice to Project Co) of this Schedule, refer the matter to the Dispute Resolution Procedure.

If either party does not refer the matter to the Dispute Resolution Procedure within the periods provided for in (a) or (b) above, as applicable, such party will be deemed to have agreed to the amount of the applicable determination of the Termination Payment as of the estimated Termination Payment Date.

6. PAYMENTS

6.1 Termination Payment Date

The Termination Payment Date will be determined as follows:

- (a) if the amount of the Termination Payment is agreed to or deemed agreed to by the Authority and Project Co, on the earlier of:
 - (1) the date advised by the Authority; and
 - (2) 60 days after such agreement or, in accordance with Section 5.4 (Disputes), deemed agreement, as the case may be; or
- (b) if the amount of the Termination Payment is the subject of a Dispute, 45 days after the amount of the Termination Payment is determined under the Dispute Resolution Procedure.

6.2 Tax Allocations

The Authority and Project Co will:

- (a) act reasonably and will co-operate with each other to determine the Income Tax treatment resulting from a Termination Payment and to allocate the Termination Payment to each of the non-fixed assets transferred to the Authority pursuant to Section 14.2 (Transfer to Authority of Assets, Contracts, etc.) so as to minimize the amount of Taxes payable on such transfer;
- (b) failing agreement on such treatment or allocation, use the treatment or allocation determined by the Authority unless and until such time as a different treatment or allocation is determined under the Dispute Resolution Procedure or by Canada Revenue Agency (after all appeals have been exhausted); and
- (c) use the allocation agreed to in (a) above or determined in accordance with (b) above in their respective Tax filings and returns.

6.3 Liability for Sales Taxes

The Authority will be responsible for all applicable sales Taxes payable in connection with the transfers referred to in Section 14.2 (Transfer to the Authority of Assets, Contracts, etc.) and will either pay all such sales Taxes directly or reimburse Project Co for such sales Taxes if Project Co is required to and does remit such sales Taxes.

6.4 GST Filings

If Section 182 of the *Excise Tax Act* (Canada) applies to a Termination Payment, the Authority and Project Co will submit their respective GST filings in respect of any period in which a Termination Payment was made on the basis that Section 182 of the *Excise Tax Act* (Canada) will apply to any such Termination Payment.

6.5 Full Settlement

Notwithstanding any other provision of this Schedule or this Agreement, any and all amounts paid by either the Authority or Project Co under this Schedule, or any agreement or determination that the Authority has no obligations to make any payment to Project Co under this Schedule, will be in full and final settlement of each party's rights and claims against each other for termination of this Agreement and the Design-Build Agreement, whether under contract, tort, restitution, or otherwise, but without prejudice to:

- (a) any antecedent liability of either party to the other that arose prior to the Termination Date (but not from the termination itself) to the extent any such liability has not already been taken into account in determining the Termination Payment; and
- (b) any liability of either party to the other that may arise after the Termination Date (but not from the termination itself), including, for greater certainty, liabilities arising under the provisions of this Agreement which are intended by Section 17.11 (Survival) to survive termination, to the extent any such liability has not already been taken into account in determining the Termination Payment.

6.6 Condition Precedent to Payment

Notwithstanding any other provision of this Schedule or this Agreement, it will be a condition precedent to any Termination Payment in excess of an amount equal to the Senior Debt Termination Amount that Project Co has complied in all material respects with its obligations under Section 14.2 (Transfer to the Authority of Assets, Contracts, etc.) and Section 14.3 (Transitional Arrangements).

7. RETENTION OF THE DEFICIENCY HOLDBACK IN THE EVENT OF TERMINATION

If the Termination Date occurs after the Substantial Completion Date but prior to Project Co achieving both SFB Expansion Total Completion and New Tower Total Completion, the Authority's entitlements in respect of the Deficiency Holdback will be as set out in Section 5.1(d) (Deficiency Holdback) of Schedule 8 [Payments].