IN THE MATTER OF AN ARBITRATION brought pursuant to the Ontario *Labour Relations Act, 1995*, as amended;
(Union/Policy Grievance #100 250 616 re pension contributions)
(Dispute Resolution Services File #10005-XR-24)

BETWEEN:

2615412 ONTARIO INC.
o/a Park Street Place Retirement Residence
(the "Employer")

- and -

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1 CANADA
(the "Union")

ORDER

Sole Arbitrator: Marilyn A. Nairn

Representations received: April 24, June 25, September 23, 2024

APPEARANCES

For the Union: David Sworn, Counsel

For the Employer: Lorrie McCullough, Property Manager
Pushpinder Brah, Director

ORDER

[1] Grievance #100 250 616 was filed by the Service Employees International Union, Local 1 Canada (the "Union") on March 11, 2024 and referred to arbitration pursuant to the terms of section 49 of the *Labour Relations Act, 1995,* as amended. That grievance alleged that 2615412 Ontario Inc. o/a Park Street Place Retirement Residence (the "Employer") had failed to pay pension amounts according to a repayment plan and that outstanding pension contribution amounts were owing from the Employer.

[2] I received the appointment to arbitrate the grievance on April 9, 2024 and a hearing was scheduled to convene on April 24, 2024. No issue was raised with respect to my jurisdiction to hear and determine the grievance.

[3] Prior to convening that hearing, I was advised by the Parties that they had entered into Minutes of Settlement ("MOS") regarding the payment of outstanding contributions to the Nursing Home and Related Industries Pension Plan (the "NHRIPP"). The MOS is attached to this Order as "Appendix A". (The MOS is incorrectly dated April 24, 202<u>3</u> and should properly read April 24, 2024.)

[4] That MOS confirms that the Employer and the Union are parties to a collective agreement. Having regard to the terms of the MOS and to the terms of the collective agreement, I hereby find that the collective agreement (specifically, Article 19.05) requires the Employer to pay pension contributions to the NHRIPP. Having regard to the MOS, I further find that, since December 25, 2022, the Employer deducted the employee contributions from the wages of employees represented by the Union but failed to remit those contributions, and as well, failed to remit the required matching employer contributions to the NHRIPP.

[5] Further to an Order issued by Arbitrator Brownlee dated September 21, 2023 and following the signing of the MOS which set out the amount owing ($55,288.94) and a payment schedule, the Employer made certain partial payments. I am advised by Union counsel that the payments set out at sub-paragraphs 3a and 3b of the MOS were made in accordance with the terms of the MOS, that two further payments of $5000 each were

made on May 21 and June 12, 2024, and that a further payment of $5000 was made on July 31, 2024. Full payment was to have been made by May 15, 2024. A balance of $20,288.94 remains unpaid. The Employer has not taken issue with the Union's assertion that this amount remains outstanding. The Union has provided the Employer with ample opportunity to meet its obligations under the collective agreement and the MOS.

[6] I find therefore that the Employer has breached both the collective agreement and the MOS and is in default of payments to the NHRIPP amounting to $20,288.94, comprised of unpaid pension contributions owing to April 30, 2024.

[7] Having regard therefore to sub-sections 49(7), 48(15) and 48(18) of the *Labour Relations Act, 1995* as amended, and to the factual finding made above, I HEREBY ORDER the Employer to forthwith pay to the NHRIPP the amount of $20,288.94.

[8] I will remain seized with respect to any further issues arising from the filing of Grievance #100 250 616.

Dated at Toronto, Ontario, this 30th day of September, 2024.

Marilyn A. Nairn

Marilyn A. Nairn, Arbitrator

APPENDIX A

<u>MINUTES OF SETTLEMENT</u>

Dated April 24, 2023

BETWEEN:

2615412 ONTARIO INC o/a Park Street Place Retirement Residence

and

Service Employees International Union Local 1 Canada

and

The Board of Trustees of the Nursing Homes and Related Industries Pension Plan

WHEREAS, 2615412 ONTARIO INC operating as Park Street Place Retirement Residence (the "Employer") is a retirement home located at 650 Park Street, Dresden, Ontario;

AND WHEREAS, the Employer is required to pay pension contributions to the Nursing Homes and Related Industries Pension Plan (the "NHRIPP") pursuant to a collective agreement between the Service Employees International Union Local 1 Canada ("SEIU") and the Employer (the "Collective Agreement");

AND WHEREAS, since December 25, 2022 the Employer has deducted the employee contributions from the wages of its SEIU employees but failed to remit those contributions and the required matching employer contributions to the NHRIPP;

AND WHEREAS, the Employer is in default of an order issued by Arbitrator Diane Brownlee on September 21, 2023, on consent of the Employer, SEIU, and the NHRIPP, requiring the Employer to pay delinquent pension contributions to the NHRIPP;

AND WHEREAS, the Collective Agreement requires the Employer to provide pension contribution reports to the NHRIPP with its contributions;

AND WHEREAS, the Employer has failed to do so which has resulted in the most recent pension contribution report received by the NHRIPP from the Employer being for the period ending December 9, 2023;

AND WHEREAS, SEIU filed a grievance on March 11, 2024 regarding the Employer's failure to remit the required pension contributions and contribution reports to the NHRIPP, including contributions that remain in default following Arbitrator Brownlee's September 21, 2023 order;

AND WHEREAS, based on previous contribution reports received from the Employer, the NHRIPP estimates that the Employer owes the NHRIPP pension contributions in the amount of $43,565.00 for the period from December 25, 2022 to April 12, 2024;

AND WHEREAS, the $43,565.00 does not include interest of 12% per year, amounting to $3,010.94 to April 30, 2024, and liquidated damages of 20%, amounting to $8,713.00, which are payable on delinquent pension contributions pursuant to the NHRIPP's Agreement and Declaration of Trust and these Minutes of Settlement.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. The recitals are true and accurate in all respects and each party acknowledges that the other parties are relying upon the truth and accuracy of the recitals.

2. The Employer acknowledges and agrees that it owes pension contributions to the NHRIPP and interest owing on those contributions in the approximate amount of $55,288.94, which represents outstanding pension contributions of $43,565.00 plus interest at 12% per annum which has, or will, accrue on those delinquent contributions to April 30, 2024 in the amount of $3,010.94, and liquidated damages of 20% in the amount of $8,713.00.

3. The Employer agrees that it will eliminate its contribution delinquency and its obligations to pay interest and liquidated damages by payment of $55,288.94 to the NHRIPP on the following schedule:

a. $10,000.00 on or before April 29, 2024, failing which Arbitrator Marilyn Nairn will issue the Order in Schedule A on the request of the NHRIPP, being an enforceable order for the Employer's immediate payment of $55,288.94, which is the balance of the amount described in paragraph 2;

b. $10,000.00 on or before May 6, 2024, failing which Arbitrator Nairn will issue the Order in Schedule B on the request of the NHRIPP, being an enforceable order for the Employer's immediate payment of $45,288.94, which is the balance of the amount described in paragraph 2; and

c. $35,288.94 on or before May 15, 2024, failing which Arbitrator Nairn will issue the Order in Schedule C on the request of the NHRIPP, being an enforceable order for the Employer's immediate payment of $35,288.94, which is the balance of the amount described in paragraph 2.

4. The NHRIPP shall allocate all such funds received in regard to the outstanding contributions, interest and liquidated damages in the following order:

(i) to satisfy outstanding interest and liquidated damages;

(ii) to current contributions owing for the month prior to the receipt of the payment;

(iii) to make up any deficiency in contributions for terminated or retired members; and

(iv) to repay the outstanding delinquencies with payment to be credited first to the oldest delinquency.

The NHRIPP shall allocate, at first instance, all funds received as per the above-criteria. Should the Employer object to the allocation made in regard to any of the funds received pursuant to these Minutes of Settlement, it may refer such dispute to Arbitrator Marilyn Nairn for final and binding resolution pursuant to the grievance and arbitration procedure contained in the Collective Agreement between the Employer and the SEIU.

5. The Employer agrees that it shall immediately remit all outstanding pension contribution reports and continue to remit such reports to the NHRIPP in accordance with the terms of the Collective Agreement.

6. The NHRIPP shall attribute current contributions to the individual employees and provide the Employer with written notice of any discrepancy with respect to such amounts.

7. The Employer shall pay any additional amount owing as a result of such discrepancy within 15 days of its receipt of such notice.

8. If the amount of current contributions received exceeds the amount of current contributions owing, the NHRIPP shall promptly advise the Employer.

9. If the actual amount of the outstanding contributions is greater than $43,565.00, the NHRIPP shall provide the Employer with written notice of the additional amount owing. The Employer shall pay any such additional amount owing within 15 days of its receipt of such notice.

10. If the actual amount of the outstanding contributions is less than $43,565.00, the NHRIPP shall refund the excess contributions to the Employer provided that there are no other outstanding contributions owing to the NHRIPP by the Employer at that time. If there are other outstanding contributions owing, the excess contributions shall be used to pay all outstanding contributions prior to the making of any refund to the Employer.

11. Should the Employer breach any of the terms herein, SEIU and the NHRIPP, or either of them, may at their discretion immediately take all steps they deem necessary to collect all outstanding amounts the Employer owes to the NHRIPP including taking any and all steps required to enforce any of the Arbitrator's Orders described in paragraph 3, including but not limited to garnishment of the Employer's bank accounts and seizure and sale of the Employer's assets and real property.

12. The SEIU agrees to withdraw the grievance dated March 11, 2024 regarding the Employer's failure to remit pension contributions to the NHRIPP upon receipt by the NHRIPP of all the payments described in paragraphs 2 and 3 above and the applicable contribution reports.

13. The parties agree that Arbitrator Nairn shall remain seized with respect to the implementation and interpretation of these Minutes of Settlement and her Order.

14. These Minutes of Settlement may be executed in one or more counterparts, by original or facsimile signature.

IN WITNESS WHEREOF each of the parties has duly executed these Minutes of Settlement.

SIGNED in the presence of: ________________ Witness	)	**2615412 ONTARIO INC o/a Park Street Place Retirement Residence** Per: PUSHPINDER SINGH brah (Apr 24, 2024 07:36 EDT) Name: Pushpinder Brah Title: Director I have authority to bind the corporation
SIGNED in the presence of: ________________ Witness	)	**Service Employees International Union Local 1 Canada** Per: Kyle Hoskin Name: Kyle Hoskin Title: Union Representative
SIGNED in the presence of: A Cato Witness	)	**The Board of Trustees of the Nursing Homes and Related Industries Pension Plan** Per:________ Name: Ricardo McKenzie Title: Member of the Board of Trustees