

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**BETWEEN:**

**THE TORONTO-DOMINION BANK**

Applicant

-and-

**TORONTO ARTSCAPE INC.**

Respondent

**MOTION RECORD  
OF THE CITY OF TORONTO**

(Motion by the Respondent for a Vesting Order, returnable January 5, 2024)

January 3, 2024

**CITY SOLICITOR'S OFFICE**

26<sup>th</sup> Floor, Metro Hall, Stn. 1260

55 John Street

Toronto, ON M5V 3C6

**Michele A. Wright (LSO #40724W)**

**Christopher J. Henderson (LSO #54291B)**

Email: [Michele.A.Wright@toronto.ca](mailto:Michele.A.Wright@toronto.ca) &

[Christopher.Henderson@toronto.ca](mailto:Christopher.Henderson@toronto.ca)

Tel: (416) 397-5342 & 416-397-7106

Lawyers for the City of Toronto

TO:

**HARRISON PENZA LLP**

1101 - 130 Dufferin Avenue  
London, ON N6A 5R2

**Timothy C. Hogan (LSO #36553S)**

**Robert Danter (LSO #69806O)**

Email: thogan@harrisonpensa.com & rdanter@harrisonpensa.com

Tel: (519) 679-9660

Lawyers for the Applicant,  
The Toronto-Dominion Bank

**AND TO:**

**MSI SPERGEL INC.**

200 - 505 Consumers Road  
Toronto, ON M2J 4V8

**Mukul Manchanda and Trevor Pringle**

Email: mmanchanda@spergel.ca & tpringle@spergel.ca

Tel: (416) 498-4314 and (905) 527-2227

Proposed Receiver

**AND TO:**

**MILLER THOMSON LLP**

Scotia Plaza  
5800 - 40 King Street West, P.O. Box 1011  
Toronto, ON M5H 3S1

**Craig A. Mills**

Email: cmills@millerthomson.com

Tel: (416) 595-8596

Lawyers for Toronto Artscape Inc.

**AND TO:**

**MINDEN GROSS LLP**

2200 - 145 King Street West  
Toronto, ON M5H 4G2

**Rachel Moses**

Email: rmoses@mindengross.com

Tel: (416) 369-4115

Lawyers for the Proposed Receiver

**AND TO: CANADA REVENUE AGENCY**

c/o Department of Justice  
Ontario Regional Office  
400 - 120 Adelaide Street West  
Toronto, ON M5H 1T1

Email: [AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca](mailto:AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca)

**AND TO: HER MAJESTY THE QUEEN IN RIGHT  
OF ONTARIO AS REPRESENTED BY  
THE MINISTRY OF FINANCE**

Revenue Collections Branch – Insolvency Unit  
33 King Street W., P.O. Box 627  
Oshawa, ON L1H 8H5

Email: [insolvency.unit@ontario.ca](mailto:insolvency.unit@ontario.ca)

**AND TO: LAWSON LUNDELL LLP**

1600 Cathedral Place  
925 West Georgia Street  
Vancouver, BC V6C 3L2

**William L. Roberts**

Email: [wroberts@lawsonlundell.com](mailto:wroberts@lawsonlundell.com)

Lawyers for Vancity Community Investment Bank

**AND TO: WELLS FARGO EQUIPMENT FINANCE COMPANY**

1100 - 1290 Central Parkway West  
Mississauga, ON L5C 4R3

**AND TO: SIMPSON WIGLE LAW LLP**

103 - 1006 Skyview Drive  
Burlington, ON L7P 0V1

**Rosemary Fisher**

Email: [fisherr@simpsonwigle.com](mailto:fisherr@simpsonwigle.com)

Tel: (905) 639-1052

Lawyers for First Ontario Credit Union Limited

**AND TO: ROBINS APPLEBY LLP**  
2600-120 Adelaide Street West  
Toronto, ON M5H 1T1

**Dominique Michaud**  
Email: dmichaud@robapp.com  
Tel: (416)3 60-3795

Lawyers for Community Forward Fund

**AND TO: FEDERAL ECONOMIC DEVELOPMENT AGENCY FOR SOUTHERN ONTARIO**

**Regional Innovation Ecosystem**  
101-139 Northfield Drive West  
Waterloo, ON N2L 5A6

**AND TO: GARDINER MILLER ARNOLD LLP**  
1400 - 390 Bay Street  
Toronto, ON M5H 2Y2

**Chris Dominaux**  
Email: chris.dominaux@gmalaw.ca  
Tel: (416) 363-2614

Counsel for Toronto Standard Condominium Corporation No. 2674

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-and-

**TORONTO ARTSCAPE INC.**

Respondent

**AFFIDAVIT OF BEN MACINTOSH**

(Affirmed January 3, 2024)

I, **BEN MACINTOSH**, of the City of Toronto, in the Province of Ontario, AFFIRM AND SAY as follows:

1. I am currently employed as the Manager of Cultural Partnerships in the Economic Development and Culture Division, Arts and Culture Services Section, of the City of Toronto ("EDC" and the "City," respectively), a position which I have held since February, 2022. The mandate of the Arts & Culture Services Section of EDC is to contribute to the development of arts and culture in Toronto by consulting with and advocating for the cultural sector in the City of Toronto. In particular, Arts and Culture Services Section staff seek to support the not-for-profit arts and culture sector through direct grants, policy and program initiatives. Arts and Culture Services staff have been involved in the development of not-for-profit cultural spaces for approximately two decades. I have been personally involved in dealing with matters relating to the within proceeding since April, 2023.

2. In particular, I have been a member of an inter-divisional City working group which has been coordinating the City's response to the pending Receivership application of Toronto Artscape Inc. ("Artscape"), including seeking to support Artscape's continuity plan to identify successor operators. This inter-divisional working group has included senior members of various City divisions, including:

- a) Housing Secretariat – which seeks to create and maintain safe, affordable, rental and ownership housing for lower-income residents;
- b) Corporate Real Estate Management – which is responsible for the operational day-to-day stewardship and planning of the City's real estate assets;
- c) City Planning – which oversees the growth and physical form of the City to contribute to the development of desirable communities and neighbourhoods; and
- d) Financial Planning – which seeks to promote the City's financial integrity through the provision of corporate financial advice; and
- e) Legal Services.

I have discussed the matters to which I depose with other City staff, and reviewed certain electronic and paper records kept by the City. As such, I have knowledge of the matters to which I depose. Where I indicate that my evidence is based on information and belief, I have indicated the source of my belief and I believe that information to be true.

**Toronto City Council Has Determined it is in the Public Interest To Support Provision of Not for Profit Arts and Culture Programming**

3. Toronto City Council has determined it is in the public interest to support not for profit arts and culture programming, for example, stating the following in the City's Official Plan:

- a. to be successful, the City's future must actively promote arts and culture;

- b. a flourishing cultural life is a magnet attracting new residents to the City and convincing existing residents to stay;
- c. arts and cultural activities, including expressions of popular culture, crafts and multiculturalism associated with everyday activities, enrich the day-to-day quality of life of Toronto's residents and workers and play an important role in the look and feel of the City, our collective identity and the image we project beyond Toronto's borders; and
- d. cultural industries are an important sector of our local economy. Strategic municipal support for our cultural capital contributes to a healthy City economy, promotes cultural tourism and helps the City to be competitive in attracting and keeping businesses, particularly in the relatively mobile knowledge-based industries.

Extracts of the City's Official Plan in this regard are attached as Exhibit A.

4. Broadly speaking, the City seeks to enter into partnerships with community not for profit groups to act as the City's alternative service delivery agent and provide for arts and culture programming, rather than providing those services directly itself. These partnerships result in the provision of services in a more flexible, simpler, and cost-effective basis.

#### **Successful Arts and Culture Sector Requires Affordable Housing for Artists**

5. Artists have historically struggled to find affordable housing that fits their income and their practice. Artists in Toronto earn significantly less than other professions. Based on my review of information from Statistics Canada, I understand that the median employment income of Toronto artists was \$15,700 in 2021, less than one-third of the median employment income of all Toronto workers in the same year, which was \$42,800. In addition, many artists rely on contract work and are precariously employed. As such, providing affordable housing for artists is a necessary part of



the City promoting and supporting the not for profit arts and culture sector – the City cannot have a thriving arts and culture sector if artists cannot afford to live in the City.

**City’s Partnership with Artscape to Provide Not for Profit Arts and Culture Programming and Affordable Housing Services**

6. Artscape is a not-for-profit developer and manager of creative space in Toronto. Artscape operates 14 unique properties that provide live and work spaces for 265 residential and 125 not for profit arts and culture tenants. The organization also delivers a broad range of accessible community programs. In 2022, Artscape showcased the work of 400+ artists at over 30 exhibitions; held more than 20 events featuring 50+ artists, mentors, and leaders in creative technology; and provided professional development programming for over 400 artists and creative workers.

7. Artscape provides services in a manner that can be organized into the following categories:

a. Not for Profit Affordable Rental Residential Housing Properties:

Artscape is a housing provider with whom the City partners to create affordable rental housing opportunities. This partnership provides residents with better access to affordable housing, by ensuring that a portion of new homes in purpose-built rental developments are offered at or below Average Market Rent (AMR).

b. Not for Profit Community Artist Hubs / Event Properties:

Artscape operates community hubs and event spaces on a not-for-profit basis, which are open to the public to experience accessible cultural programming. Artscape leases space in these hubs to artists and arts organizations at below market rates, who in turn use them for producing and presenting their artwork. Artscape also rents spaces to arts groups to hold special events at the community hubs.

c. Not for Profit Affordable Ownership Residential Housing:

Artscape offers qualified lower income artists the option of purchasing a residential unit at a below-market rate. The program works by securing mortgages along with options to purchase in favour of Artscape such that, upon resale, the unit can only be acquired by a qualifying artist, and a significant proportion of the increase in value for each unit is retained by Artscape for future reinvestment into the program.

8. The City has assisted Artscape to provide these public services in a number of ways:
  - a. Access to space at below-market prices – the City uses instruments available to it under the *Planning Act* to require that in the course of re-developments, a developer must convey space to community not for profit groups, such as Artscape, for either nominal consideration, or below market prices. In addition, the City leases space to Artscape for nominal or below-market rent;
  - b. Property tax exemptions and grants – the City enacts by-laws under s. 252 of the *City of Toronto Act* whereby eligible property can be made exempt from property taxation, and has provided tax increment grants under its Imagination, Manufacturing, Innovation and Technology (IMIT) tax increment grant program;
  - c. Direct grants - City has historically provided an annual operating grant to Artscape, out of public funds, of \$415,000. The City provided Artscape with a further emergency grant of \$125,000 in September, 2023 when it was facing liquidity challenges, to afford it further time to continue with its continuity planning; and
  - d. Loan guarantee – at its meeting on July 19 and 20, 2023, City Council also approved a plan to guarantee a \$1.5 million extension to Artscape’s existing line of credit with TD Bank in order to attempt to provide working capital while the organization embarked on financial and strategic restructuring (the guarantee was ultimately not provided, as Artscape received a demand to repay its entire debt before negotiations regarding the guarantee were finalized).
  
9. On October 11, 2023, City Council adopted a Staff Report from the City’s General Manager of EDC, Executive Director of the Housing Secretariat, Executive Director of Corporate Real Estate Management, and City Solicitor, which noted that:

Toronto's cultural community faces a crisis related to the lack of affordable, sustainable spaces for artists to live and work, leading to a wave of prominent venue closures across the city in recent years, and the continued threat of displacement of artists and creative workers. City Council directed the City Solicitor to participate in the pending Artscape receivership proceeding with a view to protecting the City's property and interests in affordable housing and affordable not for profit community arts and culture space. A copy of this report to City Council, and City Council's Tracking Status confirming it was adopted, is attached as Exhibits B and C.

**City Has Actively Engaged in Pending Receivership Proceeding to Advance Public Interest in Not for Profit Arts and Culture and Affordable Housing Services**

10. Since on or about August, 2023, the City has been in ongoing communication with Artscape, the Applicant The Toronto Dominion Bank ("TD Bank") and various creditors and stakeholders to identify the not for profit public services provided by Artscape at its various properties, and assist in the development and implementation of a continuity plan to seek to ensure as many of these services as possible can continue to be delivered in an uninterrupted fashion, notwithstanding the within Receivership proceeding.

11. The City has communicated to TD Bank, as well as other creditors and stakeholders, that the City's position is that most of the properties operated by Artscape have no commercial value. Essentially, most properties are properties either owned by the City and operated by Artscape pursuant to leases or other agreements restricting the use to various enumerated not for profit purposes. Other properties were acquired by Artscape with the assistance of the City, for example, through *Planning Act* instruments, and are subject to various registered agreements and restrictions agreed to when they were acquired that were intended to ensure the properties continue to be operated as not for profit affordable housing and artist or community hubs.

12. In particular, and as set out in more detail in the Affidavit from Grace Lee Reynolds, affirmed December 27, 2023, and the Affidavit of Kathryn Furfaro, sworn December 19, 2023, I understand that TD Bank and other secured creditors have agreed to exclude certain property from the Receivership, currently defined in the proposed Order sought by TD Bank as the “Excluded Properties,” and that those Excluded Properties are the subject of the within motion for a vesting Order. While the terms of the various agreements applicable to each property, and attached as exhibits, speak for themselves, below is a summary of the Excluded Properties, and a brief summary of the main provisions upon which I have been advised the City relies upon in support of its arguments that the Excluded Properties have no commercial value.

13. **Not for Profit Affordable Residential Housing Rental Properties**

a. **Parkdale Arts & Culture Centre - 1313 Queen Street West (9 live work units)**

*Lease Between Artscape & City, August, 2017 (Exhibit D)*

2.1(1)(b) – permitted use is restricted to nine artist live-work units, cultural community offices, arts offices, workshops and galleries

2.1(2)(a) – the tenant must be a not for profit organization

3.3 – City can terminate for any reason, on one year notice

8.4 – the tenants must have an income below a defined limit, and the rent charged must be below a defined limit.

b. **Bayside Lofts - 30 Merchants Wharf (80 units)**

*Lease Between Artscape & City, June, 2019 (Exhibit E)*

8.1 - permitted use is restricted to affordable rental housing

c. **Weston Commons – 33 King Street (26 live work units)**

Tripartite Lease Between Artscape, City and Developer, November, 2016 (Exhibit F)

1.5 & 6.1 – permitted use is restricted to artist live-work units

11.1(c) - the tenant must remain a not for profit corporation, if that changes, deemed to be an assignment of the lease, for which all parties must consent, and consent may be unreasonably withheld

12.1-12.6 Rights of the City - with respect to a default by Artscape, right of access to the premises, and no transfer of lease without the City's approval

14. **Affordable Residential Ownership Properties**

Below is an example of certain documents regarding the affordable home ownership program.

Contribution agreement between the City and Artscape, regarding 210 Simcoe, dated November, 2014 (Exhibit G):

- A. A public benefit, in the form of fourteen residential condominium units ... has been secured by the City entering into an agreement under s. 37 of the *Planning Act*...
- B. Artscape has developed a model for delivering affordable home ownership units to the arts community which includes a means of securing the ongoing affordability for subsequent owners.

Home Ownership Assistance Program (HOAP) agreement between Artscape and the City, regarding 153 Dundas St. E. and 210 Simcoe Street, dated November, 2014 (Exhibit H):

4.8 – while the charge of loan agreements are taken out by Artscape, Artscape receives and holds all amounts payable to it, or received by it, as trustee for the City to the extent of the City's beneficial interest in each loan up to the principal amount of the Loan and any capital appreciation

Sample option to purchase, and mortgage, 311 – 159 Dundas St. E., 2016 (Exhibit I)

Option

6 Purpose – The Purchaser acknowledges and agrees that the underlying purpose of this Option is to ensure that the Property remains affordable for artists and non-profit arts professionals.

Mortgage

6.1 The Charge is intended to assist artists to own the Property for their own personal and actual use. ... The Chargor [the owner] is not permitted to enter into a Transfer of the Property without the prior written approval of the Chargee [Artscape], and the Chargee [Artscape] shall have sole and unfettered discretion in deciding when to give such approval.... The Chargee [Artscape] will be deemed to be reasonable in withholding its consent to any Transfer if:

...

b. The Transfer could result in the use of the Property for any purpose other than as ... a community service facility or cultural and arts facility;

c. The Transferee is not a Qualified Artist.

8.1. No payment on account of the Principal Amount or interest shall be required from the Chargor [owner] until this Charge is to be discharged, unless otherwise consented to by the City of Toronto.

and/or

13. The City of Toronto reserves the right to review and amend the terms of the Charge at any time.

15. **Not for Profit Community Artist Hubs / Event Properties**

a. **Wychwood Barns - 601 Christie Street (29 studio / offices)**

*Lease between Artscape & City, March, 2006 (Exhibit J)*

2(3) – no basic rent if tenant is Artscape, otherwise rent is market rent at highest and best use to be set at an arbitration

3(1)(j) – use is restricted to not for profit arts and cultural centre

3(3) – lease can be terminated by City if tenant ceases to be not for profit

3(4) – sub leases to tenants must be approved Tenant Advisory Council / Tenant Selection Committee

b. **Gibraltar Point - 443 Lakeshore Avenue (25 studios + 5 event spaces)**

*Lease between Artscape & City, October, 1999 (Exhibit K)*

3.1(h) - permitted use is restricted to not for profit arts and culture centre for affordable studio, rehearsal and performance space such as arts workshops, exhibitions, conferences, retreats, a short term accommodation for artists for a maximum of one month.

3(4)(a) – the tenant must remain a non-profit organization, and if it ceases to be, the City can terminate the agreement on 10 days notice.

3(4)(b) – the tenant must operate the property on a cost-recovery basis

3(5)(a) – sub leases to tenants must be approved Tenant Advisory Council / Tenant Selection Committee

**c. Daniels Spectrum – 585 Dundas Street East (25 studios + event venue)**

Ground and operating leases Between Artscape and Toronto Community Housing Corporation, and Regent Park Arts Non-Profit Development Corporation, (Exhibit L)

4.1 - permitted use is restricted to a not for profit community based arts and cultural centre, including a performance/ event centre...office facilities for not for profit social mission and arts organizations

4.2 – all net revenue must be used to support community based arts and cultural activities

**d. Weston Common - 33 King Street / 34 John Street (tripartite) (8,200 sq feet)**

Tripartite Lease Between Artscape, City and Developer, November, 2016 (Exhibit M)

1.5 - & 6.1 - permitted use is restricted to a community centre and cultural hub

11.1(c) - the tenant must remain a not for profit corporation, if that changes, deemed to be an assignment of the lease, for which all parties must consent, and consent may be unreasonably withheld

12.1-12.6 Rights of the City - with respect to a default by Artscape, right of access to the premises, and no transfer of lease without the City's approval

**e. Sandbox - 301 Adelaide Street West (6,000 sq. feet event space)**

s. 37 Planning Act Agreement, July, 2011 (Exhibit N)

5.1 – 420 m2 of space had to be conveyed to Artscape, for nominal consideration, for use as a community performance space

5.2 – prior to the conveyance, an option in favour of the City had to be registered on title giving the right the right to demand conveyance of the community performance space for nominal consideration

5.4 – the space has to be used for arts and culture uses.

The City gave notice to Artscape on November 9, 2023 that it intended to exercise its option to demand conveyance of the space, attached as Exhibit O. By letter dated November 16, 2023, the City advised TD Bank, the proposed Receiver, and all secured creditors known to it that the City was exercising its option, attached as Exhibit P. The City received no response to this letter. The space was conveyed to the City on December 22, 2023, the transfer document is attached as Exhibit Q.

**Successor Operator to Artscape Must be Found to Protect Interests of Lower Income Third Party Residents and Artists**

16. The provision of not for profit arts and culture programming and affordable housing services (as the case may be) requires some or all of the following types of services to be provided:

- a. maintaining the property in a good state of repair in accordance with all applicable health, safety and maintenance standards;
- b. planning, promoting and delivering community arts programs, including special events, exhibitions, theatre performances, public art installations, artist residencies, and arts training workshops;
- c. income-testing and/or otherwise confirming the eligibility of new tenants under applicable agreements, including renting space to community organizations and artists to produce and present their own artistic programming;
- d. determining appropriate rent levels of tenants in accordance with program terms, and collecting rent;
- e. long-term capital planning;
- f. addressing various tenant communications and concerns;
- g. managing the resale of homes and associated administration of second mortgages to eligible future owners.

These services are labour-intensive. The City lacks available staff to provide the services provided to date by Artscape employees.



17. Artscape’s recent financial difficulties and the pending Receivership already appear to have resulted in some disruption of essential public services. In late August, 2023, Artscape announced it was laying off numerous of its employees its staff due to its financial challenges and the pending Receivership proceedings, and would be continuing to operate with only a “skeleton staff.” Since then, residents of Artscape properties have complained to the media about Artscape’s recent challenges in providing basic and essential services at its properties, for example, an incident of unrepaired flood damage, and malfunctioning heating, both of which pose health and safety concerns for residents, especially in the winter months. Attached as Exhibit R is a true copy of this media report.

18. I have spoken with Doug Rollins and Paul Fischer with the City’s Housing Secretariat – Housing Stability Services Section, who have experience in dealing with situations where affordable housing providers have struggled, failed, or abandoned affordable housing projects due to financial or governance problems. In their experience, prior failures of affordable housing providers has led to:

- a. health and safety concerns for residents due to the failure to monitor and maintain life-safety systems;
- b. deferred preventative maintenance and unaddressed work orders;
- c. unfunded capital reserves, undermining the long-term sustainability of the housing asset;
- d. failure to promptly rent vacant units, resulting in a failure to provide the intended public service, and undermining the ongoing viability of the project.

They expect those problems to manifest themselves at Artscape’s current portfolio of Not for Profit Affordable Residential Housing Rental Properties unless an appropriate successor organization can be located and successfully make arrangements to operate at the properties. The City therefore

considers it to be in the public interest for the Excluded Properties to be transitioned to successor not for profit operators, failing which there is a further risk to the health and safety of residents.

19. The City has been closely involved in and provided input and guidance to the development of the Transactions. It is the City's position that the Transactions before the Court are the best available means to promote the continuity of the services and affordable housing to the not for profit arts community.


20. I am advised by Doug Rollins and Paul Fischer with the City's Housing Secretariat that the City has worked with the Artscape Not for Profit Homes Inc. ("ANPHI") since 2001, which has managed housing services at 910 Queen St. West and 601 Christie Street. They advise that they consider ANPHI to be an experienced and competent operator of not for profit housing, and believe that as a related company, ANPHI Affordable Homes Inc. ("AAHI") will display the same degree of competence. The City has been advised by ANPHI and AAHI that it intends to engage with Woodgreen, which is Toronto's largest not-for-profit housing provider, to provide property management services. WoodGreen owns and manages 28 housing sites in the City, where it offers housing and related services for an estimated 37,000 seniors, newcomers, youth, individuals with disabilities, psychiatric survivors and people with a long history of homelessness. Doug Rollins and Paul Fischer advise they consider Woodgreen to be a competent and sophisticated housing operator that understands the complexities of housing low-income tenants, managing properties, and navigating complex relationships in complex projects in similar situations as is engaged in this proceeding. Attached as Exhibit S is information about Woodgreen. In light of the foregoing, the City considers ANPHI and AAHI to be the best known and available option to provide ongoing affordable housing services to minimize disruption to the residents at the various properties.

21. I have personally been involved along with others in the City’s Arts and Culture Section in the establishment and development of the successor organization ArtHubs, and the following has been undertaken to attempt to ensure that ArtHubs can successfully operate the various not for profit arts and culture hubs:

- a. ArtHubs has secured financing from a not for profit arts institution for its first year of operations, including \$850,000 in credit as working capital at 6% interest over a one-year term;
- b. the City will provide a \$250,000 grant (using funds from its approved 2023 operating budget) to incent further grants from philanthropic sources, which donations are expected to be in excess of the amount contributed by the City;
- c. ArtHubs will be overseen by a three-person board for its first year, including a representative of ArtHubs’ financing partner, a member of the arts community, and the City of Toronto’s General Manager of EDC as the City’s designate. Attached as Exhibits T and U is a Members Motion from City of Toronto Mayor Olivia Chow recommending the City’s appointment to the ArtHubs board, and a copy of City Council tracking status confirming that the motion was adopted.

In light of the foregoing, the City considers ArtHubs to be the best available option known to the City to provide ongoing not for profit arts and culture management services to minimize disruption to the artists operating at the various properties.

22. I affirm this affidavit in support of the relief sought in the within motion, and for no improper purposes.

AFFIRMED BEFORE ME at the City )  
of Toronto, in the Province of )  
Ontario, this 3<sup>rd</sup> day of January, 2024 )  
 )  
Christopher J. Henderson )  
A Notary Public )  
And Commissioner for Taking Affidavits )

*Ben Macintosh*  
\_\_\_\_\_  
**BEN MACINTOSH**

This is Exhibit "A" referred to in the Affidavit of Ben Macintosh, affirmed by Ben Macintosh, at the City of Toronto, in the Province of Ontario, before me on this 3<sup>rd</sup> day of January, 2024, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Christopher J. Henderson  
*Commissioner for Taking Affidavits*

*Christopher J. Henderson*

**TORONTO**

# OFFICIAL PLAN

## CHAPTER ONE – **MAKING CHOICES**





- and are poised to capture new business opportunities;
- well-being is measured by how well we provide for our children and the most disadvantaged among us;
- no person pays more than they can afford for shelter;
- educational opportunities are available for people of all means and abilities;
- children and youth find their surroundings safe, stimulating and inviting;
- the elderly can live comfortably and securely;
- people enjoy freedom of conscience and religion and opportunities for such enjoyment are supported;
- adequate amounts of safe, nutritious, culturally acceptable food are available to all; and
- communities are supported by equitable access to opportunities, resources and services.



### A City of Beauty

All successful cities astonish with their human-made and natural beauty. People choose to live and businesses choose to invest in beautiful cities. People also want to live in cities that understand their past and push their creative limits. Toronto's future must be one where:

- nature is within easy reach throughout the City;
- the City's waterfront is a vital, healthy and beautiful asset;
- the arts and culture are actively promoted;
- public art graces streets and open spaces;
- heritage buildings and features are conserved, archaeological resources are protected and lost heritage is commemorated;
- the City's natural features are protected, enhanced and restored;
- quality and excellence are hallmarks in the design of public spaces and buildings;
- sidewalks are animated and attractive people places;
- significant public views and focal points are preserved; and
- the City is well maintained, with clean and beautiful green spaces, including community and rooftop gardens.



### A City of Connections

A connected city recognizes that all aspects of our daily lives are linked and that we have to understand relationships and interdependencies to ensure future success. The choices we make about where we live, how we travel, where we work, shop and play all impact on and are affected

- iv. Providing sufficient weather-protected and well-lit waiting space for anticipated passenger volumes; and
- v. Providing sufficient stopping area for anticipated transit vehicle volumes;
- c) recognizing the potential for bus and streetcar services to build demand for future higher-order transit services along certain corridors and to support the growth objectives of this Plan.

## Service Foundations For Growth



Manage sewage and stormwater before they enter streams and the lake

Water, wastewater and stormwater management services are important foundations for growth in a healthy city, as well as for maintaining the quality of life in areas that will not see much growth. Additional infrastructure is needed to provide clean, safe drinking water to everyone, and to manage and treat sewage and stormwater before it enters watercourses and the Lake. This may mean bigger pipes, stormwater facilities and treatment plants in some areas. It is also important to use less water in our homes and businesses, to manage rainwater where it falls and to use our streams and rivers more effectively to minimize flooding in built up areas. Implementing green street designs and initiatives will also help manage stormwater and create healthier environments.

### Policies

9. The City's water, wastewater and stormwater management infrastructure will be maintained and developed to support the city-building objectives of this Plan by:
  - a) providing adequate facilities to support new development and maintaining the infrastructure in a state of good repair;
  - b) supporting, encouraging and implementing measures and activities which reduce water consumption, groundwater discharge to municipal sewers, wastewater and stormwater flows and improve water quality, in accordance with best management practices developed by the City for this purpose; and
  - c) acquiring land or easements, where appropriate and where funds allow, to:
    - i. keep ravines and watercourses in a natural state; or
    - ii. implement other stormwater management, and sanitary and water distribution improvements.

## 2.2.1 DOWNTOWN: THE HEART OF TORONTO

Toronto has only one downtown. It plays a vital role as the city's economic and cultural hub and is critical to the health and prosperity of the entire region that surrounds it.

## CHAPTER TWO

*Downtown*, with its recognizable skyline, is Toronto's image to the world and to itself: cosmopolitan, civil, urbane, diverse and liveable. It is the oldest, most dense and most complex part of the urban landscape, with a rich variety of building forms and activities.

*Downtown* is the place where our city's history was born and where much of our future will be shaped. It is an area that has been inhabited by Indigenous peoples for nearly 15,000 years. Built and cultural heritage can be seen in *Downtown's* significant buildings, districts, landmarks, landscapes and archaeological sites. The conservation and promotion of cultural heritage resources – of First Nations and Métis communities and of settlers – should guide future planning and investment decisions *Downtown*.

Toronto's *Downtown* includes a portion of the *Central Waterfront*, which offers unique opportunities for substantial employment and residential growth and for upgrades and expansion to the public realm and community facilities as waterfront revitalization proceeds. Both *Downtown* and the *Central Waterfront* are guided by their own Secondary Plans.

The Province's Growth Plan for the Greater Golden Horseshoe (2019) identified a *Downtown Toronto Urban Growth Centre* and establishes a minimum density target for this area.

### Economic Powerhouse

*Downtown* Toronto is the most accessible business location in the Greater Golden Horseshoe and the largest employment centre in the regional economy. Thousands of students, shoppers and visitors also spend time in *Downtown* Toronto every day. The economic strength of *Downtown* arises not only from the largest concentration of office towers in the nation but also from the myriad of other activities located here:

- government offices centred around the Provincial Legislature, City Hall and the courts;
- arts and cultural venues;
- entertainment activities and sporting events;
- festivals and special events in public spaces, streets and along the waterfront;
- destination and speciality retail;
- restaurants and food markets featuring Toronto's diverse cuisines;
- nightclubs, bars and live music venues;
- film and TV production and a flourishing film scene;
- major tourist attractions and convention facilities;
- concentration of print and broadcast media;
- post-secondary educational institutions; and

"Toronto is fortunate in having a large and relatively mixed population resident in its core area and a diversity of old and new neighbourhoods and old and new populations..."

Perhaps the single best method of ensuring continued employment growth and renewal in the core is to ensure that the area is healthy and attractive as a social space, as a place for both living and working."

*The Future of Downtown Toronto, June 2000*



Typically, building heights and densities are greatest in the *Financial District*, tapering through the commercial and institutional districts to encompass low scale neighbourhoods and shopping streets that are also an important part of the *Downtown* environment.

- health sciences and related treatment and research facilities, many linked to the University of Toronto and Ryerson University.

The concentration, intensity and interaction among all these activities, the access to national and global markets, connections to decision makers in business and government, the ability to easily walk around interesting and safe streets, all give rise to a synergy that fosters innovation, creativity and an atmosphere of success.

While we anticipate and want *Downtown* to accommodate growth, this growth will not be spread uniformly across the whole of *Downtown*. In fact, there are many communities *Downtown* that will not experience much physical change at all. While the population mix within these communities will change over time, their physical character will remain largely unchanged.

Other parts of *Downtown* will see the development of vertical mixed-use communities in predominantly mid-rise and tall buildings. Mixed use is a key ingredient to the successful functioning of *Downtown* that creates “accessibility through proximity”. Every home built within the *Downtown* area offsets the need for in-bound commuting each day.

The *Financial District*, the *Health Sciences District*, the institutional complexes of government and higher learning, and the creative industries and cultural sector economies centred on King-Spadina and King-Parliament are the prime areas of job growth.

Toronto’s *Financial District* is Canada’s premier centre of commerce. This is where commercial activity is most intense with a concentration of large architecturally significant landmark buildings. Jobs are concentrated in large office buildings tightly clustered within walking distance of Union Station and several subway stations, the majority of them connected to one another through the climate-controlled PATH network.

Many of the jobs located *Downtown* are in government, education or health services, and most of these are located in *Institutional Areas* north of the *Financial District*. In addition to being the seat of government for the City and the Province, *Downtown* is home to large teaching hospitals and other health services that have a regional draw. Equally important are campuses of higher learning, including the University of Toronto, Ryerson University, George Brown College and OCAD University.

There is also an important cluster of arts and culture activities *Downtown*. From museums, galleries, theatres and performance halls of national significance to small theatre, music and dance companies and individual artists, Toronto’s *Downtown* helps to shape Canadian culture. The City needs to support the important economic contribution that is forged here through arts and culture.

Many *Downtown* activities are interdependent. These activities are linked through *Downtown*’s public realm: the streets, sidewalks and



“The City of Toronto, and particularly its *Downtown*, is the knowledge centre of the entire region. Through its universities and hospitals, *Downtown* Toronto has a core concentration of research infrastructure that coupled with its cultural, entertainment, housing and social services infrastructure, are fundamental to the new economy.”

*The Future of Downtown Toronto, June 2000*



## CHAPTER TWO

pedestrian connections, parks, squares, open spaces, natural areas and other publicly accessible spaces. This is where people experience public life most directly. The key to successfully shaping *Downtown's* future is to improve connections within the public realm and create places that foster public life.

Well-designed connections between the core of the city and the *Central Waterfront* are important to the vitality of *Downtown* as a great place to live, work and visit and as an attractive and competitive business location. The renewed *Central Waterfront* will create new opportunities for business development and contribute in an important way to the image of *Downtown* and the entire city.

### Policies

1. The *Downtown Toronto Urban Growth Centre* will be planned to optimize the public investment in higher order transit within the *Centre* and thus should exceed the minimum combined gross density target of 400 residents and jobs per hectare set out in the Growth Plan for the Greater Golden Horseshoe, 2019. Map 6 shows the boundaries of the *Downtown Toronto Urban Growth Centre*, the *Financial District* and the *Health Sciences District*. Map 6A shows the *Downtown Plan* and the *Central Waterfront Secondary Plan* boundaries.
2. *Downtown* will continue to be shaped as the largest economic node in the city and the region by accommodating development that:
  - a) builds on the strength of *Downtown* as the premier employment, institutional, retail, arts and culture, and entertainment centre in the Greater Golden Horseshoe;
  - b) advances economic competitiveness and helps to attract provincially, nationally and internationally significant investment and employment uses;
  - c) provides a full range of housing opportunities for *Downtown* workers and reduces the demand for in-bound commuting;
  - d) focuses on the *Financial District* as the prime location for the development of prestige commercial office buildings;
  - e) focuses on the *Health Sciences District* as the prime location for the expansion of healthcare facilities and related research, education and commercial functions;
  - f) supports expansion of institutions including post-secondary education, governmental and health; and
  - g) fosters growth of creative industries and the culture sector centred on the King-Spadina and King-Parliament Secondary Plan Areas.
3. Investment in *Downtown* on the part of the City, other levels of government and public/private partnerships will be sought to:
  - a) maintain, improve and expand the public realm, including linkages between *Downtown* streets, parks, publicly accessible spaces, ravines and the water's edge;
  - b) expand active transportation and transit infrastructure;
  - c) promote an environment of creativity and innovation for arts and culture;



*Downtown* housing means less commuting

- d) support and enhance Priority Retail Streets and specialty retail and entertainment districts found *Downtown* as important regional and tourist destinations;
- e) maintain high-quality and resilient business infrastructure *Downtown* including a stable and secure hydro-electric grid, communications networks, district heating and cooling distribution systems, and water, wastewater and stormwater management infrastructure; and
- f) create and advance research and business development alliances among the health, education, biotechnology and biomedical sectors *Downtown*.

### Living Downtown

*Downtown* is seen as an attractive place to live. New housing *Downtown* makes an important contribution to the economic health of the City. There is a great degree of social and economic diversity among the *Downtown* population, accompanied by a diversity of housing types, tenures and affordability. Different communities have different needs in terms of community services and support. Downtown is an inclusive place for vulnerable people and, as growth continues, there is a need to address the threat of displacement and increase supportive services and affordable housing. Planning for Downtown community services and facilities cannot follow a broad city-wide template.

As *Downtown's* population increases, more residents are using its parks and open spaces as their shared backyards and gathering areas. They are joined by hundreds of thousands of workers and visitors who use the same public spaces to gather, celebrate and be active. The development of a connected and expanded system of high-quality public spaces for people and healthy, diverse natural systems will keep *Downtown* liveable as it intensifies.

*Downtown* is where our history is richest, but it is also where we continue to rebuild to accommodate a growing economy and a changing society. Given that this is one place in Toronto where "change is constant", we must ensure that our built heritage is respected, nurtured and celebrated.

Toronto is grappling with the impacts of climate change and extreme weather events, including disproportionate burdens on the city's most vulnerable residents. As growth continues, there are opportunities to re-shape *Downtown* in ways that will slow the worst impacts of climate change, build resilience to shocks and stresses, improve business productivity, create employment, safeguard the vulnerable, and contribute to better public health. *Downtown's* growth can help transform Toronto into a resilient, low-carbon city.

## CHAPTER TWO

**Policies**

4. The quality of the *Downtown* will be improved by:
  - a) developing programs and activities to maintain and upgrade public amenities and infrastructure;
  - b) recognizing the high maintenance needs of streets, open spaces and City services in this heavy demand area;
  - c) enhancing existing parks and acquiring new parkland;
  - d) preserving and strengthening the range and quality of the social, health, community services and local institutions located *Downtown*;
  - e) supporting the development of complete communities;
  - f) developing buildings that are shaped, scaled and designed to enhance liveability;
  - g) providing a diverse range and mix of housing options, including affordable housing, to accommodate the needs of all household sizes and avoid the displacement of vulnerably housed and at-risk groups; and
  - h) developing a resilient and low-carbon *Downtown*.
5. The architectural and cultural heritage of *Downtown* will be preserved by designating buildings, districts and open spaces with heritage significance and by working with owners to restore and maintain historic buildings.
6. Design guidelines specific to districts of historic or distinct character will be developed and applied to ensure new development respects the context of such districts in terms of the development's fit with existing streets, setbacks, heights and relationship to landmark buildings.
7. A campaign to improve *Downtown* over time and to achieve a healthy and competitive future will be pursued by setting priorities for local improvements.



Art and culture are key ingredients for a successful *Downtown*.

**Downtown Accessibility and Mobility**

Economic success and accessibility go hand-in-hand. *Downtown's* high level of accessibility is a result of the large concentration of jobs and housing (proximity) combined with the convergence of many transportation routes (mobility). *Downtown* is the largest centre of economic activity in the nation. As the focus of both the regional (GO Transit) and local (TTC) transit systems, it is easily reached by public transit by the nation's largest labour market. Planned investments in higher order transit to expand the subway and regional rail systems are needed to enhance the existing transit network and support projected growth. The Union-Pearson Express linking *Downtown* with Pearson International Airport and the pedestrian tunnel to Billy Bishop Toronto City Airport also boost Toronto's competitiveness by improving national, trans-border and international connectivity.

The large increase in *Downtown* activity and development over the past several decades has not been accompanied by any significant increase in road capacity. Instead, the growth in trips has been successfully



**TORONTO**

# OFFICIAL PLAN

CHAPTER THREE –

**BUILDING A**

**SUCCESSFUL CITY**



- adjacent areas of the City;
- g) connecting major institutions to the network of bicycle routes; and
  - h) establishing new universities, colleges and hospitals in locations with access to rapid transit and improving transit services to existing universities, colleges and hospitals not currently served by rapid transit.

### 3.5.2 CREATING A CULTURAL CAPITAL

A great city offers and promotes a vibrant cultural life. It recognizes the contribution the arts make to the quality of life of its residents. For Toronto to become one of the great cities of the 21st century, we will need to nurture leading-edge imagination and build on the strength of our rich diversity of cultural expression. A flourishing cultural life is a magnet attracting new residents to the City and convincing existing residents to stay.

Arts and cultural activities, including expressions of popular culture, crafts and multiculturalism associated with everyday activities, enrich the day-to-day quality of life of Toronto's residents and workers and play an important role in the look and feel of the City, our collective identity and the image we project beyond Toronto's borders. Our cultural industries are also an important sector of our local economy. Strategic municipal support for our cultural capital will contribute to a healthy City economy, promote cultural tourism and help us to be competitive in attracting and keeping businesses, particularly in the relatively mobile knowledge-based industries.

There is a critical role for the City to play in keeping existing and creating new performance venues, studios, rehearsal and administrative spaces, galleries and museums. We can also continue to welcome film production and location filming throughout Toronto. Community arts endeavours in the hundreds of libraries and community, cultural and recreation centres should also be supported in order to provide opportunities for people of all ages and cultural backgrounds to experience arts and cultural activities and explore their creativity. Some of our surplus municipal properties could be dedicated to arts and cultural centres while we encourage other levels of government to do likewise.

#### Policies

1. A full range of arts and cultural activities, from community-based endeavours to nationally prominent institutions, will be promoted and supported in Toronto to express the cultural diversity of our communities.
2. The arts and cultural community will have access to City owned facilities and properties, including surplus properties, for non-profit

community arts performance venues, arts education and training programs, studio, rehearsal, storage and administrative space.

3. The inclusion of new, not-for-profit arts and cultural facilities in development will be promoted through development incentives and public initiatives.
4. The arts and cultural community will be encouraged to participate in local design and beautification efforts.
5. Concentrations of cultural activities will be promoted to create arts districts and corridors that can collectively draw visitors and revitalize communities.
6. Cultural industries and employment are significantly clustered within the *King Spadina Secondary Plan* area, *King Parliament Secondary Plan* area and the Liberty Village Area of the *Garrison Common North Secondary Plan*. Non-residential floor space associated with cultural industries in these areas will be preserved or expanded for cultural industry uses.

The City's *Culture Plan* will position Toronto as a "Creative City", a leading international culture capital. The Official Plan policies support these efforts.

### Cultural Industries

Cultural industries have their origin in individual creativity, skill and talent and have a potential for wealth and job creation through the generation and advancement of intellectual property, including: design, broadcasting, film video and photography, music and the visual and performing arts, publishing, software, computer games and electronic publishing.

## 3.5.3 THE FUTURE OF RETAILING

The pattern of retail activity in Toronto has evolved over time and includes a full spectrum of convenience stores in neighbourhoods, traditional "main street" shopping streets, small plazas, large shopping malls, big box stores and specialty retail districts like Yorkville that are also tourist destinations. The retail sector has seen some dramatic shifts in the past 30 years and there is every reason to believe that the next three decades will see more change. The Plan therefore provides the flexibility for owners and operators of retail properties to adapt to changing circumstances. The population of Toronto is going to grow and the retail sector will continue to evolve to serve that growth. The Plan provides for the continued evolution of the retail sector to serve the growing population in different forms and settings. However, as the population of Toronto grows and our land base remains the same, it is essential to make the best use of available land with retail provided within multi-storey buildings with less emphasis on surface parking.

Regardless of scale or location, it is important for retail development to provide a high quality public realm and private setting with improved public amenities, and to develop in a form that fits with the existing and planned context of the immediate and surrounding areas.

As retail grows in some areas, it may close in others. The impact of the loss of retail commercial space as a result of redevelopment could, in some instances, negatively affect local residents. They may face longer trips, the loss of walkable shopping options, or the loss of an informal meeting place. In other cases the lost retail space may hardly be missed. Its closure may follow underperformance of the space as a result of changes in shopping patterns or demographics in its local market.



Traditional main street shopping



## REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

# Responding to Toronto Artscape Inc. Receivership Proceedings

**Date:** October 11, 2023

**To:** City Council

**From:** General Manager, Economic Development and Culture; Executive Director, Housing Secretariat; Executive Director, Corporate Real Estate Management; and City Solicitor

**Wards:** All

This is Exhibit "B" referred to in the Affidavit of Ben Macintosh, affirmed by Ben Macintosh, at the City of Toronto, in the Province of Ontario, before me on this 3<sup>rd</sup> day of January, 2024, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Christopher J. Henderson  
Commissioner for Taking Affidavits

*Christopher J. Henderson*

### REASON FOR CONFIDENTIAL INFORMATION

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Confidential Attachment #1 is about potential litigation that affects the City of Toronto, and contains advice or communications that are subject to solicitor-client privilege.

Confidential Attachment #2 is about potential litigation that affects the City of Toronto and positions, plans, procedures, criteria or instructions to be applied to negotiations carried on or to be carried on by or on behalf of the City, and involves the security of property belonging to the City and the proposed or pending acquisition or disposition of land by the City.

### SUMMARY

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Toronto Artscape Inc. ("Artscape") is a not-for-profit developer and manager of creative live, work and convening space in Toronto that, over its forty-year history, developed an important portfolio of creative spaces across the city, frequently through various forms of City assistance. On August 28, 2023, following a period of significant financial challenges, Artscape announced that it was insolvent and would soon enter into receivership.

Since then, City staff worked closely with Artscape and its primary lender to secure two extensions to the commencement of receivership proceedings, first to September 29, and a second and final extension which is presently expected to expire on October 20. City staff and Artscape have worked collaboratively during this period to develop a comprehensive transition plan to identify successor operators for Artscape's properties, with the objective of maintaining stability and security for their 390 residential and commercial tenants.

It is anticipated that receivership proceedings will be initiated in late October, prior to the next regular meeting of City Council. As such, the Confidential Attachments to this report contain various recommendations that may be necessary to respond to the receivership proceedings.

## **RECOMMENDATIONS**

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The General Manager, Economic Development and Culture; Executive Director, Housing Secretariat; Executive Director, Corporate Real Estate Management; and City Solicitor recommend that:

1. City Council adopt the confidential instructions to staff in Confidential Attachments 1 and 2.
2. City Council authorize the public release of the confidential recommendations contained in Confidential Attachment 1, if adopted by City Council, but that all other information contained in Confidential Attachment 1 remain confidential as it is about potential litigation that affects the City of Toronto, and contains advice or communications that are subject to solicitor-client privilege.
3. City Council direct that the confidential information contained in Confidential Attachment 2 remain confidential in its entirety, as it relates to litigation, contains advice which is subject to solicitor-client privilege, contain positions, plans, procedures, criteria or instructions to be applied to negotiations carried on or to be carried on by or on behalf of the City, concerns the security of property belonging to the City, and / or the proposed or pending acquisition or disposition of land by the City.
3. City Council direct the General Manager, Economic Development and Culture to report back to the Economic Development and Culture Committee in Q4 2023 regarding the status of both interim and long-term efforts to preserve the facilities and services established by Artscape, and the use of any delegated authorities sought through this report.

## **FINANCIAL IMPACT**

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In addition to the annual operating grant of \$415,000 provided by Economic Development and Culture to Artscape through the Cultural Organizations Operating Partnership program, the City also provided Artscape with a one-time emergency grant of \$125,000 through Economic Development and Culture's 2023 Council Approved Operating Budget.

There may be impacts in future years related to implementing new operating arrangements for properties currently managed by Artscape. Any such impacts and associated budget requests will be reported to Council as part of the annual budget process.



The Interim Chief Financial Officer and Treasurer has reviewed this report and agrees with the information as presented in the Financial Impact Section.

## **DECISION HISTORY**

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At its meeting of July 19-21, 2023, City Council approved terms and conditions for staff to negotiate and enter into agreements to guarantee a \$1.5 million extension to Toronto Artscape Inc's existing line of credit with its primary lender in order to provide working capital while the organization embarked on financial and strategic restructuring. Staff were ultimately unable to reach an agreement to provide this guarantee in accordance with the terms approved by Council as Artscape's financial situation materially changed following Council's decision.

<https://secure.toronto.ca/council/agenda-item.do?item=2023.EX6.27>

## **COMMENTS**

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### **Toronto Artscape Inc. - Background**

Established in 1986, Artscape is a not-for-profit developer and manager of creative space in Toronto. Artscape operates 14 unique properties that provide live and work spaces for 265 residential and 125 commercial tenants. The organization also delivers a broad range of accessible community programs. In 2022, Artscape showcased the work of 400+ artists at over 30 exhibitions; held more than 20 events featuring 50+ artists, mentors, and leaders in creative technology; and provided professional development programming for over 400 artists and creative workers.

Artscape's properties can be organized into the following categories. Some properties are listed under more than one category, as Artscape operates more than one type of program at the property in question.

#### **Affordable Residential Rental Properties**

- Owned by Artscape
  - Triangle Lofts - 38 Abell Street
  - Artscape Lofts at 210 Simcoe - 210 Simcoe Street
- Owned by City
  - Parkdale Arts & Culture Centre - 1313 Queen Street West
  - Bayside Lofts - 30 Merchants Wharf
- Owned by a Third Party (City interest)
  - Weston Common - 33 King Street / 34 John Street (tripartite)

#### **Community Artist Hubs / Event Properties**

- Owned by Artscape
  - Triangle Lofts - 38 Abell Street
  - Youngplace - 180 Shaw Street
  - Sandbox - 301 Adelaide Street West

- Launchpad - 130 Queens Quay East
- Owned by the City
  - Wychwood Barns - 601 Christie Street
  - Gibraltar Point - 443 Lakeshore Avenue
  - Parkdale Arts & Culture Centre - 1313 Queen Street West
- Owned by a Third Party (City interest)
  - Weston Common - 33 King Street / 34 John Street (tripartite)

### **Affordable Residential Ownership Properties**

- Owned by Third Parties
  - Triangle Lofts - 38 Abell Street
  - Artscape Lofts at Waterworks - 505 Richmond Street West
  - Artscape Lofts at PACE - 163 Dundas Street East
  - Artscape Lofts at 210 Simcoe - 210 Simcoe Street

This list is not inclusive of properties owned or leased by legal entities which are separate, but related, to Artscape, namely, Artscape Non-Profit Homes Inc. (ANPHI), and Regent Park Arts Non-Profit Development Corporation (RPAD). Per an exchange of communications between the City and Artscape's primary lender, TD Bank, these entities are not within the scope of the contemplated receivership. RPAD owns Daniels Spectrum, a community cultural hub in Regent Park, and ANPHI owns Artscape West Queen West, an affordable housing development at 900 Queen Street West and leases affordable residential rental units at Wychwood Barns (601 Christie Street) from the City.

Of the properties owned by Artscape, Launchpad and Youngplace were obtained with minimal financial participation by the City. The remaining properties owned by Artscape were obtained by Artscape via the City arranging for the properties to be conveyed to Artscape by developers - either for nominal or below-market prices in exchange for height and density increases as permitted under the Planning Act. The City's purpose in so doing was so that Artscape could provide not for profit housing, or community arts and culture programs and activities to the public, on behalf of the City.

### **Current Status**

Over the years, Artscape funded its expansion through project development fees, asset sales, and debt. However, expansion between 2017-2019, most notably with the opening of Artscape Launchpad on the central waterfront, combined with the effects of business disruption during COVID-related shutdowns, led to Artscape facing cash flow challenges and a related inability to service its debt. To address these issues, Artscape's Board of Directors adopted a restructuring plan in May 2023 to reduce debt and refocus the organization on its core mandate of providing affordable live, work and presentation space for artists. The restructuring plan was premised on the sale of Launchpad, which was listed on the market in spring 2023. No buyer has been found to date.

The City sought to support Artscape as it undertook this restructuring by guaranteeing a \$1.5 million extension to its existing line of credit to provide working capital ahead of the sale of Launchpad. City Council approved terms and conditions for this guarantee at its July 19-21 meeting. However, on August 8, Artscape's primary lender, TD Bank, issued a demand letter to Artscape to fully repay the entirety of its debt to the lender, then valued at \$20.5 million, within 10 days. As a result, the City was no longer able to provide the line of credit guarantee in accordance with the terms approved by Council. Without available cash, and with no prospective buyer for Launchpad, Artscape effectively became insolvent and announced on August 28 that it would be shutting down operations and enter into receivership.

Following this announcement, the City moved quickly to ensure stability and security for the 390 tenants living and working in Artscape buildings. The City worked closely with Artscape and its lenders to secure two temporary stays of receivership, the first to September 29 and a second and final stay which is estimated through to October 20, to allow for sufficient time to develop a comprehensive transition plan for Artscape's properties, including identifying successor operators for Artscape's properties and making arrangements for the re-assignment of operating contracts. Artscape accordingly entered into forbearance agreements with all major secured creditors to formalize the stay of receivership.

The City also provided Artscape with a one-time emergency grant of \$125,000 through the Economic Development and Culture Division's existing 2023 Council-approved operating budget to retain approximately 40 staff to continue to provide property management services for tenants, protect the value of its real property assets, and assist the City in longer-term transition planning. This funding supplemented the regular monthly rents collected by Artscape, and was further matched by other philanthropic donors. Artscape has sufficient funding to continue these core operations through to the commencement of receivership proceedings, and additional financial support from the City will not be required for this period.

### **Proposed Response to Receivership and Next Steps**

With Artscape's forbearance agreements with its lenders currently expected to expire on October 20, it is anticipated that receivership proceedings will commence towards the end of the month. As a court date is expected to occur prior to the next regular meeting of City Council, the Confidential Attachments to this report contain various recommendations that may be necessary to respond to the receivership proceedings to protect the City's interests.

The City of Toronto has many interests across Artscape's portfolio of 14 properties, which includes affordable housing units, community hubs and event spaces. Specific City interests include ownership of properties leased by Artscape, contribution agreements for affordable housing for artists and artist families, and encumbrances on title through agreements under Section 37 of the Ontario Planning Act.

More broadly, Toronto's cultural community faces a crisis related to the lack of affordable, sustainable spaces for artists to live and work, leading to a wave of prominent venue closures across the city in recent years, and the continued threat of

displacement of artists and creative workers. Recognizing these challenges, it is critically important for the City to take action to ensure that these properties can be maintained as affordable housing for creative workers, and cultural hubs for the broader community.

Toronto's arts community has rallied in support of maintaining services at the Artscape properties since the news of the organization's insolvency broke, demonstrating the significant community impact and value of Artscape's sites and services. Recognizing the importance of these sites to the community, staff will work in partnership with current tenants, as well as other artists, arts organizations and community stakeholders in order to develop a fulsome and sustainable long-term vision for the Artscape properties. City staff will report back to Council in Q4 2023 with an update on both the interim and longer-term plans for the sites.

## **CONTACT**

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Patrick Tobin, General Manager, Economic Development and Culture,  
[Patrick.Tobin@toronto.ca](mailto:Patrick.Tobin@toronto.ca), 416-392-4166

Abigail Bond, Executive Director, Housing Secretariat, [Abigail.Bond@toronto.ca](mailto:Abigail.Bond@toronto.ca), 416-338-1143

Patrick Matozzo, Executive Director, Corporate Real Estate Management,  
[Patrick.Matozzo@toronto.ca](mailto:Patrick.Matozzo@toronto.ca), 416-392-9158

Christopher J. Henderson, Deputy Director, Land Development and Real Property Litigation, Legal Services, [Christopher.Henderson@toronto.ca](mailto:Christopher.Henderson@toronto.ca), 416-397-7106

## **SIGNATURE**

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Patrick Tobin  
General Manager, Economic Development and Culture

Abigail Bond  
Executive Director, Housing Secretariat,

Patrick Matozzo  
Executive Director, Corporate Real Estate Management

Wendy Walberg  
City Solicitor

## **ATTACHMENTS**

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Confidential Attachment 1  
Confidential Attachment 2

## Item - 2023.MM11.32

### Tracking Status

- City Council adopted this item on October 11, 2023 without amendments.

City Council consideration on October 11, 2023

### **MM11.32 - Responding to Toronto Artscape Inc. Receivership Proceedings - by Councillor Gord Perks, seconded by Councillor Frances Nunziata**

**Decision Type:** ACTION

**Status:** Adopted

**Wards:** All

#### **City Council Decision**

City Council on October 11 and 12, 2023, adopted the following:

1. City Council adopt the confidential instructions to staff in Confidential Attachments 1 and 2 to the report (October 11, 2023) from the General Manager, Economic Development and Culture, the Executive Director, Housing Secretariat, the Executive Director, Corporate Real Estate Management, and the City Solicitor.
2. City Council authorize the public release of the confidential instructions to staff in Confidential Attachment 1 to the report (October 11, 2023) from the General Manager, Economic Development and Culture, the Executive Director, Housing Secretariat, the Executive Director, Corporate Real Estate Management, and the City Solicitor, and City Council direct that the balance of Confidential Attachment 1 remain confidential as it pertains to potential litigation that affects the City of Toronto, and contains advice or communications that are subject to solicitor-client privilege.
3. City Council direct that Confidential Attachment 2 to the report (October 11, 2023) from the General Manager, Economic Development and Culture, the Executive Director, Housing Secretariat, the Executive Director, Corporate Real Estate Management, and the City Solicitor remain confidential in its entirety, as it pertains to litigation, contains advice which is subject to solicitor-client privilege, concerns the security of property belonging to the City, and/or a proposed or pending acquisition or disposition of land by the City.
4. City Council direct the General Manager, Economic Development and Culture to report back to the Economic Development and Culture Committee in the fourth quarter of 2023 regarding the status of both interim and long-term efforts to preserve the facilities and services established by Artscape, and the use of any delegated authorities sought in the report (October 11, 2023) from the General Manager, Economic Development and Culture, the Executive Director, Housing Secretariat, the Executive Director, Corporate Real Estate Management, and the City Solicitor.

The confidential instructions to staff in Confidential Attachment 1 to the report (October 11, 2023) from the General Manager, Economic Development and Culture, the Executive Director, Housing Secretariat, the Executive Director, Corporate Real Estate Management, and the City Solicitor were adopted by City Council and are now public as follows:

1. City Council direct the City Solicitor to participate in the pending receivership proceeding against Artscape with a view to protecting City's property and interests in affordable housing and affordable not for profit community arts and culture space, and that such authority include the authority to settle or take further steps in the legal proceeding when it is concluded that it is reasonable to do so, to appeal any decision if warranted, to otherwise deal with the matter in consultation with the General Manager, Economic Development and Culture, the Executive Director, Housing Secretariat, and the Executive Director, Corporate Real Estate Management, and to execute documents in furtherance of the above.

The balance of Confidential Attachment 1 to the report (October 11, 2023) from the General Manager, Economic Development and Culture, the Executive Director, Housing Secretariat, the Executive Director, Corporate Real Estate Management, and the City Solicitor remains confidential in accordance with the provisions of the City of Toronto Act, 2006, as it is about potential litigation that affects the City of Toronto, and contains advice or communications that are subject to solicitor-client privilege.

Confidential Attachment 2 to the report (October 11, 2023) from the General Manager, Economic Development and Culture, the Executive Director, Housing Secretariat, the Executive Director, Corporate Real Estate Management, and the City Solicitor remains confidential in its entirety in accordance with the provisions of the City of Toronto Act, 2006, as it pertains to litigation, contains advice that is subject to solicitor-client privilege, concerns the security of property belonging to the City, and/or a proposed or pending acquisition or disposition of land by the City.

**Confidential Attachment - Potential litigation that affects the City of Toronto, and contains advice that is subject to solicitor-client privilege, and concerns the security of property belonging to the City, and/or a proposed or pending acquisition or disposition of land by the City**

### **Background Information (City Council)**

Member Motion MM11.32

<https://www.toronto.ca/legdocs/mmis/2023/mm/bgrd/backgroundfile-239882.pdf>

(October 11, 2023) Report from the General Manager, Economic Development and Culture, the Executive Director, Housing Secretariat, the Executive Director, Corporate Real Estate Management, and the City Solicitor on Responding to Toronto Artscape Inc. Receivership Proceedings

<https://www.toronto.ca/legdocs/mmis/2023/mm/bgrd/backgroundfile-239884.pdf>

Confidential Attachment 1

Confidential Attachment 2

Fiscal Impact Statement from the Chief Financial Officer and Treasurer

<https://www.toronto.ca/legdocs/mmis/2023/mm/bgrd/backgroundfile-239893.pdf>

### **Motions (City Council)**

*Motion to Introduce Motion without Notice moved by Councillor Gord Perks (Carried)*

That Councillor Gord Perks be permitted to add to the agenda of today's meeting an urgent Motion without Notice concerning:


Responding to Toronto Artscape Inc. Receivership Proceedings

Reason for Urgency:

This motion is urgent as the receivership proceedings are expected to commence prior to the next regular meeting of City Council.

*Motion to Adopt Item (Carried)*

Source: Toronto City Clerk at [www.toronto.ca/council](http://www.toronto.ca/council)

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This is Exhibit "D" referred to in the Affidavit of Ben Macintosh, affirmed by Ben Macintosh, at the City of Toronto, in the Province of Ontario, before me on this 3<sup>rd</sup> day of January, 2024, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

*Christopher J. Henderson*

Christopher J. Henderson  
Commissioner for Taking Affidavits

**THIS BELOW MARKET RENT LEASE** made in duplicate as of August 15, 2017.

**BETWEEN:**

**CITY OF TORONTO**

(the "Landlord")

OF THE FIRST PART

-and-

**TORONTO ARTSCAPE INC.**

(the "Tenant")

OF THE SECOND PART.

APPROVED AS TO FORM

  
For Wendy Walberg  
City Solicitor

File No. 2200-805-5371.16(EMH)

**WHEREAS:**

**WHEREAS** the City is the registered owner of the Property (as defined herein);

**AND WHEREAS** the City as landlord has agreed to lease to the Tenant, and the Tenant has agreed to lease from the City, the Property in accordance with the terms and provisions and subject to the conditions herein contained;

**AND WHEREAS** the City Council, by its adoption of Government Management Committee Item No. GM23.14 at its meeting held on December 5, 6 and 7, 2017 (the "Council Report"), authorized the entering into this Lease by the City.

**NOW THEREFORE** in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration (the receipt and adequacy of which are acknowledged), the Landlord and Tenant covenant and agree with each other, as follows:

**SECTION 1 - DEFINITIONS**

**1.1 Definitions:** In this Lease:

- (1) "Access Plan" means a policy established by the Proponent and approved by the General Manager, which policy shall specify how tenants are to be selected and how information about such process is disseminated to the public;
- (2) "Additional Rent" means the following costs incurred and attributable to the Leased Premises:
  - (a) all Realty Taxes estimated for 2018 at approximately \$1,912.85 per month, subject to change;
  - (b) any applicable Sales Taxes;
  - (c) all taxes imposed upon the Tenant which are attributable to: (i) the personal property, furnishings, fixtures and Improvements installed in the Leased Premises; and (ii) the business, income or occupancy of the Tenant or any other approved occupant of the Leased Premises as described in Section 12.1 of this Lease ("Tenant Taxes");
  - (d) the costs of the Landlord's insurance as provided in Section 11.7(3);
  - (e) all Operating Costs
  - (f) all additional costs payable by the Tenant to the Landlord ("Additional Service Costs") for any service which is requested by the Tenant in addition to those normally provided by the Landlord and which the Landlord is prepared to supply to the Tenant ("Additional Service"); and
  - (g) all other amounts, costs and charges, excluding Basic Rent, specified in this Lease to be payable by the Tenant.
- (3) "Applicable Laws" means all applicable statutes, directions, regulations, by-laws (including zoning), orders in council, codes, the *Building Code*, O. Reg 332/12 and the *Fire Code*, O. Reg 213/07 (as each may be amended or replaced from time to time), orders, building schemes, including rules, ordinance, directives, notices, guidelines and guidance documents, protocols, approvals and requirements having the force of law, and obligations or requirements arising from the common law, now or hereafter in force;
- (4) "Authorized Member" means all members, directors, officers, workers, employees, licensee, agents, contractors and invitees, of or authorized by the Tenant and/or the Landlord to enter the Leased Premises;



- (5) **"Average Market Rents"** or "Average Rents" or "AMR" means average monthly Toronto-wide rents by unit type as determined in the end-of-year survey of City-wide rents for the prior calendar year published by CMHC; if CMHC does not publish a survey of City-wide rents, then "average market rents" for the calendar year shall be City-wide average rents as determined by the City;
- (6) **"Basic Rent"** means the nominal sum of \$1 per year, plus Sales Taxes for the Term;
- (7) **"Building"** means the two story building located on the Lands, located at 1313 Queens Street West;
- (8) **"Business Day"** means any day which is not a Saturday, Sunday or a statutory holiday;
- (9) **"Business Hours"** means 7:00 a.m. to 11 p.m.;
- (10) **"Capital Repair"** or **"Capital Repairs"** has the meaning attributed thereto in Section 10.1(1) of this Lease;
- (10.1) **"Carbon Credits"**, or **"carbon offset credits"**, "offset credits" or "offsets", means quantified and verified GHG Emissions Reductions which may be created as a result of activities undertaken by the Landlord or any of the Landlord's tenants, subtenants, licensees, or occupants on the Lands, and which are additional to any existing voluntary or regulatory requirement, where such GHG Emissions Reductions have been verified by an independent third party verifier, and may be serialized and listed through a GHG registry;
- (10.2) **"Carbon Credit Costs"** means the costs of purchasing Carbon Credits, where such purchase is necessary to ensure compliance of the Building and the Lands, or any part thereof, with any required limit to GHG Emissions or to energy consumption as prescribed by any Applicable Laws;
- (10.3) **"Carbon Tax"** means the aggregate of all taxes, rates, duties, levies, fees, charges and assessments whatsoever, imposed, assessed, levied, confirmed, rated or charged against or in respect of the consumption in the Building or on the Lands, or any part thereof, of electricity, natural gas, propane or any other fossil fuel, or levied in lieu thereof, against the Landlord, Leased Premises, Building or Lands, or any part thereof, by any local, provincial or federal government or any agency having jurisdiction thereof;
- (11) **"City Solicitor"** means the City Solicitor for the Landlord, or his or her designate from time to time;
- (12) **"Claims"** means claims, demands, sanctions, damages (including indirect and consequential), penalties, losses, liabilities, costs, charges, fines, expenses, executions, suits, orders, judgments, actions and other legal proceedings, whatsoever, including without limitation those under or in connection with the *Workplace Safety and Insurance Act, 1997*, S.O. 1997, c. 16, Sch. A, as the same may be amended from time to time, or any successor legislation, whether accrued, actual, contingent or otherwise;
- (13) **"CMHC"** means the Canada Mortgage and Housing Corporation, and includes any successor organization;
- (13.1) **"CO<sub>2</sub>e"** means a unit of measurement that indicates the global warming potential of each of the GHG, usually expressed in tonnes;
- (14) **"Commencement Date"** means August 15, 2017 or such other date as may be agreed in writing between the parties;
- (15) **"Community Premises"** means that part of the Leased Premises containing cultural community offices, arts offices, workshops and/or galleries;
- (16) **"Deputy City Manager"** means the Deputy City Manager, Internal Corporate Services, or her or his successor or designate from time to time;
- (17) **"Eligibility Criteria"** means the eligibility criteria and other requirements of the Landlord as set out from time to time in the Landlord's policies for the provision of City-owned space at below-market rent which any Non-Profit Organization must attain and continue to comply with at all times during the Term of this Lease in order to be and to remain eligible for leasing the Leased Premises at below-market rent;
- (17.1) **"Environmental Attributes"** means a broad range of rights and benefits arising out of attributes or characteristics relating to the environmental impacts directly or indirectly associated with the Leased Premises, Building, Lands, or any part thereof, or any existing or new facilities, equipment, materials, upgrades, or activities thereon, now or in the future, including, but not limited to:
- (i) any Carbon Credits, renewable energy certificates, green tags, white tags, labelled/certified "green" power, negawatts, water conservation credits, reduction rights, allocated pollution rights, allowances, emission reduction allowances, and related attributes;
  - (ii) any fungible or non-fungible attributes or entitlements relating to environmental impacts, however arising;
  - (iii) any rights relating to the nature of an energy source as may be defined and awarded through applicable laws and regulations or voluntary programs; and
  - (iv) all revenues, entitlements, benefits, and other proceeds arising from or related to the foregoing.

For greater certainty, in the event that any governmental or non-governmental agency, whether provincial, federal, regional or international in scope or authority, creates or sanctions a registry, trading system, credit, offset or other program relating to Environmental Attributes or their equivalent, the term "Environmental Attributes" shall include the rights or benefits created or sanctioned under any such program or programs to the extent available as a result of, or arising from, the Leased Premises, Building, Lands, or any part thereof;

- (18) **"General Manager"** means the General Manager of Shelter, Support and Housing Administration, or her or his successor or designate from time to time;
- (18.1) **"Greenhouse Gas Emissions" ("GHG Emissions")** means all known and existing methods of release or emission of GHG, as well as all future methods, whether or not now contemplated;
- (18.2) **"Greenhouse Gas Emissions Reductions" ("GHG Emissions Reductions")** means any reduction or offset in GHG Emissions, measured in CO<sub>2</sub>e;
- (18.3) **"Greenhouse Gases" ("GHG")** means gases the release or emission of which contributes to the warming of the earth's atmosphere, including, but not limited to, carbon dioxide, methane, nitrous oxide, sulphur hexafluoride, hydrofluorocarbons, perfluorocarbons, perfluoroethane, nitrogen trifluoride and related gases or any other contaminant prescribed as a greenhouse gas by government regulation or international treaty, and "Greenhouse Gas" means any one of them;
- (19) **"Household Income"** means total gross household income from all sources of all persons who reside in a unit or who will reside in a unit if it is rented to them as defined in the City's Affordable Rental Housing Eligibility and Income Guide 2015;
- (20) **"Housing"** means residential accommodation and facilities, common areas and services used directly with the residential accommodation. Housing does not include commercial or institutional premises, social or recreational services, and services or facilities related to mental or physical health care, education, corrections, food services, social support or public recreation other than those services described in Article 3 hereof;
- (21) **"Housing Access System"** means the City's housing access system;
- (22) **"Initial Income Limit"** means Household Income at or below four (4) times the annualized Monthly Occupancy Costs, as determined annually by the General Manager;
- (23) **"Initial Occupancy"** means when a new tenant occupies a unit regardless of whatever it was previously rented for;
- (24) **"Lands"** means the lands and premises (on which the Building is situate) municipally known as 1313 Queen Street West in the City of Toronto, Province of Ontario, and legally described as being Part of Lot 1-2 on Plan 382, Parkdale, as in EW1980 (Sixthly); City of Toronto being all of PIN 21302-0045 (LT);
- (25) **"Lease"** means this agreement between the parties, including all schedules;
- (26) **"Leased Premises"** means the Building and the Lands, or any part;
- (27) **"Leasehold Improvements"** means all items generally considered as leasehold improvements to the Leased Premises, including all fixtures, equipment, improvements, installations, alterations, additions, substitutions or replacements from time to time made, erected or installed by or on behalf of the Tenant but excluding free-standing partitions which can be removed without damage to the Leased Premises;
- (28) **"MFIPPA"** means the Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. M56;
- (29) **"MFIPPA Protected Information"** means any "Personal Information" as defined in the Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. M56;
- (30) **"Non-Profit Organization"** means an organization that is either: (i) a corporation in good standing and registered under the laws of Ontario as a not-for-profit corporation, or (ii) a registered charitable organization in good standing under the *Income Tax Act of Canada*, R.S.C. 1985, c. 1, as amended;
- (31) **"Operating Costs"** means the total of all direct and indirect costs, charges and expenses, without duplication, incurred or accrued by or on behalf of the Landlord in discharging its obligations under this Lease, in respect of the maintenance, operation, improvement, repair, replacement, insurance, supervision, preservation, protection, administration and management of the Leased Premises as determined necessary or desirable in the sole, reasonable opinion of the Deputy City Manager, and including, without limitation:
- (a) costs of complying with all Applicable Laws;
  - (b) costs of office expenses, including telephone, internet, rent, stationery and supplies;

- (c) costs in respect of the maintenance, operation and repair of the Leased Premises, including, without limitation, HVAC System and all elevators and escalators if installed in the Building;
- (d) costs of direct supervision and management and indirect expenses to the extent applicable to the maintenance and operation and repair of the Leased Premises;
- (e) costs of maintenance and operation of all outside areas, including any parking area but excluding landscaping, policing and snow removal;
- (f) reasonable costs of consulting and professional fees and expenses, including legal fees;
- (g) costs of supplies and materials in respect of the maintenance, operation, administration and management of the Leased Premises;
- (h) depreciation or amortization of the capital costs of: **(A)** additions and modifications; **(B)** replacements if incapable of further repair in the Landlord's sole discretion, or the sole purpose was to reduce other areas of Operating Costs;
- (i) Sales Taxes as set out in Section 5.1(2) of this Lease, payable by the Landlord on the purchase of goods and services included in Operating Costs, less any tax credits available to the Landlord;
- (j) such other costs, charges and expenses as may be deemed necessary or desirable in the sole reasonable opinion of the Deputy City Manager from time to time to be incurred in respect of the better or more efficient maintenance, operation, repair, replacement, insurance, supervision, administration and management of the Leased Premises;
- (k) a management or administrative fee equal to fifteen percent (15%) of the total annual costs referred to in foregoing sub-sections **(a)** to **(c)** inclusive; and
- (l) Carbon Tax and Carbon Credit Costs.

In calculating Operating Costs for any Fiscal Period, there shall be excluded: **(i)** expenses incurred by the Landlord in respect of repairs or replacements to the extent that the Landlord receives reimbursement therefor from the Tenant; **(ii)** such of the Operating Costs as are recovered by the Landlord from insurance proceeds; and **(iii)** the costs of repairing or replacing inherent structural defects of the Building;

- (32) "**Permitted Use**" has the meaning attributed to it in Section 2.1(1)(b);
- (33) "**Rent**" means Basic Rent and Additional Rent;
- (34) "**Rentable Area**" means the number of square feet of floor area as determined by the Landlord, acting reasonably;
- (35) "**Residential Premises**" means that part of the Leased Premises containing the nine (9) residential units;
- (36) "**Sales Taxes**" means all business transfer, multi-stage sales, goods and services, harmonized sales, use, consumption, value-added, carbon tax, or other similar taxes imposed by the Government of Canada or any provincial or local government upon the Landlord, or the Tenant or in respect of this Lease, or the payments made by the Tenant hereunder or the goods and services provided by the Landlord hereunder including, the rental of the Leased Premises and the provision of administrative services and Additional Services to the Tenant;
- (37) "**Term**" means the five (5) year period commencing on and from the Commencement Date and expiring at **11:59 PM** on August 14, 2022; and
- (38) "**Work**" means any construction, reconstruction, alterations, repairs, modifications, alterations, changes, additions, improvements, replacements, renovations, additions, substitutions, decorations, re-decorations or other work of or to the Leased Premises and all ancillary services thereto, including all Leasehold Improvements.

## SECTION 2 - GENERAL COVENANTS, REPRESENTATIONS & WARRANTIES

### 2.1 Tenant Covenants, Representations & Warranties:

- (1) The Tenant covenants and agrees with the Landlord as follows:
  - (a) that the Tenant will observe and perform during the Term all covenants and obligations of the Tenant in this Lease, including, to pay to the Landlord, when due, Rent;
  - (b) that the Tenant shall use the Leased Premises, and any profits or other accretions to the Tenant from the Tenant's use of the Leased Premises, shall be used at the Leased Premises, solely for the purposes of maintaining a minimum of nine (9) artist live-work residential units, cultural community offices, arts offices, workshops and/or galleries, and for no other purpose whatsoever (the "**Permitted Use**");

- (c) that the Tenant, and its use of the Leased Premises during the Term, shall at its sole cost, at all times comply with all Applicable Laws made by all governments (federal, provincial or municipal), governmental agencies, commissions, departments, courts, administrative, judicial and quasi-judicial boards and tribunals and any other entity with lawful authority to regulate, or having a power or right conferred at law or by or under a statute over, the Landlord, the Tenant, or the Leased Premises (collectively, or individually, the "**Authority**");
  - (d) that the Tenant may periodically be required to submit proof of payment of Realty Taxes, Tenant Taxes, operating expenses and all other amounts payable by the Tenant pursuant to this Lease, as required by the Deputy City Manager and/or General Manager;
  - (e) that the Tenant will make available to the Deputy City Manager and/or the General Manager all corporate books and records (including financial records) of the Tenant for inspection at all reasonable times, to the extent considered necessary or desirable by the Deputy City Manager to determine, among other things, whether a change of Control of the Tenant, has occurred. As used herein, "**Control**" means the right to direct the management and policies of the Tenant, whether directly or indirectly, or to elect a majority of its board of directors and/or members, whether through the ownership of voting securities or by contract or otherwise.
- (2) The Tenant represents and warrants to the Landlord that:
- (a) the Tenant is and will at all times during the Term maintain itself as a duly incorporated, and validly existing Non-Profit Organization;
  - (b) the Tenant has the necessary corporate power, legal right and authority to enter into this Lease and to do all things and carry out its activities and obligations as are required or contemplated thereunder to be done, observed or performed by it; and
  - (c) the Landlord has not provided and will not be requested to provide any release or indemnity of any kind whatsoever to the Tenant regarding any labour or employment issues regarding the Leased Premises.

### SECTION 3 - DEMISE AND TERM

**3.1 Demise of Leased Premises:** The Landlord leases unto the Tenant, and the Tenant hereby leases from the Landlord, the Leased Premises for the Term, subject to the terms and conditions contained in this Lease.

**3.2 Condition of Leased Premises:** The Tenant confirms that:

- (1) it has inspected the Leased Premises and accepts the same in their "as is" condition as of the Commencement Date;
- (2) the Landlord has made no representation, warranty, inducement or agreement of any kind as to the condition of the Leased Premises or any part, including any representation or warranty as to their fitness for the Permitted Use, or the environmental condition thereof or any part; and
- (3) the Leased Premises are being leased to the Tenant, subject to all encumbrances now or hereafter existing, registered or unregistered.

The provisions of this Section may be relied upon by the Landlord as a full and effective estoppel.

**3.3 Right To Terminate:** At any time during the Term, the Landlord, shall have the right to terminate the Lease, upon giving at least twelve (12) months' notice (the "**Termination Notice**") to Tenant of such termination. The Termination Notice shall specify the termination date (the "**Termination Date**"). If the Termination Notice is given, then, the following shall apply:

- (1) the Lease shall terminate on the Termination Date and the Tenant shall deliver vacant possession of the Community Premises, and make best efforts to deliver vacant possession of the Residential Premises, subject to the *Residential Tenancies Act, 2006*, to the Landlord on the Termination Date in accordance with the applicable provisions in this Lease without payment or compensation of any kind from the Landlord;
- (2) the Tenant shall be responsible for the payment of all Rent and other charges to and including the Termination Date including all Rent and other charges in respect of any period prior to the Termination Date which are subsequently billed or adjusted after the Termination Date; and
- (3) neither party shall have any further liability or obligation to the other after the Termination Date except for the Tenant's obligations under Sections **3.3**, **16**, **18** and **19.3**, and except for any default under the Lease by the Tenant occurring on or before the Termination Date, all of which liabilities and obligations shall continue to survive.

**3.4 Failure To Vacate:** The acceptance by the Landlord of arrears of Rent or compensation for use or occupation of the Leased Premises after the Termination Notice referred to in Section **3.3** has been delivered shall not operate as a waiver of the Termination Notice or as a reinstatement of the Lease or as a creation of a new lease, unless the parties so agree.

### **3.5 Overholding:**

- (1) If, at the expiration of the Term the Tenant remains in possession with the consent of the Landlord but without any further written agreement, the Tenant shall be deemed to be a monthly Tenant only, which tenancy may be terminated by the Landlord on one (1) month's notice and otherwise upon and subject to the terms and conditions contained in this Lease.
- (2) If the Tenant holds over after the expiration of the Term without the Landlord's consent, the Landlord may take immediate action without notice to the Tenant, to recover possession of the Leased Premises, subject to the *Residential Tenancies Act, 2006*.
- (3) If the Landlord has entered into a lease or agreement to lease with a third party for all or any part of the Leased Premises, and failure by the Tenant to vacate at the expiry or earlier termination of the Term causes the Landlord to incur liability to such third party, the Tenant shall, in addition to all other obligations under this Lease, fully indemnify the Landlord for all such liability.

### **3.6 Leasehold Improvements & Trade Fixtures:**

- (1) Upon the expiry or other termination of this Lease, all Leasehold Improvements and other Work in the Leased Premises shall remain upon and be surrendered with the Leased Premises as a part thereof and become the property of the Landlord without payment of compensation to the Tenant by the Landlord.
- (2) Notwithstanding the above, the Landlord agrees that, provided the Tenant has paid the Rent hereby reserved and is not in default under this Lease, the Tenant shall have, at the termination or expiration of this Lease, the right to remove its trade fixtures, at its own expense, provided the Tenant repairs, at its own expense, any damage to the Leased Premises caused by such removal, such work to be done by or at the direction of the Landlord.

**3.7 Heritage Inventory:** The Tenant acknowledges that the Building has been listed on the City of Toronto's Heritage Inventory, and has been designated as being of cultural heritage value or interest and agrees to comply with all restrictions such a designation implies.

## **SECTION 4 - RENT**

**4.1 Basic Rent:** The Tenant shall pay to the Landlord or as the Landlord may in this Lease or otherwise in writing direct, Basic Rent on or before the Commencement Date of the Term without any set-off, compensation or deduction whatsoever. Unless the Landlord otherwise directs, the Tenant shall pay all Rent payments to the Landlord at the address set out in Section 19.13(2)(a).

**4.2 Additional Rent:** The Tenant shall pay to the Landlord or as the Landlord may in this Lease or otherwise in writing direct, all Additional Rent when due, commencing on the Commencement Date and throughout the Term.

**4.3 Additional Rent as Rent:** All Additional Rent shall be deemed to be rent and the Landlord shall have all rights against the Tenant for default in payment of Additional Rent as for default in the payment of Basic Rent, provided that the Tenant shall be entitled to any Notices and cure periods set forth in this Lease.

**4.4 Payment of Additional Rent and Additional Service Costs:** Unless the Tenant is otherwise advised in writing by the Landlord from time to time during the Term, Additional Rent shall be paid and adjusted with reference to a fiscal period of twelve (12) calendar months ending on December 31 in each year during the Term unless the Landlord, selects a fiscal period which ends on a different date (but which shall be a twelve (12) month period except where a shorter broken fiscal period occurs at the Commencement Date or end of the Term or is necessary to accommodate a change in the fiscal period during the Term). From time to time, the Landlord may give notice to the Tenant of the Landlord's estimate of such Additional Rent to be paid by the Tenant during the next ensuing fiscal period. Such Additional Rent payable by the Tenant shall be paid in yearly installments in advance of the start of the fiscal period. All Additional Service Costs shall be paid by the Tenant within thirty (30) consecutive days after receipt by it from time to time of invoices from the Landlord specifying the amounts thereof.

**4.5 Adjustment of Additional Rent:** At the end of each fiscal period referred to in Section 4.4, the Landlord shall deliver to the Tenant a statement specifying the actual Additional Rent payable by the Tenant in respect of such fiscal period and a calculation of the amount by which such Additional Rent payable by the Tenant varies from the aggregate installments paid by the Tenant on account of such Additional Rent for such fiscal period. Within thirty (30) days after giving such Statement, the Tenant shall pay to the Landlord any shortfall from the amount estimated, and the Landlord shall pay to the Tenant any overpayment, without interest, or the overpayment may be held by the Landlord, without interest and applied to payments fully due under the Lease. If there is any dispute by the Tenant of the amount of such Additional Rent payable, a letter from the Deputy City Manager and Chief Financial Officer of the City or his or her designate shall be conclusive.

**4.6 Security Deposit:** *Intentionally Deleted.*

**4.7 Apportionment of Rent:** Rent shall be considered as accruing from day to day hereunder. If it is necessary to calculate Rent for a period of less than one (1) year, an appropriate apportionment and adjustment on a pro rata daily basis shall be made. Where the calculation of Additional Rent cannot be made until after the expiration or earlier termination of this Lease, the obligation of the Tenant to pay such Additional Rent shall survive the expiration or earlier termination hereof, and such amount shall be paid by the Tenant to the Landlord forthwith

upon demand. If the Term commences on any day other than the first day of the month, Rent for such fraction of a month shall be adjusted, as aforesaid, and paid by the Tenant on the commencement date of the Term.

**4.8 No Right of Set-off:** Tenant expressly waives the benefits of Section 35 of the *Commercial Tenancies Act*, R.S.O. 1990, c. L.7, as amended from time to time, or any successor legislation, permitting the Tenant to claim a set-off against Rent for any cause whatsoever.

**4.9 Pre-Authorized Payment Plan:** The Tenant shall arrange to pay Basic Rent and Additional Rent by pre-authorized bank payment, in lieu of providing post-dated cheques. The pre-authorized payment plan form attached as Schedule "E" shall be returned to the Landlord together with the signed Lease.

**4.10 Late Payment Charges/NSF Cheques:** If any amount herein due and payable to the Landlord remains unpaid thirty (30) days after it is due, interest on the amount outstanding shall be paid to the Landlord at the rate of 1.25% per month (15% per annum). Interest will be calculated monthly and including the day after the last day of the thirty (30) day period and paid monthly until payment is received in full by the Landlord. The obligation of the Tenant to pay interest in accordance with this section is without prejudice to any of the other remedies available to the Landlord at law or otherwise. The Tenant shall pay to the Landlord a charge of forty dollars (\$40.00) (the "NSF Fee") for each cheque tendered by the Tenant to the Landlord that is not honored by the bank or other institution on which it is drawn. The NSF Fee may be increased from time to time by notice given to the Tenant by the Landlord so that it is equal to the fee charged by the Landlord in respect of cheques tendered in payment of municipal tax and water charges that are not honored by the banks or other institutions on which they are drawn, and the Tenant agrees to pay the NSF Fee as it may be increased from time to time.

**4.11 Net Lease to Landlord:** The Tenant acknowledges and agrees that it is intended that this Lease is a completely net and carefree lease to the Landlord, except as otherwise expressly set out herein, and that the Landlord is not responsible during the Term for any costs, changes, expenses and outlays of any nature arising from or relating to the Leased Premises or any part, or the use and occupancy thereof, or the contents thereof or the Permitted Uses carried on therein, and the Tenant shall pay all charges, impositions, costs and expenses of every nature and kind whatsoever relating to the Leased Premises and the use thereof by the Tenant, including, without limitation, the costs of all insurance, taxes, services, utilities, and repairs, as Additional Rent. Any obligation which is not specifically stated to be that of the Landlord shall be deemed to be that of the Tenant.

## SECTION 5 - TAXES

### 5.1 Tenant's Taxes and Sales Taxes:

The Tenant shall pay when due to the relevant taxing Authority, or to the Landlord if the Landlord directs:

- (a) all Tenant Taxes; and
- (b) all Sales Taxes.

### 5.2 Realty Taxes:

- (a) The Tenant shall, in respect of each calendar year included in whole or in part within the Term, pay to the Landlord, or as the Landlord may direct, an amount to cover all taxes, rates, duties, levies, fees, charges, sewer levies, local improvement rates, and assessments whatsoever, imposed, assessed, levied or charged now or in the future by any Authority or other governmental body, corporate authority, agency or commission, including, without limitation, school boards and utility commissions against the Leased Premises and/or the Landlord in connection therewith, including, without limitation, grants in lieu thereof, such amount to be determined by the Landlord ("**Realty Taxes**"). The Tenant shall make payment within ten (10) business days from the issued date of the bill. The Tenant shall provide the Landlord with a copy of any separate notices of assessment for the Leased Premises which the Tenant has received. If the Tenant receives during the Term any rebate from the City of Toronto for Realty Taxes that were funded through the budget(s) of any department or approved program of the City of Toronto, the Tenant shall forthwith send to the Landlord, an amount equal to the rebate within ten (10) consecutive days of receiving any such rebate. The Tenant shall, in respect of each calendar year included in whole or in part within the Term, pay to the Landlord the amount by which Realty Taxes are increased above the Realty Taxes which would have otherwise been payable as a result of the Leased Premises or the Tenant or any other occupant of the Leased Premises being taxed or assessed in support of separate schools.
- (b) The Tenant shall pay to the relevant taxing Authority, as the Landlord may direct all Realty Taxes that are levied, charged or assessed against the Landlord on account of its ownership of the Leased Premises or its interest therein to the extent that the Landlord is assessed for any Realty Taxes in lieu of same being levied, rated, charged or assessed against the Tenant. In that event, the Tenant shall make payment, on or before the due date, of each instalment and shall deliver to the Landlord, on demand, receipts for payment of all Tenant's taxes and furnish such other information in connection therewith.
- (c) Where the Landlord makes any payment to cover Realty Taxes that are levied, charged, or assessed against the Landlord, in respect of any period during the Term, on account of its ownership of the Leased Premises or its interest therein, then the Tenant shall forthwith reimburse the Landlord for all of landlord's payment in respect of such Realty Taxes within fourteen (14) days of receipt of Landlord's notice.

## SECTION 6 - SERVICES

**6.1 Operation & Maintenance of HVAC System:** Except for reasonable wear and tear, the Tenant shall, as would a prudent owner, operate, regulate and be responsible for the normal day-to-day operation, maintenance and repair of the HVAC System so as to provide conditions of adequate comfort therein during Business Hours and so as to maintain the HVAC System in a good and working order. The Landlord shall not be responsible for any loss, damages or costs of the Tenant that arise if such system is damaged or destroyed, or from the failure of such systems to perform their function. If the Tenant fails to operate or maintain as aforesaid, then, the Landlord may (but shall not be obliged) upon the expiry of Notice given to the Tenant (save in an emergency when no Notice shall be required) to effect the Work in question and the Tenant shall pay all costs and expenses incurred or payable by the Landlord in respect thereof forthwith upon demand, together (without duplication) with an administration fee equal to fifteen percent (15%) of such costs and expenses.

**6.2 Utilities Supplies:**

- (a) The Tenant shall arrange for and pay to the appropriate suppliers all costs (including penalties) of supplying the Leased Premises with all utilities and services, including, (without limiting the generality of the foregoing) heat, water, electrical power, gas, telephone and other communication services, heating fuel and any other utilities and services desired by the Tenant.
- (b) The Tenant shall at its sole expense provide all supplies to operate the Leased Premises, and shall at its expense, maintain, repair and replace, throughout the Term as and when required, all electric light bulbs, fluorescent tubes and ballasts and appliances initially supplied in the Leased Premises and provide the necessary maintenance and repair of fluorescent and other standard Building lighting, plumbing and electrical fixtures located in or at the Leased Premises.

**6.3 Janitorial & Other Services:**

- (1) The Tenant acknowledges that the Landlord will not be responsible to clean or landscape the Leased Premises and the Tenant agrees that it will, at its sole expense, provide and pay for all requisite landscaping, janitorial and cleaning services (including, without limitation, window cleaning) to, and snow removal from, the Leased Premises and maintain the Leased Premises in a neat and sanitary condition to the reasonable satisfaction of the Deputy City Manager and/or General Manager.
- (2) The Tenant acknowledges that the Landlord may from time to time elect to supervise the moving of equipment of the Tenant and/or the making of deliveries to or from the Leased Premises, which shall be treated as Additional Services and all reasonable Additional Service Costs relating thereto shall be paid by the Tenant to the Landlord.

**6.4 Security:** The Tenant shall be responsible, at its expense, for all security and protection of the Leased Premises and the Tenant agrees that the Landlord's security staff, if any, is not responsible for the security and protection of the Leased Premises.

**6.5 Interruption in Services – Community Premises:** For the Community Premises, the Landlord has the right to stop the use of any facilities and the supply of any services or utilities, when considered appropriate in the Landlord's discretion, acting reasonably, including, without limitation, due to an accident, or during the making of any repairs, replacements, alterations or improvements which, in the judgment of the Landlord, are necessary or desirable to be made, until the repairs, replacements, alterations or improvements have been completed to the satisfaction of the Landlord. The Landlord shall not be liable for any Claims or injury to person or property due to any interruption in the supply of HVAC and/or other services or utilities.

**6.6 Interruption in Services – Residential Premises:** For the Residential Premises, the Landlord has the right to stop the use of any facilities and the supply of any services or utilities, when considered necessary in the Landlord's discretion, acting reasonably, upon providing 72 hours' notice to the Tenant, including, without limitation, due to an accident, or during the making of any repairs, replacements, alterations or improvements which, in the judgment of the Landlord, are necessary or desirable to be made, until the repairs, replacements, alterations or improvements have been completed to the satisfaction of the Landlord. The Tenant shall be responsible for providing notice to the residential tenants, in accordance with the *Residential Tenancies Act, 2006*. If emergency repairs are required, no notice by the Landlord is required. The Landlord shall not be liable for any Claims or injury to person or property due to any interruption in the supply of HVAC and/or other services or utilities.

**6.7 Energy Conservation:** The Tenant shall comply with reasonable measures of the Landlord, or any Authority, that may from time to time introduce to conserve or to reduce consumption of energy or to reduce or control other Operating Costs. The Tenant shall also convert to whatever system or units of measurement of energy consumption the Landlord may from time to time adopt.

**6.8 Pest Control by Tenant:** The Tenant agrees to institute and carry out and maintain, at its own expense, such pest control measures in the Leased Premises as the Landlord reasonably requires.

**6.9 Delivery and Shipping:** The delivery and shipping of and all loading and unloading of goods, merchandise, supplies and fixtures to and from the Leased Premises shall be done only at such times, in the areas, and through the entrances designated for such purposes by the Landlord and shall be subject to such rules and regulations as, in the sole reasonable judgement of the Landlord, are necessary or desirable for the proper operation of the Building. The Landlord shall not be liable for any loss or damage of any of the goods or merchandise of the Tenant, (or of others, whose goods or merchandise shall be received and/or handled, directly or indirectly, by the Tenant).

**6.10 Garbage and Refuse:** The Tenant shall, at its sole cost and expense, ensure that no ashes, refuse, garbage or other loose or objectionable material accumulate on the Leased Premises. The Tenant shall keep the Leased Premises clean and tidy at all times, and comply with all of the Landlord's waste disposal and recycling policies. The Tenant shall be responsible, at its cost, for all requisite waste disposal and collection and recycling. The Tenant shall not burn any trash or garbage of any kind in or about the Leased Premises.

**6.11 Excessive Noise:** The Tenant is required to comply with Toronto Municipal Code Chapter 591, Noise.

**6.12 Plumbing Facilities:** The plumbing and drainage facilities shall not be used for any other purpose other than that for which they are constructed, and no foreign substance of any kind shall be thrown therein. The expense of any breakage, stoppage, or damage resulting from a violation of this subsection by the Tenant shall be borne by the Tenant.

## SECTION 7 - USE AND OCCUPANCY OF LEASED PREMISES

### 7.1 Use of Leased Premises:

- (1) The Tenant shall, at its sole expense, pay all expenses and obtain and maintain at all times during the Term, in force all permits, licenses and authorizations necessary to carry on its Permitted Use;
- (2) On or before the Commencement Date, the Tenant shall provide the City with a list of the names, titles, addresses for service and phone, email and fax numbers of all regular users of the Community Premises, including their positions, their mailing addresses and telephone numbers. Such list shall be updated and given forthwith to the Landlord if there are any changes thereto. Otherwise, the Tenant shall not permit any person, firm, corporation, organization or entity (or any combination thereof) to occupy the Leased Premises without written consent of the City;
- (3) The Tenant shall not use the Community Premises outside of regular Business Hours without first having obtained the prior written consent of the Deputy City Manager (which consent may be unreasonably or arbitrarily withheld);
- (4) The Tenant shall not install, carry on or permit at, in or from the Leased Premises or any part, except with the prior written consent of the Landlord (which may be unreasonably or arbitrarily withheld):
  - (a) the sale, provision, or use of alcoholic beverages, or tobacco or tobacco products of any kind in the Community Premises;
  - (b) the sale of alcoholic beverages, or tobacco or tobacco products of any kind in the Residential Premises;
  - (c) the sale, provision, or distribution of bottled water in the Community Premises;
  - (d) a shooting range, gun club, or the promotion of firearms use;
  - (e) an auction, bulk sale (other than a bulk sale made to an approved assignee), liquidation sale, going out of business or bankruptcy sale, warehouse sale, catalogue sale, or discount store or for the sale of second-hand goods or surplus stock or equipment, insurance salvage stock, fire-sale stock or bankruptcy stock or as a discount house; or
  - (f) any business to be operated by any concessionaire, licensee, franchisee or other person.
- (5) *Intentionally Deleted.*

**7.2 Solicitation of Business:** The Tenant and its Authorized Members shall not display any merchandise or advertising outside the Building or on the Leased Premises, at any time, without the prior written consent of the Landlord.

**7.3 Waste and Nuisance:** The Tenant shall ensure that nothing is done or kept at the Leased Premises, which is or may be a nuisance, or carry on any business or activity or do or suffer anything else, which, in the opinion of the Landlord, may interfere with or cause a disturbance to the Landlord or of any neighboring property, or which may cause damage to the Leased Premises or any neighboring property. The Tenant acknowledges that the mass release (ten (10) or more) of balloons inflated with lighter-than-air gases into the atmosphere within a twenty-four (24) hour period shall be considered a nuisance and the Tenant shall not engage in this activity.

**7.4 Rules and Regulations:** The Tenant and its Authorized Members shall comply with any rules and regulations that the Landlord acting reasonably, may set for the proper operation of the Building and Lands. If there is any conflict between a provision of this Lease and any of such rules and regulations, the provision of the Lease shall govern.

### 7.5 Signs:

- (a) The Tenant shall, at its own expense, install and maintain signs approved of by the Landlord in the Leased Premises and keep these signs, if any, well lighted during Business Hours and such other hours as are



designated by the Landlord from time to time, unless prevented by causes beyond the control of the Tenant. In addition to the foregoing, the Tenant shall only install such signs as comply with the City's sign By-law, as amended from time to time.

- (b) Without first obtaining the Landlord's prior written consent (which shall not be unreasonably withheld), the Tenant shall not erect, place, inscribe or suffer to be erected, placed or inscribed any aerial, sign, awning or canopy, or advertising matter or other thing of any kind on the Lands or upon any part of the exterior of the Building including the roof, or on any exterior or interior door, wall or window of the Leased Premises or the exterior of any demising walls, and will not place or maintain any decoration, lettering or advertising matter on the glass of any window or door of the Leased Premises. Any aerial, sign, awning, canopy, matter or thing so installed without such prior written consent shall be subject to removal without notice at any time, at the cost of the Tenant. The Tenant agrees to maintain any such aerial, sign, awning, canopy, decoration, lettering, advertising matter or other thing as may be approved, in good condition and repair at all times and shall pay for the electricity used in such signs. Notwithstanding the foregoing, the Tenant shall be permitted to use its standard logo on the fascia of the Leased Premises at all times during the Term.
- (c) The Tenant acknowledges that the Landlord may develop a uniform sign policy for the Leased Premises and, upon request by the Landlord, the Tenant shall replace all of its signage at the Tenant's expense, to conform with the Landlord's sign policy. At the expiration of the Term or earlier termination of this Lease, the Tenant will remove any such sign(s) at its sole cost and will immediately repair all damage caused by any such removal and restore such sign location(s) to their original condition in a good and worker-like manner to the Landlord's reasonable satisfaction, failing which the Landlord may enter upon the Leased Premises, without notice, and remove the same and complete such work on the Tenant's behalf, at the Tenant's sole cost and expense, without incurring any liability in respect thereof.

**7.6 Use of Trade Marks:** The Tenant shall not use or allow the use of the Landlord's trademarks, trade names, logos, or designs.

## SECTION 8 - USE AND OCCUPANCY OF RESIDENTIAL PREMISES

- 8.1** The Tenant shall maintain nine (9) Affordable Housing Units on the Leased Premises.
- 8.2** The Monthly Occupancy Costs of the nine (9) Affordable Housing Units shall be at or below Average Market Rent (as an average).
- 8.3** The Tenant shall have completed, signed and delivered a "Declaration of Compliance with Anti-Harassment/Discrimination Legislation & City Policy" form, a copy of which is attached as Schedule "C", to the City.
- 8.4** For the Residential Premises, the Tenant shall:
- (a) ensure that, upon Initial Occupancy of the Project the tenant has a Household Income at or below the Initial Income Limit;
  - (b) ensure that, upon Initial Occupancy, the average of the Monthly Occupancy Costs for the Project are maintained at a maximum of Average Market Rents;
  - (c) manage the Project so that occupancy is maximized and that the average of the Monthly Occupancy Costs for the Project are maintained at a maximum of one hundred percent (100%) of Average Market Rents for the duration of the Affordability Period;
  - (d) ensure that a Unit will not be rented to the Proponent or shareholder or director of the Proponent, or any individual not at arm's length to the Proponent, shareholder or director of the Proponent unless the Proponent is a non-profit co-operative as defined in the *Co-operative Corporations Act*, R.S.O. 1990, c. C.35, as amended, or is a not-for-profit corporation;
  - (e) put in place a good corporate governance policy, satisfactory to the Director, Housing Stability Services to prevent conflicts of interest in the management of the Leased Premises;
  - (f) provide representatives of the City with access to its books, records, and to the Leased Premises, subject to any rights of the residential tenants, of the Leased Premises;
  - (g) in each year, commencing on the first anniversary of Commencement Date of the Lease, provide to the General Manager, no later than three (3) months after the end of the Tenant's fiscal year:
    - (i) the Tenant's Annual Targeting Report as set out in Schedule "B", or in a form designated by the Director, Housing Stability Services;
    - (ii) the Tenant's Annual Occupancy Report as set out in Schedule "D", or in a form designated by the Director, Housing Stability Services;
    - (iii) a management representation report, in a form designated by the Director, Housing Stability Services including management declarations and a report on compliance with the provisions of this Agreement;

(iv) audited financial statements of the Tenant in a form acceptable to the Director, Housing Stability Services; and

(v) information on the Household Income and household composition of the Residential Premises rented to new tenants during the year, in a form acceptable to the Director; Housing Stability Services.

When the first anniversary of the Commencement Date of this Lease occurs less than six (6) months before the end of the Tenant's fiscal year, the first fiscal period to which the provisions of this section apply shall be not less than twelve (12) months.

(h) comply with all applicable federal, provincial and municipal laws, regulations and by-laws, including, without limitation, the *Residential Tenancies Act, 2006*, S.O. 2006, c.17 or any successor legislation.

**8.5** Upon Initial Occupancy, the Tenant shall take such reasonable steps as are necessary to verify that Household Income does not exceed the Initial Income Limit for each Unit, determined in accordance with the City's Affordable Rental Housing Eligibility and Income Verification Guide and in a form acceptable to the Director, Housing Stability Services.

**8.6** The Tenant will be required, at the City's option, to participate in the City's Housing Access System or any similar process to be approved by the Director, Housing Stability Services.

**8.7** Monthly Occupancy Costs:

(a) the total average Monthly Occupancy Costs of all Units in the Residential Premises shall not exceed one hundred per cent (100%) of Average Market Rents for any year of the Lease; and

(b) while Monthly Occupancy Costs include the cost of heat, water and hydro, if these services are to be paid directly by the tenant, the Monthly Occupancy Costs must be adjusted in accordance with the hydro, heat and water utility allowance policy to be published annually by the City.

**8.8** Monthly Occupancy Costs Increases:

(a) the Tenant may adjust the Monthly Occupancy Costs, with respect to a Unit if at least twelve (12) months have elapsed;

(i) since Initial Occupancy; or

(ii) since the day of the last rent increase with respect to the Unit, if there has been an increase.

(b) Subject to Section 8.8(a) the Tenant shall not increase the Monthly Occupancy Costs during the Lease by more than the prevailing rent increase guideline established each calendar year pursuant to the *Residential Tenancies Act, 2006*, S.O. 2006, c.17 or any successor legislation to an amount not to exceed an average for the Residential Premises of 100% of Average Market Rent. The Tenant acknowledges that the rent increase guideline of the *Residential Tenancies Act, 2006* may not apply to the Residential Premises and agrees that the rent increase guideline applies by virtue of the contractual terms of this Lease.

**8.9** The Tenant shall ensure that:

(a) upon Initial Occupancy, each lease with a residential tenant shall provide the following:

(i) for the disclosure to the City, by the Proponent of the tenant's personal information including Household Income, has been consented to by the tenant; and

(ii) that no Unit may be sublet by the tenant under any circumstances, unless the Tenant confirms with the City that the new subtenant's Household Income does not exceed the Initial Income Limit for that Unit;

(b) it will provide the City with access to all information obtained from the tenant concerning the Household Income and family composition of each unit, which information the City may verify; and

(c) for compliance with the provisions of MFIPPA, in its collection and sharing of any MFIPPA Protected Information, collected and shared, in accordance with the terms of this Agreement.

**8.10** The Tenant shall retain all books, accounts, records (including records related to rent collection and tenant income and eligibility verification), receipts, vouchers and other documents, that pertain to the Residential Premises for a period of not less than seven (7) years from the end of each fiscal year of the Tenant to which the records relate.

**8.11** The Tenant will make such books, accounts and records available at all reasonable times for audit and inspection by the auditor of the City or anyone designated in writing by the auditor to ensure compliance with the terms and conditions of this Lease.

## SECTION 9 - ALTERATIONS & OTHER TENANT WORK

**9.1 Tenant Work:** Subject to Section 10.1 of this Lease, if the Tenant desires to affix, install, perform, or complete any Tenant Work in or at the Leased Premises, including any Work for its use and occupancy thereof, it may do so at its own expense from time to time, subject to the following conditions:

(1) all such Tenant Work and all trade fixtures, goods, chattels and equipment from time to time to any part of the Leased Premises, will be completed at the sole cost and expense of the Tenant and without cost to the Landlord, with all due diligence, in a good and worker-like manner in accordance with the provisions of this Lease, including Section 8 and the requirements for Tenant Work as set out in attached Schedule "A". At the request of the City, the Tenant shall submit timely and sufficient proof of such compliance to the City;

(2) if,

(a) subject to Section 13, if any other Tenant Work agreed to in writing by the parties hereto during the Term is not completed to the reasonable satisfaction of the Deputy City Manager on or before ninety (90) consecutive days (including holidays) following the date of any such agreement between the parties hereto, and/or

(b) at any time prior to completion of any Tenant Work from time to time, such Work ceases and has not been resumed within thirty (30) days of the Date any such Work was discontinued,

then, unless otherwise agreed to in writing by the Deputy City Manager, the Landlord shall have the right, in its sole discretion, on written notice to the Tenant to terminate this Lease without compensation or liability of any kind.

**9.2 Liens:**

(1) The Tenant shall comply, at its expense, with the *Construction Act*, R.S.O. 1990, c. C.30, as the same may be amended from time to time, or any successor legislation, applicable to the performance and completion of all Tenant Work at the Leased Premises. At the request of the Landlord, the Tenant shall submit satisfactory evidence of such compliance promptly upon request.

(2) If any construction lien or other liens or order for the payment of money shall be filed against the Lands or Building by reason of, or arising out of any labor or material, work or service furnished to the Tenant or to anyone claiming through the Tenant, the Tenant shall cause the same to be discharged or vacated within five (5) consecutive days of notice from the Landlord requiring it to do so, failing which the Landlord, at the expense of the Tenant, in addition to any other rights or remedies it may have, but shall not be obliged to, cause such liens or orders to be discharged or vacated by payment into court and the cost and legal costs of the Landlord on a substantial indemnity basis shall be paid forthwith by the Tenant to the Landlord on demand as Rent in arrears.

## SECTION 10 - MAINTENANCE AND REPAIRS

**10.1 Landlord's Capital Repair and Replacement:**

(1) Subject to the Tenant not being in default under this Lease, the Landlord shall during the Term, as would a prudent owner, be responsible for and make all repairs and replacements of a capital nature to the structural elements of the Building comprising the roof or any component thereof such as a roof membrane or roof deck, sub-floors, foundations, load-bearing walls and structural supports of the Leased Premises, and to the HVAC System, plumbing, utility, fire safety systems supplied to the Building and other base Building systems including electrical, mechanical and plumbing, but excluding computer, parking lot, driveways or other access facilities, all as determined necessary or desirable in the reasonable discretion of the Deputy City Manager from time to time (collectively, "**Capital Repairs**" and individually, "**Capital Repair**"). For greater certainty, the determination of what constitutes a Capital Repair from time to time shall be in the sole reasonable discretion of the Deputy City Manager based on what is normally treated, in accordance with then current capital budget guidelines of the Corporate Finance Division of the City of Toronto, as being of a capital nature and, failing same, in accordance with generally accepted accounting practices. The Landlord's obligations under this Lease shall not extend to any matters that are the Tenant's responsibility hereunder including, without limitation, any new Work, additions, growth or expansion to the Building and its systems and facilities.

(2) The Tenant shall pay to the Landlord or as the Landlord may in this Lease or otherwise in writing direct by way of Additional Rent, without any set-off, compensation or deduction whatsoever, a fee of \$0.00 per year, as compensation to the Landlord for the costs of Capital Repairs, at its sole discretion (the "**Capital Facilities Maintenance Fund**").

## **10.2 Maintenance and Repair:**

**(1)** The Tenant shall, as would a prudent owner, at its own expense:

- (a)** operate, repair, maintain and keep the Leased Premises and all Leasehold Improvements (including the HVAC System, entrances, glass, glass doors, walls, windows, and all outside areas, landscaping, policing, parking areas and walkways) and all trade fixtures, goods, chattels, equipment therein, and all electrical and telephone outlets and conduits, neat and tidy, and in good condition and repair and painted and decorated, in the same manner as would a prudent owner, excepting only reasonable wear and tear;
- (b)** keep from uncleanness, obstruction and freezing all electrical/gas/plumbing/sprinkling/heating/air-conditioning systems (including the fixtures associated therewith) of the Leased Premises in order that the same will not be prevented from efficient working;
- (c)** clean the floors, windows and interior wood work of the Leased Premises immediately prior to vacating the Leased Premises;
- (d)** repair according to Notice in writing. Subject to Section 14, the Tenant shall permit the Landlord and its Authorized Members to enter onto the Leased Premises for the purpose of inspecting and making maintenance repairs, and replacement alterations or improvements to the Leased Premises other than those for which the Tenant is responsible hereunder, as the Landlord deems appropriate or necessary, and the Tenant shall not be entitled to compensation for any inconvenience, nuisance or discomfort thereby occasioned;
- (e)** without limiting any of the Tenant's record-keeping obligations on its part contained in this Lease including Section 11.8, the Tenant covenants and agrees that, unless required more frequently by Applicable Laws or the Landlord, acting reasonably, the Tenant shall, at its own expense: (i), carry out monthly and annual inspections of the condition of the Leased Premises and its interior/exterior elements and systems (including the HVAC System, plumbing, utility, fire alarm, sprinkler and fire safety protection systems, security systems, the boiler, elevator, plant and other base Building systems) and the compliance therewith with Applicable Laws and the maintenance and repair obligations of the Tenant under this Lease); and (ii) the Tenant shall establish, keep and maintain at the Leased Premises or a designated office within the City of Toronto approved of in writing by the Deputy City Manager, a proper and systematic record-keeping arrangement, to the satisfaction of the Deputy City Manager, for complete and accurate records, statements, logs and statements relating to the results of all such inspections and of all maintenance, repair and other Work that the Tenant or its Authorized Members have conducted. The Tenant shall, at its expense, other than information which cannot be disclosed due to relevant privacy information, make such records available to the Landlord to review and copy at all reasonable times. Where an inspection report indicates, or if the Landlord advises the Tenant that maintenance, repair or further Work is required by the Tenant or the record-keeping system of the Tenant requires revision, the Tenant shall undertake and complete the required Work or revisions to the Tenant's system, at its expense, in a good and worker-like manner to the satisfaction of the Deputy City Manager.
- (f)** meet the requirements of all fire insurance underwriters and shall ensure that all maintenance, repairs, or other Work to the Leased Premises are in all respects to a standard at least substantially equal to the quality and workmanship of the original Work and materials affected. The Tenant shall reimburse the Landlord for any damages suffered by the Landlord as a result of the failure by the Tenant to comply with the foregoing maintenance and repair requirements; and
- (g)** take all measures necessary to ensure to the Landlord satisfaction that the plant of or appurtenance to any municipal service or public utility now or in the future on, under or adjacent to the Leased Premises, is adequately protected against damage, impairment, destruction or loss.

**(2)** The Tenant shall not be responsible for any items that are within the Landlord's obligations pursuant to Section 10.1(1) of this Lease.

## **10.3 Repair where Tenant at Fault:**

- (a)** The Tenant shall permit the Landlord and its Authorized Members to enter onto the Leased Premises for the purpose of inspecting and making any requisite maintenance, repairs, replacements, refurbishments, alterations or improvements to the Leased Premises other than those for which the Tenant is responsible hereunder, as the Landlord deems appropriate or necessary, and the Tenant shall not be entitled to compensation for any inconvenience, nuisance or discomfort thereby occasioned. The Landlord or its Authorized Members may at any time and from time to time enter on the Leased Premises to remove any article or remedy any condition which, in the reasonable opinion of the Deputy City Manager, would likely lead to the cancellation of any policy of insurance or increase the insurance risks to the Landlord. The Tenant agrees that, if the Leased Premises or any part, including the Building and its structural elements, the roof, roof membrane, sub-floors, foundation and load-bearing walls, the HVAC, plumbing and electrical systems, elevators, boilers, engines, controls, pipes and other apparatus used for the purpose of heating, ventilation or air-conditioning or operating the elevators, or if the pipes, electric lighting or other equipment of the Building, are put in a state of disrepair or become damaged or destroyed through the wilful act or negligence, carelessness or misuse of the Tenant or its Authorized Members, the expense of all necessary repairs, replacements or alterations shall be borne by the Tenant, who shall pay the same to

the Landlord forthwith upon demand together (without duplication) with an administrative fee equal to fifteen (15%) percent of such costs and expenses;

- (b) Where any maintenance, repairs or replacements are necessary and required by the Lease to be done by the Tenant, the Landlord shall give the Tenant Notice thereof as described in Section 20.13 (save in an emergency when no such Notice shall be required) and thereupon, the Tenant shall within five (5) business days from the giving of such Notice or such longer period as is reasonably necessary in the circumstances given the nature or type of such Work (the "**Notice Period**"), make or commence making and diligently proceed with the necessary maintenance and repairs in a good and workmanlike manner. If the Tenant fails to maintain or repair as aforesaid, then, at the expiry of the Notice Period (save in an emergency when no Notice Period is required) the Landlord may (but shall not be obliged to) effect the Work in question and the Tenant shall pay all costs and expenses incurred or payable by the Landlord in respect thereof forthwith upon demand, together (without duplication) with an administrative fee equal to fifteen percent (15%) of such costs and expenses;
- (c) The Deputy City Manager shall be the sole judge as to the sufficiency of the Tenant's performance of the Tenant's obligations including the sufficiency of all record keeping by the Tenant pursuant to its obligations in this regard as contained in the Lease and the cleanliness and neatness of appearance, painting, maintenance and repair of the Leased Premises, and the Tenant shall complete any changes or alterations thereto, as ordered by the Deputy City Manager, acting reasonably.

**10.4 Notice of Defects:** The Tenant shall give to the Landlord prompt notice in writing of any defect in the electrical/gas./plumbing/sprinkling/heating/air-conditioning systems and equipment (including the fixtures associated therewith) in order that the same will not be prevented from efficient working, and to notify the Landlord promptly of any fire or any accident affecting or defect in any of the said systems or the structure of the Leased Premises or other or damage to the Leased Premises whatsoever, or any part thereof, howsoever caused.

**10.5 No Claim by Tenant:** No claim for compensation or damages, direct or indirect shall be made by the Tenant by reason of the loss of use, inconvenience or otherwise arising from the necessity of repairing any portion of the Leased Premises.

**10.6 Leave Leased Premises in Good Repair:** The Tenant shall leave the Leased Premises at the expiration of the Term or other termination of the Term in the same good condition and state of repair as the Leased Premises were in upon delivery of possession thereto under this Lease as of the Commencement Date, reasonable wear and tear and damage by fire, lightening, explosion, windstorm, hail, smoke and impact by aircraft or vehicles excepted, unless caused or contributed to by the Tenant or its Authorized Members or other persons for whom the Tenant is in law responsible. The Tenant shall surrender all keys for the Leased Premises to the Landlord at the place then fixed for the payment of Rent.

## **SECTION 11 - INSURANCE AND LIABILITY**

**11.1 Tenant's Insurance:** At all times during the Term and any renewal thereof, the Tenant at its own expense, shall take out and keep in full force and effect:

- (a) all risks property insurance in an amount equal to one hundred (100%) percent of the full replacement cost insuring all property owned by Tenant or for which Tenant is legally liable, or which is installed by or on behalf of Tenant within, or located on, the Leased Premises including, without limitation, chattels, furniture, merchandise, stock-in-trade, equipment, partitions, trade fixtures, Leasehold Improvements made or installed by or on behalf of the Tenant in, on or about the Leased Premises, and any other equipment, fixtures and contents, and the Tenant releases the Landlord from all Claims for any loss resulting from the Tenant's failure or neglect to so insure; and
- (b) commercial general liability insurance including owners' and contractors protective, products liability, if applicable, completed operations liability, bodily injury, personal injury, incidental medical malpractice, employer's liability, (including full and contingent employer's liability to cover certain risks not covered in the *Workplace Safety and Insurance Act, 1997*, S.O. 1997, c. 16, Sch. A, as the same may be amended from time to time, or any successor legislation), Tenant's legal liability, broad blanket contractual liability, and provisions for cross liability and severability of interests, and non-owned automobile liability, with limits of not less than **Five Million Dollars (\$5,000,000.00)** per occurrence, and if alcohol is served on the Leased Premises for compensation, liquor liability insurance with limits of not less than **Two Million Dollars (\$2,000,000.00)** per occurrence. The Landlord is to be added as an additional insured; and
- (c) such other forms of insurance as the Chief Financial Officer and Treasurer of the Landlord, acting reasonably, may require from time to time, such requirement to be made on the basis that the required insurance is customary at the time in the City of Toronto for tenants of buildings similar to the Building.

**11.2 Insurance Terms and Conditions:**

- (1) **Waiver of Subrogation:** With respect to the policy contained in Section 11.1(1)(a), the Tenant shall have no claim against the Landlord or the Landlord's insurers for any damage the Tenant may suffer, and such policy shall contain a waiver of any subrogation rights that the Tenant's insurers may have against the Landlord and against those for whom it is in law responsible whether any such damage is caused by the act, omission or negligence of the Landlord or those for whom it is in law responsible.
- (2) **Approval of Insurance and Insurers:** All policies of insurance required to be taken out by the Tenant shall be placed with insurers that are licensed in the Province of Ontario and in form and substance

acceptable to the Landlord, acting reasonably.

- (3) **Notice of Material Change or Cancellation:** Each policy shall contain an endorsement requiring the insurers to notify the Landlord in writing, by registered mail, at least thirty (30) days prior to any material change that restricts or reduces the insurance required under this Section 11, or cancellation thereof.
- (4) **Breach of Conditions:** Each policy will contain a waiver in favor of the Landlord of any breach of a policy condition or warranty such that the insurance policy in question will not be invalidated in respect of the interest of the Landlord by reason of a breach of any condition or warranty contained in such policies.
- (5) **Deductibles:** The parties agree that insurance policies may be subject to deductible amounts, such amounts to be subject to approvals of the Chief Financial Officer and Treasurer of the Landlord, and which amounts shall be borne by Tenant.
- (6) **Primary Coverage:** The insurance policies required pursuant to this Section 11 shall be primary and shall not call into contribution any insurance available to the Landlord.
- (7) **Limits of Insurance:** The Landlord, acting reasonably, may require the limits of all insurance policies provided by Tenant to be increased from time to time. The Tenant shall cause the limits of its insurance on its physical assets located on the Leased Premises to be adjusted for inflation from time to time.

### 11.3 Failure to Maintain Insurance:

- (a) The Tenant shall promptly advise the Landlord, in writing, of any unavailability, cancellation, material alteration or apse of any policies of Tenant's insurance required under this Section 11. If the Tenant fails to obtain and keep in force the aforesaid policies of insurance or should any such insurance not be approved by the Landlord, acting reasonably, the Landlord may consider the Tenant to be in breach of the terms and conditions of this Lease and may take, at the expense of the Tenant, whatever legal steps available to remedy the situation. Without limiting the foregoing, the Landlord may obtain such policies and shall give the Tenant Notice setting out the amount and dates of payment of all costs and expenses incurred by the City in connection therewith to the date of such notice. Any sum so expended by the Landlord shall be due and payable on demand without prejudice to any other rights of the Landlord hereunder.
- (b) No such insurance taken out by the Landlord shall relieve the Tenant of its obligations to insure hereunder and the Landlord shall not be liable for any loss or damage suffered by the Tenant in connection therewith.
- (c) If the Tenant fails to obtain and keep in force the insurance required by this Lease and, if any similar insurance maintained by the City shall be called into contribution at either or both of their option, and as a consequence thereof the City's cost of effecting such insurance increases, any such additional cost shall be payable by the Tenant to the Landlord forthwith upon production of reasonable proof of such additional cost, without prejudice to any other rights of the City as a result of the Tenant's failure to keep such insurance in place.

**11.4 Increase in Insurance Premiums and Cancellation of Insurance:** The Tenant agrees that the Tenant and its Authorized Members will not keep in or upon the Leased Premises any article or substance which may be prohibited by the insurance policies mentioned above, or do or omit, or permit to be done or omitted anything which will cause any increase in the insurance premiums or the cancellation of any insurance policy. If any insurance policy should be cancelled or the coverage reduced or a threat of cancellation or reduction of coverage made by reason of anything arising out of the use or occupation of the Leased Premises by the Tenant, whether or not the first sentence of this section has been complied with, and if the Tenant fails to remedy the condition giving rise to such cancellation, reduction or threat, upon ten (10) days' notice thereof by the Landlord, the Landlord may enter the Leased Premises and remedy the condition at the sole cost and expense of the Tenant which cost and/or expense shall be payable to the Landlord forthwith on demand as rent in arrears, and in addition or in the alternative, may exercise any other remedy available to it.

**11.5 Payment of Premiums:** The Tenant shall duly and punctually pay all premiums under the aforesaid policies as they become due and payable. In the event of default of payment by the Tenant, the Landlord may, but shall not be required, pay same and the amount so paid shall be forthwith payable by the Tenant as Additional Rent.

**11.6 Evidence of Insurance:** On or before the execution of this Lease, the Tenant shall deliver to the Landlord evidence of the insurance required hereby in the form of certificates of insurance, (in form and detail satisfactory to the Landlord, acting reasonably), signed by the insurer or by an authorized representative of the insurer. The Tenant will make available the complete original certified copies of all applicable policies delivery to the Landlord if required. Certificates of insurance evidencing renewal or replacement of policies shall be delivered to the Landlord ten (10) days prior to the expiration of its then current policies, without demand having to be made therefore by the Landlord. The Landlord shall at all times be supplied with certified evidence of insurance being in force with respect to insurance applicable to any Tenant Work, prior to commencement of any construction activities on the Leased Premises and with respect to post-construction insurance, before any person is permitted to occupy the Leased Premises for the purpose of commencing the business operations contemplated in this Lease.

### 11.7 Landlord's Insurance:

- (1) The Landlord shall take out and maintain or cause to be taken out and maintained with respect to the Leased Premises the following insurance (collectively the "**Landlord's Insurance**") with such insurers

and in such amounts and on such terms and conditions as the Landlord shall determine to maintain in its sole discretion, having regard to the size, age and location of the Building:

- (a) all risks of physical damage (including flood and earthquake) property insurance in an amount equal to one hundred (100%) percent of the full replacement cost thereof from time to time based on the cost to repair or rebuild or replace with new materials of like size, kind and quality, including:
    - (i) the Building;
    - (ii) all property of every description and kind owned by the Landlord or for which the Landlord is legally liable, or which is installed by or on behalf of the Landlord within, or located on, the Leased Premises including, without limitation, mechanical and electrical equipment, fixtures, contents, any other structures chattels, furniture, stock-in-trade, office equipment, partitions, trade fixtures, Leasehold Improvements of the Landlord, and any other equipment, fixtures and contents;
  - (b) if any boiler or pressure vessel is operated in, on or about the Leased Premises, boiler and pressure vessels insurance in such amount as the Landlord considers reasonable from time to time, based on the value of the Building on a replacement cost basis;
  - (c) commercial general liability insurance for all losses arising out of, or relating to the Leased Premises, including owners' and contractors protective, products liability, if applicable, completed operations liability, bodily injury, personal injury, incidental medical malpractice, employer's liability, broad blanket contractual liability, occurrence property damage and provisions for cross liability and severability of interests, and non-owned automobile liability, in such amount as may be considered reasonable from time to time in the sole discretion of the Deputy City Manager but in any event with limits of not less than **Three Million Dollars (\$3,000,000.00)** per occurrence; and
  - (d) such other insurance as the Deputy City Manager, acting reasonably, determines from time to time to take out and maintain in respect of the Leased Premises and its operation and management.
- (2) The Tenant shall not be an insured under the policies with respect to the Landlord's Insurance, nor shall it be deemed to have any insurable interest in the property covered by such policies, or any other right or interest in such policies or the proceeds.
- (3) The Tenant shall pay to the Landlord, as Additional Rent, all costs and expenses of the Landlord in maintaining its insurance as contemplated in Section 11.7 upon receipt of an invoice therefor to it by the Landlord, plus an administration fee equal to fifteen percent (15%) of such costs and expenses; provided that if the Landlord, in its sole discretion, elects to self-insure at any time or from time to time, the Landlord shall include as part of its costs and expenses aforesaid and the Tenant shall pay to the Landlord as and by way of Additional Rent in such instance, a deemed amount in respect of the insurance as contemplated in Section 11.7(1) equal to the amount that the Deputy City Manager, in consultation with the Landlord's Chief Financial Officer reasonably determine as the amount that would have been included had the Landlord actually placed such insurance with an independent third party insurer;
- (4) If the occupancy of the Leased Premises, the conduct of business in the Leased Premises, or any acts or omissions of the Tenant in the Leased Premises or any part thereof, causes or results in any increase in premiums for the Landlord's Insurance, the Tenant shall pay any such increase in premiums, as Additional Rent, forthwith after invoices for such additional premiums are rendered by the Landlord.
- (5) Notwithstanding the foregoing, the Landlord shall have the right, upon giving prior written notice to the Tenant, to self-insure for all or any portion of the perils for which insurance is required to be carried under this Section 11.7(1) throughout the Term of this Lease to the extent, including deductibles, that Landlord considers appropriate in its sole discretion, subject to:
- (a) "self-insurance" shall mean that the Landlord is acting as though it were the insurance company providing the insurance required under the provisions of Section 11.7(1) and the Landlord shall pay any amounts due in lieu of insurance proceeds which would have been payable if the insurance policies had been carried, which amounts shall be treated as insurance proceeds under this Lease; and
  - (b) If the Landlord elects to self-insure and an event or claim occurs for which a defence and/or coverage would have been available from the insurance company had insurance been purchased, the Landlord shall undertake the defence of any such claim, and use its own funds to pay any claim or replace any equipment or other physical property or otherwise provide the funding which would have been available from the insurance proceeds but for such election by the Landlord to self-insure.

**11.8 Fire Protection Systems:** The Landlord shall ensure, at its expense, that the Leased Premises are equipped with up-to-date fire protection systems in compliance with the *Building Code*, O. Reg 350/06 and *Fire Code*, O. Reg 213/07, as the same may be amended from time to time, or any successor legislation, and Applicable Laws.

**11.9 Release:** The Tenant releases and discharges the Landlord and its Authorized Members, successors and assigns, from any and all liability for Claims in respect of which the Tenant is indemnified under any insurance

which it is obligated to obtain pursuant to this Lease or of which it would have been indemnified had it obtained such insurance and diligently pursued its Claims. The Tenant further covenants and agrees that it will not make, cause or pursue any Claim against a third party which may result in any Claim over by such third party against the Landlord.

#### **11.10 Indemnity:**

- (1) The Landlord and its Authorized Members shall not be liable for any death, injury, or damage to, or loss of property, of the Tenant, its employees, agents, invitees or any other person, occurring in or about the Leased Premises, unless such death, injury, damage or loss resulted from the gross negligence of the Landlord or persons for whom it is in law responsible and to the extent to which the Tenant is not indemnified in respect of such Claims under any insurance which it is obligated to obtain pursuant to the terms of this Lease or to the extent to which it would have been so indemnified had it obtained such insurance and diligently pursued its Claims. All property of the Tenant within the Leased Premises shall be at the risk of the Tenant only. The Tenant agrees that it will not make, cause or pursue any Claim against a third party which may result in any Claim over by such third party against the Landlord. Section 11.10 shall survive termination or expiry of this Lease, anything to the contrary notwithstanding.
- (2) The Tenant shall, during the Term, indemnify and save harmless the Landlord from any and all liabilities, damages, costs and expenses, claims, suites or actions incurred by it as a result of or arising out of:
  - (a) Any breach, violation or non-performance of any covenants, condition or agreement in this Lease set forth and contained, on the part of the Tenant and/or its Authorized Members and any others permitted by the Tenant to be on the Leased Premises to be fulfilled, kept, and observed and performed;
  - (b) Any damage to property occasioned by the Tenant's use and occupation of the Leased Premises; and
  - (c) Any injury to person or persons, including death, resulting at any time there from occurring in or about the Leased Premises and/or on the sidewalks and laneways or streets adjacent to same, unless the same is caused by the negligence of the Landlord.
- (3) If the Landlord, without actual fault on its part, is made a party to litigation begun by or against the Tenant, excepting a bona fide action by the Tenant against the Landlord, the Tenant shall protect and hold the Landlord harmless and will pay all costs, expenses and reasonable legal fees incurred or paid by the Landlord in connection with the litigation.

**11.11 Increase of Insurance Risk:** The Tenant shall not undertake any action, operation or work or install or store any fixtures, improvements, equipment or materials on, under or in the Leased Premises, so as to increase the risk thereof to the Landlord.

### **SECTION 12 - RESTRICTIONS ON ASSIGNMENT, SUBLEASE, ETC.**

**12.1 Assignments or Subleases:** The Tenant shall not sell, assign or otherwise dispose of its rights and obligations under this Lease or permit any other person or organization or other entity (or combination thereof) to occupy or use the Leased Premises, or any part, or sublet the Leased Premises, or any part, to a third party (individually and collectively a "Disposition") or in any way charge, encumber or pledge this Lease or its interest therein without the prior written consent of the Landlord, which consent may be unreasonably withheld and delayed, and need not be based upon any financial considerations whatsoever. All reasonable costs of the Landlord incurred with respect to reviewing a request for any Disposition shall be paid by the Tenant forthwith upon demand.

**12.2** Notwithstanding Section 12.1, the Tenant may sublease individual units in the Residential Premises to subtenants without the consent or approval of the Landlord.

**12.3** Notwithstanding Section 12.1, the Tenant is permitted to sublease part of the Community Premises to the Parkdale Village Business Improvement Area, the Kababayan Community Centre, Gallery 1313, and Parkdale Arts and Cultural Centre Community Board.

### **SECTION 13 - UNAVOIDABLE DELAYS**

**13.1 Unavoidable Delays:** Whenever and to the extent that the Landlord or the Tenant is unable to fulfill, or is delayed or restricted in the fulfillment of, any obligation under this Lease including the supply or provision of any facility, service or utility or the doing of any Work or the making of any repairs or replacements, by reason of:

- (a) unavailability of materials, equipment, services or utilities;
- (b) any Applicable Law or order or direction of any Authority having jurisdiction;
- (c) its inability to procure any permission, licence or permit or other authority required therefore;
- (d) any strikes, lockouts, slow-downs or other action arising from a labour dispute;
- (e) fire, flood or other act of God; or



- (f) a health epidemic;

in each instance other than due to any insolvency, lack of funds or other financial cause of delay, and which such party cannot reasonably be expected to have foreseen by the exercise of reasonable foresight and to have overcome by commercially reasonable efforts, such as would have been employed by a reasonably prudent person with obligations similar to those of the party delayed in performing its obligations pursuant to this agreement, the Landlord or the Tenant, as the case may be, shall be relieved from the fulfillment of such obligation so long as such cause continues provided always that (except as may be expressly provided in this Lease) the Tenant shall not be entitled to any compensation for any inconvenience, or nuisance or discomfort thereby occasioned by such unavoidable delay, or to cancel or terminate this Lease or to any abatement of Rent.

#### SECTION 14 - LANDLORD'S ACCESS TO LEASED PREMISES

**14.1 Inspection and Repair:** The Landlord and its Authorized Members shall have the right, upon providing 48 hours' notice to the Tenant, to enter the Leased Premises for the purposes of inspection, maintenance, making repairs, alterations or improvements to the Leased Premises, or to have access to utilities and services and/or any maintenance and repair notes, logs, books or other records required to be maintained under this Lease by the Tenant and the Tenant shall provide free and unhampered access for such purpose and shall not be entitled to compensation for any inconvenience, nuisance or discomfort caused thereby. In the case of emergency, the Landlord and its Authorized Members may enter the Leased Premises for the purposes of inspection, maintenance, making repairs, alterations or improvements to the Leased Premises, or to have access to utilities and services without notice. The Landlord in exercising its rights hereunder shall proceed to the extent reasonably possible so as to minimize interference with the Tenant's use and enjoyment of the Leased Premises. The Tenant shall be responsible for providing notice to the residential tenants, in accordable with the *Residential Tenancies Act, 2006*.

**14.2 Right to Exhibit Leased Premises:** The Landlord and its Authorized Members shall have the right upon reasonable prior notice of a least twenty-four (24) hours, to enter upon and exhibit the Leased Premises or any part during the Term: (i) to prospective tenants during the last twelve (12) months of the Term; and (ii) to any prospective purchasers or mortgagees at any time and from time to time.

#### SECTION 15 - DEFAULT

##### 15.1 Events of Default:

Each of the following shall be an event of default of the Tenant if, at any time during the Term:

- (a) the Tenant undergoes any change of Control to which the Landlord has not consented in writing; or
- (b) the Tenant fails to keep the Leased Premises insured as required under this Lease;
- (c) the Tenant is in default under its Service Agreement and such default continues uncured for fifteen (15) consecutive days after notice to the Tenant; or
- (d) any Contract Document, as defined in Schedule "A", is terminated as a result of the Tenant's default; or
- (e) the Tenant defaults in the payment of any Rent and such default continues for five (5) consecutive days after notice to the Tenant; or
- (f) the Tenant becomes bankrupt or insolvent or takes the benefit of any act now or hereafter in force for bankrupt or insolvent debtors or files any proposal or makes any assignment for the benefit of creditors or any arrangement or compromise; or
- (g) a receiver or a receiver and manager or trustee or any other officer with similar powers shall be appointed for the Tenant, or of all/a portion of the Leased Premises and Tenant's assets and such appointment is not vacated within thirty (30) consecutive days; or
- (h) any steps are taken or any action or proceedings are instituted by the Tenant or by any other party or acquiesced in by the Tenant, including, without limitation, any court or governmental body of competent jurisdiction, for the re-organization, arrangement, composition, readjustment, liquidation, dissolution, winding-up, termination of existence, declaration of bankruptcy or insolvency or similar relief, of the Tenant or its assets other than a corporate re-organization of the Tenant and such dissolution, winding-up or liquidation is not rescinded within thirty (30) consecutive days; or
- (i) the Tenant makes a sale in bulk of any of its assets, wherever situated other than a bulk sale of worn out furniture and equipment that has been replaced with new furniture and equipment; or
- (j) the Tenant abandons or attempts to abandon the Leased Premises or the same or a substantial part thereof becomes vacant or not used and occupied while capable of use and occupancy for a period of fifteen (15) consecutive days or more without the written consent of the Landlord; or
- (k) the Leased Premises are used by any other person or persons other than the Tenant and its Authorized Members or for any other purpose than the Permitted Use, in each case without the prior written consent of the Landlord; or

- (l) this Lease and/or any of the goods and chattels of the Tenant or any approved assignee or subtenant, other than a residential subtenant, are at any time seized or taken under any writ of execution or in attachment and such seizure or attachment is not set aside or revoked to the reasonable satisfaction of the Deputy City Manager within fifteen (15) consecutive days after the making or taking of the same; or
- (m) the Tenant shall fail to or neglect to provide any information required hereunder or to observe, perform, conform to or comply with any other term, covenant, condition or obligation of this Lease to be observed or performed by the Tenant, (other than those terms, covenants, conditions or obligations set out above in Subsections 15.1(e) to 15.1(k) inclusive for which no notice is required), provided that the Landlord first gives the Tenant fifteen (15) consecutive days' notice of any such failure to perform and the Tenant fails to cure such failure within such period of fifteen (15) days or such longer time as in the sole discretion of the Deputy City Manager, would have reasonably sufficed for the remedying of such breach or non-performance if the Tenant had commenced to remedy the same within fifteen (15) days and thereafter proceeded to remedy the same with reasonable diligence; provided that the Tenant shall not be entitled to the advantage of such longer time unless it shall have actually proceeded thereafter to remedy the same with all due diligence; or
- (n) if in the opinion of the Landlord, acting reasonably, the Tenant knows or ought reasonably to have known at occupancy that a unit in the Residential Premises is being provided to a subtenant whose Household Income exceeds the Initial Income Limit, that the household composition has been misrepresented or has not been verified on Initial Occupancy as set out in Section 8.9 hereof;

## 15.2 Remedies by Landlord:

In addition and without prejudice to any rights or remedies which the Landlord may have by this Lease or at law or in equity upon any event of default of the Tenant, the Landlord may, at its sole discretion, on written notice to the Tenant without compensation or liability to the Tenant of any kind:

- (a) terminate this Lease and all rights of the Tenant hereunder. If the Landlord terminates this Lease, in addition to any other remedies it may have, the Landlord may also recover from the Tenant all damages it incurs by reason of such breach, including the cost of recovering the Leased Premises, solicitor's fees (on a full indemnity basis) including the worth at the time of such termination of the excess, if any, and the amount of Rent and charges equivalent to Rent required to be paid pursuant to this Lease for the remainder of the stated Term over the then reasonable rental value of the Leased Premises for the remainder of the stated Term, all of which amounts shall be immediately due and payable by the Tenant to the Landlord; or
- (b) immediately re-enter upon and repossess the Leased Premises as though the Tenant is overholding after the expiration of the Term and the Term shall be forfeited and void in such event, without service of notice or resort to legal process and without the Landlord being considered guilty of trespass or becoming liable for any loss or damage occasioned thereby; or
- (c) enter the Leased Premises as agent of the Tenant, either by force or otherwise, without being liable for any prosecution therefor, and without being deemed to have terminated this Lease, and make such alterations and repairs as are necessary in order to relet the Leased Premises or any part thereof as the agent of the Tenant, for such term or terms (which may be for a term extending beyond the Term) and at such Rent and upon such other terms and conditions as the Landlord in its sole discretion considers advisable. Upon such reletting, all rent received by the Landlord therefrom shall be applied first, to the payment of any indebtedness other than Rent due hereunder from the Tenant to the Landlord; second, to the payment of any costs and expenses of such reletting, including brokerage fees, and solicitor's fees and of costs of such alterations and repairs; third, to the payment of Rent due and unpaid hereunder; and the residue, if any, shall be held by the Landlord and applied in payment of future rent as the same becomes due and payable hereunder. If the Rent received from such reletting during any month is less than that to be paid during that month by the Tenant hereunder, the Tenant shall pay any such deficiency which shall be calculated and paid monthly in advance on or before the first day of each and every month. No such re-entry or taking possession of the Leased Premises by the Landlord shall be construed as an election on its part to terminate this Lease unless a written notice of such intention is given to the Tenant. Notwithstanding any such re-letting without termination, the Landlord may at any time thereafter elect to terminate this Lease for such previous breach; or
- (d) exercise its right of distress and the Tenant hereby waives any present or future limitation on the Landlord's right of distress. In this regard, the Tenant agrees that none of the goods and chattels of the Tenant or any approved assignee or subtenant hereunder shall be exempt from levy by distress and the Tenant and any approved assignee or subtenant, by virtue of the Tenant having waived such exemption, shall thereby be fully and effectively estopped from setting up any such exemption in any proceeding between the Landlord and such parties; or
- (e) subject to the *Residential Tenancies Act, 2006*, suspend the supply to the Leased Premises of any benefit, service, utility or Additional Service furnished by the Landlord until the default is cured.

In any Section 15.1 event of default, in addition and without prejudice to any other rights of the Landlord, the full amount of the current month's instalment of Additional Rent and any other payments required to be made monthly hereunder, together with the next three months instalments for Additional Rent, (all of which shall be deemed to be accruing due on a day-to-day basis), shall immediately become due and payable as accelerated Rent, and the Landlord may immediately distrain for the same, together with any arrears then unpaid.

**15.3 Removal of Chattels:** In case of removal by the Tenant of the goods and chattels of the Tenant from the Leased Premises other than in accordance with this Lease, the Landlord may follow same for thirty (30) days in the same manner as is provided for in the *Commercial Tenancies Act*, R.S.O. 1990, c. L.7, as the same may be amended from time to time, or any successor legislation.

**15.4 Additional Remedy of Landlord:** Without limiting any other remedies the Landlord may have under this Lease or by statute or at law or in equity, upon the happening of an event of default by the Tenant under this Lease which the Tenant has not rectified within the time required, the Landlord shall also have the right, without any re-entry or termination of this Lease, to enter upon the Leased Premises and cure or attempt to cure such default (but this shall not obligate the Landlord to cure or attempt to cure any such default or, after having commenced to cure or attempted to cure such default, to continue to do so), and to recover from the Tenant all damages and expenses incurred by the Landlord as a result of any breach by the Tenant.

**15.5 Landlord's Expenses:** If legal action is brought for recovery of possession of the Leased Premises, or for the recovery of Rent or any other amount due under this Lease, or for any advice with respect to any other matter related to this Lease, or because of the breach of any other terms, covenants or conditions herein contained on the part of the Tenant to be kept or performed, and a breach is established, the Tenant shall pay to the Landlord all reasonable expenses incurred therefor, including solicitor's fees (on a full indemnity basis), unless a Court shall otherwise award.

**15.6 Waiver by Tenant of Exemption from Distress:** The Tenant hereby agrees with the Landlord that notwithstanding anything contained in the *Commercial Tenancies Act*, R.S.O. 1990, c. L.7, as the same may be amended from time to time, or any successor legislation, none of the goods and chattels of the Tenant on the Leased Premises at any time during the Term shall be exempt from levy by distress for Rent in arrears by the Tenant as provided for by any sections of the said Act or any amendments thereto, and that if any claim is made for such exemption by the Tenant or if a distress is made by the Landlord, this covenant and agreement may be pleaded as an estoppel against the Tenant in any action brought to test the right to the levying upon any such goods as are named as exempted in any sections of the said Act or any amendments thereto; the Tenant waiving, as it hereby does, all and every benefit that could or might have accrued to the Tenant under any or by virtue of any sections of the said Act, or any amendments thereto but for this covenant.

**15.7 Remedies Cumulative:** The remedies of the Landlord specified in this Lease are cumulative and are in addition to any remedies of the Landlord, whether by statute or at law or in equity. No remedy shall be deemed to be exclusive, and the Landlord may from time to time have recourse to one or more or all of the available remedies specified herein or by statute or at law or in equity.

**15.8 Non-Waiver:** Any condoning, excusing or overlooking by either the Landlord or the Tenant of any default by the other at any time or times in respect of any obligation of the other herein shall not operate as a waiver of the non-defaulting party's rights hereunder in respect of such default or so as to defeat or affect in any way the rights of the non-defaulting party in respect of any such continuing or subsequent default by the defaulting party. No waiver shall be implied by anything done or omitted by a party. Any waiver of a particular default shall not operate as a waiver of any subsequent or continuing default.

**15.9 Termination by Tenant:** The Tenant covenants and agrees that the Tenant shall only exercise its right to terminate this Lease pursuant to the provisions of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as the same may be amended from time to time, or any successor legislation, provided that the Tenant has received the prior written consent of the Landlord.

## SECTION 16 - ENVIRONMENTAL PROVISIONS

**16.1 Hazardous Substances:** The Tenant shall not cause or allow any explosive or inflammable substances, pollutants, contaminants or hazardous environmentally sensitive materials, as defined by Applicable Laws ("**Hazardous Substances**") to be used, generated, stored, or disposed of on, in, under or about, or transported to or from, the Leased Premises except in strict compliance, at the Tenant's expense, with all Applicable Laws. The Tenant shall also be responsible for proper disposal of all substances and materials, whether Hazardous Substances or not, in accordance with all Applicable Laws.

### **16.2 Discharge of Hazardous Substance or Contaminants:**

- (1) The Tenant shall not authorize, cause or permit any spill or discharge ("**Discharge**") of any Hazardous Substance or contaminant, as defined by Applicable Laws ("**Contaminant**"), except in accordance with Applicable Laws.
- (2) The Tenant shall immediately notify the Landlord both by telephone and in writing of any Discharge.

**16.3 Orders of an Authority:** Should an order of an Authority be issued to the Landlord, requiring the Landlord to do anything in relation to an environmental problem caused by the Tenant, the Tenant will, upon receipt of written notice from the Landlord, carry out the order at the Tenant's expense. If the Tenant fails or refuses to promptly and fully carry out such an order or if, in the Landlord's opinion, the Tenant is not competent to carry out the order, the Landlord may elect in writing to carry out the whole or any part of the order at the Tenant's expense and where it is reasonably necessary, the Landlord will have the right to prevent the Tenant from obtaining access to the Leased Premises for a reasonable period of time, but no such prevention from obtaining access will constitute an eviction or entitle the Tenant to any abatement to Rent. If the Tenant fails or refuses to promptly and fully carry out any order of an Authority, the Landlord will have the option, at its sole discretion, to terminate

this Lease forthwith by notice in writing, and the Landlord will not be liable for any damages of any kind however caused arising out of such termination.

**16.3.1 Environmental Attributes:** The parties acknowledge and agree that, regardless of who created or paid for any Environmental Attributes, the following shall apply:

- (a) The Landlord solely owns and may claim or seek to claim any and all Environmental Attributes.
- (b) The Tenant hereby transfers and agrees to transfer to the Landlord, or hold in trust for the Landlord for transfer in the future, any and all Environmental Attributes.
- (c) The Tenant agrees not to register or seek to register or verify any Environmental Attributes, either now or in the future, unless such registration, verification or claim is done or made on behalf of the Landlord, for the benefit of the Landlord.
- (d) The Tenant hereby agrees to execute any and all agreements as may be requested by the Landlord in order to give effect to this Section **16.3.1**.

**16.4 No Merger:** The provisions of Section **16** will survive and continue to apply following the expiry or earlier termination of this Lease.

## **SECTION 17 – DAMAGE OR DESTRUCTION AND EXPROPRIATION**

**17.1 Rights of Termination:** If:

- (a) all or any portion of Building on the Leased Premises is destroyed or substantially damaged by reason of any cause to such extent that in the Landlord's reasonable opinion, it is unable to be repaired or rebuilt within one hundred and eighty (180) days after such destruction or damage; or
- (b) the estimated cost (as reasonably determined by the Deputy City Manager in consultation with the Landlord's Chief Financial Officer) of repairing or rebuilding the Leased Premises exceeds the proceeds of insurance available to the Landlord for such purpose; or
- (c) proceeds of insurance are not payable to or received by the Landlord, or any mortgagee, encumbrancer or other person entitled thereto shall not consent to the payment to the Landlord of the proceeds of any insurance policy for such purpose, or
- (d) the Landlord is not able to obtain all approvals of all authorities or governments (federal, provincial, and municipal, including City Council, as required) having jurisdiction in the circumstances considered necessary or desirable by the Deputy City Manager, in form acceptable to the City Solicitor, to rebuild the Building on the Leased Premises

the Landlord may elect, within sixty (60) days of such damage or destruction, on written Notice to the Tenant, terminate this Lease, and thereupon Rent and other payments hereunder shall be apportioned to the later of the date of such damage or destruction or the date the Tenant ceases operating its business at the Leased Premises, and the Tenant shall immediately surrender and deliver up vacant possession of the Leased Premises to the Landlord.

**17.2 Repair of Damage or Destruction:** If all or any portion of the Building on the Leased Premises are destroyed or damaged by fire or other casualty beyond the control of the Tenant and its Authorized Members and this Lease shall not have been terminated within the time periods as contemplated in Section **17.1**, the Landlord shall implement, with reasonable due diligence, all required Capital Repairs in respect of the Building, but exclusive of the Tenant's responsibilities set out in this Lease, and the Tenant shall thereafter, with all reasonable diligence, make all remaining repairs to the Leased Premises pursuant to this Lease and complete the same for occupancy for its Permitted Use. The Landlord's obligation to repair and rebuild shall not include the obligation to rebuild and repair any: (i) Leasehold Improvement or other Tenant Work made by the Tenant during the Term or existing in the Building and/or made by the Tenant during the period immediately preceding the Term, or by the Landlord on behalf of the Tenant or another Tenant; (ii) chattel, fixture, installation, addition, partition, property or other item of Tenant Work in respect of which the Tenant is required to maintain insurance hereunder; (iii) any other property or item of Tenant Work; or (iv) to make repairs to wear and tear within the Leased Premises. If as a result of any destruction or damage which the Landlord is obligated to repair pursuant to this Lease, and which is not the fault of the Tenant or its Authorized Members and which does not consist of merely a temporary interruption of or interference with any utility, service or access, the Leased Premises are rendered in whole or in part unfit for the purposes of the Tenant, then, Rent shall abate from the date of damage or destruction to the date of surrender in proportion to that portion of Rentable Area of Leased Premises which, in the opinion of the Landlord's architect or professional engineer, is thereby rendered unfit is of total Rentable Area of the Leased Premises until the Leased Premises are repaired and rebuilt. Rent shall recommence to be payable one (1) day after the Landlord notifies the Tenant that the Tenant may reoccupy the Leased premises for the purposes of undertaking its Work.

**17.3 No Further Rent Abatement:** Other than as specified in subsection **17.2**, there shall be no abatement of Rent, nor shall the Landlord be liable to the Tenant, for any damage to the property of the Tenant (or its occupants) as a result of fire, water (leakage, sprinkler or fire hose), partial or temporary failure or stoppage of electricity, plumbing, ventilation or other service, whether due to acts of God, strikes, accidents, or the making of alterations, repairs, renovations, improvements or structural changes to the Leased Premises, or to the equipment or systems thereof, or from any cause whatsoever.

**17.4 Expropriation:** If at any time during the Term, a portion of the Leased Premises is acquired or expropriated by any lawful expropriating authority, or if any reasonable access to the Leased Premises is materially and adversely affected by any such acquisition or expropriation, then in any of such events, at the option of the Landlord, this Lease shall cease and terminate as of the date of the interest acquired or expropriated vesting in such expropriating authority and the Tenant shall have no Claim against the Landlord for the value of any unexpired Term or for damages or for any other reason whatsoever in respect of any such expropriation and/or termination.

## SECTION 18 - RELEASE & INDEMNITY

**18.1 Release of Landlord by Tenant:** The Tenant agrees that the Landlord, its successors and assigns, and those for whom the Landlord is at law responsible shall not be liable to any extent for any personal injury or death of, or loss or damage to any property belonging to the Tenant or its Authorized Members or any other person in, on or about the Leased Premises or any part, however caused unless resulting from the actual gross negligence of the Landlord (but only to the extent of such actual gross negligence) or from a breach of the obligations of the Landlord under this Lease and only to the extent to which the Tenant is not indemnified in respect thereof under the insurance which it is obligated to maintain pursuant to this Lease or to the extent to which it would not have been so indemnified had it obtained such insurance. In no event shall the Landlord be liable for:

- (a) any damage (other than insured damage) resulting from or caused by fire, explosion, falling plaster, steam, gas, electricity, water, rain, flood or snow which may leak into, issue or flow from any part of the Building, including the Leased Premises, or from the pipes, appliances, plumbing works, including the sprinkler system, roof or subsurface of any floor or ceiling, thereof, or from the street or any other place or quarter, or by dampness, the existence of any hazardous or toxic substances or materials (including, without limitation, products of waste, asbestos, PCBs, radon gas, or urea formaldehyde foam insulation) in any part of the Leased Premises, or for any damage caused by or attributable to the condition or arrangement of any electric or other wiring or of sprinkler heads, or resulting from any other cause or for any damage caused by anything done or omitted by any other person or of property adjacent thereto, or the public, or caused by the construction of any private, public or quasi-public work; or
- (b) any act or omission (including theft, malfeasance or negligence) on the part of any agent, contractor or person from time to time employed by it to perform janitorial services, security services, supervision or any other work in or about the Leased Premises; or
- (c) loss or damage, however caused, to money, securities, negotiable instruments, papers or other valuables of the Tenant; or
- (d) damage required to be insured against by the Tenant.

The Tenant hereby further releases the Landlord and those for whom the Landlord is at law responsible from all claims in respect of damage required to be insured against by the Tenant.

**18.2 Indemnity by Tenant:** The Tenant shall at all times fully indemnify and save harmless the Landlord and its Authorized Members of, from and against all Claims whatsoever (including under or in connection with the *Workplace Safety and Insurance Act, 1997*, S.O. 1997, c. 16, Sch. A, as the same may be amended from time to time, or any successor legislation), whether accrued, actual, contingent or otherwise, and including all reasonable legal costs on a full indemnity basis incurred in connection with any appeal, which they or any of them may sustain, incur or be put to from time to time pertaining in any manner to this Lease or the construction, use and occupation of the Leased Premises or the performance of any Tenant Work, including, without limitation:

- (a) any breach, violation or non-performance of any representation, warranty, covenant, condition or agreement in this Lease to be fulfilled, observed or performed by the Tenant;
- (b) any damage to property, either real or personal, owned by the Landlord or others occurring at any time in, on, or about the Leased Premises, or any part;
- (c) any personal or bodily injury to any person or persons, including death, incurred by or to such person(s), directly or indirectly arising out of or from the performance of any Tenant Work, or the construction, occupation or use of, or any operation in connection with, the Leased Premises or any part by or on behalf of the Tenant or any approved subtenant, occupant or assignee of the Tenant or its/their Authorized Members;
- (d) the construction or non-completion of the Tenant Work, including all construction liens and other Claims under the *Construction Act*, R.S.O. 1990, c. C.30, as the same may be amended from time to time, or any successor legislation, related to any Work performed by or at the direct or indirect request of the Tenant at the Leased Premises;
- (e) all costs and expenses of every kind and nature relating to the Leased Premises and the Tenant Work, unless expressly stated to be the responsibility of the Landlord;
- (f) the use, generation, storage or disposal of any Hazardous Substances on the Leased Premises, or any part of, except in accordance with Section 16.1 of this Lease.
- (g) the Discharge of any Hazardous Substances and Contaminants caused or permitted by the Tenant;

- (h) where the Landlord has carried out in order referred to in Section 16.3 or has cleaned up or restored a Discharge referred to in Section 16.2, or has otherwise incurred any cost, expense, loss, penalty, or damage relating to the environmental condition of the Leased Premises caused by the Tenant;
- (i) the Tenant's non-payment of any Additional Rent (including the Tenant's Business Taxes or any Taxes imposed in lieu of Business Taxes or assessed against Rent);
- (j) all Taxes and Other Taxes, including, without limitation, any increase in Taxes or Other Taxes arising directly or indirectly out of any appeal or contestation by or on behalf of the Tenant of the Taxes or Other Taxes relating to the Leased Premises or any part;
- (k) all damages suffered by the Landlord as a result of the Tenant being obliged to vacate the Leased Premises by a certain date and failing to do so at a time when the Landlord is legally obliged to deliver possession thereof to a third party, and
- (l) any damage to the Building, including the roof, foundation and load-bearing walls of the Building, the entire HVAC, plumbing and electrical systems of the Building, caused by the Tenant and/or its Authorized Members;

except and to the extent that such Claims are due to the gross negligence of the Landlord or persons for whom it is in law responsible or any breach by the Landlord of its obligations in this Lease and to the extent to which the Tenant is not indemnified in respect of such Claims under any insurance which it is obligated to obtain pursuant to the terms of this Lease or to the extent to which it would not have been so indemnified had it obtained such insurance and diligently pursued its Claims. The Tenant agrees that it will not make, cause or pursue any Claim against a third party which may result in any Claim over by such third party against the Landlord. Section 17 shall survive termination or expiry of this Lease, anything to the contrary notwithstanding.

## SECTION 19 - GENERAL PROVISIONS

**19.1 Entire Agreement:** This Lease contains all of the terms and conditions of the agreement between the Landlord and the Tenant relating to the matters herein provided and supersedes all previous agreements or representations of any kind, written or verbal, made by anyone in reference thereto. There shall be no amendment hereto unless in writing and signed by the party to be bound.

**19.2 Schedules:** Attached Schedules "A", "B", "C", "D" and "E" to this Lease form a part of this Lease.

**19.3 Survival of Obligations:** Termination of this Lease by expiry or otherwise shall not affect the obligation or liability of the Tenant to the Landlord in respect to any obligation which has accrued to the date of expiry or termination but has not been properly satisfied or discharged and such obligation shall survive until fulfilled.

**19.4 Severability of Illegal Provision:** If any provision of this Lease is or becomes illegal or unenforceable, it shall during such period that it is illegal or unenforceable be considered separate and severable from the remaining provisions of this Lease which shall remain in force and be binding as though the said provision had never been included.

**19.5 Governing Law:** This Lease shall be interpreted and enforced in accordance with the laws of the Province of Ontario and Canada. Any legal proceeding arising in connection with this Lease shall be commenced and heard in a court (or, if applicable, a tribunal of competent jurisdiction) sitting in Toronto, Ontario, which it is agreed will be the appropriate location. If the court (or, if applicable, tribunal of competent jurisdiction) does not sit in Toronto, the legal proceedings shall be commenced and heard in the jurisdiction nearest to the City of Toronto within the Province of Ontario in which such court (or, if applicable, tribunal of competent jurisdiction) convenes.

**19.6 Nature of the Relationship:** The Landlord and the Tenant disclaim the creation of a general agency, limited agency, partnership, joint venture, master/servant relationship or employer/employee relationship. The powers and obligations of the Landlord and the Tenant are therefore restricted expressly to those provided in this Lease and no representations will be made or acts undertaken by either of them which could establish or imply any apparent relationship of agency, partnership or employment and neither party shall be bound in any manner whatsoever by any agreements, warranties, representations or action of the other to such effect.

**19.7 Number, Gender, Joint and Several Liability:** If at any time there is more than one Tenant together or in succession, they shall be jointly and severally liable for all of the obligations of the Tenant hereunder.

**19.8 Captions:** The captions for Sections of this Lease are for convenience only and are not to be considered a part of this Lease and do not in any way limit or amplify the terms and provisions of this Lease.

**19.9 Time of Essence:** Time shall be of the essence of this Lease.

**19.10 Landlord's Agent:** The Landlord may perform any of its obligations or exercise any of its rights hereunder through its Authorized Members or such agency as it may from time to time determine and the Tenant shall, as from time to time directed by the Landlord, pay to any such Authorized Member or agent any moneys payable hereunder to the Landlord.

**19.11 Accounting Principles:** All calculations referred to herein shall be made in accordance with generally accepted accounting principles and practices applicable to the real estate Building industry and applied on a consistent basis.

**19.12 Further Assurances:** Each party agrees to make such further assurances as may be reasonably required from time to time by the other to more fully implement the true intent of this Lease.

**19.13 Notices & Lease Administration:**

(1) All notices (including notices of termination), statements, consents, approvals, elections, demands, requests, agreements, instruments, certificates, reports, directions, designations, or other communications permitted or required to be given under the Lease (collectively, "Notices", and individually, "Notice") shall be in writing, shall not be unreasonably withheld or delayed unless otherwise specifically provided for in the Lease, and shall be: personally delivered; sent by prepaid registered mail (except during a postal disruption or threatened postal disruption), or; sent by facsimile, in each case to the applicable party's address set out below:

(2) in the case of the Landlord, to:

(a) City of Toronto  
Real Estate Services  
Metro Hall, 2<sup>nd</sup> Floor  
55 John Street  
Toronto, Ontario  
M5V 3C6

Attention: Director of Real Estate Services  
Facsimile: (416) 392-1880

(b) In the case of annual reporting pursuant to Section 8.4(g), to:

City of Toronto  
Shelter, Support & Housing Administration  
Metro Hall, 6<sup>th</sup> Floor  
55 John Street  
Toronto, Ontario  
M5V 3C6

Attention: Director, Housing Stability Services  
Facsimile: (416) 696-3718

(3) in the case of the Tenant, to:

Toronto Artscape Inc.  
130 Queens Quay East  
Suite 423, East Tower  
Toronto, ON, M5A 0P6

Attention: Chief Operating Officer  
Facsimile: (416) 535-6260

(4) Any Notice shall be deemed to have been validly and effectively given and received: if personally delivered, on the date of delivery; if sent by prepaid registered mail, on the third (3<sup>rd</sup>) Business Day next following the date of mailing, provided, however, that during any postal disruption or threatened postal disruption, delivery shall be in person; and if sent by facsimile, on the Business Day next following the day on which it was sent. Either party may from time to time by notice to the other change its address for service as provided hereunder.

(5) The Deputy City Manager shall administer and manage this Lease including the provision of any Notices, provided that the Deputy City Manager may, at any time, refer consideration of such matters (including their content) to City Council for its determination and direction.

(6) The Tenant agrees to pay to the Landlord forthwith upon demand all costs and expenses of every nature and kind whatsoever (including applicable goods and services tax and/or harmonized sales tax) with respect to the rental of the Leased Premises and any interest and penalties, as authorized by City Council from time to time with respect to this Lease, including, without limitation, its preparation and execution, any amendment, renewal, extension or termination thereof, and the provision of any related approval.

**19.13 Landlord as Municipal Corporation:**

(1) Nothing in this Lease derogates from, interferes with, or fetters the exercise by the Landlord of all of its rights and obligations as a municipality (whether discretionary or mandatory), or imposes any obligations on the Landlord in its role as a municipality, and the Landlord shall not be prevented from or prejudiced in carrying out its statutory rights and responsibilities, including its planning rights and responsibilities. Nothing in this Lease derogates from, interferes with, or fetters the exercise by the Landlord's officers, employees, agents, representatives or elected and appointed officials of all of their rights, or imposes any obligations on the Landlord's officers, employees, agents, representatives or elected and appointed officials, other than as expressly set out in this Lease.

(2) No communication or dealing between the Tenant and any department, committee, body, officer, employee, agent, representative or elected or appointed official of the Landlord that is not clearly in respect of and in accordance with this Lease will be deemed to be a communication or dealing under this Lease between the Tenant and the Landlord as parties to this Lease, or affect the Landlord with notice of any such communication or dealings. It is intended and agreed that any communication or dealing between the Tenant and the Landlord as parties to this Lease will only be effective if delivered in accordance with the notice provisions in this Lease. No communication or dealing between the Landlord as a party to this Lease and the Tenant as a party to this Lease will relieve the Tenant from the responsibility of discharging its lawful obligations to the Landlord imposed by statute, regulation, by-law or by any other lawful manner separate and apart from the obligations imposed under this Lease.

**19.14 Miscellaneous:**

- (1) No Registration of Lease: Tenant shall not authorize, register or permit this Lease or any notice thereof to be registered or to remain registered on the title to the Leased Premises or any part, and any purported registration is of no force or effect.
- (2) Contra Proferentum: The parties acknowledge and agree that both parties have participated in the drafting of this Lease, and any rule of law providing that ambiguities shall be construed against the drafting party shall be of no force or effect. Each of the parties confirms that they have been advised to obtain and to have obtained independent legal advice regarding this Lease, prior to executing this Lease.
- (3) Real Estate Commission: The Landlord will not pay any real estate or other commission associated with this Lease.
- (4) Counterparts: This Lease may be signed in counterparts (including counterparts by facsimile or other electronic transmission) and all counterparts taken together shall be deemed to constitute one and the same instrument; provided, however, that any party providing its signature by facsimile or other electronic transmission shall promptly forward to the other party an original of the signed copy of this Lease which was so faxed or electronically transmitted within forty-eight (48) hours of any facsimile or electronic transmission.


**19.15** The Tenant shall not, unless required by law, release information pertaining to tenants and applicants for tenancy at the Residential Premises to third parties without first obtaining the written consent of the affected tenant or applicant.

**19.16** The collection, use and disclosure of information by the City shall be governed by MFIPPA.

**19.17 Successors and Assigns:** The covenants, terms and conditions in this Lease shall bind and enure to the benefit of the parties hereto and their respective successors and permitted assigns.

**IN WITNESS WHEREOF** the parties hereto have executed this Lease as of the date thereof by their proper officers duly authorized in that behalf.

**CITY OF TORONTO**


Per:   
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Nick Simos**  
Director, Real Estate Services

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**TORONTO ARTSCAPE INC.**

Per:   
Name: **LORIANNE GIRVAN**  
Title: **COO**

Per:   
Name: **TIM JONES**  
Title: **CEO**

(I/We have authority to bind the corporation)

Authorized by Government Management Committee, Item No. GM23.14 as adopted by City of Toronto Council on December 5, 6, 7 and 8, 2017.

\_\_\_\_\_

for City Clerk



## SCHEDULE "A"

### TENANT WORK

1. In addition to the provisions of Sections 9 and 10 of the Lease, all Tenant Work to be performed will be subject to those conditions described herein and such other conditions as are considered appropriate from time to time in the reasonable discretion of the Deputy City Manager. Any refusal by the Landlord to consent based on grounds that any Work is not in compliance with these conditions shall be conclusively deemed not to be an unreasonable withholding of consent.
2. The Tenant shall not perform or allow Work of any kind or negotiate or execute any contracts or commitments for any Work until such time as the Tenant has received in final form the Landlord's written approval of the Tenant's proposed plans, specifications and design drawings fully describing its intended Work prepared by suitably qualified persons in the field acceptable to the Landlord as well as a construction schedule and a written estimate of the costs for completion of all Tenant Work (the "**Plans and Specifications**"). The Tenant shall be responsible for all reasonable fees incurred by the Landlord to have its architects or engineers approve such Plans and Specifications.
3. Once approved, these Plans and Specifications shall not be modified or added to by the Tenant without the prior written consent of the Landlord. The Tenant agrees to use its best efforts to obtain from the authors of such Plans and Specifications at the time of their creation, the agreement by such author(s) to permit the Landlord to use such documents in the event of an uncured default by the Tenant under this Lease without further compensation to its author(s).
4. All Tenant Work shall be performed by a qualified and reputable arms-length architect (the "**Architect**"), and/or construction firm or other general contractor (the "**Contractor**") engaged by the Tenant for the design, construction and completion of the Tenant Work (the "**Contract Documents**") and shall include all other reasonable conditions which the Landlord may impose, including:
  - (a) at the Landlord's option, the requirement that the Landlord's contractors be engaged for any structural, roof, mechanical or electrical Work;
  - (b) all Contract Documents shall be on terms satisfactory to the Landlord, including terms giving the Landlord an optional licence, at its discretion, to access, use and reproduce all plans, designs, including shop drawings, construction, technical engineering and design drawings and as-built plans for the Tenant Work and to take an absolute assignment thereof for the purpose of completing such Work upon an uncured Event of Default by the Tenant described in Section 15 of the Lease, subject only to the Landlord giving notice thereof to the Architect or Contractor and agreeing to assume the Tenant's obligations under the Contract Documents commencing with the date of the giving of such notice;
  - (c) upon request, the Tenant shall provide the Landlord with an assignment of the Contracts Documents as security for the Tenant's obligation to perform the Tenant Work, in form acceptable to the Landlord's legal counsel.
5. If required by the Landlord, the Tenant shall comply with the Landlord's policies respecting non-discrimination and *Fair Wage Policy*, as amended from time to time. The Tenant acknowledges receipt of a copy of the non-discrimination policy and *Fair Wage Policy*.
6. If the estimated cost of completion of the Tenant Work, as prepared by the Tenant pursuant to this Schedule "A", exceeds **fifty thousand dollars (\$50,000.00)** including all taxes; or if, in the sole discretion of the Corporate Chief Officer of the Landlord, all or any part of the Tenant Work overlaps or interferes with or would delay or render more expensive the carrying out of any Work or obligation to be performed by the Landlord under this Lease or otherwise to the Building, or would constitute a capital repair, replacement or refurbishment to the Building or Building systems, facilities or equipment of any part, then, upon review of the then current circumstances and in the sole discretion of the Deputy City Manager, the following conditions may also apply:
  - (a) the Landlord may direct and in such an event, the Tenant shall comply with the Landlord's policy, at its sole cost, respecting *Labour Trade Contractual Obligations in the Construction Industry* as amended from time to time, in the Landlord's reasonable discretion; and
  - (b) at the Landlord's request, the Tenant shall also submit to the Landlord prior to the award of any construction contract to a Contractor of the Tenant, a complete list of all unions and construction trades, that hold certificates and/or have collective bargaining rights with the Tenant, any of its subsidiaries or related companies, and shall have obtained the Landlord's written approval thereof.
7. As a condition of and prior to commencing construction of any Tenant Work, the Tenant will, at its own expense:
  - (a) provide the Landlord with a current clearance certificate issued pursuant to the *Workplace Safety and Insurance Act, 1997*, S.O. 1997, c. 16, Sch. A, as the same may be amended from time to time, or any successor legislation, in respect of the contractor and every sub-contractor which the Tenant proposes to employ and the Tenant will not permit any contractor or sub-contractors to do any Work except for those for which the clearance certificate has been provided;

- (b) obtain all necessary consents, permits, licenses, approvals and inspections from all authorities having jurisdiction that are required and provide written evidence satisfactory to the Landlord prior to commencing any such Work that the Tenant has obtained each of the same, and post permits when required by Applicable Law. Should the Tenant fail to do this, the Landlord may, but will not be obligated to, obtain and complete such requirements on behalf of the Tenant at the Tenant's expense;
- (c) provide the Landlord with a certificate of insurance, duly executed by the Tenant's insurers, evidencing that the insurance required to be placed by the Tenant pursuant to the Lease is in full force and effect, as required;
- (d) require the Contractor for any Tenant Work and/or the correction of any deficiencies to provide to the Landlord for approval in writing:
  - (i) a performance bond posted by the Contractor for the due and proper performance of the construction of the Tenant Work and the correction of any deficiencies, in the minimum amount of 50% of the overall Tenant Work contract price; and
  - (ii) labour and material bonds posted by the Contractor, in the amount of 50% of the overall Tenant Work contract price, for the due and proper payment of those having direct contracts with the Tenant's Contractor for labour, materials and/or services in connection with the Work and/or those having direct contact with those persons in direct contact with the Tenant's Contractor; removal of registered construction lien claims and certificates of action from title to the Lands or any part; and full reimbursement of the Landlord and the Tenant for all liability and payments to such persons in connection with the Tenant Work, and the correction of any deficiencies, with the Landlord to be named in these bonds as obligee and which bonds shall otherwise on terms and conditions acceptable to the Landlord, in form acceptable to the City Solicitor. The Tenant shall provide the Landlord with such evidence of compliance as the Landlord may reasonably request; and
- (e) if requested, the Tenant shall provide the Landlord with an unconditional and irrevocable letter of credit in a form satisfactory to its Treasurer and Chief Financial Officer and the City Solicitor in an amount equal to **105%** of all lienable contracts entered into by or on behalf of the Tenant for the supply of labour, services, materials and other Work, for the purpose of providing security for completion of all intended Tenant Work, including the payment and discharge in full of all construction lien claims. The letter of credit shall be designed to provide such security throughout all phases of the Tenant Work as may be agreed upon between the Tenant and the Landlord. The letter of credit may be drawn upon by the Landlord in its discretion, as required, for payment of any Tenant Work in the event of default by the Tenant in its obligation to construct and complete and/or pay for any Tenant Work, and/or any construction lien claims. The Landlord may, in its discretion, periodically release funds from the letter of credit on a dollar-for-dollar basis upon receiving evidence satisfactory to the Deputy City Manager, in form acceptable to the City Solicitor, from a qualified architect in good standing in Ontario attesting to the completion and payment in full of the Work in question for which the letter of credit is being held, subject to the retention therefrom of all such funds as required to satisfy the holdback provisions in respect thereof in the opinion of such architect pursuant to the *Construction Lien Act*, R.S.O. 1990, c. C.30, as the same may be amended from time to time, or any successor legislation. This letter of credit shall be cancelled upon the later of the first day of the month next following the expiration of all construction lien periods immediately following full completion and payment of the Tenant Work and the Tenant's delivery of evidence from a qualified architect attesting thereto and confirming that all applicable construction lien claim periods have expired and the Tenant has not received any notices of any construction lien claim.

8. In performing or causing to be performed any Work, the Tenant agrees, as follows:

- (a) all Work will be completed with all due diligence at the Tenant's expense in a good and worker-like manner in accordance with the Plans and Specifications as approved by the Landlord and the requirements of this Lease, using new materials, the whole of which are to be to the Landlord's satisfaction. At the request of the Landlord, the Tenant shall promptly submit satisfactory evidence of such compliance;
- (b) unless otherwise agreed to in writing by the Landlord, the Tenant shall not carry out any Work which, in the reasonable discretion of the Deputy City Manager, overlaps or interferes with, or would delay, or render more expensive the cost to the Landlord of carrying out any Work or obligation to be performed by the Landlord under this Lease, or otherwise to the Building, or would constitute a capital repair, replacement or refurbishment to the Building or Building systems, facilities or equipment of any part;
- (c) the Landlord or the applicable public utility company shall have the right throughout the construction of any Work to perform all necessary Work required to complete the Tenant Work;
- (d) one set of the final Plans and Specifications with the Landlord's consent endorsed on them will remain on the Leased Premises at all times when the Tenant Work is being performed;
- (e) all Work shall be completed in a careful manner so that no unauthorized damage or injury occurs to Leased Premises, or any part, or to the roads, fences, sidewalks, land, structures or other improvements adjoining the Lands and any services therein. No Work shall be of such kind or extent to in any manner weaken the structure and sound-proofing of the Leased Premises, or reduce the value of the Leased Premises;
- (f) the Landlord, at its discretion, shall have the right to monitor any Tenant Work at any time and to appoint,

at the Tenant's cost, any inspector, quantity surveyor, architect, or professional engineer or any Authorized Member ("**Landlord's Representative**") to inspect and report and certify to the Landlord on the status of the Tenant Work. The Landlord's Representative(s) shall have reasonable access to the Leased Premises for purposes of inspection and the Tenant shall co-operate with them in anything else that may be reasonably required to assist in any such inspection;

- (g) the Tenant will test all plumbing, gas or fire protection and electrical systems within five (5) days of their installation and give two days' prior written notice to the Landlord that such test will take place. The Landlord will have the right to be present in the Leased Premises when the test is performed. The Tenant will be responsible for any damage caused as a result of the performance of the test. Following completion of any testing, the Tenant will provide the Landlord with a copy of the test results and a final certificate or certificates of approval;
- (h) the written opinion of the Landlord's architect shall be binding on both the Landlord and the Tenant respecting all matters of dispute regarding the Tenant Work, including the state of completion and whether or not the Work is completed in a good and workerlike manner;
- (i) if, at any time during the installation and construction of the Tenant Work, the Landlord is not satisfied with the construction of any part and delivers to the Tenant written notice setting forth particulars of the deficiency or other cause of dissatisfaction, the Tenant shall take such steps as are necessary or considered appropriate by the Landlord's Representative or Deputy City Manager, in consultation with the Tenant, to rectify the deficiency at its cost, without delay; and
- (j) from time to time during and upon completion of any Work, the Tenant shall, at its expense, dispose of all waste, refuse and excess soil off-site, restore the Leased Premises to its original condition including relocating trees where feasible, and restore grades in accordance with final approved Plans and Specifications, all to the satisfaction of the Deputy City Manager.

9. Prior to to substantial completion of any ensuing items of Tenant Work made during the Term, the Tenant will, at its expense, obtain and provide to the Landlord a copy of every occupancy and other permit that may be required from any governmental or other regulatory authority having jurisdiction, to permit the Tenant to open for business.

10. Within sixty (60) days after the substantial completion of any ensuing items of Tenant Work made during the Term, the Tenant will provide the Landlord, with a properly executed statutory declaration in a form acceptable to the City Solicitor (the "**Declaration**"):

- (a) stating that the Tenant Work in question has been performed in accordance with all of the provisions of this Schedule and that all deficiencies (if any) which the Landlord has brought to the Tenant's attention have been corrected;
- (b) stating that there are no construction, builders, workers', workers compensation or other liens and encumbrances affecting the Leased Premises with respect to work, services or materials relating to such Tenant Work and that all accounts for work, services and materials have been paid in full with respect to all of such Tenant Work;
- (c) listing each contractor and sub-contractor who did work or provided materials in connection with such Tenant Work;
- (d) confirming the date upon which the last such Work was performed and materials were supplied and an itemized list showing the actual cost of all Work including, sprinklers, washrooms, or any other special facilities; and
- (e) confirming that a clearance certificate issued under the *Workplace Safety and Insurance Act, 1997*, S.O. 1997, c. 16, Sch. A, as the same may be amended from time to time, or any successor legislation, in respect of each contractor and sub-contractor listed on the Declaration.

**SCHEDULE "B"**

**PROPONENT'S ANNUAL TARGETING REPORT**

For year ending December 31, 20\_\_\_\_

<b>Name of Owner</b>	<b>AVERAGE RENT OF UNITS PER MONTH</b>

SCHEDULE "C"



Declaration of Compliance with Anti-Harassment/Discrimination Legislation & City Policy

For Office Use Only  
DECLARATION OF COMPLIANCE WITH ANTI-HARASSMENT/DISCRIMINATION LEGISLATION & CITY POLICY

Date: \_\_\_\_\_  
Group/Vendor/Individual Name: \_\_\_\_\_

Organizations/individuals in Ontario, including the City of Toronto, have obligations under the Ontario Human Rights Code, the Occupational Health and Safety Act, the Employment Standards Act, the Accessibility for Ontarians with Disabilities Act, the Criminal Code of Canada and the Charter of Rights and Freedoms. In addition, the City of Toronto also has policies that prohibit discrimination on the additional grounds of political affiliation or level of literacy, subject to the requirements of the Charter. Organizations are required to have and post policies, programs, information, instruction, plans and/or other supports, and an appropriate internal process available to their employees and service recipients to prevent, address and remedy discrimination, racism, harassment, hate and inaccessibility complaints under the applicable legislation and including the additional grounds of discrimination prohibited under City policy. Individuals are obliged to refrain from harassment/hate activity.

The City of Toronto requires all organizations and individuals that contract with the City to sign the following Declaration of Compliance with Anti-Harassment/Discrimination Legislation & City Policy. This Declaration must be signed by your organization and submitted with the contract or Letter of Understanding. The name of your organization and the fact that you have signed this declaration may be included in a public report to City Council.

Declaration:

I/we uphold our obligations under the above provincial and federal legislation. In addition, I/we uphold our obligations under City policies which prohibit harassment/discrimination on a number of grounds including political affiliation and level of literacy.

WHERE LEGALLY MANDATED I/we have in place the necessary policies, programs, information, instruction, plans and/or other supports that are consistent with our obligations, and I/we have an internal process available to my/our employees and service recipients to prevent, address and remedy discrimination, racism, harassment, hate and inaccessibility complaints. I/we agree that I/we shall, upon the request of the City, provide evidence of the policies, programs, information, instruction, plans and other supports and an appropriate internal complaint resolution process required under this Declaration which is sufficient to allow the City to determine compliance. I/we acknowledge that failure to demonstrate compliance with this declaration to the satisfaction of the operating Division, in consultation with the City Solicitor, may result in the termination of the contract.

Name of Vendor or Name of Grant Applicant (Organization or Individual):

TORONTO ARTSCAPE INC.

Complete Address: 130 QUEENS QUAY EAST  
SUITE 433, EAST TOWER  
TORONTO, ONTARIO

Email: TJONES@ARTSCAPE.CA

Tel. No. 416-392-1038 x2400

Postal Code: M5A 0P6

Fax No. 416-535-6260

Name of Signing Officer or Name of Applicant (Name - please print), Position

TIM JONES, CHIEF EXECUTIVE OFFICER

Signature:   
Authorised Signing Officer or Individual

Date: 2019-06-14

Multilingual Services: 311 and TTY 416-338-0889 Further information: [www.toronto.ca/diversity.ca](http://www.toronto.ca/diversity.ca)



**SCHEDULE "D"**

**PROPONENT'S ANNUAL OCCUPANCY REPORT**  
For the Year Ended December 31, 20XX

**A. Project Information**

Reference No.	
Project Name	
Property Address	
Occupancy Date	
Contribution Date	
Contribution Agreement Expiry Date	

**B. Average Rents at Year End**

Unit Type	Number of Units	Previous year		Current Year		(E) CMHC or City published AMR	Rationale (if D>B)
		Actual Rent per Unit per Month (A)	RTA Permitted Increase per Unit per month X % (specify) (B)	Actual Rent per Unit per Month (\$) (C)	Rent Increase (D)= (A) – (C)		
Bachelor							
1 BR							
2 BR							
3 BR							
4 BR							
Other (specify)							
<b>TOTAL</b>							

**C. Depth of Affordability: Rents during year of reporting**

Unit Type	Unit Size	Number of Units (A)	Actual Rent to be charged per month (B)	CMHC Average market Rent (AMR – 20XX) or City published AMR (C)	Actual Project Rents (D)=(A)X(B)	Project Rents as per CMHC AMR or City Published (E)=(A)X(C)
Bachelor						
1 BR						
2 BR						
3BR						
Others (specify)						
<b>TOTAL</b>						

**Notes:**

1. For Column (B), actual rent is the net to occupants after all subsidies
2. For Column (C), Alternate e.g. modified Ontario Works Shelter Allowance, ODSP (in the event CMHC AMR does not apply)

<b>Weighted Average Rents</b>	<b>Project Weighted Average Rent</b> Total of (D)=Total of (A) =	<b>CMHC or City Published Weighted Average Rent</b> Total of (E)=total of ( ) =
<b>Depth of Affordability</b>	(Project Weighted Average Rent+ CMHC (or City published) Weighted Average Rent) X100=	

**D. Project Certification**

I certify, to the best of my knowledge, that the information provided in Section B above is true and correct. I hereby authorize the City of Toronto to review the rent roll from appropriate source(s) if deemed necessary.

**Name of Proponent:**

by: \_\_\_\_\_ Date: \_\_\_\_\_

Name:

Title:

I have authority to bind the corporation

**City of Toronto**

by: \_\_\_\_\_ Date: \_\_\_\_\_

Name:

Title:

I have authority to bind the corporation

SCHEDULE "E"

PRE-AUTHORIZED PAYMENT PLAN FORM



*The City of Toronto  
Accounts Receivable  
Metro Hall, 14<sup>th</sup> Floor  
55 John Street, Toronto ON M5V 3C6  
Phone: (416) 397-4922 / (416) 392-8702  
Fax: (416) 392-8003*

PRE-AUTHORIZED PAYMENT PLAN (PAPP) APPLICATION FORM

I (We) hereby authorize **The City of Toronto** and its designated Financial Agents to initiate a Pre Authorized Payment debit entry to my chequing/savings account indicated below, and my financial institution to debit the entry to my account. I also authorize the financial institutions involved in the processing of my electronic payment of services to receive confidential information necessary to answer inquiries and resolve issues related to my payment. This authority will remain in effect until The City of Toronto is notified by me (us), **in writing**, to cancel it in such time to afford The City of Toronto and the financial institutions a reasonable opportunity to act on it.

Name \_\_\_\_\_ Customer ID \_\_\_\_\_

Address \_\_\_\_\_

City, Province,  
Postal Code \_\_\_\_\_

Telephone Number \_\_\_\_\_

Name of Account Holder  
(if different from Customer) \_\_\_\_\_

Name of Financial Institution \_\_\_\_\_

Address of Financial Institution  
(Branch, City, Province & Postal Code) \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

Please indicate if this account is a: Chequing Account \_\_\_\_\_ Savings Account \_\_\_\_\_

Chequing/Savings Account Number \_\_\_\_\_

Effective Date of PAPP  
(please allow 10 business days before the 1<sup>st</sup> due date for processing) \_\_\_\_\_

**If your debit account is a savings account or through a Credit Union, please call your bank to confirm that this account can be used for PAPP.**

**All payments will be withdrawn on the first (1<sup>st</sup>) business day of each month and will be for the monthly amount stipulated in your agreement with The City of Toronto.**

**All returned items will be assessed a \$40.00 administration fee.**

***Please mail this form to the above address with a VOID cheque.***



This is Exhibit "E" referred to in the Affidavit of Ben Macintosh, affirmed by Ben Macintosh, at the City of Toronto, in the Province of Ontario, before me on this 3<sup>rd</sup> day of January, 2024, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

*Christopher J. Henderson*

Christopher J. Henderson  
*Commissioner for Taking Affidavits*

**CITY OF TORONTO**

**and**

**TORONTO ARTSCAPE INC.**

---

**LEASE**

**30 Merchant's Wharf, Toronto, Ontario**

**THIS LEASE** made as of the 14th day of June, 2019.

**IN PURSUANCE OF** the Short Form of Leases Act

**BETWEEN:**

**CITY OF TORONTO**

(hereinafter called the "Landlord")

**OF THE FIRST PART**

- and -

**TORONTO ARTSCAPE INC.**

(hereinafter called the "Tenant")

**OF THE SECOND PART**

**WHEREAS:**

In consideration of the premises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each Party, the Parties covenant and agree as follows:

## **ARTICLE 1 DEFINITIONS**

### **Section 1.1 Definitions**

The terms defined herein shall have for all purposes of this Lease and of all agreements or other subsequent instruments, implemental or confirmatory or amendatory hereof now or hereafter entered into in accordance with the provisions hereof, the following meanings unless the context expressly or by necessary implication otherwise requires:

**"Additional Rent"** means any and all amounts, other than Basic Rent, required to be paid by the Tenant under this Lease, whether or not same are designated "Additional Rent" or whether or not the same are payable by Landlord;

**"Affiliate"** of any Person means, at the time the determination is being made, any other Person Controlling, Controlled by or under common Control with, that Person, whether directly or indirectly;

**"Applicable Laws"** shall mean, collectively, every statute, regulation, by-law, building code, order, which from time to time affects the Demised Premises, the Building or the Work;

**"Arbitration"** means that the specified dispute is to be resolved pursuant to the *Arbitration Act, 1991*, S.O. 1991, c. 17 or any successor thereto. Each party is to bear its own costs and share equally in the fees and expenses of the Arbitrator and Arbitration, unless otherwise awarded by the Arbitrator. The parties hereby expressly agree that the provisions of the *Municipal Arbitrations Act*, R.S.O. 1990, c. M.48 relating to arbitrations shall not apply.

**"Article", "Section", "Subsection" or "Paragraph"** means the specified Article, Section, Subsection or Paragraph of this Lease;

**"Basic Rent"** means the rent payable pursuant to Section 3.2;

**"Building"** means the 80 unit affordable housing rental building constructed, on behalf of the Landlord on the Land and all other improvements including, without limitation, all fixtures, fixed machinery, accessories and equipment or other facilities, installations, alterations, additions, renovations, mechanical, electrical and utility installations which in each case are permanently affixed thereto or permanently situated thereon or are of a permanent nature that are used in connection therewith from time to time and which together with the Land forms the Demised Premises;

**"CMHC"** means Canada Mortgage and Housing Corporation and any successor thereto;

**"Commencement Date"** means the 14th day of June, 2019, or the date the City takes possession of the Building from the Developer.

**"Control"** means, with respect to any Person at any time, the possession, directly or indirectly of the power to direct or cause the direction of the management or policies of such Person, whether through the ability to exercise voting power, by contract, by virtue of being (or Controlling) the general partner, manager, managing partner, board of managers, board of trustees or board of directors of such Person, or by virtue of the beneficial ownership of or control over a majority of the economic interest of such Person or otherwise; and each of **"Controlled by"** or **"Controlling"** has a corresponding meaning;

**"Contribution Agreement"** means the Contribution Agreement dated January 8, 2016, to be assigned, by way of an assignment and assumption agreement, to the Tenant by the City with respect to the operation of the Project and all schedules attached thereto;

**"Demised Premises"** means those lands described in Schedule "A" and the with the Building, together with all rights and interests the Landlord enjoys over the adjacent properties for ingress and egress by people and vehicles, parking and for storage.

**"Deputy City Manager"** means the Deputy City Manager – Corporate Services for the Landlord, his or her successor, or his or her designate(s) from time to time;

**"Developer"** means the builders contracted by the City to build the Bayside Project;

**"Hereof", "hereto", "hereunder"** or similar expressions means this Lease and, where relevant, the particular Article, Section, Subsection or Paragraph of this Lease;

**"Inspector"** means an inspector for the Landlord;

**"Landlord"** means the City of Toronto and its successors and assigns;

**"Lease"** means this Agreement and all amendments thereto in writing that may be agreed upon by the Landlord and the Tenant from time to time.

**"Leasehold Mortgage"** means the first mortgage or similar security executed by the Tenant of the Tenant's leasehold interest in the Project as may be extended, modified, renewed or replaced from time to time;

**"Leasehold Mortgagee"** means the holder of the Leasehold Mortgage, as well as CMHC, as insurer of the Leasehold Mortgage, if applicable;

**"Parties"** means the Landlord and the Tenant and their respective successors and permitted assigns; and **"Party"** means any one of the Parties;

**"Person"** means any individual, partnership, corporation, trust, unincorporated organization, municipality, government, or governmental agency or any combination thereof;

**"Rent"** means Basic Rent and Additional Rent;

**"Taxes"** means all taxes, rates, duties, charges, impositions, levies, assessments, realty taxes, licence and permit fees, and other governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen of any kind and nature whatsoever whether municipal, parliamentary or otherwise, which are from time to time levied, imposed or assessed against the Demised Premises and including those levied, imposed or assessed thereon for education, schools, utilities and local improvements or in respect of any occupancy or use thereof, capital taxes and any business transfer tax, national goods and services tax, value added tax, sales tax or any tax levied, rated, charged or assessed in respect of Rent payable by the Tenant under this Lease and municipal business taxes relating to the ownership levied or imposed on all or any portion of the Demised Premises or the revenues therefrom or the Tenant in substitution for, or in addition to, Taxes presently levied or imposed, then any such new tax or levy shall be deemed to be and shall be included in Taxes. Notwithstanding the foregoing, the Demised Premises will be the subject of an exemption from taxation for municipal and school purposes (municipal property taxes) for the term of the Lease in accordance with the terms of the Contribution Agreement;

**"Tenant"** means Toronto Artscape Inc., its successors and permitted assigns;

**"Term"** means the period from the Commencement Date to the fiftieth (50<sup>th</sup>) anniversary of such date, less a day;

**"Transfer"** means an assignment or sublet of this Lease or any transaction whereby the rights of the Tenant under this Lease or to the Demised Premises or any part, are transferred, any transaction by which any right of use or occupancy of all or any part of the Demised Premises is conferred upon a third party, any mortgage, charge or encumbrance of this Lease or the Demised Premises or any part thereof or other arrangement under which either this Lease or the Demised Premises become security for any indebtedness or other obligations and includes any transaction or occurrence whatsoever (including, but not limited to, receivership proceedings, seizure by legal process and transfer by operation of law), but does not include the entering into of a leasehold mortgage or any other security authorized pursuant to Section 5.1, or subleases, licences or other occupancy arrangements of dwelling units in the ordinary course of the Tenant's activities as permitted by Section 8.1 of this Lease. In addition, it does not

include a transfer to another entity associated with and controlled by the Tenant and of which the Landlord has received notice;

**"Transferee"** means the Person or Persons to whom a Transfer is or is to be made; and

**"Work"** shall mean any renovation or capital repair of the Building with all ancillary services thereon or connected therewith and the provision of all labour, materials, tools, machinery or equipment related thereto.

## **ARTICLE 2 DEMISE**

### **Section 2.1 Demise of Demised Premises**

(1) In consideration of and subject to the Rent reserved and the covenants and conditions herein contained and in the Contribution Agreement on the part of the Tenant to be paid, performed, observed and complied with, the Landlord hereby demises and lets to the Tenant, and the Tenant hereby leases from the Landlord, the Demised Premises to have and to hold during the Term, unless and until sooner terminated as expressly provided herein.

(2) Each of the Landlord and the Tenant covenant and agree to perform, fulfil and observe the covenants, obligations and conditions herein contained to the extent they bind or are expressed to bind the Landlord or the Tenant, respectively.

### **Section 2.2 Surrender**

At the expiration of the Term or the earlier termination of this Lease:

(a) The Tenant agrees to peaceably surrender and yield up to the Landlord the Demised Premises in the state of repair required of the Tenant pursuant to this Lease shall thereupon vest in the Landlord free and clear of all financial encumbrances without any necessity for any transfer documentation and for no consideration and thereupon the rights of the Tenant under this Lease shall terminate.

(b) The Tenant also agrees to deliver to the Landlord copies of all books and records with respect to the Demised Premises as are in its possession at such time so as to ensure the orderly continuance of operation of the Demised Premises by the Landlord if the Landlord so requires beginning on the date this Lease is terminated. The Landlord shall have the right to review the Tenant's original books and records related to the Demised Premises as and when necessary.

(c) The Tenant shall not execute any agreement with respect to the Demised Premises (including a lease or an agreement for the provision of services) which expires after the end of the Term, without the consent of the Landlord, which may be unreasonably withheld.

(d) Notwithstanding the termination of the Lease, whether at the expiration of the Term or earlier as is provided herein, the Tenant shall remain liable to the Landlord for

any default hereunder by the Tenant, notice of which has been received by the Tenant, during the Term and which remain outstanding as of the expiry of the Term.

(e) Notwithstanding the foregoing, it is understood that the Tenant, upon termination or expiry of this Lease for any cause, may go upon the Demised Premises and remove chattels, trade fixtures and other personal property in each case placed thereon by the Tenant.

(f) The Tenant shall, at the expiration or earlier termination of the Term, at its sole cost, leave the Building and any subsequent leasehold improvements in the same condition it is required to be maintained pursuant to the provisions of this Lease.

### **Section 2.3 Assignment of Rights**

(1) At the expiration of the Term or the earlier termination of this Lease, the Tenant shall, for no consideration, assign to the Landlord all of the Tenant's interest in the Demised Premises including, for greater certainty, the Building and all Tenant's fixtures located thereon which the Tenant elects not to remove in accordance with its rights under Section 2.2 above, together with the benefit of all subleases, licence agreements, guarantees, warranties and other agreements and rights benefiting the Demised Premises or the Tenant's interest therein, if and to the extent that the Landlord shall require such benefits to be assigned, provided that such benefits are capable of being assigned. The Tenant agrees to deliver executed copies of all such documents to the Landlord at such time. The Landlord shall assume the Tenant's rights and obligations under such documents, provided that such rights and obligations are capable of being assigned. Notwithstanding the foregoing, the Tenant shall remain liable for any default, cost or obligation arising pursuant to such documents prior to the date of such assignment.

(2) The Tenant agrees to deliver an assignment agreement, with respect to all contracts and ongoing obligations, substantially in the form of the assignment agreement attached hereto as Schedule "B".

(3) The Tenant hereby constitutes the Landlord as the Tenant's true and lawful attorney fully empowered to execute any required documents in order to take any reasonable steps necessary to effect any such assignments set out in Section 2.3(1).

### **Section 2.4 Overholding**

If the Landlord permits the Tenant to remain in possession of the Demised Premises after the expiration of the Term and without an agreement concerning such overholding and accepts Rent, as set out below, in respect thereof, a tenancy from month to month shall be deemed to have been created. Such tenancy may be terminated at any time either by the Landlord or, by the Tenant by notice to the other with the termination date to be set out in the notice and to be at least sixty (60) clear days after delivery of the notice and, in the absence of written agreement to the contrary, shall be subject to all of the terms of this Lease, except as to the Term.

## **ARTICLE 3 RENT**

### **Section 3.1 Covenant to Pay Rent**

The Tenant agrees to pay Basic Rent and Additional Rent as herein provided.

### **Section 3.2 Basic Rent**

(1) From and after the Commencement Date, and throughout the Term, the Tenant shall pay to the Landlord at the office of the Landlord, or at such other place designated by the Landlord, in lawful money of Canada, without any prior demand therefor and, unless otherwise expressly set out herein, without any deduction, abatement, set-off or compensation whatsoever, as Basic Rent, annual rent equal to Ten Dollars (\$10.00) per annum for the duration of the Term, the receipt and sufficiency of which for the entirety to the Term has been received by the Landlord as of the date hereof.

(2) In the event that an event of default, as set out in Section 11 of this Lease, occurs which event of default subsists beyond any applicable cure periods set out therein, then, from and after the occurrence of such default and until such time as such default is corrected, and in addition to any other rights and remedies of the Landlord under this Lease, the Tenant will be responsible for the payment of basic rent equal to the then current fair market rent for the use of the Demised Premises as a residential building as permitted under this Lease, as of the time when the Landlord invokes its rights herein to receive payment and to be agreed to by the Landlord and the Tenant. If the Landlord and Tenant cannot reach agreement, as to the basic rent payable, within three months of when such basic rent becomes due and payable, then the basic rent payable will be determined by Arbitration. The Landlord and the Tenant will each pay one-half of the fees and expenses of the Arbitration (except for the separate costs of each of the Parties. For certainty, upon correction of the event of default in question, the obligations of the Tenant under this subparagraph shall cease to apply.

### **Section 3.3 Late Payment Charges/NSF Cheques**

If any amount due and payable to the Landlord remains unpaid thirty (30) days after it is due, interest on the amount outstanding from time to time shall be paid to the Landlord at the rate of 1.25% per month. Interest will be calculated monthly from and including the day after the last day of the thirty (30) day period and paid monthly until payment in full is received by the Landlord. The obligation of the Tenant to pay interest in accordance with this subsection is without prejudice to any of the other remedies available to the Landlord, at law or otherwise. A charge of \$40.00 (the "NSF Fee") will be paid by the Tenant for each cheque given by the Tenant to the Landlord that is not honored by the bank on which it is drawn. The NSF Fee may be increased from time to time by the Landlord so that it is equal to the fee charged by the Landlord in respect of cheques tendered in payment of municipal tax and water charges that are not honored by the banks on which they are drawn, and the Tenant agrees to pay the NSF Fee as it may be so increased from time to time.

### **Section 3.4 Net Lease**

The Tenant acknowledges and agrees that it is intended that this Lease is a completely carefree net lease to the Landlord, save and except as is otherwise provided for in this Lease and/or the Contribution Agreement. The Landlord is not responsible during the Term for any costs, charges, expenses and outlays of any nature whatsoever arising from or relating to the Demised Premises including, without limitation, the Building, or the use and occupancy thereof, or the contents thereof or the business or operation carried on therein, and the Tenant shall pay all charges, impositions, costs and expenses of every nature and kind whatsoever relating to the Demised Premises and the use thereof by the Tenant including, without limitation, the costs of all insurance and all Taxes, save and except as is otherwise provided for in this Lease and/or the Contribution Agreement, as well as all costs and expenses incurred with respect to any shared facilities or reciprocal agreement affecting the demised premises.

### **Section 3.5 Waiver of Set-Off by Tenant**

Except as otherwise provided for in this Lease and/or the Contribution Agreement, the Tenant hereby waives and renounces any and all existing and future claims and rights of set-off against any Rent and other monies payable hereunder to the Landlord and agrees to pay such Rent and other monies payable hereunder to the Landlord regardless of any claim or set-off which may be asserted by the Tenant or on its behalf.

### **Section 3.6 Taxes, Utility and Other Charges**

Subject always to the terms and conditions of the Contribution Agreement and compliance by the Landlord with the provisions thereof, the Tenant agrees to pay when due at the Tenant's sole expense and for its own account from and after the Commencement Date:

- (a) each and every instalment of Taxes on the Demised Premises or any part thereof, if applicable; and
- (b) all utility charges and rates and similar taxes, rates, charges and assessments including payments in lieu thereof which are properly charged, levied or assessed in connection with the Demised Premises or any part thereof or which are properly levied or assessed against the Tenant or which would, if unpaid, become a lien on the Demised Premises or the Tenant's leasehold interest therein or where such lien will, at any time, affect the interest of the Landlord; and
- (c) all of the other costs and expenses of maintaining and operating the Demised Premises, its services, equipment and facilities; such costs and expenses to include, without limiting the generality of the foregoing: Certificates of Property Use compliance costs, ground water discharge filtration system maintenance and repair costs, the shared facilities costs associated with the Demised Premises, water heating, snow and ice removal and clearance, administrative charges and salaries, repairs and replacement of equipment, fixtures and facilities, landscaping contracts, grass cutting, lighting, cleaning, supplies, supervising; and
- (d) all other charges and expenses which are the responsibility of the Tenant pursuant to this Lease.

### **Section 3.7 Landlord may Pay Taxes, etc.**

If the Tenant fails to pay when due any Additional Rent required to be paid by the Tenant pursuant to this Lease, the Landlord shall have the right but shall have no obligation to pay the same at the expense of the Tenant after thirty (30) days' prior notice to the Tenant and the Tenant covenants to pay to the Landlord forthwith upon demand as Rent any amounts so paid by the Landlord.

### **Section 3.8 Adjustment of Rent**

If applicable, sums paid by the Tenant under this Article 3 shall be subject to adjustment to reflect any partial billing periods encountered at the commencement or termination of this Lease.



### **Section 3.9 Payments of Rent**

All payments of Rent are payable in lawful money of Canada without deduction, abatement, set-off or compensation whatsoever, unless otherwise expressly set out herein. Additional Rent is due and payable as specifically provided in this Lease.

## **ARTICLE 4 ASSIGNMENT AND SUBLETTING AND OTHER DISPOSITIONS OF INTEREST**

### **Section 4.1 Dealings by Landlord**

(a) The Landlord shall provide a non-disturbance agreement in favour of the Tenant from any mortgagee, assignee or purchaser which non-disturbance agreement shall be in a form and in substance approved by each of the City Solicitor and the Tenant, each acting reasonably.

(b) The Tenant shall, if requested by the Landlord, postpone the Lease and/or any registered notice of this Lease to any bona fide freehold mortgage registered after the date of registration of notice of this Lease against title to the Demised Premises, provided that:

(i) the holder of each mortgage or charge affecting the Landlord's interest in the Demised Premises has executed and delivered to the Tenant a non-disturbance agreement in a form and in substances approved by the City Solicitor and the Tenant, each acting reasonably;

(ii) the Tenant shall be permitted to remain in quiet possession of the Demised Premises without interruption or disturbance from the freehold mortgagee, assignee or purchaser;

(iii) the rights of the Tenant and those of any Leasehold Mortgagee arising out of this Lease and/or Leasehold Mortgage shall not be affected or disturbed by any freehold mortgagee, assignee or purchaser;

(iv) the Tenant and any Leasehold Mortgagee shall not in any foreclosure or other proceedings under the freehold mortgage, nor in any other way, be deprived of its rights under or pursuant to the Lease, nor shall this Lease be terminated or effected by any foreclosure or sale or any proceeding under any freehold mortgage; and

(v) the Landlord shall cause any party to whom it sells the Demised Premises to enter into an agreement with the Tenant and the Leasehold Mortgagee wherein the Purchaser assumes the covenants and obligations of the Landlord under this Lease, which shall remain in full force and effect.

(c) The Landlord represents and warrants that the Demised Premises are owned and seized in fee simple by the Landlord and the Landlord has entered into this Lease with proper authority and has the right to lease the Demised Premises to the Tenant as contemplated herein. If, at any time during the term any indebtedness, encumbrance, lien, assessment, claim or other matter shall arise or shall be asserted which in any way interferes or threatens to interfere with the Tenant's use of the Demised Premises, as permitted by this Lease, then the Tenant shall have the right to expend such sums as are necessary to abate such threat or interference and the Landlord shall forthwith pay to the Tenant, on demand, the amount of any such sum expended by the Tenant. The Landlord acknowledges and agrees that it shall not

grant any consent, easement, right or interest in the Demised Premises or enter into any agreement affecting the Demised Premises without the Tenant's prior written approval.

#### **Section 4.2 Assignment and Subletting by Tenant**

(a) Subject to Articles 5 and 8 the Tenant shall not Transfer or sublet all or any part of the Demised Premises for the whole or any part of the Term and shall not enter into, consent to or permit any Transfer without obtaining the prior written consent of the Landlord, which consent will not be unreasonably or arbitrarily withheld, conditioned or delayed. In determining whether the Landlord is prepared to grant its consent to a Transfer, the Landlord may consider the following factors:

- (i) whether the financial standing of the proposed transferee is sufficient to satisfy the obligations of the Tenant under the Lease; and
- (ii) the reputation and experience of the transferee or its related corporation, its management and investors in the operation of affordable residential housing developments.

The Landlord may, in its sole discretion, charge a commercially reasonable administration fee for such request.

(b) Notwithstanding the foregoing or anything else contained in this Lease, the Tenant may effect a Transfer to or with any of the following, without the Landlord's consent, but with notice of same to the Landlord:

- (i) an affiliate of the Tenant; and
- (ii) any lease, sublease or licence or other occupancy related to any dwelling or storage units in any building on the Demised Premises.

(c) Consent by the Landlord to any Transfer if granted shall not constitute a waiver of the necessity for such consent to any subsequent Transfer. This prohibition against Transfer shall include a prohibition against any Transfer by operation of law. The Transfer of a part of the Demised Premises is prohibited.

(d) No assignment by the Tenant shall be effective until the Transferee has entered into an agreement directly with the Landlord, in a form satisfactory to the Landlord and Tenant acting reasonably, whereby the assignee expressly agrees to assume all of the obligations and liabilities arising from and after the date the assignment is effective, of the Tenant in this Lease including the use provision set out in Article 8. After the assignment is effected, the Tenant shall be relieved of all obligations and liabilities, under or pursuant to this Lease, including any liabilities or obligations incurred up to the date of the assignment is effective.

(e) If a Leasehold Mortgagee is in possession or has acquired the Tenant's leasehold title, it may, subject to any rights of the Tenant, assign the leasehold interest of the Tenant in the Demised Premises; however, the party to whom such leasehold interest is assigned shall be obliged to comply with all of the terms of this Lease. When such an assignment has been completed, the Leasehold Mortgagee shall have no obligations and shall incur no liability under this Lease except for any liability on the part of the Leasehold Mortgagee arising out of any breach of this Lease committed by the Leasehold Mortgagee before the completion of such

assignment and any other terms of this Lease for which the Leasehold Mortgagee would have been responsible to fulfil.

(f) For certainty, the Landlord acknowledges and agrees that, to the extent the Tenant is entitled to assign this Lease in accordance with the terms hereof, it shall also be entitled to assign the benefit and rights under the Contribution Agreement and such entitlement or the Landlord's consent to the assignment of this Lease shall be deemed to also be a consent to the assignment of the Contribution Agreement whether or not such consent specifies same.

(g) If the Tenant intends to effect a Transfer, the Tenant shall give prior written notice to the Landlord of such intent specifying the identity of the Transferee, the type of Transfer contemplated, and shall provide such financial, business or other information relating to the proposed Transferee and its principals as the Landlord or any mortgagee requires, each acting reasonably, together with copies of any documents which evidence the proposed Transfer (subject always to the redaction of any confidential information). The Landlord shall, within forty-five (45) days after having received such notice and all requested information, notify the Tenant either that it consents or does not consent to the Transfer in accordance with the provisions and qualifications of this Article.

(h) For certainty, the Landlord acknowledges and agrees that in the event that it consents to the assignment of the Contribution Agreement or any rights or entitlements set out therein, the said consent shall also be deemed to constitute a consent to any corresponding Transfer of this Lease to the party entitled to receive the benefits under the Contribution Agreement as aforesaid.

#### **Section 4.3 Conditions of Transfer**

(a) Prior to the written consent of the Landlord being obtained, no acceptance by the Landlord of any payments by a Transferee shall be deemed a waiver of the Tenant's covenants or any acceptance of the Transferee as Tenant or a release from the Tenant from the further performance by the Tenant of its obligations under this Lease. Any consent by the Landlord shall be subject to the Tenant and Transferee executing an agreement with the Landlord, in form and content satisfactory to the Landlord's solicitor, acting reasonably, agreeing that the Transferee will be bound by all of the terms of this Lease and the Contribution Agreement and except in the case of a sublease, that the Transferee will be so bound as if it had originally executed this Lease as tenant.

(b) Notwithstanding the effective date of any permitted Transfer as between the Tenant and the Transferee, all Rent for the month in which such effective date occurs shall be paid in advance by the Tenant so that the Landlord will not be required to accept partial payments of Rent for such month from either the Tenant or the Transferee.

(c) Any document evidencing any Transfer permitted by the Landlord, or setting out any terms applicable to such Transfer or the rights and obligations of the Tenant or Transferee thereunder, shall be prepared by the Tenant or its solicitors and all associated reasonable legal costs shall be paid by the Tenant, subject to the Landlord's approval of the applicable form.

#### **Section 4.4 No Advertising**

The Tenant shall only advertise that the whole or any part of the Demised Premises are available for a Transfer and shall only permit any broker or other Person to do so in accordance with advertising and listings which are consistent with prudent practices in the real estate industry

in the greater Toronto area for buildings and premises similar to the Building and the Demised Premises without the Landlord's consent.

## **ARTICLE 5 LEASEHOLD MORTGAGE**

### **Section 5.1 Tenant's Right to Mortgage**

Provided that the Tenant is not in default under this Lease or the Contribution Agreement in each case which default persists beyond any applicable cure period, the Tenant shall have the right at any time and from time to time to mortgage this Lease and the Tenant's leasehold interest in the Demised Premises. The Leasehold Mortgage may be granted by way of assignment or otherwise. The Tenant shall also have the right to extend, modify, renew or replace any such Leasehold Mortgage with another Leasehold Mortgage, provided however that with respect to such Leasehold Mortgage:

- (a) the term of the Leasehold Mortgage shall not extend beyond the end of the Term;
- (b) the Leasehold Mortgage shall provide that it is expressly subject and subordinate to the Landlord's rights hereunder and in the Demised Premises;
- (c) the Tenant shall observe and perform all of the Tenant's obligations under any Leasehold Mortgage and keep any Leasehold Mortgage in good standing at all times; and
- (d) nothing contained in this Lease shall in any way bind the Landlord to subordinate its reversionary interest in the Demised Premises to any Leasehold Mortgage.

The Landlord acknowledges and agrees that the Tenant and/or the mortgagee shall be entitled to register the Leasehold Mortgage on the leasehold parcel for the Demised Premises.

Provided the Proponent is in good standing under this Lease, it is understood and agreed that the City shall subordinate and postpone the City Charge to the Leasehold Mortgage (and related security) and all prior and subsequent advances thereunder as that mortgage may be replaced during the Term, and to all the Permitted Encumbrances, provided in the City's reasonable opinion; sufficient equity remains to secure the City Charge. The City reserves the right to request, at the Proponent's expense, such appraisals, financial statements, mortgage statements or other information as it deems appropriate prior to executing the postponement. Please note: The City requires a minimum of three (3) weeks to process requests for the execution of postponements and forbearance documents.

### **Section 5.2 Tenant to Perform all Obligations Under Leasehold Mortgage**

The Tenant shall observe and perform all of the Tenant's obligations under any Leasehold Mortgage and keep any Leasehold Mortgage in good standing at all times.

### **Section 5.3 Tenant's Right to Refinance**

The Tenant shall be entitled at any time to refinance the Leasehold Mortgage and the provisions of Section 5.1 shall be amended mutatis mutandis.

#### **Section 5.4 Tenant's Rights under Contribution Agreement**

Nothing contained in this Article 5 shall in any way affect the Tenant's rights under the Contribution Agreement.

#### **Section 5.5 Leasehold Mortgagee**

Notwithstanding any other provisions of this Lease:

(a) The Landlord will give to the Leasehold Mortgagee simultaneously with service on the Tenant, a duplicate of any and all notices or demands given by the Landlord to the Tenant from time to time. The Landlord shall not exercise right, power or remedy with respect to any default under this Lease, including any right of re-entry or distress or right to terminate this Lease until;

(i) the Landlord gives to the Leasehold Mortgagee at least forty-five (45) days' prior notice in writing of the intention to exercise any right, power or remedy with respect to any default hereunder, including to re-enter or to distrain or to terminate, which written notice shall specify the full particulars of the grounds therefor; and

(ii) the Leasehold Mortgagee does not during that forty-five (45) day period either remedy all specified proper grounds for exercise of any right, power or remedy, including re-entry or distraint or termination or give to the Landlord notice in writing that the Leasehold Mortgagee intends to take, or has taken, formal proceedings for the enforcement of the Leasehold Mortgage and the protection of its position; and

(iii) the Leasehold Mortgagee, having given the notice specified in (ii) has had reasonable time to pursue to its conclusion all reasonable proceedings for the enforcement of the Leasehold Mortgage and the protection of its position.

(b) Any Leasehold Mortgagee may make any payment or perform any act required to be made or performed by the Tenant with the same effect as if made or performed by the Tenant.

(c) If upon the conclusion of proceedings by the Leasehold Mortgagee for the enforcement of the Leasehold Mortgage and the protection of its position, the rights of the Tenant have been released to the Leasehold Mortgagee or foreclosed or sold, thereupon all then existing grounds for exercise of any power, right or remedy including re-entry or distress or termination based on any default by the Tenant and all then existing rights (if any) in respect of any remedy including of re-entry or distress or termination based on such grounds shall terminate and the Leasehold Mortgagee or purchaser shall become the Tenant free of all liability for such grounds;

(d) Where the Landlord, at the request of the Tenant, intends to terminate the Lease either by surrender of lease or otherwise, notice of such intention shall be given in writing to the Leasehold Mortgagee, allowing the Leasehold Mortgagee at least 60 days to obtain repayment in full of the outstanding Leasehold Mortgage, inclusive of interest and penalties, or take mortgage default enforcement action. If the Leasehold Mortgagee provides to the Landlord notice of its intention to commence or the commencement of mortgage default enforcement action to realize on its security, including but not limited to foreclosure proceedings, the Landlord shall not accept the surrender of the Lease;

(e) Throughout any period of time during which, as a result of proceedings for default under the mortgage including transfer of leasehold title under the *National Housing Act*, R.S.C., 1985, c. N-11, the Leasehold Mortgagee as successor is in leasehold possession of the Demised Premises or holds leasehold title to the Demised Premises:

(i) the Landlord waives, as against the Leasehold Mortgagee and its successors and assigns, all Basic Rent and Additional Rent and interest accruing and otherwise required to be paid under this Lease, but for the purpose of this waiver, Basic Rent and Additional Rent do not include municipal real estate taxes, school taxes, local improvement charges, water rates and utility charges and any other amounts or costs required to be paid by the Landlord or the Tenant and the actual costs of construction, maintenance and repair of damage that are the responsibility of the Tenant in each case which solely pertain to the period during with the Leasehold Mortgagee and/or its successors are in possession of the Demised Premises.

(ii) the review and approval of the Landlord shall not be required with respect to plans, specifications, contractors, workers, tradesmen, materials, proposals, details and drawings for repairs, replacements, maintenance, improvements, alterations, and decorations unless the repair will materially affect the building's structure or the mechanical, heating, ventilating, air-conditioning or other base systems; and

(iii) the consent of the Landlord shall not be required with respect to any vacancy of or removal of goods from the Demised Premises.

(f) No restriction on any Transfer, assignment or subletting of this Lease by the Tenant applies to any Transfer, assignment or subletting or release of this Lease by the Leasehold Mortgage and the Leasehold Mortgagee shall not remain liable on the Lease after any Transfer, assignment or release by it;

(g) If at any time the Demised Premises are damaged or destroyed to the extent of twenty-five (25%) per cent or more of its full insurable value, then the Leasehold Mortgagee may, within 60 days of its receipt of notice of the event and extent of damage or destruction and appropriate amount of available insurance proceeds, elect to require that the insurance proceeds not be applied towards the repair or rebuilding or restoration of the Building, and in the event of such an election, the Lease shall be terminated, and the insurance proceeds shall be applied, in priority;

(i) first, but only if and to the extent required by the Landlord or the Tenant, toward clearing and restoring the Demised Premises as nearly as possible to their condition prior to the commencement of construction;

(ii) second, towards payment of all moneys owing on the Leasehold Mortgage. Notwithstanding section 5.5(g)(i) above, the Landlord confirms and agrees with any Leasehold Mortgagee that so long as the Leasehold Mortgage remains in full force and effect and the Leasehold Mortgagee elects in writing as hereinafter provided and provides written notice of such election to the Landlord and the Tenant, the provisions of section 5.5(g)(ii) will rank in priority to section 5.5(g)(i) hereof so that should the Leasehold Mortgagee elect that insurance proceeds on damage or destruction of any Building(s) on the Demised Premises

not be applied to the repair or rebuilding or restoration of the Project, then, in such event, such proceeds will be applied first to the payment of all moneys then owing on the Leasehold Mortgage and then in the manner and to the extent provided in section 5.5(g)(i), section 5.5(g)(iii), and section 5.5(g)(iv) of this Lease;

(iii) third, towards payment of all moneys payable to the Landlord under this Lease;

(iv) fourth, in payment to the Landlord and the Tenant in accordance with their interests herein;

and neither the Landlord nor the Tenant shall be obligated to repair or rebuild or restore.

(h) Subject to Section 7.11, there shall be no obligation on the Leasehold Mortgagee to arrange or maintain any insurance, and, if for the purpose of paragraph (f), because the Leasehold Mortgagee has not arranged or maintained insurance there are no or insufficient insurance proceeds and the Leasehold Mortgagee makes the election specified, then the Leasehold Mortgagee shall not be required to do more than clear and restore the Demised Premises as nearly as possible to their condition prior to the commencement of construction and shall be entitled to apply to that end whatever insurance proceeds may be available;

(i) There shall be no obligation on the Leasehold Mortgagee to indemnify the Landlord except where the Leasehold Mortgagee would be so obligated under the terms of this Lease;

(j) In the event the Landlord or Tenant requires Arbitration pursuant to the Lease, the party requiring Arbitration shall give timely notice of all Arbitration proceedings to the Leasehold Mortgagee and the Leasehold Mortgagee may participate fully in the proceedings if in its reasonable opinion the outcome may affect its security;

(k) If the Leasehold Mortgagee wishes to take proceedings under its security to assign the Lease, then:

(l) the Leasehold Mortgagee will use reasonable commercial best efforts to find an assignee or purchaser that will carry on the operation of the Demised Premises as affordable housing in accordance with Section 8.1 of the Lease.

(i) If, after having conducted reasonable commercial best efforts over a period of six (6) months, the Leasehold Mortgagee is unable to enter into an agreement of purchase and sale satisfactory to the Leasehold Mortgagee, acting reasonably, with a purchaser as referred to in clause (i), and then obtains the consent of the Landlord, the Leasehold Mortgagee may assign or sell the Tenant's interest in the Lease to any Person, subject to the consent of the Landlord, which consent may not be unreasonably or arbitrarily withheld. Under such circumstances, the fact that the assignee or purchaser does not agree to assume the affordable housing obligations set out in the Contribution Agreement will not be a factor that the Landlord may consider in determining whether to consent.

(ii) If the Leasehold Mortgagee assigns the Lease under clause (ii), then at the request of the Leasehold Mortgagee on completion of the assignment or sale

transaction, in addition to any other documents that may be required, the Landlord will enter into an agreement with the assignee or purchaser deleting subparagraph of 8.1 (1), (2) and (3) and insert a new subsection 8.1 (1) as follows:

“The Tenant may use the Project only for the purpose of a residential housing project, as its principle use and any other ancillary uses related or pertaining thereto or otherwise servicing such residential housing project and in each case, only in accordance with all applicable zoning and other laws, by-laws and regulations.”

(l) If the Leasehold Mortgagee is in possession of the Demised Premises as a mortgagee in possession, then the Leasehold Mortgagee shall be responsible for the obligations of the Tenant under this Lease for so long as it is in possession of the Demised Premises, but neither the Leasehold Mortgagee nor a Transferee under a transfer entered into pursuant to 5.5 (j) will have any liability with respect to any matter or thing occurring before the Leasehold Mortgagee's possession of the Demised Premises.

(m) Upon any rejection of this Lease by any trustee of the Tenant in any bankruptcy, reorganization, arrangement or similar proceeding which would, if it were not for this provision, cause this Lease to terminate, without any action or consent by the Landlord, the Tenant or any Leasehold Mortgagee, the transfer of the Tenant's interest hereunder to such Leasehold Mortgagee or its nominee shall automatically occur. Such Leasehold Mortgagee may terminate this Lease upon any such transfer upon giving notice thereof to the Landlord or no later than thirty (30) days after notice from the Landlord of such transfer. Upon any such termination such Leasehold Mortgagee shall have no further obligations hereunder (including any obligations which may have accrued prior to such termination) except in the event that said Leasehold Mortgagee shall request a new lease, in which event all prior obligations accruing to the effective date of the new lease shall be payable at the date of its effectiveness notwithstanding the earlier rejection and termination.

(n) In the event of the termination of this Lease or of any succeeding lease made pursuant to the provisions hereof above or any other provision of this Lease prior to its stated expiration date, upon the request of the Leasehold Mortgagee, the Landlord will enter into with the Leasehold Mortgagee, or as it may direct, a new lease of the Demised Premises with the Leasehold Mortgagee for the remainder of the term, effective as of the date of such termination, at the rent and additional rent and upon the covenants, agreements, terms, provisions and limitation herein contained, provided:

(i) such Leasehold Mortgagee makes written request upon the Landlord for such new lease within sixty (60) days from the date of such termination and such written request is accompanied by payment to the Landlord of all amounts then due to the Landlord; and

(ii) such Leasehold Mortgagee pays or causes to be paid to the Landlord at the time of the execution and delivery of said new lease any and all sums which would at the time of the execution and delivery thereof be due under this Lease but for such termination and pays or cause to be paid any and all expenses, including reasonable counsel fees, court costs and disbursements incurred by the Landlord in connection with any such default and termination as well as in connection with the execution and delivery of such new lease.



(o) Upon the execution and delivery of a new lease in accordance with the provisions hereof, all subleases which theretofore may have been assigned and transferred to the Landlord shall thereupon be assigned and transferred, without recourse by the Landlord, to the Leasehold Mortgagee as the new tenant.

(p) The Parties hereto shall give the Leasehold Mortgagee notice of any expropriation proceedings affecting the Demised Premises and such Leasehold Mortgagee shall have the right to intervene and be made a party to any such expropriation proceedings. The Tenant's interest in any award or damages for such taking is hereby set over, transferred and assigned to the Leasehold Mortgagee to the extent that such transfer and assignment is provided for by the terms of any such Leasehold Mortgage.

(q) The Parties hereby agree that the Leasehold Mortgagee shall be given notice of any arbitration or judicial proceedings by or between them and shall have the right to intervene therein and be made a party to such proceedings and shall receive notice of and a copy of any award or decision made in such proceedings.

(r) The Landlord agrees that the name of the Leasehold Mortgagee may be added to the "**Loss Payable Endorsement**" of any and all insurance policies required to be carried by the Tenant hereunder on condition that the insurance proceeds are to be applied (either by the Tenant or by any such Leasehold Mortgagee) in the manner specified in this Lease.

(s) No Leasehold Mortgagee shall become personally liable under the agreements, terms, covenants or conditions of this Lease or any new lease entered into in accordance with the provisions of this Article unless and until it becomes, and then only for as long as it remains, the owner of the leasehold estate. Upon any assignment of this Lease or the aforesaid new lease by any owner of the leasehold estate whose interest shall have been acquired by, through or under any Leasehold Mortgage or from any holder thereof, the assignor shall be relieved of any further liability which may accrue under this Lease or the aforesaid new lease from and after the date of such assignment (except for any outstanding liabilities arising prior to such date) provided that the assignee shall execute and deliver to Landlord a registrable instrument of assumption wherein such assignee shall assume and agree to perform and observe the covenants and conditions in this Lease or the aforesaid new lease contained on Tenant's part to be performed and observed, it being the intention of the Parties that once the Leasehold Mortgagee shall succeed to Tenant's interest under this Lease or the aforesaid new lease, any and all subsequent assignments (whether by such Leasehold Mortgagee, any purchaser from or through the Leasehold Mortgagee or other transferee or assignee) shall effect a release of the assignor's further liability under this Lease or the aforesaid new lease (except for any outstanding liabilities arising prior to such date). Nothing contained herein shall be deemed to release the original Tenant of its liabilities hereunder;

(t) There shall be no merger of this Lease nor of the leasehold estate created by this with the fee estate in the Demised Premises or any part thereof by reason of the fact that the same person, firm, corporation or other entity may acquire or own or hold, directly or indirectly, (i) this Lease or the leasehold estate created by this Lease or any interest in this Lease or in any such leasehold estate and (ii) the fee estate in the Demised Premises or any part thereof or any interest in such fee estate, and no such merger shall occur unless and until all corporations, firms and other entities, including any Leasehold Mortgagee, having any interest in (x) this Lease or the leasehold estate created by this Lease and (y) the fee estate in the Demised Premises or any part thereof or any interest in such fee estate shall join in a written instrument effecting such merger and shall duly register the same;

(u) Landlord shall, upon request, execute, acknowledge and deliver to each Leasehold Mortgagee making such request an agreement prepared at the sole cost and expense of Tenant, in form reasonably satisfactory to such Leasehold Mortgagee and Landlord, between Landlord, Tenant and such Leasehold Mortgagee, agreeing to all of the provisions of this Article; and

(v) If there is more than one Leasehold Mortgagee, each shall have the rights and privileges contemplated under this Article and if more than one such Leasehold Mortgagee exercises their rights in conflict with one another, the holder of the higher-ranking Leasehold Mortgage shall prevail.

## **ARTICLE 6 INDEMNITY**

### **Section 6.1 Non-Liability of Landlord**

Subject to the other provisions of this Lease and the Contribution Agreement, the Landlord (acting in its capacity as a Landlord, only) shall have no liability whatsoever with respect to claims or damages resulting from the use or occupation of the Demised Premises during the Term. Notwithstanding the foregoing or any other provision herein or in any other agreement, the Landlord shall not be released from any liability and shall be responsible to the Tenant for all costs, fees, expenses, claims, actions, losses and damages arising from or related to fault (including any breach of its obligations under this Lease and/or the Contribution Agreement and/or any non-compliance with applicable laws) or wilful or negligent act(s) or omission(s) of the Landlord and/or its agents, contractors, employees or any other persons for whom it is responsible for at law or in equity and for any Hazardous Materials and any Hazardous Materials Activities in existence or pertaining to the period prior to the commencement date of the Licence Agreement (as that terms is defined in the Contribution Agreement) (the "Excluded Liability").

### **Section 6.2 Tenant's Indemnity**

Other than in respect of the Excluded Liability, the Tenant shall indemnify and save harmless the Landlord from any and all costs, expenses, claims, actions and losses of every nature and kind whatsoever and of and from all liabilities of every nature and kind whatsoever in connection with the Demised Premises and this Lease, whether accrued, actual, contingent including, without limitation, the following but for certainty, excluding the Excluded Liability:

(a) any breach, violation or non-performance of any covenant, obligation or agreement in this Lease on the part of the Tenant to be fulfilled, kept, observed or performed;

(b) all legal fees and disbursements incurred in connection with any appeal, pertaining in any manner to this Lease and the Demised Premises;

(c) any damage to property, either real or personal, owned by the Landlord or others resulting at any time upon or occurring in or about the Demised Premises, unless caused by the negligence of the Landlord or those for whom the Landlord is in law responsible;

(d) any personal or bodily injury to any person or persons, including death, resulting at any time upon or occurring in or about the Demised Premises, unless caused by the negligence of the Landlord or those for whom the Landlord is in law responsible;

(e) any contract, lien, mortgage, charge or encumbrance on or in respect of the Demised Premises arising from or occasioned by the act, default or negligence of the Tenant or those for whom the Tenant is in law responsible;

(f) all costs and expenses of every kind and nature relating to the Demised Premises, unless expressly excluded under this Lease or unless expressly stated in this Lease to be the responsibility of the Landlord. Without limiting the generality of the foregoing, the Tenant is not responsible for any costs incurred by the Landlord with respect to the preparation and/or review of such documentation required by the Landlord to give effect to the Demised Premises, unless expressly stated to be the responsibility of the Tenant; and

(g) any appeal of an assessment of Taxes made by the Tenant, excluding any financial loss of the Landlord due to a reduction in the amount of Taxes payable by the Tenant resulting from such appeal being successful.

This section shall survive the termination or expiry of this Lease, any provisions in this Lease to the contrary notwithstanding.

### **Section 6.3 Landlord's Indemnity**

The Landlord agrees to exonerate, protect, defend, indemnify and hold the Tenant, its officers, directors, shareholders, beneficiaries, partners, representatives, agents and employees harmless from and against any and all losses, damages, claims, suits or actions, judgements and costs arising out of damage to property on or about the Demised Premises; and/or any material breach of the obligations of the Landlord under this Lease and/or the Contribution Agreement, including where to the extent caused by negligent acts or omissions of the Landlord or its employees, agents, contractors or those for whom it is responsible at law.

### **Section 6.4 Waiver of Subrogation**

The Landlord and the Tenant hereby release each other, to the extent of their agreed insurance coverage, or any amounts covered under a program of self-insurance, from any and all liability for any loss or damage caused by fire or any of the losses covered by the releasing party's property insurance or loss covered by the releasing party's commercial general liability insurance, even if such property or casualty loss shall be brought about by the fault or negligence of the other Party. The Landlord and the Tenant agree to include in their insurance policies a clause permitting this release. Except as provided above, nothing contained in this Lease shall be deemed to release either Party hereto from liability for damages resulting from the fault or negligence of that Party or its agents, contractors or employees.

## **ARTICLE 7 INSURANCE**

### **Section 7.1 "All Risks" Property Insurance**

The Tenant shall, at all times during the Term, insure and keep insured the Demised Premises and all other insurable property belonging to the Tenant and from time to time located on the Demised Premises in an amount not less than the Replacement Cost thereof against loss or

damage by perils of "all risks" (being the perils from time to time included in the standard "all risks" policy issued by insurers from time to time), including resultant damage from error in design and faulty workmanship, to the extent available and as would be obtained by a prudent owner of such a Demised Premises, and in any event in an amount sufficient to prevent the Landlord or the Tenant from being deemed to be a co-insurer.

#### **Section 7.2 Public Liability Insurance**

The Tenant shall, at all times during the Term, maintain or cause to be maintained comprehensive general liability insurance including contractual liability on an occurrence basis against claims for personal or bodily injury, death or property damage suffered by others arising in connection with the Demised Premises or out of the operations of the Tenant or its sublessees in, on or about the Demised Premises, indemnifying and insuring the Landlord and the Tenant and their employees and all others for whom each of them is at law responsible in such amounts and to such extent as a prudent owner of such a Demised Premises would, from time to time, carry (which amount shall initially be not less than Five Million Dollars (\$5,000,000.00) during any period of construction and thereafter not less than Five Million Dollars (\$5,000,000.00) for any personal or bodily injury, death, property damage or other claim in respect of any one accident or occurrence) and, without limiting the generality of the foregoing, with provisions for cross-liability and severability of interests.

#### **Section 7.3 Other Insurance**

The Tenant shall maintain, or cause to be maintained, and shall keep in force during the Term such other insurance as may be reasonably required from time to time and to the extent such other insurance is consistent with the customary practices of a prudent owner of a property similar to the Demised Premises and similarly located.

#### **Section 7.4 Co-Insurance**

All policies of insurance required under this Article and all renewals thereof shall contain a stated amount co-insurance clause effective for the term of the policy or the renewal so as to prevent the Tenant from becoming a co-insurer under the terms of such policy or policies and to permit full recovery of the amount insured in the event of loss.

#### **Section 7.5 Copies of Policies and Approval of Policies**

The Tenant shall deliver certificates of all insurance to the Landlord forthwith.

The Landlord, acting reasonably, shall have the right, but not the obligation, to approve of the insurers and the insurance policies carried by the Tenant including the limits of coverage and the provisions thereof, provided that if the Landlord is named as loss payee or additional insured on any insurance policies, and the leasehold mortgagee has approved such insurance policies, the Landlord's prior approval is not required.

#### **Section 7.6 Non-Cancellation**

Each of the policies of insurance provided pursuant to this Article shall contain an agreement by the insurer to the effect that it will endeavour to not cancel or alter or refuse to renew such policy prior to its expiration, whether by reason of non-payment of premium, non-fulfilment of condition or otherwise, except after thirty (30) clear days' prior written notice to the Landlord.

**Section 7.7 Premiums and Evidence of Payment Thereof**

The Tenant shall duly and punctually pay or cause to be paid all premiums and other sums of money payable for maintaining the insurance to be provided pursuant to this Article.

**Section 7.8 Additional Named Insureds**

The Tenant shall cause any and all policies of insurance provided for in this Article 8 to include the Landlord as an additional insured or loss payee as applicable.

**Section 7.9 Landlord's Right to Insure**

The Tenant shall advise the Landlord of any cancellation, material alteration or lapse of any policies of insurance required to be provided hereunder. If the Tenant fails to effect and keep such insurance in force, or if such insurance is in an amount less than the amount required under this Lease, the Landlord shall have the right, upon at least 72 hours prior written notice to the Tenant and without assuming any obligation in connection therewith, to effect such insurance at the cost of the Tenant and all outlays by the Landlord shall be payable by the Tenant to the Landlord as Rent forthwith upon demand without prejudice to any other rights and recourses of the Landlord hereunder. No such insurance taken out by the Landlord shall relieve the Tenant of its obligations to insure hereunder and the Landlord shall not be liable for any loss or damage suffered by the Tenant in connection therewith.

**Section 7.10 Loss or Damage**

The Landlord shall not be liable for any death or injury arising from, or out of any occurrence in, upon, at, or relating to the Demised Premises or damage to property of the Tenant or of others located on the Demised Premises, nor shall it be responsible for any loss of or damage to any property of the Tenant or others from any cause, unless and to the extent that any such death, injury, loss or damage, results from the negligence of the Landlord, its agents, employees, contractors, or others for whom it may, in law, be responsible, or as a result of any Excluded Liability. Without limiting the generality of the foregoing, the Landlord shall not be liable for any injury or damage to persons or property resulting from fire, explosion, falling plaster, falling ceiling tile, falling fixtures, steam, gas, electricity, water, rain, flood, snow or leaks from any part of the Demised Premises or from the pipes, sprinklers, appliances, plumbing works, roof, windows or subsurface of any floor or ceiling of the Building or from the street or any other place or by dampness or by any other cause whatsoever. The Landlord shall not be liable for any such damage caused by other Persons on the Demised Premises or by occupants of adjacent property thereto, or the public, or caused by construction or by any private, public or quasi-public work. All property of the Tenant kept or stored on the Demised Premises shall be so kept or stored at the risk of the Tenant only and the Tenant releases and agrees to indemnify the Landlord and save it harmless from any claims arising out of any damage to the same including, without limitation, any subrogation claims by the Tenant's insurers.

**Section 7.11 Insurance Maintained by CMHC**

Notwithstanding the foregoing, so long as CMHC maintains or causes to be maintained insurance coverages not less comprehensive than those provided in Sections 7.1, 7.2 and 7.3, Sections 7.1, 7.2, 7.3, 7.4, 7.5, 7.6 and 7.8 will not be enforced against CMHC.

## ARTICLE 8 USE

### Section 8.1 Use and Management of Demised Premises

(a) The Tenant shall use, manage and operate the Demised Premises solely, continuously and actively for the sole purpose of affordable rental housing, together with all ancillary uses related thereto, or benefitting or contributing to the principal use, in each case, in accordance with the requirements of the Contribution Agreement and this Lease. The Tenant shall not use or permit the use of the Demised Premises or any part thereof for any other business or purpose except as may be permitted under the Contribution Agreement and this Lease or as otherwise consented to by the Landlord, acting reasonably.

(b) The Tenant shall be permitted to lease, sublease or licence units in the Building and permit occupancy of the Building only in accordance with the terms of this Lease and the Contribution Agreement.

(c) The Tenant shall protect all public works services and/or utilities and all easements and right-of-way in favour of the Landlord on above, under or affecting the Demised Premises.

(d) Notwithstanding the foregoing, the Tenant shall not be in default of its obligations under this Section 8.1 to the extent that it has ceased to operate in connection with any circumstance or delay contemplated by Section 15.12 hereof or any event of Force Majeure (as such term is defined in the Contribution Agreement); in connection with any repair or restoration work after damage or destruction; or any alteration, remodelling, renovation or expropriation or pursuant to any permitted Transfer of this Lease.

(e) "Force Majeure" means strikes, labour troubles, inability to procure materials or services, power failure, riots, insurrection, sabotage, rebellion, war, act of God, or other reason whether of a like nature or not, which is not the fault of the party delayed in performing work or doing acts required under the terms of this Agreement. Notwithstanding anything to the contrary contained in this Lease, if the Tenant is bona fide delayed or hindered in or prevented from the performance of any term, covenant or act required hereunder by reason of Force Majeure, then, the performance of such term, covenant or act is excused for the period of the delay and the Tenant as so delayed shall be entitled to perform such term, covenant or act within the appropriate time period after the expiration of the period of such delay.

### Section 8.2 Observance of Law

The Tenant shall, at its sole cost and expense (except as otherwise specified in this Lease and subject always to the terms of the Contribution Agreement), promptly:

(a) observe and comply with all Applicable Laws, and all requirements of all governmental authorities, including, without limitation, federal, provincial and municipal legislative enactments, zoning and building by-laws (where applicable), and any other governmental or municipal regulations or agreements now or hereafter in force which relate to or affect the demolition or construction of buildings and to equipping or maintenance, operation and use of the Demised Premises or the conduct of any business in the Demised Premises, and public ways adjacent thereto and to the making of any repairs, replacements, alterations, additions, changes, substitutions or improvements of or to the Demised Premises or any part thereof and including further all police, fire and sanitary regulations imposed by any federal, provincial or municipal

authorities and all requirements made by fire insurance underwriters to the extent required in order to keep the required insurance in force;

(b) observe and comply with all requirements of, and pay all costs and expenses in connection with, the controls imposed by governmental authorities for ambient air and environmental standards;

(c) observe and comply with any reciprocal or shared facility agreements entered into with the developer of the adjoining condominium and or commercial space, including the rules set out therein;

(d) observe and comply with all police, fire and sanitary regulations imposed by any governmental authorities (whether federal, provincial or municipal); and

(e) to comply with all present and future legislation under the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1, or any successor or replacement legislation including any regulations to designated substances;

(f) carry out all modifications, alterations or changes of or to the Demised Premises and the Tenant's conduct of business in or use or operation of the Demised Premises which are required by any such authorities as set out above.

### **Section 8.3 Required Provisions for Residential Leases**

(1) The Tenant shall ensure that all residential leases permit the Landlord to carry out its obligations under this Lease and, without limiting the foregoing, shall include the following clauses:

(a) "Warning: This site is in proximity to the heavy industrial Redpath Sugar refinery located at 95 Queens Quay East (the "Redpath Facility") which operates 24 hours a day, 7 days a week. Various processes, shipping and receiving, and rail operations may either operate continuously or at any time of the day or night. Activities may include: loading, unloading and repair of large tractor trailers or bulk bin trucks; loading, unloading and movements of railway cars along Queen Quay Boulevard; docking and unloading of ocean and lake going ships; venting steam; construction and repair; and operation of various sugar refining processes. In addition, there may be industrial odours and light emanating from the refinery from time to time. Redpath may apply to alter or expand the Redpath Facility in the future. Notwithstanding the inclusion of certain mitigation features within this development to lessen potential noise, air emission, dust, odour, vibration, and visual impact from the Redpath Facility, from time to time noise from the Redpath Facility is likely to be audible, odours maybe unpleasant and dust and light emissions may be bothersome and such potential noise, air emissions, dust, odour, vibrations and visual impact may impact the enjoyment of indoor and outdoor areas of this development. Redpath Sugar advises that it will not be responsible for any complaints or claims arising from any of the activities at or relating to the Redpath Facility property or operations thereon."

(b) "The Tenant agrees to be bound by the rules set out in the shared facilities agreement and a copy of such rules will be attached to each lease."

(c) "The Tenant shall purchase tenant insurance with liability limits of not less than \$1,000,000.00 per occurrence, and otherwise on commercially reasonable terms for such insurance."

#### **Section 8.4 Performance of Work by Tenant**

(a) In performing any work on the Demised Premises, the Tenant will, at its own expense:

(i) proceed at its own expense with all due diligence to completion and will cause the Work to be done in a good and workmanlike manner;

(ii) do all acts and things required for the performance and completion of the Work in accordance with all applicable building and zoning ordinances and all Applicable Laws, by-laws, orders, rules, regulations and other requirements of all federal, provincial and municipal authorities and in accordance with the Plans and Specifications, as approved by the Landlord;

(iii) do all acts and things required to be done in the performance of the Work in compliance with the insurance requirements;

(iv) proceed with care and in such a manner so that no damage or injury occurs to the Demised Premises or to the structures or other improvements located on abutting lands and if such damage or injury occurs, repair and restore the Demised Premises or such abutting lands and the structures and other improvements located thereon; and

(v) obtain all necessary permits at its own expense and execute the Declaration of Non-Discrimination attached as Schedule B hereto, and comply with the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56.

(b) If at any time prior to completion of any Work, the Work ceases, except by the conditions described in Section 15.12 hereof and has not been resumed within three (3) months of the date Work was discontinued, except as a result of the conditions described in Section 15.12 hereof or if the Tenant abandons the Demised Premises, then the Landlord shall have the right, upon at least ninety (90) days prior written notice given to the Tenant, to terminate this Lease, provided that in the event the Tenant recommences and thereafter is diligently proceeding with the undertaking of the work during such ninety (90) day period, the Landlord's entitlement to terminate the Lease pursuant to this provision in such instance shall be null and void.

#### **Section 8.5 Construction Liens**

(a) If any lien under the *Construction Act*, R.S.O. 1990, c. C30, or any like statute shall at any time be registered against the Demised Premises by reason of work done or materials supplied for or to the Tenant or for or to anyone holding an interest in the Demised Premises through the Tenant or if the Landlord is given notice of any such lien, the lien shall be discharged or vacated from the title to the Demised Premises by the Tenant within ninety (90) days after the lien is filed or sooner if the Demised Premises are in jeopardy of forfeiture or sale by the party performing the Work in respect of which the lien was filed even if the validity of the lien is being contested, if requested by the Landlord, or by a Leasehold Mortgagee. If the Tenant wishes to contest the amount or validity of any lien and has so notified the Landlord and if the Tenant has deposited with the Landlord or paid into court to the credit of the lien action the amount of the lien plus a reasonable amount for costs and has registered a discharge of such



lien, the Tenant may defer payment of such lien for a period of time sufficient to enable the Tenant to contest the lien with due diligence, provided always that the Demised Premises shall not thereby become liable to forfeiture or sale.

(b) The Landlord may, but shall not be obligated to, discharge or vacate any construction lien if in the Landlord's judgment, exercised reasonably, the Demised Premises become liable to immediate forfeiture or sale or the Demised Premises is otherwise in jeopardy, and any amount paid by the Landlord in so doing, shall be reimbursed to the Landlord by the Tenant as Additional Rent within thirty (30) days after demand. If a construction lien is not discharged and vacated within three (3) months of registration, notwithstanding that the lien may be contested, the Landlord shall have the right, on written notice to the Tenant, to terminate the Lease.

(c) Nothing herein contained shall authorize Tenant, or imply any consent or agreement or request on the part of the Landlord to subject the Landlord's estate or interest in the Demised Premises and/or the Building to any construction lien or any other lien of any nature or kind whatsoever. Notice is hereby given to all parties that the Landlord expressly refuses and denies any consent or agreement or request to permit their estate or interest in the Demised Premises and/or the Building to be subject to any construction lien or other lien of any nature or kind whatsoever without the express written agreement of the Landlord to this effect. Tenant acknowledges that the Landlord is not, and should not be held to be, an owner as that term is defined in the *Construction Lien Act* with respect to the construction of any work on the Demised Premises by, or on behalf of Tenant.

#### **Section 8.6 Tenant's Covenants**

The Tenant covenants in respect of the use of the Demised Premises as follows:

- (a) not to commit, suffer or permit any act or omission in the Demised Premises which shall result in an illegal use or cause any breach of any of the Applicable Laws;
- (b) to maintain in force during the Term all necessary licences, permits, and authorizations relating to the use and occupancy of the Demised Premises by the Tenant; and
- (c) to comply with all terms and conditions set out in the Contribution Agreement.

### **ARTICLE 9 REPAIRS AND MAINTENANCE**

#### **Section 9.1 Landlord Not Responsible**

The Landlord acting in its capacity as Landlord and not as a municipal corporation shall not be obliged to make any repairs whatsoever to the Demised Premises at any time during the Term nor to furnish any services or facilities to the Demised Premises or the Demised Premises except as set out in this Lease (including as a result of any Excluded Liability)

#### **Section 9.2 Tenant's Obligation to Repair**

(a) The Tenant shall, at its own cost and expense, repair, replace and maintain the Demised Premises, structural or otherwise in good order and good condition and repair, in each case in accordance with customary and prudent practices for rental residential developments similar to

the Building and Improvements in size, age and location at all times during the Term, subject always to reasonable wear and tear and Article 10 hereof. Such repair and maintenance shall be in all respects to the standard that would be maintained by a prudent owner. The Tenant shall make all needed repairs and replacements with due diligence and dispatch.

(b) Notwithstanding any other provision of this Lease, should the Tenant, but for the provisions of this subsection 9.2 be required to effect any repair or replacement during the last three (3) years of the Term, the economically useful life of which would extend beyond the expiry of the Term, the Landlord and the Tenant may agree to terminate this Lease, or require the Tenant to proceed with the repair or replacement and only if this Lease is not renewed and upon expiry, an unamortized amount of such repair or replacement will be reimbursed to the Tenant. The calculation of the unamortized amount will be based on straight line amortization of the costs of such repair or replacement over the improvements' economic life.

### **Section 9.3 Nuisance**

The Tenant and its employees, agents, occupants and invitees shall not commit, cause or permit any nuisance or waste on the Demised Premises and shall ensure that nothing is done or kept at or on the Demised Premises which causes material and adverse disturbance, damage to or interference with normal use of any adjoining property. For certainty, the parties acknowledge and agree that the undertaking of the permitted uses herein do not violate this provision.

### **Section 9.4 Access by Landlord**

Save in the case of emergency, as determined by the Landlord, acting reasonably in which case the Landlord shall have access without notice to the Demised Premises, the Landlord and its agents shall be entitled to enter the Demised Premises from time to time upon twenty-four (24) hours' prior notice or, where necessary, such period of time as set out in the *Residential Tenancies Act, 2006*, S.O. 2006, c. 17 or its successor legislation, to view its state of repair in a reasonable manner and without interfering unreasonably with the Tenant's possession of the Demised Premises or the possession of any of the Tenant's subtenants or occupants

### **Section 9.5 Environmental Matters**

(a) The Tenant shall not cause or allow any hazardous or toxic waste or substances (collectively the "Hazardous Materials") to be used, generated, stored, or disposed of on, under or about, or transported to or from, the Demised Premises (collectively the "Hazardous Materials Activities") except in strict compliance, at the Tenant's expense, with all applicable Environmental Laws, as hereinafter defined, and using all necessary and appropriate precautions which a prudent operator would exercise.

(b) The Landlord shall not be liable to the Tenant for any Hazardous Materials Activities conducted on the Demised Premises during the Term or any extension thereof, however caused, whether or not consented to by the Landlord; the Tenant shall indemnify, defend with counsel, and hold the Landlord harmless from and against any claims, damages, costs and liabilities arising out of any and all such Hazardous Materials Activities.

(c) For purposes hereof, Hazardous Materials shall include but not be limited to substances defined as contaminants or pollutants under the *Environmental Protection Act* (Ontario), R.S.O. 1990, c. E.19 or the *Canadian Environmental Protection Act, 1999*, S.C. 1999, c. 33, and all other laws and ordinances governing similar matters; and any regulations adopted and publications promulgated pursuant thereto (collectively the "Environmental Laws"), as they may be amended from time to time.

(d) The Tenant shall notify the Landlord, as soon as reasonably possible both by telephone and in writing of any material spill or material unauthorized discharge of Hazardous Materials or of any material discharges under the Environmental Laws, and the Landlord, its representatives and employees at their expense may enter the Demised Premises at any time, upon reasonable notice, during the Term to inspect the Tenant's compliance herewith.

(e) The Tenant shall also be responsible for proper disposal of all substances and toxic materials, and other materials which under the Environmental Laws, any Governmental regulations dealing with waste and or recycling by virtue of prudent waste management procedures in the Tenant's industry require special disposal measures, including, without limitation, oil, kitchen waste, grease and cleaning substances.

(f) Subject to the provisions of Subsections 9.5 (7) and (9) below, after the Commencement Date, the Demised Premises shall be entirely at the risk of the Tenant and the Tenant shall assume any and all responsibilities and liabilities arising out of or in any way connected with any matter or condition in, on, under or in the vicinity of the Demised Premises from and after the Commencement Date, whether known or unknown and whether such responsibilities are imposed by federal, provincial or municipal laws, statutes, by-laws, rules, regulations, orders or directives or by any regulatory authority, and whether imposed by common law, equity or statute ("Environmental Laws").

(g) The Landlord releases and discharges the Tenant, its employees, directors, officers, appointees, representatives and agents from any claims, demands and actions arising out of or as a result of the condition of the Demised Premises as of the Commencement Date and any impact such condition has had on any adjacent land owned by the Landlord, except where the claim, demand or action has been caused by the negligence of the Tenant or the negligence of any person on the Demised Premises at the invitation or request of the Tenant.

(h) The Tenant hereby indemnifies the Landlord, its elected and appointed officials, directors, officers, employees, appointees, agents and representatives (the "Indemnified Parties") from and against all damages, losses, liabilities, harm, injury, costs, expenses, actions, demands and claims (including legal and witness costs) that are suffered, sustained or incurred by an Indemnified Party as a result of or in connection with the activities or omissions of the Tenant on the Demised Premises or the activities or omissions of any person on the Demised Premises at the invitation or request of the Tenant, including in respect of any environmental investigations or remediation undertaken by the Tenant. This indemnity from the Tenant is the sole and exclusive indemnity obligation of the Tenant to the Landlord

(i) Notwithstanding the provisions of Sections 9.5 (6), (7) and (8) in the event that:

(i) the soil, subsoil, surface water or groundwater of any other lands ("Neighbouring Properties") are affected by Hazardous Substance emanating from the Demised Premises to the extent that such effect is the result of the presence of Hazardous Substance on the Demised Premises prior to the Commencement Date or in respect of any Excluded Liability; and/or

(ii) after the Commencement Date, Hazardous Substance emanating from lands owned or controlled by the Landlord affects the soil, subsoil, surface water or ground water at, on or under the Demised Premises, this Lease shall in either case not relieve the Landlord from any responsibilities and liabilities therefor to the Tenant or the owners or occupants of any Neighboring Properties and/or any Governmental Authority to the extent the Landlord has such responsibility under Environmental Laws or otherwise under the Contribution Agreement and such effects cause damages, losses, liabilities, harm, injury, costs, expenses to, or actions, demands and claims against the Tenant or

are the subject of regulatory action or third party claims, and the Tenant shall not be required to indemnify the Landlord with respect thereto. For clarity, it is understood and agreed that in the circumstances described in this Subsection 9.5 (9), the Landlord shall bear the responsibility and liability therefor, including as it would have had at law as if Subsections 9.5 (6), (7) and (8) had not been included herein.

## **ARTICLE 10 DAMAGE OR DESTRUCTION**

### **Section 10.1 Continuation of Rent**

Subject to subsection 10.2(2) below, the partial or complete damage to or destruction of the Building shall not terminate this Lease or entitle the Tenant to any abatement of Rent.

### **Section 10.2 Repair and Replacement by Tenant**

(1) If the Building from time to time standing on the Demised Premises, or any equipment, machinery and other facilities are totally or partially destroyed by any cause whatsoever, there shall be no abatement of Rent and the Tenant shall repair, replace, rebuild or restore same with all reasonable diligence, provided the Leasehold Mortgagee has not elected to have any insurance proceeds applied to payment of the Leasehold Mortgage and the Tenant has first submitted its plans to the Landlord for approval and such plans have been approved by the Landlord to the extent required herein and provided that all the terms of this Lease continue to be complied with.

(2) Provided further that, notwithstanding Section 10.2(1), if the Building is damaged or destroyed in excess of 50% of the Replacement Cost of the Building above ground, the Tenant, may within ninety (90) days of such damage or destruction, at its option, give written notice to the other Party that it wishes to terminate the Lease, in which case neither the Landlord nor the Tenant shall be obliged to repair, the Tenant shall surrender the Demised Premises to the Landlord within thirty (30) days after delivery of the notice, the Rent shall be apportioned and paid to the date of such damage or destruction, and the Lease shall forthwith be terminated.

(3) The Tenant shall not be deemed to be in default under this Lease during any period of construction or repair while the Demised Premises is tenantable.

(4) The certificate of a quantity surveyor shall bind the Parties as to:

- (a) the percentage of the Demised Premises rendered tenantable;
- (b) the date upon which the reconstruction or repair is completed and the date when the Demised Premises are rendered tenantable; and
- (c) the state of completion of any repair or replacement by the Tenant.

**ARTICLE 11  
REMEDIES OF LANDLORD**

**Section 11.1 Default and Right to Re-Enter**

If and whenever:

(a) the Tenant fails to pay any Rent or other sums due hereunder within forty-five (45) days of the later of the day or dates appointed for the payment thereof and receipt of written notice by the Tenant from the Landlord of the amounts delinquent and then outstanding; or

(b) the Tenant fails to observe or perform any other material terms, covenants, obligations or conditions of this Lease, and the Contribution Agreement and any shared facilities or reciprocal agreement affecting the Demises Premises to be observed or performed by the Tenant, (other than those terms, covenants or conditions set out below in Subsections (d), (c), (f) (g) and (i) for which no notice is required) provided the Landlord first gives the Tenant sixty (60) days prior written notice of any such failure to perform and the Tenant fails to cure such failure within such period of sixty (60) days or such longer time as would have reasonably sufficed for the remedying of such breach or non-performance if the Tenant had commenced to remedy the same within sixty (60) days and thereafter proceeded to remedy the same within reasonable diligence provided that the Tenant shall not be entitled to the advantage of such longer time unless it shall have actually proceeded thereafter to remedy the same with all due diligence and shall have provided to the Landlord, if requested by the Landlord, reasonable evidence as to the steps being taken by the Tenant toward remedying the same; or

(c) the Tenant becomes bankrupt or insolvent or takes the benefit of any act now or hereafter in force for bankrupt or insolvent debtors or files any proposal or makes any assignment for the benefit of creditors or any arrangement of compromise; or

(d) a receiver or a receiver and manager is appointed for all or a portion of the Tenant's property and the receiver's appointment is not vacated within thirty (30) days; or

(e) any steps are taken or any action or proceedings are instituted by the Tenant or by any other party including, without limitation, any court or governmental body of competent jurisdiction for the dissolution, winding-up or liquidation of the Tenant or its assets other than a corporate re-organization of the Tenant and such dissolution, winding-up or liquidation is not rescinded within thirty (30) days; or

(f) the Tenant abandons the Demised Premises or the Demised Premises becomes unoccupied for a period of sixty (60) consecutive days or more without the consent of the Landlord, other than as a result of circumstances set out in Section 15.12, any permitted renovations, construction, alteration or due to damage or destruction; or

(g) this Lease is taken under any writ of execution; or

(h) the Tenant purports to make a Transfer other than in compliance with this Lease, which Transfer is not withdrawn within ninety (90) days following written notice from the Landlord in respect thereof.

then and in every such case the Landlord, in addition to any other rights or remedies it has pursuant to this Lease or by law, but subject to Section 11.6, has the immediate right of re-entry upon the Demised Premises and it may repossess the Demised Premises, all without service of notice or resort to legal process and without the Landlord being considered guilty of trespass or becoming liable for any loss or damage which may be occasioned thereby.

Notwithstanding the foregoing and without limiting any other remedies, the Landlord may have arising out of this Lease or at law, upon the happening of a default by the Tenant under this Lease which the Tenant has not rectified within the time required pursuant to the provisions of this Lease, the Landlord shall have the right, without any re-entry or termination of this Lease, to enter upon the Demised Premises and cure or attempt to cure such default (but this shall not obligate the Landlord to cure or attempt to cure any such default or, after having commenced to cure or attempted to cure such default, to continue to do so), and to recover from the Tenant all damages and expenses incurred by the Landlord (plus 15% for administration costs) as a result of any breach by the Tenant.

**11.1A** Notwithstanding the foregoing and any other provision of this Lease or any right or entitlement of the Landlord at law or in equity, the Landlord acknowledges and agrees that:

(a) in the event that the Landlord is in material breach of any of its obligations in the Contribution Agreement it may not assert a default by the Tenant of its obligations under this Lease which default may be reasonably attributable to or connected with the Landlord's failure to materially comply with its obligations under the Contribution Agreement; and

(b) in no event shall the Landlord be entitled to terminate this Lease for any default under this Lease and/or the Contribution Agreement or otherwise, save and except in the event of a breach under Section 11.1(a), (c), (d), (e) or (f) that persists beyond any applicable cure period, provided that with respect to the assertion of an event of default under subparagraph 11.1(b), such default must form part of a series of habitual, and persistent defaults by the Tenant of its non-monetary obligations under this Lease such that the Tenant is habitually and persistently over time failing to undertake the operation of an affordable housing project from the Demised Premises in the manner required under this Lease and the Contribution Agreement.

**11.1B** In the event that the Landlord elects to terminate the Contribution Agreement in accordance with its rights therein, the Landlord must concurrently terminate this Lease and similarly, in the event that the Landlord elects to exercise its right to terminate this Lease in accordance with its rights herein, the Landlord must concurrently exercise its right to terminate the Contribution Agreement.

## **Section 11.2 Right to Relet**

If the Landlord elects to re-enter the Demised Premises as herein provided, or if it takes possession pursuant to legal proceedings or pursuant to any notice provided for by law, it may either terminate this Lease or it may from time to time without terminating this Lease make such alterations and repairs as are necessary in order to relet the Demised Premises or any part thereof for such term or terms (which may be for a term extending beyond the Term) and at such Rent and upon such other terms, covenants and conditions as the Landlord in its sole discretion considers advisable. Upon each such reletting all rent received by the Landlord from

such reletting shall be applied first, to the payment of any indebtedness other than Rent due hereunder from the Tenant to the Landlord; second, to the payment of any costs and expenses of such reletting, including brokerage fees, and solicitor's fees and of costs of such alterations and repairs; third, to the payment of Rent due and unpaid hereunder; and the residue, if any, shall be held by the Landlord and applied in payment of future rent as the same becomes due and payable hereunder. If such Rent received from such reletting during any month is less than that to be paid during that month by the Tenant hereunder, the Tenant shall pay any such deficiency which shall be calculated and paid monthly in advance on or before the first day of each and every month. No such re-entry or taking possession of the Demised Premises by the Landlord shall be construed as an election on its part to terminate this Lease unless a written notice of such intention is given to the Tenant. Notwithstanding any such reletting without termination the Landlord may at any time thereafter elect to terminate this Lease for such previous breach. If the Landlord at any time terminates this Lease for any breach, in addition to any other remedies it may have, it may recover from the Tenant all damages it incurs by reason of such breach, including the cost of recovering the Demised Premises, solicitor's fees (on a solicitor and client basis) and including the worth at the time of such termination of the excess, if any, of the amount of Rent and charges equivalent to Rent required to be paid pursuant to this Lease for the remainder of the stated Term over the then reasonable rental value of the Demised Premises for the remainder of the stated Term, all of which amounts shall be immediately due and payable by the Tenant to the Landlord.

In any events referred to in Section 11.1(e), in addition to any and all other rights, including the rights referred to in this Section and in Section 11.1(e), the full amount of the current month's instalment of Additional Rent and any other payments required to be made monthly hereunder, together with the next three months instalments for Additional Rent, all of which shall be deemed to be accruing due on a day-to-day basis, shall immediately become due and payable as accelerated Rent, and the Landlord may immediately distrain for the same, together with any arrears then unpaid.

### **Section 11.3 Landlord's Expenses**

If legal action is brought for recovery of possession of the Demised Premises, for the recovery of Rent or any other amount due under this Lease, or because of the breach of any other terms, covenants or conditions herein contained on the part of the Tenant to be kept or performed, and a breach is established, the Tenant shall pay to the Landlord all reasonable expenses incurred therefor, including solicitor's fee (on a solicitor and client basis), unless a Court shall otherwise award.

### **Section 11.4 Removal of Chattels**

In case of removal by the Tenant of the goods and chattels of the Tenant from the Demised Premises other than in accordance with this Lease, the Landlord may follow same for thirty (30) days in the same manner as is provided for in the *Commercial Tenancies Act*, R.S.O. 1990, c.L.7.

### **Section 11.5 Waiver by Tenant of Exemption from Distress**

The Tenant hereby agrees with the Landlord that notwithstanding anything contained in the *Commercial Tenancies Act*, or any statute subsequently passed to take the place of or amend the said Act, none of the goods and chattels of the Tenant on the Demised Premises at any time during the Term shall be exempt from levy by distress for Rent in arrears by the Tenant as provided for by any sections of the said Act or any amendments thereto, and that if any claim is made for such exemption by the Tenant or if a distress is made by the Landlord, this covenant

and agreement may be pleaded as an estoppel against the Tenant in any action brought to test the right to the levying upon any such goods as are named as exempted in any sections of the said Act or any amendments thereto; the Tenant waiving, as it hereby does, all and every benefit that could or might have accrued to the Tenant under any or by virtue of any sections of the said Act, or any amendments thereto but for this covenant. Notwithstanding the foregoing, in the event that CMHC holds leasehold title, as tenant, this clause will not be enforced.

#### **Section 11.6 Remedies of Landlord Cumulative**

The remedies of the Landlord specified in this Lease are cumulative and are in addition to any remedies of the Landlord at law or equity. No remedy shall be deemed to be exclusive, and the Landlord may from time to time have recourse to one or more or all of the available remedies specified herein or at law or equity.

#### **Section 11.7 Obligation to Mitigate**

Whether or not the Landlord shall repossess the Demised Premises on default of the Tenant, the Landlord shall use reasonable efforts to mitigate its damages

### **ARTICLE 12 QUIET ENJOYMENT**

#### **Section 12.1 Right of Tenant**

If the Tenant is not in default with respect to the payment of Rent hereby reserved, which default persists beyond any applicable cure period, the Tenant shall and may peaceably enjoy and possess the Demised Premises during the Term, without any interruption or disturbance whatsoever from the Landlord or any other Person, firm or corporation lawfully claiming from or under the Landlord, and free from the adverse claims of any Persons whatsoever and the Landlord will protect the Tenant, with full, complete and absolute possession of the Demised Premises subject in each case only to the other express provisions of this Lease. The Landlord covenants and agrees that no exclusive uses, rights or privileges shall be granted to any Persons (nor will the Landlord consent to same) which would affect the use of the Demised Premises without the written consent of the Tenant. The Landlord covenants and agrees that if any lien or encumbrance is registered against the Demised Premises which may result in the sale thereof or which causes harm to the Tenant, then the Landlord, shall, as soon as is reasonable possible, at its own expense cause the same to be removed by payment to the lien claimant or posting security in the appropriate court of any like proceeding.

### **ARTICLE 13 ESTOPPEL CERTIFICATES**

#### **Section 13.1 Estoppel Certificates**

Each of the Parties shall, at any time and from time to time during the Term, upon not less than fifteen (15) clear days' prior notice by the other Party, execute, acknowledge and deliver to the other Party a statement in writing certifying whether this Lease and Contribution Agreement are in good standing, unmodified and in full force and effect, or where requested, that the particular terms thereof have been met or satisfied, as the case may be, or if there have been



modifications that the same are in good standing, in full force and effect as modified, stating the modifications, the dates to which the Rent and other charges, if any, have been paid in advance, the defaults, if any, on the part of the Party requesting such statement known to the Party from whom such statement is requested and the action taken or proposed to be taken by such last-mentioned Party with respect to the same; it being intended that any such statement delivered pursuant to this Article may be relied upon by any prospective purchaser of the Landlord's freehold estate, the Tenant's leasehold estate, any mortgagee of the freehold, any assignee or sublessee of the Tenant's leasehold estate or any leasehold mortgagee, as the case may be.

## **ARTICLE 14 APPROVALS, NOTICES, ETC.**

### **Section 14.1 Approvals**

Where by a provision of this Lease an approval, consent or agreement of a Party (hereinafter individually or collectively referred to as an "Approval") is required, unless the contrary is expressly provided in this Lease:

- (a) the Party whose Approval is required will, within thirty (30) clear days after receipt of a request for Approval which request shall contain reasonable detail if the circumstances require, give notice to the requesting Party either that it gives its Approval, or that it withholds its Approval, setting forth in reasonable detail its reasons for withholding;
- (b) if the notification referred to in Section 14.1(a) is not given within the applicable period of time, the Party whose approval is requested will be deemed conclusively to have given its Approval in writing;
- (c) an Approval may not be unreasonably withheld unless expressly provided in this Lease.

### **Section 14.2 Notices**

(1) All notices, demands, requests, agreements, consents, approvals and payments (hereinafter, individually or collectively called a "Notice") which may be or are required to be given pursuant to this Lease shall be in writing and shall be delivered by personal service or facsimile to the following address:

- (a) to the Landlord at:

City of Toronto  
Metro Hall, 55 John Street, 2<sup>nd</sup> Floor, Suite 204  
Toronto, ON M5V 3C6  
Attention: Deputy City Manager – Corporate Services

Fax: (416) 392-4828

and a copy to:

City of Toronto  
Metro Hall, 55 John Street 7<sup>th</sup> Floor  
Toronto, ON M5V 3C6

Attention: Executive Director, Housing Secretariat  
Fax: (416) 392-4219

(b) to the Tenant at:

Toronto Artscape Inc.  
171 East Liberty Street, Suite 224  
Toronto, ON M6K 3P6

Attention: President and CEO  
Fax No.: 416-392-1059

Any such notice given as aforesaid shall be deemed to have been effectively given if sent by facsimile or other similar form of telecommunications on the next business day following such transmission, or if delivered, to have been received on the third date of such delivery. Any Party may change its address for service from time to time by notice given in accordance with the foregoing and any subsequent notice shall be sent to the Party at its changed address.

(2) Any Notice shall be deemed to have been validly and effectively given and received: if personally delivered, on the date of delivery and if sent by facsimile, on the business day next following the day on which it was sent.

(3) Notwithstanding any consent or approval given by Landlord with respect to any plans, specifications or other construction-related matter, the Landlord will not be in any way liable for the design or construction of any proposed structure, and the party that has obtained the consent or approval of the Landlord shall be wholly liable for such design and construction.

(4) Either party under this Lease may from time to time by Notice to the other party change its address for service under this Lease.

## **ARTICLE 15 GENERAL**

### **Section 15.1 Gender and Number**

Words importing the singular shall include the plural and vice versa. Words importing gender shall include all genders.

### **Section 15.2 Index and Captions**

The index and the captions contained in this Lease are for reference only and in no way affect this Lease.

**Section 15.3 Applicable Law**

This Lease shall be construed and enforced in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein from time to time and shall be treated in all respects as an Ontario lease.

**Section 15.4 Invalidity**

The invalidity or unenforceability of any provision or covenant contained in this Lease shall not affect the validity or enforceability of any other provision or covenant herein contained and any such invalid provision or covenant shall be deemed to be severable.

**Section 15.5 Covenants Independent**

Each covenant contained in this Lease is a separate and independent covenant, and a breach of covenant by any Party will not relieve the other Party from its obligation to perform each of its covenants, except as otherwise expressly provided herein.

**Section 15.6 Currency**

All reference to currency in this Lease shall be deemed, unless the context otherwise requires, to be a reference to lawful money of Canada.

**Section 15.7 Entire Agreement**

This Lease, the Contribution Agreement, and the other agreements specifically referred to herein constitute the entire agreement among the Parties pertaining to the Lease of the Demised Premises to the Tenant and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, between the Parties with respect thereto. There are no conditions, warranties, representations or other agreements between the Parties in connection with this Lease except as specifically set forth herein or in such other agreements.

**Section 15.8 Amendments**

No supplement, modification, amendment, waiver or termination of this Lease shall be binding unless executed in writing by the Landlord and the Tenant.

**Section 15.9 Non-Waiver**

No waiver of any of the provisions of this Lease shall be deemed to be or shall constitute a waiver of any other provision (whether or not similar) nor shall any waiver constitute a continuing waiver unless otherwise provided.

**Section 15.10 Calculations**

Except as otherwise provided herein, all calculations required or permitted under this Lease shall be made on the basis of generally accepted accounting principles and practices applied on a consistent basis.

**Section 15.11 Successors and Assigns**

All of the provisions of this Lease shall be binding upon and enure to the benefit of the Parties and their respective successors and permitted assigns.

**Section 15.12 Excusable Delay**

Except as expressly otherwise provided in this Lease:

(i) if because of an event of Force Majeure (as such term is defined in the Contribution Agreement), the party is delayed in performing or observing a covenant or in complying with a condition under the terms of this Lease that party is required to do by a specified date or within a specified period of time or with all due diligence (save and except for the payment of Basic Rent and/or surrender of the Demised Premises on the expiration or earlier termination of the Term); and

(ii) if the circumstance is not caused by the default or act of commission or omission of that party nor avoidable by the exercise of reasonable effort or foresight by that party

then, in that event, the date or period of time by or within which that party is to perform, observe or comply will be extended by a period of time equal to the duration of the delay, provided that nothing excuses a delay dealing with a life and safety issue or excuses the Tenant from the payment of Basic Rent hereunder when due or payment under the Contribution Agreement.

#### **Section 15.13 Time of Essence**

Time shall be of the essence of this Lease, except as specifically provided otherwise herein.

#### **Section 15.14 Relationship of Parties**

This Lease shall not be deemed to create any relationship between the Parties other than that of Landlord and Tenant as to the Demised Premises. For greater certainty, the Parties agree that they are not partners or joint ventures and that the Tenant is not the agent or representative of the Landlord and has no authority to bind the Landlord.

#### **Section 15.15 Continuation of Certain Obligations**

Wherever specifically provided for in this Lease or if it is necessary for the full implementation of any provision of this Lease, the obligations of a Party shall survive the expiration of the Term or the earlier termination of this Lease, as the case may be.

#### **Section 15.16 No Voluntary Surrender**

The Tenant shall not have the right to surrender this Lease without the prior written consent of the Landlord.

#### **Section 15.17 Expropriation**

In the event of expropriation of the Demised Premises or any part thereof by any lawful power or authority which the Tenant acknowledges may include the Landlord, each of the Landlord and the Tenant shall be entitled to seek compensation for their respective interest so expropriated. In the event of expropriation of all of the Demised Premised, this Lease and the Term shall be terminated forthwith and thereupon Rent shall be apportioned and paid to the date of termination and the Tenant shall surrender possession of the Demised Premises and the Demised Premises to the Landlord, provided that such termination shall not affect the Tenant's claim to seek compensation. In calculating any compensation payable to the Tenant, any secured or unsecured consideration provided to the Tenant by the Landlord in respect of construction of the Demised Premises (the "Sum"), and outstanding amounts payable by the Tenant to the Landlord with respect to this Lease and the Contribution Agreement which are then due and outstanding shall be deducted from such compensation and paid to the Landlord. In determining the amount of the Sum to be included in the amount deducted from the Tenant's compensation, the Sum shall be present valued as at the day compensation is determined (the

"New Sum"), and such New Sum shall be deducted from any compensation payable to the Tenant.

#### **Section 15.18 Registration of Agreement**

The Tenant shall have the right to register a notice of this Lease and any Leasehold Mortgage against title to the Demised Premises. If the Tenant registers the Lease, the Tenant agrees that it will, at its sole expense, discharge and withdraw from title any such registration of the lease within thirty (30) days after the termination of this Lease. If such registration is not discharged or withdrawn within such time, the Landlord shall have the right and is hereby appointed by the Tenant as the Tenant's agent to prepare, execute and register such documentation as is required to discharge and withdraw any such registration.

#### **Section 15.19 Rights, Obligations and Capacity of the Landlord**

All rights and benefits and all obligations of the Landlord under this Agreement shall be rights, benefits and obligations of the Landlord in its capacity as a party to this Agreement and shall not derogate from or interfere or fetter with the rights, benefits and obligations of the Landlord, its Council or its elected and appointed officials and representatives in their respective functions and capacities.

#### **Section 15.20 Administration of Agreement**

The Tenant acknowledges that all references herein to the "Deputy City Manager - Corporate Services" shall mean the Landlord's Deputy City Manager - Corporate Services, his/her successor or designate from time to time. The Deputy City Manager - Corporate Services will administer the terms of this Lease on behalf of the Landlord. The Deputy City Manager - Corporate Services shall administer and manage the Lease including the provision of any consents, approvals, waivers, notices and notices of termination provided that the Deputy City Manager - Corporate Services may, at any time, refer consideration of such matter (including their content) to City Council for its determination and direction.

#### **Section 15.21 Signage**

(1) The signage policy for the Demised Premises identifying the, form, type, colour, design, content and location of exterior signs identifying the Demised Premises and any material amendments thereto, together with any exterior canopies and lights, shall be subject to the prior approval of the Landlord.

(2) Tenant shall not erect any signs other than those relating directly to the Demised Premises.

(3) Tenant shall be responsible for the cost of all signage, canopies and lighting.

#### **Section 15.22 Further Assurances**

Each Party agrees to make such further assurances as may be reasonably required from time to time by the other Party to more fully implement the true intent of this Lease.

#### **Section 15.23 Assignment by the Landlord**

If the Landlord transfers the Demised Premises and if the transferee executes an assumption of this Lease and the Contribution Agreement, each in a form and content acceptable to the Tenant, then the Landlord shall be relieved of all liability under this Lease after the date of such transfer.

#### **Section 15.24 City as Municipal Corporation**

(1) Nothing in this Lease derogates from, interferes with, or fetters the exercise by the City of all of its rights and obligations as a municipality (whether discretionary or mandatory), or imposes any obligations on the City in its role as a municipality, and the City shall not be prevented from or prejudiced in carrying out its statutory rights and responsibilities, including its planning rights and responsibilities. Nothing in this Lease derogates from, interferes with, or fetters the exercise by the City's officers, employees, agents, representatives or elected and appointed officials of all of their rights, or imposes any obligations on the City's officers, employees, agents, representatives or elected and appointed officials, other than as expressly set out in this Lease.

(2) No communication or dealing between the Tenant and any department, committee, body, officer, employee, agent, representative or elected or appointed official of the City that is not clearly in respect of and in accordance with this Lease will be deemed to be a communication or dealing under this Lease between the Tenant and the City as parties to this Lease, or affect the City with notice of any such communication or dealings. It is intended and agreed that any communication or dealing between the Tenant and the City as parties to this Lease will only be effective if delivered in accordance with the notice provisions in this Lease. No communication or dealing between the City as a party to this Lease and the Tenant as a party to this Lease will relieve from the responsibility of discharging its lawful obligations to the City imposed by statute, regulation, by-law or by any other lawful manner separate and apart from the obligations imposed under this Lease.

#### **Section 15.25 Reasonableness**

Except and only to the extent specifically stated otherwise herein, whenever in this Lease or any of the Schedules forming a party hereof, any allocation, appointment, consent, approval, leave, designation, judgment, discretion or permission is required of the Landlord or the Tenant shall be exercised and/or granted reasonable and equitably and without undue delay. Each architect, engineer, auditor, assessor, consultant or any other person of similar nature employed or retained by the Landlord or Tenant will act in accordance with the applicable principles and standards of such person's profession.

#### **Section 15.26 Arbitration**

Where a Party wishes to refer a matter to Arbitration for determination (including for certainty whether the occurrence of a default of Tenant's obligations under this Lease has occurred), after a Party gives notice that it is referring such matter to Arbitration for determination (the "**Arbitration Notice**"):

(a) The Parties may, within fifteen (15) days after the delivery of the Arbitration Notice, agree in writing upon the appointment of a single arbitrator who will determine the dispute or matter acting alone, failing which such arbitrator may be appointed by order of the Court in accordance with the applicable legislation in respect of private arbitrations in the Province of Ontario, upon the application of either Party, made on notice to the other Party. The language to be used in the arbitral proceedings shall be English.

(b) Within fifteen (15) days of the appointment of the arbitrator, the Party who delivered the Arbitration Notice (the "**Initiator**") shall deliver to the other Party and to the arbitrator a statement (the "**Statement of Claim**") describing the facts supporting its position, the points at issue and the relief sought. The responding Party shall deliver

to the Initiator and to the arbitrator a responding statement within 15 days from the receipt of the Statement of Claim.

(c) Unless expressly agreed to in writing to the contrary, the parties undertake as a general principal to keep confidential all awards in their Arbitration, together with all materials, proceedings and evidence created for the purpose of the Arbitration and all documents produced by any Party in the proceedings not otherwise in the public domain, save and except to the extent that disclosure may be required of a Party by legal duty, to protect or pursue a legal right or to enforce or challenge an award in bona fide legal proceedings before a competent court.

(d) It is the intent of the parties that, barring extraordinary circumstances, the Arbitration proceedings shall be concluded within sixty (60) days from the date the arbitrator is appointed. The parties may agree to extend this time limit or the arbitrator may do so in his or her discretion if he or she determines that the interest of justice so requires. The arbitrator shall use his or her best efforts to issue the final award or awards within fifteen (15) days after closure of the proceedings. Failure to adhere to these time limits will not be a basis for challenging the award.

(e) The determination made by the arbitrator shall be final and binding upon the Landlord and the Tenant. The costs of Arbitration shall be apportioned between the parties hereto as the arbitrator may decide. Neither Party shall be deemed to be in default in respect of the dispute which is subject of the Arbitration so long as the Arbitration is proceeding.

(f) The parties expressly agree that the provisions of the *Municipal Arbitrations Act*, R.S.O. 1990, Chapter M.48 shall not apply at any time to any arbitration whatsoever initiated pursuant to this Lease. Arbitration initiated pursuant to this Lease shall proceed in accordance with the provisions of the *Arbitration Act, 1991*, S.O. 1991, Chap. 17.

#### **Section 15.27 Planning Legislation**

The Parties agree that Section 50(3) of the *Planning Act*, R.S.O. 1990, c. P.13 is not applicable to this Lease, as the City of Toronto is the Landlord.

#### **Section 15.28 Counterparts**

This agreement may be executed in one or more counter parts. Any single counterpart or a set of counterparts executed, in either case, by all the parties hereto shall constitute a full, original and binding agreement for all purposes. Counter parts may be transmitted by facsimile and/or PDF and the reproduction of signatures by way of facsimile or PDF will be treated as though such reproductions were executed originals and each party hereto undertakes to provide the other with the copy of this agreement bearing original signatures within a reasonable time after the date execution.

**Section 15.29 Schedules**


The following schedules form part of this Lease:

**Schedule A - Legal Description**

**IN WITNESS WHEREOF** the Parties have duly executed this Lease as of the date of this Lease.

**CITY OF TORONTO**


Authorized by Executive Committee Item No. EX42.16 as adopted by City of Toronto Council on June 10, 11, 12 and 13, 2014.


  
Marilyn M. Toft  
for Ulli S. Watkiss  
City Clerk

per:   
Name: Marilyn M. Toft  
Title: for Ulli S. Watkiss  
City Clerk

per:   
Name: Stella So  
Title: Manager  
Financial Reporting

**TORONTO ARTSCAPE INC.**

per:   
Name: Timothy Jones  
Title: CEO

per:   
Name: Lorianne Bliven  
Title: Coa

We have authority to bind the corporation.

APPROVED AS TO FORM



For Wendy Walberg, City Solicitor

File # 4918-203-6220.17



## **SCHEDULE "A"**

### **Legal Description & Permitted Encumbrances**

#### **Legal Description:**

PIN 21384-0207

Block 3, Plan 66M-2514, except Part 1 on 66R-28259, together with an easement over Part of Block 3, Plan 66M-2514, being Part 1 on 66R-28259 as in Instrument No. AT4070078 and subject to an easement as in AT4070079; Subject to an easement in gross as in AT4529866; subject to an easement as in AT4636476, City of Toronto

Part of PIN 21384-0206

Part of Block 3, Plan 66M-2514, being parts 25, 26, 27 and 32 on Plan 66R-30712, City of Toronto

#### **Permitted Encumbrances:**

1. Applicable municipal by-laws, development agreements, subdivision agreements, site plan agreements and building restrictions, provided they are complied with.
2. The reservations, limitations, provisos and conditions expressed in the original grant from the Crown and any statutory exceptions to title.
3. Mortgage in favor of the City of Toronto.

This is Exhibit "F" referred to in the Affidavit of Ben Macintosh, affirmed by Ben Macintosh, at the City of Toronto, in the Province of Ontario, before me on this 3<sup>rd</sup> day of January, 2024, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

*Christopher J. Henderson*

Christopher J. Henderson  
Commissioner for Taking Affidavits

**LEASE AGREEMENT**

**BETWEEN**

**2295477 ONTARIO INC.**

**(the Landlord)**

**-and-**

**TORONTO ARTSCAPE INC.**

**(the Tenant)**

**-and-**

**22 JOHN STREET DEVELOPMENTS INC.**

**(the 22 John Owner)**

**-and-**

**CITY OF TORONTO**

**(the City)**

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THIS LEASE is dated the 1<sup>st</sup> day of November, 2016.

BETWEEN

**2295477 ONTARIO INC.**

(the Landlord)

-and-

**TORONTO ARTSCAPE INC.**

(the Tenant)

-and-

**22 JOHN STREET DEVELOPMENTS INC.**

(the 22 John Owner)

-and-

**CITY OF TORONTO**

(the City)

APPROVED AS TO FORM

*Laura Lemox*

For Brian Haley, Interim City Solicitor (SKL)  
File # 2100-805-1322.14

**WHEREAS**

- A. The Landlord is the registered owner of the Lands and Building municipally known as 33 King Street, Toronto (former City of York), Ontario, comprised of a mixed used residential and commercial development;
- B. 22 John Street Developments Inc., as owner of the adjoining lands municipally known as 22 John Street, Toronto, (the "22 John Lands") has submitted various planning applications regarding the development of such lands;
- C. As required by a Section 37 Agreement dated \_\_\_\_\_, 2016, between the City, the 22 John Owner, and the Landlord, to be registered on title to the Lands and the 22 John Street Lands (the "Section 37 Agreement"), the Landlord is required to enter into this Lease, pursuant to which the 22 John Owner shall carry out and complete the construction of the Landlord's Work as set out in this Lease, which construction is expected to be completed contemporaneously with the construction of a new residential rental apartment building by the 22 John Owner on the 22 John Lands (the "Rental Building");
- D. The Tenant is a not-for-profit urban development organization serving the needs of the arts and cultural community, including providing affordable rental accommodation to artists and wishes to operate twenty-six (26) Live /Work residential rental units on the ground floor of the Building (the "Residential Units");
- E. The City is a party to this Lease, with the rights set out in Article 12;
- F. The City desires to increase the number of affordable rental units in the City and has entered into the Contribution Agreement with the Tenant to provide funding for the development and construction of the Residential Units, which funding will be directed to the Landlord (or as the Landlord may direct), as set out in this Lease; and
- G. This Lease is authorized by Item EX 10.6 of the Executive Committee, adopted by the City of Toronto Council at its meeting held on December 9 and 10, 2015, and item EY10.1 of the Etobicoke York Community Council, adopted by City of Toronto Council at its meeting held on December 9 and 10, 2015 (the "Council Authority").

**IN CONSIDERATION** of the rents, covenants and agreements contained in this Lease, the parties **AGREE** as follows:

## ARTICLE 1 BASIC TERMS

### 1.1 Definitions and Interpretation

- (a) The Definitions contained in Schedule A form part of this Lease.
- (b) Each reference in this Lease to any of the Basic Terms in this Article 1 shall be read as having the same dates, quantities and other meanings as specified in this Article 1. In the event of any inconsistency between such terms and the terms hereinafter set out in this Lease, the Basic Terms shall govern to the extent of the conflict.

### 1.2 Leased Premises

The Leased Premises are the premises on the ground floor of the Building, as shown on Schedule B to this Lease, and are comprised of (i) an indoor area of approximately 20,967 square feet shown as Part 26 on the Reference Plan, and (ii) an outdoor area, being Parts 9, 33, 34 and 36 on the Reference Plan, as improved by the Landlord's Work, which outdoor area includes the Artists' Courtyard, the legal description of the Leased Premises being set out in Schedule D to this Lease.

### 1.3 Term

The term of this Lease (the "Term") shall be Fifty (50) Years less One (1) day having a commencement date that is the date (the "Commencement Date") which is (i) the earlier of thirty (30) days after the date the Landlord's Work is Substantially Complete and (ii) January 1, 2020 (the "Outside Date"), as such Outside Date may be extended in accordance with this Lease.

### 1.4 Rent

- (a) The Tenant shall pay to the Landlord annual Basic Rent of Fifty Thousand (\$50,000.00) Dollars, for the first year of the term, in equal monthly instalments of Four Thousand One Hundred and Sixty-Seven (\$4,167.00) Dollars, and thereafter Basic Rent shall be increased annually commencing on each anniversary date of the Commencement Date as set out in Section 3.5 below.
- (b) The Lease shall be fully net and carefree to the Landlord. The Tenant is responsible for any and all costs and expenses whatsoever in any way relating to the Leased Premises including, without limitation, all Additional Rent as set out in Section 3.3 of this Lease, which includes a Property Management Fee. For clarity, unless a cost or expense is expressly provided for herein to be for the Landlord, such costs or expenses shall be the sole responsibility of the Tenant. Notwithstanding anything else contained herein, the Tenant shall not be responsible for any costs for structural components not related to the Leased Premises.

### 1.5 Permitted Use

The Leased Premises shall be used solely for the purpose of the Residential Units for occupants to carry out work as artists and to use as their principal residence, together with ancillary uses, and for no other use whatsoever.

### 1.6 Special Rights

Provided there is no Event of Default and no notice of an Event of Default is outstanding, the Landlord shall make available to the Tenant during the Term, at a minimum, sixteen (16) unreserved car parking spaces in the Parkade, at the same rates as are then prevailing for residents of the Building and on the terms of the Parking License (as defined below). The Tenant may assign this right to any Residential Tenant, provided that the Tenant or Residential Tenant (as the case may be) will sign Landlord's standard form of parking agreement for such stalls (a "Parking Licence"). All Parking Licenses shall be non-transferable without the Landlord's written consent. The Tenant acknowledges and agrees that parking within the Parkade is general access and there shall be no segregated area set aside for the Residential Tenants. At the request of the Tenant, the Landlord may, at its discretion, provide additional parking stall licenses to the Tenant, subject to availability.

## ARTICLE 2- TERM, LEASED PREMISES AND DISPOSITION

### 2.1 Grant



The Landlord leases to the Tenant, and the Tenant leases from the Landlord, the Leased Premises, to have and to hold for the Term upon the terms and conditions and subject to the limitations set out in this Lease.

## 2.2 Completion of Landlord's Work by 22 John Owner

- (a) The parties acknowledge that the completion of the Landlord's Work is a requirement of the Section 37 Agreement and that the plans and specifications referred to in the Section 37 Agreement are the Plans and Specifications attached to this Lease.
- (b) The 22 John Owner shall carry out the Landlord's Work in accordance with the provisions of Schedule C to this Lease and the Plans and Specifications on behalf of the Tenant. For greater certainty, the Tenant and the City acknowledge and agree that in the event of default by the 22 John Owner to complete the Landlord's Work, the Tenant and the City shall have rights against the 22 John Owner as detailed in Section 15.7, and the Landlord (except as specifically set out in Section 15.7) shall have no liability or obligation whatsoever in respect of the Landlord's Work and the Tenant and City shall not have recourse in law or equity against the Landlord in this regard.
- (c) The cost of the Landlord's Work shall be funded by the Tenant and the 22 John Owner as follows:
  - (i) as to Five Million Four Hundred and Forty Thousand (\$5,440,000.00) Dollars, by the Tenant as follows:
    - (A) as to Four Million Four Hundred and Forty Thousand (\$4,440,000.00) Dollars, being the funding and fee and permit waivers the City has committed to the Tenant for the purpose of the constructing the Residential Units in accordance with the Contribution Agreement; and
    - (B) as to One Million (\$1,000,000) Dollars, by making a one-time payment to the Landlord (the "Tenant Contribution"), which payment shall be made to the Landlord (or as the Landlord may direct) no later than two (2) Business Days after the Leased Premises are Substantially Complete; and
  - (ii) as to the balance, by the 22 John Owner.

## 2.3 Contribution Agreement

- (a) The Tenant and the City confirm that they have entered into, or will enter into, the Contribution Agreement, pursuant to which the Tenant is entitled to receive payments in the aggregate amount of Four Million Four Hundred and Forty Thousand Dollars (\$4,440,000.00) to be used to pay for the construction of the Residential Units (the "Contribution Agreement Advances").
- (b) With respect to the Contribution Agreement, the Tenant agrees as follows:
  - (i) it shall keep the Contribution Agreement in good standing at all times and, without limitation, shall ensure that all conditions precedent to advance within its control are completed and delivered to the City and the Landlord in a timely manner;
  - (ii) it hereby irrevocably directs (1) the City to make all payments payable to it pursuant to the Contribution Agreement payable to the Escrow Agent, in trust and (2) the Escrow Agent to make such payments to the Landlord, or as the Landlord may direct; and
  - (iii) the Tenant shall, at its cost, take such steps as may be required to enforce the Contribution Agreement and compel performance thereunder by the City.
- (c) With respect to the Contribution Agreement, the City agrees as follows:

- (i) it shall make all Contribution Agreement Advances directly to the Escrow Agent, in trust, and shall direct the Escrow Agent to make all Contribution Agreement Advances to the Landlord, or as the Landlord may direct;
  - (ii) it shall keep the Contribution Agreement in good standing at all times; and
  - (iii) it shall, at its cost, take such steps as may be required to enforce the Contribution Agreement and compel performance thereunder by the Tenant.
- (d) At the reasonable request of the Tenant, the Landlord shall provide the Tenant such information in its possession or control, to assist the Tenant in satisfying the conditions precedent to the payment of the Contribution Agreement Advances.
- (e) Neither the Tenant nor the City shall waive its rights under, or agree to any amendments of the terms of, the Contribution Agreement, without the consent of the Landlord.
- (f) 22 John Owner shall commence the Landlord's Work within one hundred and twenty (120) days of the execution of the Contribution Agreement, provided that 22 John's obligation to commence the Landlord's Work is conditional upon:
- (i) receipt of a fully executed copy of the Contribution Agreement,
  - (ii) the fulfilment of all conditions precedent set out in the Contribution Agreement to the advance of funds; and
  - (iii) the first advance of funds being made by the City to the Escrow Agent and
  - (iv) confirmation to the Landlord that all fee waivers contemplated in the Contribution Agreement and the Council Authority have been granted.
- (g) In the event the Contribution Agreement Advances are not made for any reason whatsoever (including, without limitation, default of the Tenant or failure to advance by the City, the Landlord or the 22 John Owner (as the case may be) shall, in addition to any other remedies it may have, be relieved of its obligations to commence, or, if commenced, complete the Landlord's Work.

#### 2.4 Surrender at Expiration of Term

At the expiration or earlier termination of the Lease, the Tenant shall:

- (a) Peaceably surrender and yield up possession of the Leased Premises to the Landlord, reasonable wear and tear excepted;
- (b) The Tenant shall not execute any agreement with respect to the Leased Premises (including a Residential Lease or an agreement for the provision of services) which expires after the end of the Term, without the consent of the Landlord, which may be unreasonably withheld;
- (c) The Tenant shall deliver to the Landlord all keys and security/alarm codes to the Leased Premises and the combination of all locks, safes and vaults, if any, in the Leased Premises; and
- (d) In addition, sixty (60) days before the end of the Term or upon other termination of this Lease, the Tenant shall deliver to the Landlord copies of the Tenant's rent roll, setting out the names of the Residential Tenants, their respective unit numbers, their monthly rental payments, deposits held and interest owing on same, any arrears of which the Tenant is aware, and copies of all written Residential Leases or other contracts. To the extent the Tenant has other documentation relevant to the operation of the Leased Premises, it shall deliver same to the Landlord.

#### 2.5 Entry

Provided that the Tenant's operations are not unduly interfered with, during regular business hours from time to time and upon at least forty-eight (48) hours prior written notice to the Tenant:

- (a) the Landlord may, during the last twelve (12) months of the Term, show the Leased Premises to prospective tenants and, for that purpose, the Landlord, its agents, and prospective tenants may enter on and inspect all parts of the Leased Premises; and
- (b) the Landlord may show the Leased Premises to prospective mortgagees or purchasers of the Building, and for that purpose its and their agents and employees may enter on and inspect all parts of the Leased Premises.

## 2.6 Holding Over

If the Tenant remains in possession of the Leased Premises after the end of the Term with the consent of the Landlord and without the execution and delivery of a new lease, there shall be no tacit renewal of the Lease or extension of the Term, nor shall a tenancy from year to year be created, but, notwithstanding any statutory provisions to the contrary, a monthly tenancy shall be created, at a monthly Basic Rent equal to one hundred and twenty percent (120%) of the annual Basic Rent last payable, and otherwise on the terms and conditions set out in this Lease insofar as they are applicable.

## ARTICLE 3- RENT AND OTHER TENANT CHARGES

### 3.1 Net Lease

The Tenant shall pay Basic Rent and Additional Rent as provided in this Lease. It is the purpose and intent of the parties that Basic Rent shall be fully net and carefree to the Landlord, so that this Lease shall yield the Basic Rent specified in each year during the Term without notice or demand, and free of any charges, assessments, impositions or deductions of any kind, and without abatement, deduction or set-off, and under no circumstances or conditions whether now existing or hereafter arising, whether beyond the present contemplation of the parties or otherwise, is the Landlord to be expected or required to make any payment of any kind whatsoever in respect of the Leased Premises, and the Tenant shall pay, as Additional Rent, all charges, impositions and expenses of any kind relating to the Leased Premises, except as specifically set out herein. For clarity, unless a cost or expense is expressly provided for herein to be the responsibility of the Landlord, such costs or expenses shall be the sole responsibility of the Tenant. Notwithstanding anything else herein, the Tenant shall not be responsible for any costs for structural components described in Section 9.1 not related to the Leased Premises.

### 3.2 Basic Rent

The Tenant will pay to the Landlord, without deduction or set off, basic rent as provided in Section 1.4 of this Lease ("**Basic Rent**"), which shall be payable as set out in Section 1.4, to be increased annually as set out in Section 3.5 below.

### 3.3 Additional Rent

- (a) In addition to Basic Rent, the Tenant shall throughout the Term, pay to the Landlord, without any deduction, abatement or set-off whatsoever, the following costs as additional rent (collectively, "**Additional Rent**"):
  - (i) the Tenant's Proportionate Share of Operating Costs;
  - (ii) any costs that would otherwise be included in Operating Costs, but are determined by separate metering or assessment of the Leased Premises or otherwise incurred by the Landlord for the exclusive benefit of the Leased Premises;
  - (iii) all other sums, amounts, costs, cost escalations and charges specified in this Lease to be payable by the Tenant;
  - (iv) the costs of any Utilities serving the Leased Premises, to the extent paid by the Landlord;
  - (v) all Taxes attributable to the Leased Premises payable in respect to the Rent or the operations of the Tenant, if any, to the extent paid or payable by the Landlord; and
  - (vi) The Property Management Fee contemplated in Section 3.4 below.

### 3.4 Property Management Fee

The Tenant shall pay to the Landlord, without any deduction, abatement or set off whatsoever, a property management fee (the "**Property Management Fee**") of Five Hundred Dollars (\$500.00) per Residential Unit (no less than Thirteen Thousand Dollars (\$13,000.00)) (based on 26 Residential Units)) for the first year of the Term and payable in equal monthly instalments of the annual amount of such fee divided by twelve (12) on the first day of each and every month together with the payments of Basic Rent and Additional Rent. For each year of the Term thereafter, the Property Management Fee shall be increased on January 1<sup>st</sup> of each year during the Term, as set out in Section 3.5 below.

### 3.5 Increases in Basic Rent and Property Management Fee

The Basic Rent and the Property Management Fee shall be increased on January 1<sup>st</sup> each year by the increase permitted by the Ontario Rent Increase Guideline established under the *Residential Tenancies Act, 2006* (as same may be amended or replaced from time to time) for the year ending the preceding day.

### 3.6 Payment of Additional Rent

- (a) The Landlord, acting reasonably, may estimate Additional Rent and the Tenant agrees to pay such estimated Additional Rent on the first day of each and every month of the Term. Within a reasonable period of time after the end of each calendar year, the Landlord shall provide the Tenant with a statement, prepared by its accountant, of actual Additional Rent in reasonable detail, together with access to supporting invoices at a location to be determined by the Landlord, acting reasonably, and during business hours. If the Tenant has overpaid Additional Rent, then, provided the Tenant is not in default and no notice of default is then outstanding, the Landlord shall reimburse the Tenant within thirty (30) days of delivery of such statement, without interest or at the Landlord's option, apply such overpayment to future Additional Rent as it falls due. If the Tenant has underpaid Additional Rent, the Tenant shall pay the Landlord the shortfall within thirty (30) days of delivery of such statement, without interest.
- (b) All Additional Rent shall be deemed to be and shall be paid as Rent, whether or not any payment is payable to the Landlord or otherwise, and whether or not as compensation to the Landlord for expenses to which it has been put. In the event of non-payment or late payment thereof, the Landlord shall have the same remedies as it is entitled to under this Lease and by law for non-payment of Rent.
- (c) The Tenant shall not claim a readjustment in respect of Additional Rent except by notice given to the Landlord within three (3) months after delivery of the accountant's statement and, if requested, access to supporting invoices, stating the particulars of the error in computation of Additional Rent, or the Tenant's share thereof. In the event of a dispute, the finding of the Landlord's accountant as to the Additional Rent shall be conclusive.

### 3.7 Computation of Operating Costs

- (a) The Tenant shall pay the Tenant's Share of Operating Costs. Subject to subparagraph (b), the "**Tenant's Share**" shall be equal to the number of Residential Units, divided by the total number of residential units in the Building (the "**Tenant's Proportionate Share**"). As of the Commencement Date, the total number of residential units in the Building is expected to be 446, being 420 existing residential units, plus the 26 Live/Work Units.
- (b) When and if any costs of the Landlord which are included in Operating Costs is used disproportionately by the Tenant in relation to the balance of the Building, the Landlord shall be entitled, but not obligated, to allocate such Operating Costs to the Tenant on the basis of such factors as the Landlord reasonably determines to be relevant, such as, by way of example, the relative uses of such service and the benefits derived by them. In such event, after consultation with the Tenant and with evidence of such disproportionate use (with no right of approval), the Landlord shall be entitled to adjust the Tenant's Share of Operating Costs with respect to such services, including, where reasonable to do so, allocating the entirety of a cost incurred to the Tenant or to other tenants of the Building.

- (c) For illustrative purposes only, the costs intended to be charged as Operating Costs as of the date of this Lease are set out in Schedule I to this Lease. The parties acknowledge that Operating Costs actually charged to the Tenant may change over time and the Landlord is entitled to charge as Operating Costs such other costs as may be consistent with building management practices in the City of Toronto.

3.8 Interest on Arrears

All arrears of Rent shall bear interest from their respective due dates until the actual dates of payment at the Default Rate.

3.9 Payment Method

At the Landlord's request, the Tenant shall make all payments under this Lease by way of automatic withdrawals or electronic funds transfer from the Tenant's bank account, and shall execute and deliver, either concurrently with this Lease and thereafter from time to time within three (3) Business Days following request therefor, such documentation as may be required by the Landlord and its bank in order to effect such payments. Alternatively, the Landlord may require the Tenant to provide post-dated cheques in respect of the Rent. This Section 3.9 shall not apply if the Tenant is the City of Toronto.

3.10 Partial Periods

If the Term commences on any day other than the first day of the month, or ends on any day other than the last day of the month, Rent for the fractions of a month at the commencement and at the end of the Term shall be calculated on a *pro rata* basis and shall be payable on the first day of the partial month.

**ARTICLE 4- TAXES**

4.1 Taxes Payable by Tenant

The Tenant shall pay, and indemnify and hold harmless the Landlord from and against payment of, and any interest or penalty in respect of, the following on or before the due date therefor:

- (a) subject to Sections 4.2 and 4.3 below, any Taxes directly to the taxing authority. The Tenant shall exhibit to the Landlord within ten (10) days of the payment of any imposition payable by the Tenant, copies of official receipts of the appropriate taxing authority or other proof satisfactory to the Landlord.
- (b) every tax, licence fee, rate, duty and assessment of every kind with respect to any business carried on by the Tenant on the Lands or by any subtenant, licensee, concessionaire or franchisee or anyone else, or in respect of the use or occupancy of the Lands by the Tenant, its subtenants, licensees, concessionaires or franchisees, or anyone else (other than such taxes as income, profits or similar taxes assessed upon the income of the Landlord).
- (c) all Taxes or other impositions in respect of the Tenant's fixtures, Leasehold Improvements (including improvements arising as a result of the Landlord's Work), equipment or facilities on or about the Lands, and any Taxes or impositions occurring as a result of any reason peculiar to the Tenant.

4.2 Determination of Share

If the Leased Premises are not separately assessed, the Tenant shall pay the Landlord the Tenant's Proportionate Share of Taxes assessed in respect of the Property. For the purposes of determining the share of Taxes payable by the Tenant pursuant to this Lease, Taxes shall include such additional amounts as would have formed part of Taxes had the Property been fully assessed during the whole of the relevant fiscal period as fully completed and fully occupied by tenants, with no special exemptions or reductions, and without taking into account any actual or potential reduction of Taxes or change of assessment category or class of premises within the Property which are vacant or underutilized.

#### 4.3 Tax Exemption

It is acknowledged that Toronto City Council has authorized a by-law providing authority to:

- (a) enter into a "Municipal Capital Facility Agreement" with the Tenant for the portion of the Residential Units that will be used as an eligible municipal capital facility and for uses ancillary to such use (the "Eligible Live/Work Property") all in accordance with Ontario Regulation 598/06 on such terms and conditions satisfactory to the General Manager, Economic Development & Culture and in a form approved by the City Solicitor;
- (b) exempt the Eligible Live/Work Property from property taxation for municipal and school purposes, and for which the property tax exemption is to be effective from the latter of: (i) the date the Municipal Capital Facility Agreement is signed, (ii) the date the by-law is enacted; and (iii) the commencement date of the Lease;
- (c) such agreement shall provide that so long as the by-law exemption and the Municipal Capital Facility Agreement both remain in full force and effect, the Landlord shall pass the full benefit of the exemption for Eligible Live/Work Property on to the Tenant who, during the entire period of any such exemption, shall not be required to pay Taxes to the extent of such exemption; and
- (d) if required to give effect to the exemption contemplated in this section, the Landlord shall enter into a Municipal Capital Facility Agreement with respect to operation of the Residential Units to be operated by the Tenant, on terms and conditions satisfactory to the Landlord and the City, each acting reasonably, and at the cost of the Tenant, for the purposes of securing the exemptions contemplated in this Section.

#### 4.4 Harmonized Sales Tax

- (a) The Landlord warrants that it has complied with the self-supply rule contained in section 191(3) of the *Excise Tax Act* (Canada) as builder, and shall indemnify the Tenant from any liability for H.S.T. arising from the self-supply.
- (b) Subject to Section 4.4 (a), The Tenant shall pay an amount equal to any and all taxes, rates, duties, levies, fees, charges and assessments whatsoever, whether or not in existence at the commencement of the Term, assessed, charged, imposed, levied or rated by any taxing authority, whether federal, provincial, municipal or otherwise, on or against Landlord or Tenant, with respect to the Rent payable by Tenant to Landlord under this Lease or the rental space under this Lease or the provision or supply of any goods, services or utilities whatsoever by Landlord to Tenant under this Lease, whether any such tax, rate, duty, levy, fee, charge or assessment is called or characterized as a sales, use, consumption, value-added, business transfer or Harmonized Sales Tax or otherwise (collectively, "H.S.T."). If the applicable legislation requires that any H.S.T. is to be collected by Landlord, the amount of the H.S.T. so payable by the Tenant shall be calculated by Landlord in accordance with the applicable legislation and shall be paid by Tenant to Landlord at the same time as the Basic Rent is payable, or at such other time or times as the applicable legislation may from time to time require. Despite any other provision of this Lease, the amount or amounts from time to time payable by Tenant under this Section shall be deemed not to be consideration for the supply of space under this Lease, but shall be considered to be Rent for purposes of Landlord's rights and remedies for non-payment and recovery of any such amounts.
- (c) The Tenant warrants that payment of Basic Rent and Additional Rent pursuant to this Lease is exempt from HST payable pursuant to the *Excise Tax Act* (Canada) under Schedule V, Part I, subpara. 7(a)(ii), such that H.S.T. is not payable on Rent or Additional Rent hereunder. The Tenant hereby indemnifies and holds the Vendor harmless from any liability under the *Excise Tax Act* arising as a result of the payment of Rent or Additional Rent or arising in connection with the operation of the Leased Premises, together with all loss, costs and expenses relating from such liability.

### ARTICLE 5 - UTILITIES

#### 5.1 Provision of Utilities

The Landlord shall provide Utilities that are available generally for the Building to the Leased Premises in accordance with the Plans and Specifications. The Landlord shall maintain in good order and repair all facilities and equipment providing the Utilities (including fire suppression systems) to the Leased Premises with all costs for same forming part of Operating Costs, provided that if any such maintenance or repair is due to the act or omission of the Tenant or those for whom it is responsible at law, such costs shall be the sole responsibility of the Tenant.

#### 5.2 Metering

The Landlord shall install a separate meter for electricity. The Landlord may install separate meters for the following utilities as part of the Landlord's Work: (a) water; and (b) natural gas.

#### 5.3 Payment of Utilities

- (a) The cost of any utilities not separately metered, and with respect to which the Tenant is not paying the supplier directly, shall be charged to the Tenant as an Operating Cost.
- (b) The cost of any utilities separately metered, and with respect to which the Tenant is not paying the supplier directly, shall be charged entirely to the Tenant.
- (c) The Tenant shall pay promptly when due all charges, costs, accounts and any other sums payable by reason of the supply of the utilities and services to the Leased Premises. Where required by the Landlord, the Tenant shall contract with and pay the supplier directly.

#### 5.4 No Overloading

The Tenant will not install any equipment which would exceed or overload the capacity of any Utility serving in the Leased Premises, including, without limitation, electrical wiring and service in the Leased Premises, and agrees that if any equipment installed by the Tenant or any Residential Tenant shall require additional utility facilities, such facilities shall be installed, if available, and subject to the Landlord's prior written approval thereof (which approval may not be unreasonably withheld), at the Tenant's sole cost and expense in accordance with plans and specifications to be approved in advance by the Landlord, in writing.

#### 5.5 No Liability

In no event shall the Landlord be liable for any injury to the Tenant, its employees, agents or invitees, or to the Leased Premises, or to any property of the Tenant or anyone else, for any loss of profits or business interruption, indirect or consequential damages, or for any other costs, losses or damages of whatsoever kind arising from any interruption or failure in the supply of any utility or service to the Leased Premises, other than a disruption of service caused by the gross negligence of the Landlord or by those for whom it is responsible at law.

#### 5.6 HVAC

The Tenant shall, throughout the Term, operate and regulate the HVAC Equipment serving the Leased Premises in such a manner as to maintain reasonable conditions of temperature and humidity within the Leased Premises in accordance with operating instructions provided by the Landlord. The Landlord shall maintain in good order and repair all HVAC Equipment serving the Leased Premises with all costs for same forming part of the Operating Costs, provided that if any such maintenance or repair is due to the act or omission of the Tenant, or those for whom it is responsible at law, such costs shall be the sole responsibility of the Tenant. Notwithstanding the foregoing the costs of capital replacement of HVAC Equipment shall be subject to the provisions of Section 9.1.

#### 5.7 Garbage and Waste Collection

The Tenant covenants and agrees that all waste and garbage in the Leased Premises shall be taken to the "Live/Work Garbage Holding Room" within the Leased Premises as shown on Schedule B at the Tenant's sole cost and expense. The Tenant further covenants and agrees that all of its Residential Leases will require each Residential Tenant to deliver any and all garbage or waste from its respective Residential Units to such "Garbage Holding

Room". The Landlord shall, as part of Operating Costs, cause such garbage and waste to be taken, in a timely manner, to the "Garbage Room" located in the Building (or such other area as the Landlord may determine). Such waste and garbage shall be disposed of with other garbage and waste from the Building, and the costs thereof shall form part of the Operating Costs.

## **ARTICLE 6- USE OF THE LEASED PREMISES**

### **6.1 Use of the Leased Premises**

- (a) The Tenant shall use the Leased Premises solely for the purpose set out in Section 1.5 and for no other purpose. The Tenant shall continuously, actively and diligently carry on such use in the whole of the Leased Premises throughout the entire Term, subject to Force Majeure. It is acknowledged that the vacancy of individual Residential Units in the normal course of the Tenant's business shall not be a breach of this covenant. During the Disposition Period described in Article 12, ARTICLE 12 will prevail in the event of any conflict with this section.
- (b) The Tenant shall not commit, cause or permit any nuisance or waste on the Leased Premises or the Common Areas or permit the emission of any offensive substance, odour or noise from the Leased Premises and shall take all necessary actions to prevent same from occurring at its sole cost and expense. This paragraph (b) shall not be interpreted in such a manner so as to prevent the Tenant or its tenants from carrying on activities in the Leased Premises for the purposes described in Section 1.5 herein, so long as the activities do not constitute a nuisance and are in compliance with all applicable laws.
- (c) In addition to Section 5.4 above, the Tenant shall not permit or allow any overloading of the floors of the Premises, and shall not bring into the Leased Premises any articles or fixtures that, by reason of their weight, use or size, might damage or endanger the Leased Premises.
- (d) The Tenant shall not at any time cause or permit any sign, picture, advertisement, notice, lettering, flag, decoration or direction to be painted, displayed, inscribed, placed, affixed or maintained within the Leased Premises which is visible outside the Leased Premises, or in or on any windows or the exterior of the Leased Premises without the Landlord's prior written consent acting reasonably.
- (e) The Tenant shall conduct its business in a manner consistent with the best interests of the Building and Area Redevelopment as a whole. Without limiting the forgoing, the Tenant shall not use or permit the Premises, or any part thereof, to be used for any of the following businesses, purposes or activities:
  - (i) the dispensing of any kind of narcotic, such as, by way of example, a methadone clinic, or the dispensing of alcohol unless permitted in accordance with applicable law;
  - (ii) an auction, flea market, arcade, bingo hall, casino or other similar gaming establishment, pawn shop, bulk or liquidation sales;
  - (iii) any unlawful purpose or activity;
  - (iv) the featuring of full or partial nudity or a body rub parlour;
  - (v) an addiction clinic or centre of housing for addicts or recovering addicts; or
  - (vi) any other businesses, purposes, or activities that would reasonably be seen as lowering the character and reducing the value of the Building or Area Redevelopment.

### **6.2 Quiet and Peaceful Enjoyment**

- (a) Upon payment by the Tenant of the Rent and the observance and performance of all of the agreements, covenants, terms and conditions on Tenant's part to be observed and performed, the Tenant shall quietly enjoy the Premises for the Term without hindrance or interruption by Landlord or any other person or persons



lawfully or equitably claiming by, through or under Landlord, subject to the terms of this Lease, the title to the Lands and Section 6.2(b) below.

- (b) The Tenant acknowledges that the 22 John Lands are intended to be redeveloped by the 22 John Owner, as a residential apartment building including the construction of an overhead passage way between such apartment building and the 3<sup>rd</sup> floor of the Parkade, an outdoor public space, and a parking lot to be owned and operated by the Toronto Parking Authority (the "Area Re-Development"), which the Landlord has consented to and that, among other things, the repair, replacement and maintenance of the overhead passage way between the Rental Building and the Building, Parkade, and other portions of the Building may result in noise, dust, and vibration that affect the quiet enjoyment of the Tenant, and its sublessees, including the Residential Tenants. The Tenant shall include a clause in its subleases (including the Residential Leases) that the subtenants acknowledge the temporary impacts described above and shall not bring any proceeding of any nature or kind whatsoever with respect to such impacts.

### 6.3 Observance of Laws and Agreements

The Tenant will, at its expense:

- (a) comply with all provisions or changes of law and other requirements of all governmental bodies which pertain to or affect the Leased Premises or require or govern the making of any repairs, alterations or other changes of or to the Leased Premises or the Tenant's use of it;
- (b) comply with the obligations of the Landlord in relation to the Leased Premises as set out in the Permitted Encumbrances; and
- (c) comply with every requirement of the Landlord's insurance underwriters in respect of the Tenant's operation of its business, and shall not commit any act or omission that causes an increase in the fire risk or the cost of insurance, or prevents the placing of insurance on the Buildings.

### 6.4 Required Provisions for Residential Leases

The Tenant shall ensure that all Residential Leases permit the Landlord to carry out its obligations under this Agreement, and, without limiting the foregoing, shall include clauses in all Residential Leases substantially as follows:

- (a) "Tenants are advised that maintenance, repair and replacement of the concrete structures above the Leased Premises will be required from time to time. Such maintenance, repairs and replacements may, during the term, cause noise and vibration which may be disturbing to occupants or users. Further, there may be occasions when vacant possession of a Residential Unit is required for support, maintenance and repair of the structures above. The Head Landlord will carry on such work in a commercially reasonable manner so as to minimize the disruption to the Tenant. Except in the event of an emergency, any such access will be planned with full consultation with Toronto Artscape Inc., or its successor or permitted assign.";
- (b) "The Lease may be terminated in the event of damage or destruction to the Leased Premises or Building where the Head Landlord has the obligation or right to terminate the Head Lease, or requires vacant possession of the Leased Premises, for the purposes of reconstruction.";
- (c) "The Tenant acknowledges that the Artist's Courtyard is a non-exclusive portion of the premises leased by the Head Landlord to Toronto Artscape Inc. and access to the Artist's Courtyard shall be available to the public.";
- (d) "The Tenant shall purchase tenant insurance with liability limits of not less than \$1,000,000.00 per occurrence, and otherwise on commercially reasonable terms for such insurance."; and
- (e) "The Tenant acknowledges that the Head Landlord may periodically require access to its units for the purpose of making emergency repairs, and during normal

business hours on reasonable prior written notice, in accordance with the *Residential Tenancies Act* for the Residential Units for the purpose of inspecting and making repairs, alterations or improvements to the Leased Premises, or for the purpose of having access to the under floor ducts, to the access panels to mechanical shafts and fire suppression systems (which the Tenant agrees not to obstruct), or to conduct maintenance, repair and replacement of the concrete structures above the Leased Premises.";

- (f) A release of the Landlord substantially as follows: "Notwithstanding the foregoing or anything else herein contained, in no event, whether or not the result of the wilful act or the negligence of the Head Landlord, its agents, officers, employees or others for whom it is legally responsible, and irrespective of any insurance that may or may not be carried or required to be carried, shall the Head Landlord be liable for:
- (i) damage to property of the Tenant or others located on the Leased Premises or the Residential Units;
  - (ii) any injury or damage to persons or property resulting from fire, explosion, steam, water, rain, snow or gas which may leak into or issue or flow from any part of the Building or from the water, steam or drainage pipes or plumbing works of the Building or from any other place or quarter;
  - (iii) any damage caused by or attributable to the condition or arrangement of any electrical or other wiring (except as warranted as part of the Landlord's Work);
  - (iv) any damage caused by anything done or omitted to be done by any other tenant of the Property;
  - (v) any indirect or consequential damages suffered by the Tenant; or
  - (vi) any inconvenience or damage arising out of the exercise of the Head Landlord's rights to enter the Residential Units"; and
- (g) "In the event of a default under the Head Lease, the Residential Tenant shall, on notice from the Head Landlord and without limitation to any other rights the Head Landlord may have, attorn to and pay all rents to the Head Landlord. For greater certainty, these rents shall be applied to reduce rent arrears owed by the Tenant."

## 6.5 Environmental Matters

- (a) The Landlord covenants and agrees that it shall be fully responsible for any and all liabilities arising from a breach of Environmental Laws relating to the Leased Premises, other than those caused by the Tenant, a Residential Tenant or any person or party that they are responsible for, and shall indemnify and save the Tenant harmless against, any and such liabilities, claims, damages, interest, penalties, fines, monetary sanctions, losses, costs and expenses whatsoever.
- (b) Without limiting any other obligation of the Tenant in this Lease, the Tenant covenants and agrees that it shall, at its sole cost and expense, observe and otherwise comply with, and cause its sublessees, invitees and all other occupants of the Leased Premises to observe and comply with all Environmental Laws. Without limiting the generality of the foregoing, the Tenant covenants and agrees that:
- (i) it shall not cause or permit any Hazardous Substance to be brought into, stored, kept or used in or about the Premises or any part thereof, other than any Hazardous Substance that is used in the ordinary course of the permitted use being carried on at the Premises and which is stored, kept and used in strict compliance with all Environmental Laws pertaining thereto;
  - (ii) on the expiration or earlier termination of this Lease, it shall cause each and every Hazardous Substance brought into, stored, kept or used in the Premises by the Tenant or a Residential Tenant to be removed from the Premises in compliance with all Environmental Laws pertaining thereto; and

- (iii) it shall be fully responsible for any and all liabilities arising from a breach of this Section or Environmental Laws, relating to the Leased Premises that are caused by the Tenant, its Residential Tenants or any person or party that they are responsible for, and shall indemnify and save the Landlord harmless against, any and all such liabilities, claims, damages, interest, penalties, fines, monetary sanctions, losses, costs and expenses whatsoever.

## **ARTICLE 7- THE COMMON AREAS AND THE BUILDING**

### **7.1 Operation of the Common Areas and Building**

The Landlord shall manage, operate, maintain, repair, landscape and keep in tidy and orderly condition the driveways, walks, parking areas including shoveling or sweeping of ice, and snow therefrom, and other Common Areas and make such repairs thereto or replacements thereof as would a prudent owner of a similar project, and shall provide suitable and adequate means of access to and egress from the Leased Premises at all times. All costs incurred with respect to same shall be included in Operating Costs.

### **7.2 Right to Use Common Areas**

Subject to Section 7.3 below, the Landlord hereby grants to Tenant and Tenant's Residential Tenants, invitees and employees for the entire Term, the licence to use, in common with Landlord, Landlord's tenants, customers, invitees and employees and with the other lessees and occupants of the Building, and their respective customers, invitees and employees, the Common Areas for their intended purposes, subject to any rules or regulations set out by the Landlord from time to time.

### **7.3 Landlord's Rights with respect to Common Areas**

All Common Areas shall, at all times, be subject to the exclusive control and management of the Landlord or as the Landlord may direct from time to time and, without limitation, the Landlord may from time to time: (i) close parts of the Common Areas to such extent as the Landlord considers reasonably necessary to prevent the accrual of any rights therein to any persons at any time; or (ii) grant, modify and terminate easements and other agreements pertaining to the use and operation of the Common Areas, and temporarily obstruct or close off or shut down parts of the Common Areas for inspection, maintenance, repair, construction or safety reasons, and interfere, to the extent necessary and reasonable, with the use of and access over the Common Areas. In exercising its rights under this Section 7.3, the Landlord shall use reasonable commercial efforts to minimize any disruption of the operation of the Tenant's operations and, provided it complies with the foregoing, the Landlord shall have no liability for diminution or alteration of the Common Areas, and no claim for compensation shall be made by the Tenant by reason of inconvenience, nuisance or discomfort arising from the exercise of such rights.

### **7.4 Changes to the Building**

Notwithstanding anything contained in this Lease, the Landlord shall have the right, at any time, to make alterations to the Building, including the Common Areas within or around the Building, provided the Landlord shall use reasonable commercial efforts to minimize any disruption of the operation of the Tenant's operations and, provided it complies with the foregoing, the Landlord shall have no liability for diminution or alteration of the Common Areas, and no claim for compensation shall be made by the Tenant by reason of inconvenience, nuisance or discomfort arising from the exercise of such rights.

### **7.5 Artist's Courtyard**

The Tenant acknowledges that the Artist's Courtyard is a non-exclusive portion of the Leased Premises and access to the Artist's Courtyard shall be available to the public and the Tenant shall not erect any barrier or indication of the extent of the Artist's Courtyard that is visible to the public. The Landlord shall maintain, or cause to be maintained, the Artist's Courtyard, the costs of which shall be included in Operating Costs, such that the Tenant will pay its Tenant's Proportionate Share of the Cost of maintaining the Artist's Courtyard.

## **ARTICLE 8 -INSURANCE**

### **8.1 Tenant to Provide Insurance**

At all times during the Term, the Tenant, at its own expense, shall take out and keep in full force and effect insurance for businesses of the type being carried on by the Tenant, including:

- (a) "Tenant's Legal Liability (Broad Form)" coverage, in an amount not less than the full replacement cost thereof from time to time, insuring all property for which the Tenant is legally liable, or which is installed by or on behalf of the Tenant, within the Leased Premises including, without limitation, partitions, Leasehold Improvements, and trade fixtures
- (b) "Equipment Breakdown" insurance on equipment owned and operated by the Tenant, against accidents defined therein equal to the full replacement costs of such equipment, which policy shall include a joint-loss endorsement;
- (c) "Commercial General Liability" insurance against claims for personal injury, death or property damage or loss arising out of all operations of the Tenant, including owners' and contractors' protective, products, completed operations, bodily injury for the property of persons or property, personal injury including employer's liability, broad form blanket contractual liability, occurrence property damage with limits of not less than \$5,000,000.00 per occurrence and extended to include the commercial liability exposures of the Residential Tenants; and
- (d) any such other forms of insurance as the Landlord, in such amounts and on such terms as the Landlord or its Lenders, acting reasonably, may require from time to time.

## 8.2 Insurance Terms and Conditions

- (a) Naming of Landlord - All such insurance shall be with insurers and shall be upon such terms and conditions as the Landlord reasonably approves. The insurance described in Section 8.1(c) (commercial general liability) shall name as an additional insured the Landlord and anyone else with an interest in the Premises from time to time designated in writing by the Landlord.
- (b) Cross-Liability and Waiver of Subrogation - All policies of liability insurance required to be taken out by the Tenant shall provide for cross-liability or severability of interests and a waiver of any subrogation rights that the Tenant's insurers may have against the Landlord and against those for whom it is in law responsible.
- (c) Insurance Companies - All policies of insurance required to be taken out by the Tenant shall be with an insurance company licensed to transact business in the Province of Ontario and shall be satisfactory to the Landlord, acting reasonably, which insurance company shall be rated no less than A- as rated by AM Best Company.
- (d) Primary Coverage - All policies of insurance required to be taken out by the Tenant shall be primary and shall not call into contribution any insurance available to the Landlord.
- (e) Undertaking - All of the foregoing policies shall contain an undertaking by the insurer, that such policy shall not be cancelled or terminated except after not less than thirty (30) days' prior written notice to the Landlord.
- (f) Limits of Insurance - All policies required to be taken out by the Tenant shall be adjusted not less than once every five (5) years in an amount for which a prudent Landlord would require to insure.

## 8.3 Payment of Premiums

The Tenant shall duly and punctually pay all premiums under the aforesaid policies as they become due and payable. In the event of default of payment by the Tenant, the Landlord may pay same and the amount so paid shall be forthwith payable by the Tenant to the Landlord together with an administration fee of fifteen percent (15%) of such premiums. If the occupancy of the Leased Premises, the conduct of business in the Leased Premises, or any acts or omissions of the Tenant in the Property or any part thereof causes or results in any increase in premiums for the insurance carried from time to time by the Landlord with

respect to the Property, the Tenant shall pay any such increase in premiums as Additional Rent forthwith after invoices for such additional premiums are rendered by the Landlord.

#### 8.4 Evidence of Insurance

Prior to the Commencement Date, and then upon request, the Tenant shall deliver to the Landlord evidence of the insurance required hereby in the form of Certificates of Insurance, in form and detail satisfactory to the Landlord, acting reasonably, signed by an authorized representative of the insurer. The Tenant will make available the complete original copies of all applicable policies for examination if required by the Landlord. Certificates of Insurance evidencing renewal or replacement of policies shall be delivered to the Landlord 15 days prior to the expiration of the current policies, without demand having to be made by the Landlord.

#### 8.5 Landlord's Insurance

At all times during the Term, the Landlord shall take out and keep in full force and effect the following insurance:

- (a) "All Risks" property insurance on such terms and conditions as would be carried by a prudent owner of a similar building, having regard to the size, age and location of the Building, it being agreed that the Landlord shall obtain sufficient insurance to comply with its obligations pursuant to Section 10.2 of this Lease;
- (b) Equipment breakdown insurance on equipment owned and operated by the Landlord and/or its representative, against accidents defined therein equal to the full replacement costs, which policy shall include a joint-loss endorsement;
- (c) comprehensive general liability insurance against claims for personal injury, death or property damage or loss arising out of all operations of the Landlord, including owners' and contractors' protective, products, completed operations, intentional bodily injury for the property of persons or property, personal injury including employer's liability, broad blanket contractual liability, occurrence property damage with limits of not less than \$10,000,000.00 per occurrence;
- (d) The Landlord may maintain such other insurance in respect of the Building and its operation and management as the Landlord determines, acting reasonably; and
- (e) The Tenant shall be an additional insured under the Landlord's general liability policies.

#### 8.6 Proceeds of Insurance

Notwithstanding anything contained in this Lease, but subject to applicable law, the Landlord agrees to apply all proceeds of insurance for repair and reconstruction of the Property, to the extent required to complete the Landlord's Obligations pursuant to Section 10.2 of this Lease.

#### 8.7 Mutual Indemnity

Each party will indemnify the other and save it harmless from any and all losses or claims, actions, demands, liabilities and expenses in connection with loss of life, personal injury and/or damage to or loss of property: (a) occasioned or caused wholly or in part by any act or omission of such indemnifying party or anyone for whom it is in law responsible; or (b) arising from any breach by such indemnifying party of any provision of this Lease.

#### 8.8 Mutual Release

- (a) Each of the Landlord and the Tenant releases the other and waives all claims against the other and those for whom the other is in law responsible with respect to occurrences insured against or required to be insured against by the releasing party, whether any such claims arise as a result of the negligence or otherwise of the other or those for whom it is in law responsible, subject to the following:
  - (i) such release and waiver shall be effective only to the extent of proceeds of insurance received by the releasing party or proceeds which would have been received if the releasing party had obtained all insurance required to be

obtained by it under this Lease (whichever is greater) and, for this purpose, deductible amounts shall be deemed to be proceeds of insurance received (subject to the right of the Landlord to include such deductible amounts in Operating Costs); and

- (ii) to the extent that both parties have insurance or are required to have insurance for any occurrence, the Tenant's insurance shall be primary.
- (b) Notwithstanding the foregoing or anything else herein contained, in no event, whether or not the result of the wilful act or the negligence of the Landlord, its agents, officers, employees or others for whom it is legally responsible, and irrespective of any insurance that may or may not be carried or required to be carried, shall the Landlord be liable for:
- (i) damage to property of the Tenant or others located on the Premises;
  - (ii) any injury or damage to persons or property resulting from fire, explosion, steam, water, rain, snow or gas which may leak into or issue or flow from any part of the Building or from the water, steam or drainage pipes or plumbing works of the Building or from any other place or quarter;
  - (iii) any damage caused by or attributable to the condition or arrangement of any electrical or other wiring (except as warranted as part of the Landlord's Work);
  - (iv) any damage caused by anything done or omitted to be done by any other tenant of the Property; or
  - (v) any indirect or consequential damages suffered by the Tenant.

#### 8.9 Residential Tenant Insurance

The Tenant shall ensure that the Residential Leases require the Residential Tenants to purchase tenant insurance with liability limits of not less than \$1,000,000.00 per occurrence, and otherwise on commercially reasonable terms for such insurance, and naming the Landlord as an additional insured.

### **ARTICLE 9 - MAINTENANCE, REPAIRS AND ALTERATIONS**

#### 9.1 Landlord's Obligations – Building and Common Areas

- (a) The Landlord shall at all times keep, or cause to be kept in good order and condition reasonable wear and tear excepted:
  - (i) the foundation, bearing walls, structural columns, and beams and other structural components of the Leased Premises and the portions of the Building supporting the Leased Premises including the waterproof membrane on the roof and, if applicable, immediately above the Leased Premises;
  - (ii) all exterior walls of the Leased Premises;
  - (iii) the plumbing, drains and utility services leading up to the Leased Premises; and
  - (iv) the Common Areas (including removing snow and debris).
- (b) The Landlord shall carry out these obligations in a commercially reasonable manner and so as to minimize any undue interference with the use and enjoyment by the Tenant of the Leased Premises.
- (c) With respect to the repairs contemplated in Section 9.1 (a)(i),(ii), or (iii), to the extent such repairs or replacements are determined by the Landlord's accountants, acting reasonably, to be capital in nature or relate to the replacement of HVAC Equipment, such costs shall be paid for by the Landlord and the Landlord shall be entitled to charge to the Tenant depreciation of such capital costs in an amount determined by the Landlord's accountants, acting reasonably, plus during each year at the rate which

is two percent (2%) above the prime rate charged by the Landlord's chartered bank at the end of each year on the undepreciated capital cost of such items. For clarity, where such costs are determined not to be capital in nature, they may be included in Operating Costs by the Landlord.

- (d) To the extent the need for any repairs or replacements, which are otherwise the Landlord's responsibility, are caused by the actions of the Tenant, such repairs or replacements shall be at the Tenant's sole cost and expense, and the Tenant shall pay such cost to the Landlord together with an administration fee of fifteen percent (15%) of the total cost.
- (e) Notwithstanding anything contained in this Section 9.1 (other than Section 9.1(d)), any repair or replacement subject to the warranty provisions of Schedule C (Landlord's Work) shall be carried out in accordance with that provision.

## 9.2 Maintenance of Leased Premises

The Landlord shall maintain the Leased Premises in a good state of repair, consistent with the standard of maintenance and repair of a prudent owner, the cost of which services shall be included in Operating Costs and charged to the Tenant in accordance with Sections 3.3 and 3.7 of this Lease. The Landlord's obligations in this regard include, but are not limited to, the following:

- (a) keep the Leased Premises and every part thereof (other than the Residential Units) in a clean and tidy condition inside;
- (b) make all repairs to the Leased Premises when needed, reasonable wear and tear excepted,
- (c) provide maintenance services with respect to any elevating device within the Leased Premises;
- (d) provide security services for the Building, including periodic inspections of the Leased Premises;
- (e) remove waste from the Garbage Holding and Garbage Rooms area described in Section 4.7 of this Lease, and arrange for its removal from the Building, in a timely manner;
- (f) perform regular pest control activities;
- (g) at the request of the Tenant, re-paint and re-plaster Residential Units prior to occupancy by a new tenant.

## 9.3 Tenant's Obligations

- (a) Subject to the Landlord's obligations in Section 9.2 above, the Tenant shall, maintain and keep the Leased Premises in good order and condition.
- (b) All repairs to the Building necessitated by the Tenant's negligence or wilful misconduct or the negligence or wilful misconduct of the Tenant's agents, servants, contractors, invitees, employees or others for whom the Tenant is in law responsible shall be completed by the Landlord at the sole expense of the Tenants, which cost shall be included in Operating Costs, but charged exclusively to the Tenant.

## 9.4 Tenant's Work and Alterations

- (a) Throughout the Term of this Lease, the Tenant may request that the Landlord modify, repair or replace the Leasehold Improvements, provided it shall submit its plans, drawings and specifications to the Landlord in order to obtain its approval, which approval shall not be unreasonably refused or withheld, unless a change to or modification of the structural form, mechanical systems or waterproofing of the Building is requested, in which case, the Landlord may refuse to grant consent at its discretion. Where the Tenant's proposed work is substantial in nature (such as, by way of example, a modification of the structural form, mechanical systems or waterproofing of the Building), to be determined by the Landlord in its sole discretion, such reviews shall be at the cost of the Tenant and the Landlord shall

charge only its reasonable costs for such reviews. Where the Tenant's proposed work is not substantial in nature, the Landlord shall complete the review at its own cost.

- (b) All such work shall be carried out by the Landlord at the expense of the Tenant and shall be treated as an Operating Cost which will be charged entirely to the Tenant in accordance with Section 3.7 of this Lease (but as a reimbursement to the Landlord, not as Rent), and an Administration Fee of fifteen (15%) percent shall be added to the cost of such work, which Administration Fee shall be paid to the Landlord by the Tenant. Should the Tenant carry out work in the Leased Premises, without obtaining the approval of the Landlord, the Landlord shall be entitled to remove or remedy any such work at the Tenant's sole cost and expense plus an Administration Fee of fifteen (15%) percent.
- (c) The Tenant, at its sole cost and expense, shall obtain or cause to be obtained all consents, authorizations, approvals, permits, licences (temporary and permanent) and certificates of occupancy of whatsoever nature or kind which may be required to permit the completion of the work requested by the Tenant and provide copies of same to the Landlord forthwith thereafter.
- (d) All repairs, alterations, replacements or improvements shall be performed in a good and workmanlike manner, and shall comply with all applicable laws, by-laws, regulations and orders enacted or made by any federal, provincial or municipal authority having jurisdiction and all requirements of the Landlord's fire insurance underwriters. The Tenant shall indemnify the Landlord and save it harmless from any costs, expenses, damages or increased insurance premiums which may result from the performance of any work.
- (e) The Tenant shall forthwith on demand indemnify and save the Landlord harmless from any liability, claim, damages or expenses due to or arising from any claim for a construction, builders or other lien made against the Leased Premises or made against the Building in relation to any work done by, for or on behalf of the Tenant. The Tenant shall cause all registrations of any such claims or Certificates of Action related thereto to be discharged or vacated by payment into Court within fifteen (15) days of notice from the Landlord requiring it to do so, failing which the Landlord, in addition to any other rights or remedies it may have hereunder, may, but shall not be obligated to, cause such claims or Certificates of Action to be discharged or vacated by payment into court, and in such event the Tenant shall pay the Landlord's reasonable costs and expenses thereof, together with an administration fee of fifteen percent (15%) of such costs and expenses.

#### 9.5 Removal of Fixtures

- (a) All Leasehold Improvements shall immediately upon their placement become the Landlord's property, without compensation to the Tenant. Except as otherwise agreed by the Landlord in writing, no Leasehold Improvements shall be removed from the Leased Premises by the Tenant. The Tenant may, during the Term, in the usual course of its business, and with the prior written consent of the Landlord, not to be unreasonably withheld, install or remove such trade fixtures as may be installed and removed without damage to the Leasehold Improvements, provided that the Tenant is not in default under this Lease.
- (b) If the Tenant desires to remove, replace or install a trade fixture, it shall advise the Landlord who shall, at the expense of the Tenant to be included in Operating Costs and charged to the Tenant in accordance with Sections 3.3 and 3.7, remove or install such trade fixtures and repair any damage caused to the Leased Premises by such removal or installation of trade fixtures. Alternatively, provided it first obtains the consent of the Landlord, the Tenant may remove or install such trade fixtures and repair any damage caused to the Leased Premises by such removal or installation of trade fixtures.
- (c) All trade fixtures left in the Leased Premises after the end of the Term, shall, at the option of the Landlord, become the property of the Landlord and may be removed from the Leased Premises and sold or disposed of by the Landlord in such manner as it deems advisable.



- (d) For greater certainty, the Tenant's trade fixtures shall not include any HVAC Equipment or light fixtures, unless the light fixtures were installed by the Tenant. Any HVAC Equipment located on the Leased Premises shall at all times remain the property of the Landlord.

#### 9.6 Repair Where Tenant at Fault

If the Building or any part thereof, including the Leased Premises, the boilers, engines, controls, pipes and other apparatus used for the purpose of heating or air-conditioning the Building, the water and drainage pipes, the electric lighting, any other equipment or the roof or outside walls of the Building are put in a state of disrepair or are damaged or destroyed through the negligence, carelessness or misuse of the Tenant, its servants, agents, employees or anyone permitted by it to be in the Property, including its Residential Tenants, the expense of the necessary repairs, replacements or alterations shall be borne by the Tenant and paid to the Landlord forthwith on demand, together with an administration fee of fifteen percent (15%) of such costs and expenses.

#### 9.7 Inspection and Repair on Notice

- (a) The Landlord, its servants, agents and contractors shall be entitled to enter upon the Leased Premises, including the Residential Units, at any time, without notice, for the purpose of making emergency repairs, and during normal business hours on reasonable prior written notice, in accordance with the *Residential Tenancies Act* for the Residential Units for the purpose of inspecting and making repairs, alterations or improvements to the Leased Premises and carrying out its obligations under this Lease, or for the purpose of having access to the under floor ducts, to the access panels to mechanical shafts and fire suppression systems (which the Tenant agrees not to obstruct), or to conduct maintenance, repair and replacement of the concrete structures above the Leased Premises.
- (b) The parties acknowledge that the Landlord will periodically require extended continuing access to portions of the Leased Premises (including the Residential Units) to maintain, repair and replace the concrete structures above the Leased Premises. Such extended access shall be for a length of time identified by the Landlord having regard to the nature of the work to be performed. In such event, the Landlord shall co-ordinate such access with the Tenant in order to minimize disruption to the Tenant and the Residential Tenants. In this regard, the Landlord and the Tenant shall use commercially reasonable efforts so that any extended access required by the Landlord occurs during "turn over", being after the termination of a Residential Lease and before the commencement of a subsequent Residential Lease for a given Residential Unit. In the event that the Landlord requires such extended access to a Residential Unit for in excess of one (1) month, it shall pay the rental rate last charged to a Residential Tenant with respect to such Residential Unit, for the period that it occupies such Residential Unit, beyond the first month.
- (c) In the event the Landlord acquires access to a Residential Unit in order to make repairs such that the Residential Tenant occupying such unit is required to relocate, the Landlord shall compensate the Residential Tenant for all reasonable relocation costs to a unit provided by the Landlord.
- (d) Except as set out above, the Tenant shall not be entitled to compensation for any inconvenience, nuisance or discomfort occasioned by the Landlord in carrying out its obligations under this Section.
- (e) The Landlord, its servants, agents and contractors may, at any time, and from time to time, on reasonable prior written notice, enter upon the Leased Premises to remove any article or remedy any condition which, in the opinion of the Landlord, would likely lead to the cancellation of any policy of insurance or increase in premiums.
- (f) The Landlord will take reasonable precautions and attempt to schedule such work so as not to unreasonably interfere with the operation of the Tenant's business and to minimize interference with the Tenant's use and enjoyment of the Leased Premises.
- (g) All Residential Leases shall contain a clause providing access to Residential Units on the terms contemplated in this ARTICLE 9.

## 9.8 Relocation Right

If the Leased Premises becomes uninhabitable, and the Residential Tenants are required to vacate the Leased Premises, the Landlord shall make available to such Residential Tenants, residential units elsewhere in the Building, as such units become available at the then current rental rate for each such Residential Tenant, and the Landlord shall bear the cost of such relocation.

## ARTICLE 10- DAMAGE AND DESTRUCTION

### 10.1 Damage and Destruction

- (a) If during the Term, the Leased Premises shall be destroyed or damaged, to such extent that the Leased Premises may not be used as contemplated in this Lease, as determined by an independent qualified architect given within sixty (60) days after the date of the damage or destruction, then, subject to Section 10.4, the Landlord shall reconstruct the Leased Premises in accordance with Section 10.2.
- (b) If the Building is damaged or destroyed such that 50% or more of the area of the Building may not be used for its intended purpose, or if 50% or more of the Parkade is destroyed or damaged, to be determined by an independent qualified architect given within sixty (60) days after the date of the damage or destruction, then the Landlord may, within ninety (90) days of such occurrence, notify the Tenant in writing of its intent to re-develop the Property. For greater certainty, any re-development of the Property shall be subject to the usual planning approval process, including but not limited to, compliance with all applicable laws, legislation, policies, by-laws, regulations whether federal, provincial or municipal, with respect to replacement rental housing. In such case, the following shall occur:
  - (i) the Tenant and all subtenants shall vacate the Leased Premises within sixty (60) days of receiving the Landlord's Notice, and surrender the Leased Premises to the Landlord;
  - (ii) the Landlord shall, reconstruct the Leased Premises in its new development in accordance with Section 10.2;
  - (iii) Rent shall abate during the course of re-development as contemplated in Section 10.3.
- (c) In the event that damage or destruction contemplated in Sections 10.1 (a) occurs within the last five (5) years of the Term and the independent qualified architect contemplated in that confirms that the repair of such damage and destruction will take more than one hundred and eighty (180) days to complete such that the Leased Premises may be used as contemplated in this Lease, either party shall have the right to terminate this Lease on written notice to the other party given within thirty (30) days of receipt of the certificate of the architect contemplated therein.
- (d) In the event that damage or destruction contemplated in Sections 10.1(b) occurs within the last five (5) years of the Term, the Landlord shall have the right to terminate this Lease on written notice to the Tenant given within thirty (30) days of receipt of the certificate of the architect contemplated therein.

### 10.2 Reconstruction of the Leased Premises

- (a) In the event that the Landlord is required to reconstruct the Leased Premises in accordance with Section 10.1, the following shall apply:
  - (i) the Landlord shall rebuild the Leased Premises in a timely manner, on a comparable and equivalent basis within the improvement on the Lands as rebuilt (the "Alternate Premises"), but only to the extent of the Landlord's Work;
  - (ii) this Lease shall be amended to substitute the Alternate Premises for the Leased Premises and the lease of such Alternate Premises shall continue for the unexpired Term of this Lease;

- (iii) the provisions of this Lease shall apply in all respects to the Alternate Premises, except that the Plans and Specifications shall be amended to reflect the Alternate Premises;
  - (iv) the Landlord's obligation to repair and rebuild shall not include the obligation to repair and rebuild any chattel, fixture, leasehold improvement, installation, addition or partition in respect of which the Tenant is required to maintain insurance hereunder, or any other property of the Tenant;
  - (v) upon the Tenant being notified that the Landlord's Work has been substantially completed, the Tenant shall complete all work (other than the Landlord's Work) that is necessary to fully repair and restore the Leased Premises in a timely fashion such that the Leased Premises may be used for the purposes set out in this Lease.
- (b) For clarity, in the course of any reconstruction or repair of the Leased Premises, the Landlord may use plans and specifications and drawings other than those used in the original construction of the Building and Leased Premises, but the Leased Premises shall be of substantially the same size, and quality as existed prior to the date of destruction or damage.
- (c) Notwithstanding anything contained in Section 10.2, and for greater certainty, the parties acknowledge the following:
- (i) Landlord's obligation to rebuild pursuant to this Lease shall be limited to the rebuilding of the Leased Premises and the Parkade;
  - (ii) The Tenant and the City hereby waive any right or remedy they may have pursuant to this Lease to compel the Landlord, as a matter of contract, to reconstruct the residential apartment building currently located on the Lands (such waiver not extending to any rights the City may have in its capacity as a municipality and planning approval authority pursuant to its by-laws or other applicable law of general application); and
  - (iii) for the purposes of Section 8.5(a), the Landlord must obtain insurance sufficient to replace the Leased Premises, the Parkade and the leased premises described in the Live/Work Lease

### 10.3 Abatement

In the event of damage or destruction to the Leased Premises or the Building, such that the Leased Premises may not be occupied or the Landlord exercises its rights pursuant to Section 10.1(b), the Rent and any amounts payable by the Tenant under this Lease shall abate, until that date which is thirty (30) days after the date such damage or destruction is repaired or, if earlier, the date the Tenant re-occupies the Leased Premises.

### 10.4 Relocation

For clarity, Section 9.8 does not apply in the event Residential Tenants are required to vacate the Leased Premises in accordance with this Article 10.

### 10.5 Expropriation

Both the Landlord and Tenant agree to co-operate with the other regarding an expropriation of the Leased Premises or any part thereof, so that each may receive the maximum award to which they are respectively entitled at law.

## **ARTICLE 11- ASSIGNMENT AND SUBLETTING**

### 11.1 Assignment and Subletting

- (a) The Tenant shall not sublet or assign this Lease without the prior written consent of the Landlord and the City, which consent may be unreasonably withheld. Any such consent to any assignment or sublet shall not relieve the Tenant of its obligation to pay Basic Rent and Additional Rent and to perform all of the covenants, terms and conditions contained in this Lease.

- (b) Notwithstanding the foregoing, the Tenant shall have the right to enter into Residential Leases substantially in the form attached hereto as Schedule F. The Tenant shall provide the Landlord and the City with a copy of any amendments to its form of residential lease for approval prior to entering into any amended Residential Leases.
- (c) In the event the Tenant is not a not-for-profit corporation, a change in the effective direct or indirect control of the Tenant shall be deemed to be an assignment of this Lease and triggers the provisions of this Article. The Tenant shall make available to the Landlord or to its lawful representatives such books and records for inspection at all reasonable times in order to ascertain whether there has, in effect, been a change in control.
- (d) The Tenant shall not advertise the availability of the whole or any part of the Leased Premises for assignment or sublet other than in the normal course of the Tenant's business, and shall not permit any broker or other person to do so unless the text and format of such advertisement is approved in writing by the Landlord, such approval not to be unreasonably withheld. No such advertisement shall contain any reference to the rental rate of the Leased Premises.

#### 11.2 Sale or Mortgage by the Landlord

Notwithstanding any other provision in this Lease, if there is a sale, lease or other disposition by the Landlord of Lands, Building, the Leased Premises or any part thereof, or the assignment by the Landlord of this Lease or any interest of the Landlord hereunder, then to the extent that the purchaser or assignee assumes the covenants and obligations of the Landlord under this Lease, the Landlord will, without further agreement, be released from all future liability (but not past) with respect thereto.

#### 11.3 Tenant Acknowledgement

Within twenty (20) days after receipt of a written request from the Landlord, the Tenant shall, at no cost to the Landlord, sign an acknowledgement in writing to the Landlord and/or as the Landlord may direct confirming the status of the following matters under the Lease: (a) the date of the Lease; (b) the Commencement Date; (c) the Basic Rent payable; (d) the dates of any amendments to the Lease; and (e) the existence of any outstanding defaults on the part of Landlord under the Lease for which the Tenant is aware; and (f) any other information and particulars of the Lease as the Landlord may reasonably request. Within twenty (20) days after receipt of a written request from the Tenant, the Landlord shall provide the Tenant and/or as the Tenant may reasonably direct with a similar acknowledgement in writing.

#### 11.4 Subordination and Non-Disturbance

- (a) At the written request of the Landlord, the Tenant shall subordinate this Lease to any and all mortgages, trust deeds and charges (any of which are herein referred to as "Mortgage" or "Mortgages") on or in any way affecting the Leased Premises or the Building or any part thereof, now or in the future, including all renewals, extensions, modifications and replacements of any Mortgage from time to time. The Landlord may grant a Mortgage at any time without the consent of the Tenant.
- (b) The Tenant shall, at any time, on notice from the Landlord or holder of a Mortgage, attorn to and become a tenant of the holder of any such Mortgage on the same terms and conditions as set forth in this Lease, and shall execute promptly, on request by the Landlord, any acknowledgements, agreements, instruments of postponement or attornment, or other such instruments or agreements as requested from time to time, to postpone or subordinate this Lease and all of the Tenant's rights hereunder to any such Mortgage, or otherwise give full effect to any of the provisions of this Section.
- (c) The Tenant agrees to attorn to and become the tenant of any party whose title to the Leased Premises or the Building is superior to that of the Landlord or to any assignee of the Landlord's interest under this Lease, on the same terms and conditions as are set forth in this Lease, and shall execute, promptly on request, any agreements or instruments of attornment to give effect to such attornment as shall be reasonably requested by the Landlord at any time and from time to time.

- (d) The Tenant shall execute such agreements as may be reasonably required by the holder of a Mortgage to give effect to the provisions set out above.
- (e) Notwithstanding the foregoing, the Tenant shall not be required to postpone this Lease or its rights hereunder to the holder of any Mortgage unless the holder of such Mortgage has delivered to the Tenant and to the City a Subordination and Non-Disturbance Agreement, which agreement shall be substantially in the form attached hereto as Schedule I, as long as the Tenant is not in default. In order to ensure Tenant's right to the full enjoyment of the Leased Premises and the City's rights as a party to the Lease throughout the Term, the Landlord will obtain from all mortgage lenders, whether or not Permitted Encumbrances, or other creditors having rights on all or part of the Leased Premises (and any successor, lender or creditor), but in each case, only where such mortgage lender or creditor has security having priority to this Lease, such an agreement on or before the first advance pursuant to the Contribution Agreement.

## ARTICLE 12 - RIGHTS OF THE CITY

### 12.1 Notice to City

- (a) The Landlord shall give written notice of any Event of Default by the Tenant to the City within two (2) Business Days of delivery of such notice to the Tenant and failure to provide such notice to the City shall void any such notice to the Tenant. The notice to the City will state the nature of the Event of Default and the time period for curing the same. If notice to the Tenant is voided under this section, a further notice with respect to such Event of Default may be issued at any time.
- (b) If the time for curing an Event of Default for which notice has been given to the City has passed without the default being remedied, the Landlord shall give further written notice to the City (a "Final Default Notice").

### 12.2 City's Rights

- (a) From and after the date of the Final Default Notice, the City shall have one (1) year (the "Disposition Period") to notify the Landlord at any time during the Disposition Period that it wishes to either (i) assume the Lease, (ii) assign the Lease to another non-profit community and/or cultural organization, or (iii) terminate the Lease.
- (b) Throughout the Disposition Period, the City shall perform, or cause to be performed, all of the obligations of the Tenant pursuant to the Lease, including the payment of Basic Rent and Additional Rent. In the event the City fails to do so, the Landlord shall be entitled to exercise its remedies pursuant to this Lease, including, without limitation, the termination of this Lease.
- (c) The City shall not be obliged to compensate the Landlord for
  - (i) any arrears of Basic Rent or Additional Rent; or
  - (ii) any damages arising from any breach of the Lease

accruing prior to the commencement of the Disposition Period, provided that the City shall make good any other continuing default during the Disposition Period unless such default is not capable of being rectified by the City, acting in good faith, and using reasonable commercial efforts.

- (d) Nothing in this Agreement shall be construed as a release of the Tenant and the Landlord shall retain any and all rights of recovery against the Tenant as it may have as a matter of law.
- (e) During the Disposition Period, the City shall have the following rights (the "City Rights")to:
  - (i) on behalf of the Tenant, assign the Lease to a new tenant, provided that the new tenant shall be a not-for-profit corporation, shall execute an assumption agreement satisfactory to the Landlord, acting reasonably, and provided that,

unless the Landlord consents, which consent may be unreasonably withheld, shall not be the then defaulting tenant or an affiliate thereof;

- (ii) assume the Lease as the Tenant for the balance of the Term; or
  - (iii) terminate the Disposition Period or the Lease (without affecting the Landlord's rights against the Tenant) by providing the Landlord with at least sixty (60) days' notice of its intent to do so.
- (f) The City may provide notice of its election under Section 12.2(e) above to the Landlord at any time during the Disposition Period. In the event the City does not provide notice of its election during the Disposition Period, the City shall be deemed to have assumed the Lease.
- (g) If the City assumes the Lease pursuant to Sections 12.2 (e)(ii) or 12.2(f) above, the City shall be bound to observe all of the terms and covenants of the Lease as though it were the original tenant under the Lease, provided that:
- (i) it shall have the right at any time to assign this Lease on behalf of the Tenant without the consent of the Landlord on the terms and conditions set out in Sections 12.2(e)(i) above; and
  - (ii) in the event of such an assignment, the City shall be entitled to rely on the provisions of this ARTICLE 12 for the balance of the term of the Lease;
- (h) For greater certainty,
- (i) the provisions of Section 12.1 do not apply during the Disposition Period or where City has assumed the Lease pursuant to Sections 12.2 (e)(ii) or 12.2(f) above; and
  - (ii) the City's rights as set out in this Section 12.2 continue throughout the Term, from time to time, provided that in the event the City terminates the Lease, it shall execute such documents as may be reasonably required to delete any registered notice of this Lease from title to 33 King and any leasehold security in favour of the City relating to the Lease.

### 12.3 Right of Access

The Tenant shall permit the City (and its employees, contractors and authorized agents) at all reasonable times after 24 hours' notice to enter the Leased Premises for the purpose of determining whether there is compliance with the provisions of this Lease.

### 12.4 Intentionally Deleted

### 12.5 City Assignment

Except for the City's rights under this Article 12 to assign this Lease on behalf of the Tenant, the City shall not be entitled to assign its interest under this Lease to any other party, without the consent of the Landlord, which may be unreasonably withheld.

### 12.6 No Transfer by the Tenant without the City's Approval

The Tenant agrees that it shall not assign or sublet its interest in this Lease, the Leased Premises or the Leasehold Improvements (or any part thereof) without the prior written approval of the City, which may be unreasonably withheld.

## **ARTICLE 13- LEASEHOLD MORTGAGE**

### 13.1 Tenant's Right to Mortgage the Lease

Provided that the Tenant is not in default under this Lease and there is no notice of default outstanding thereunder, the Tenant shall have the right at any time and from time to time to mortgage this Lease and the Tenant's leasehold interest in the Leased Premises, to a maximum of \$1,000,000 without the consent of the Landlord, and otherwise with the consent of the Landlord, such consent not to be unreasonably withheld or delayed. A

Leasehold Mortgage may be granted by way of assignment or otherwise, provided however that with respect to each Leasehold Mortgage:

- (a) the term of the Leasehold Mortgage shall not extend beyond the end of the Term;
- (b) the Leasehold Mortgage shall provide that it is expressly subject and subordinate to the Landlord's rights hereunder and in the Leased Premises;
- (c) the Tenant shall observe and perform all of the Tenant's obligations under any Leasehold Mortgage and keep any Leasehold Mortgage in good standing at all times;
- (d) nothing contained in this Lease shall in any way bind the Landlord to subordinate its reversionary interest in the Leased Premises to any Leasehold Mortgage; and
- (e) the Leasehold Mortgagee and Tenant shall enter into a Tri-Party Agreement with the Landlord on a form satisfactory to the Leasehold Mortgagee, Landlord and Tenant providing for the rights and remedies of the Leasehold Mortgage on an Event of Default under the Lease.

#### 13.2 Tenant's Right to Refinance

The Tenant shall be entitled at any time to refinance the Leasehold Mortgage and the provisions of Section 13.1 shall be amended mutatis mutandis.

#### 13.3 Tenant's Right under Contribution Agreement

Nothing contained in this ARTICLE 13 shall in any way affect the Tenant's or the City's rights under the Contribution Agreement.

#### 13.4 Assignment by Leasehold Mortgagee

If a Leasehold Mortgagee is in possession or has acquired the Tenant's leasehold title, it may, provided it obtains the consent of the Landlord in accordance with Section 11.1(a) and brought the Lease into good standing, assign the leasehold interest of the Tenant in the Leased Premises with the Landlord's approval not to be unreasonably withheld. However, the party to whom such leasehold interest is assigned shall be obliged to comply with all of the terms of this Lease. For so long as the Leasehold Mortgagee is in possession, or has acquired the Tenant's Leasehold interest, it shall comply with the term of this Lease. Once such an assignment has been completed, the Leasehold Mortgagee shall have no obligation and shall incur no liability under this Lease except for any liability on the part of the Leasehold Mortgagee arising out of any breach of this Lease committed by the Leasehold Mortgagee before the completion of such assignment and any other terms of this Lease for which the Leasehold Mortgagee would have been responsible to fulfill.

### **ARTICLE 14 REPRESENTATIONS AND WARRANTIES**

#### 14.1 Landlord's Representations and Warranties

The Landlord represents and warrants to and in favour of the Tenant that as of the date of this Lease and as of the Commencement Date:

- (a) Title to the Leased Premises is fee simple title free from all liens, encumbrances and interests, save as set out in Schedule D, those registered on title to the Lands on the date of this Lease, arising in connection with the matters contemplated by this Lease, or registered by or with the consent of the Tenant;
- (b) the Landlord is a corporation duly existing under the laws of its jurisdiction of incorporation and has the necessary authority, power and capacity to enter into this Lease and the documents and transactions contemplated herein on the terms and conditions herein contained and to carry out this Lease and the documents and transactions contemplated herein on the terms and conditions herein contained; and
- (c) this Lease and the documents and transactions contemplated in it have been, duly and validly authorized by all requisite proceedings on the part of the Landlord and constitute legal, valid, binding and enforceable obligations of the Landlord.

#### 14.2 Tenant's Representations and Warranties

The Tenant represents and warrants to and in favour of the Landlord that as of the date of this Lease and as of the Commencement Date:

- (a) the Tenant is a corporation duly existing under the laws of its jurisdiction of incorporation and has the necessary authority, power and capacity to enter into this Lease and the documents and transactions contemplated herein on the terms and conditions herein contained and to carry out this Lease and the documents and transactions contemplated herein on the terms and conditions herein contained;
- (b) this Lease and the documents and transactions contemplated in it have been duly and validly authorized by all requisite proceedings on the part of the Tenant and constitute legal, valid, binding and enforceable obligations of the Tenant;
- (c) the Tenant has received no notice of default under the Contribution Agreement; and
- (d) to the knowledge of the Tenant, the City is not in default under the Contribution Agreement.

#### 14.3 City's Representations and Warranties

The City represents and warrants to and in favour of the Landlord and the Tenant that as of the date of the this Lease and as of the Commencement Date:

- (a) the City is a corporation duly existing under the laws of its jurisdiction of incorporation and has the necessary authority, power and capacity to enter into this Lease and the documents and transactions contemplated herein on the terms and conditions herein contained and to carry out this Lease and the documents and transactions contemplated herein on the terms and conditions herein contained;
- (b) this Lease and the documents and transactions contemplated in it have been duly and validly authorized by all requisite proceedings on the part of the City and constitute legal, valid, binding and enforceable obligations of the City;
- (c) the City has received no notice of default under the Contribution Agreement; and
- (d) to the knowledge of the City, the Tenant is not in default under the Contribution Agreement.

### **ARTICLE 15 - DEFAULT**

#### 15.1 Right to Re-enter

An Event of Default occurs whenever (or "Events of Default"):

- (a) the Tenant defaults in the payment of the Rent and the default continues for five (5) Business Days after the date such payment is due;
- (b) the Tenant has breached any covenant of this Lease, other than a breach specified in another paragraph of this Section 15.1, and the breach is not remedied within fifteen (15) Business Days or such longer period of time as may be required provided the Landlord is satisfied acting reasonably that the Tenant has commenced to cure and is thereafter continuously and diligently curing such Event of Default, after written notice to the Tenant unless the Tenant commenced curing such default within such fifteen (15) Business Day period; or
- (c) the Contribution Agreement Advances are not made as directed, in accordance with the terms of the Contribution Agreement; or
- (d) the Tenant is in material default pursuant to the terms of the Contribution Agreement (For clarity, and without limitation, any default which may result in a delay in the advance of the Contribution Agreement Advances, is material);
- (e) this Lease is amended without the prior written approval of the City;
- (f) any of the following events occurs:



- (i) the Tenant takes the benefit of any statute for bankrupt or insolvent debtors or makes any proposal, assignment or arrangement with its creditors;
- (ii) a receiver or a receiver and manager is appointed for all or part of the property of the Tenant (and is not dismissed within 30 days after notice by the Landlord to the Tenant);
- (iii) steps are taken or proceedings are instituted for the dissolution, winding up or other termination of the Tenant's existence or the liquidation of its assets;
- (iv) the Tenant abandons or attempts to abandon the Leased Premises, or the Leased Premises become vacant or substantially unoccupied, or the Tenant ceases to conduct business from the Leased Premises;
- (v) any insurance policy covering any part of the Leased Premises is cancelled or materially adversely changed (including a substantial premium increase) as a result of any action or omission by the Tenant or any person for whom it is legally responsible;
- (vi) the Tenant effects or attempts to effect a transfer, assignment or sublet that is not permitted by this Lease; or
- (vii) a writ of execution issues against the Tenant (and is not discharged within 30 days after notice by the Landlord to the Tenant), or this Lease or any of the Tenant's assets on the Leased Premises are taken or seized under a writ of execution, an assignment, pledge, charge, debenture, or other security instrument.

## 15.2 Landlord's Rights on Default

If an Event of Default has occurred, the Landlord may:

- (a) perform or cause to be performed any obligation which the Tenant should have performed without constituting a re-entry of the Leased Premises or termination of this Lease or breaching the Landlord's covenant hereunder and without being deemed to be an interference with the rights of the Tenant pursuant hereto, including making payments to a third party on behalf of the Tenant, and the Tenant will pay to the Landlord on demand, the Landlord's expenses incurred under this paragraph plus an amount equal to 15% of those expenses for the Landlord's overhead and administrative costs. The Landlord will have no liability to the Tenant for loss or damages resulting from its action or entry upon the Leased Premises;
- (b) enter the Premises and distrain upon the goods and chattels of the Tenant, and the Landlord may seize and sell the goods and chattels, and any sale by the Landlord may be effected by public auction or private contract and be either in bulk or by individual items, or partly by one means and partly by the other;
- (c) subject to the City's rights pursuant to Article 12 of this Lease, re-enter and re-possess the Leased Premises and administer them, including but not limited to the collection of all rents, and on such a re-entry, this Lease and all of the Tenant's rights hereunder will terminate without liability on the part of the Landlord for loss or damage, and without prejudice to the Landlord's rights to recover arrears of Basic Rent or Additional Rent or damages for any previous breach by the Tenant of any covenant or condition of this Lease; and
- (d) take possession of the Leased Premises as agent of the Tenant and effect such alterations and repairs as it may deem necessary or advisable for the purpose of such reletting, and it may relet the Leased Premises or any part thereof for such term or terms (which may be for a term extending beyond the Term) and at such rental and on such other terms and conditions as the Landlord may deem advisable. Upon such reletting, all rentals received by the Landlord from such reletting shall be applied as follows: first, to the payment of the Landlord's costs and expenses of such reletting and the costs of such alterations and repairs; second, to the payment of any indebtedness other than Rent due from the Tenant to the Landlord; third, to the payment of arrears of Rent; fourth, to the payment of Rent as it falls due; and the residue, if any, shall be held by the Landlord without interest until the end of the

Term and applied from time to time in payment of Rent as the same may become due and payable, and any residue remaining at the end of the Term shall be held for the Tenant.

- (e) In all events (including termination), the Landlord shall be entitled to recover damages from the Tenant including, but not limited to,
  - (i) damages or loss of Basic Rent and Additional Rent suffered by reason of this Lease having been prematurely terminated;
  - (ii) the cost of recovering the Leased Premises; and
  - (iii) solicitor's fees on a substantial indemnity basis.

### 15.3 Landlord's Costs

Whenever the Landlord takes any proceedings, does any work, or otherwise incurs any expense or takes any action with respect to any default by the Tenant, the Landlord shall be entitled to reimbursement by the Tenant forthwith on demand for any costs, charges or expenses which the Landlord incurs (including legal costs on a substantial indemnity basis) and which would not have been necessary but for the default of the Tenant, plus an amount equal to fifteen (15%) of such expenses to the Landlord's overhead and administrative costs..

### 15.4 Distress

Notwithstanding any provision of this Lease or any provision of any applicable legislation, none of the goods and chattels of the Tenant on the Leased Premises at any time during the Term shall be exempt from levy by distress for Rent in arrears, and the Tenant waives any such exemption. If the Landlord makes any claim against the goods and chattels of the Tenant by way of distress, this provision may be pleaded as an estoppel against the Tenant in any action brought to test the right of the Landlord to levy such distress.

### 15.5 Rejection of Tenant's Repudiation

If an Event of Default occurs the Landlord may, instead of terminating this Lease, insist on the performance of the covenants and conditions of this Lease and in that case may take legal proceedings against the Tenant for performance of the covenants and conditions of this Lease; all without prejudice, however, to the Landlord's right to terminate this Lease at any time should the Event of Default continue unremedied.

### 15.6 Remedies Generally

The remedies under this Lease are cumulative. No remedy is exclusive or dependent upon any other remedy. Any one or more remedies may be exercised generally or in combination. The specifying or use of a remedy under this Lease does not limit rights to use other remedies available at law generally.

### 15.7 Default in the Landlord's Work

- (a) The 22 John Owner shall be in default of its obligations with respect to the Landlord's Work if the 22 John Owner (or its designate) fails to keep, observe or perform any of its obligations regarding Landlord's Work to be kept, observed or performed under this Lease including under Schedule C of this Lease, within thirty (30) days after the 22 John Owner's receipt of notice of non-performance of such Landlord's Work from the Tenant or the City (which notice shall also be sent to the Landlord); provided, however, that if such breach cannot be cured within thirty (30) days, then within such additional time, if any, as is reasonably necessary to complete such cure, so long as the 22 John Owner has commenced such cure within the initial thirty (30) day period and diligently pursues such cure to completion.
- (b) In the event the 22 John Owner fails to cure the alleged default within such cure period and is not in good faith contesting such default in court, then, the Tenant and the City shall (to the extent permitted by law) provide notice of default to the 22 John Owner (the "Work Default Notice"), which Work Default Notice shall also be sent to the Landlord.

- (c) In the event a Work Default Notice is issued, subject to the exercise of the Landlord Work Option, the Tenant shall be entitled to possession of the Leased Premises to complete the Landlord's Work.
- (d) The Landlord shall have the option (the "Landlord Work Option") of completing the Landlord's Work by providing the Tenant and the City written notice of its intent to do so within thirty (30) days of receipt of the Work Default Notice, in which case the following shall apply:
  - (i) The Landlord shall be entitled to receive any unpaid Contribution Agreement Advances under the terms of the Contribution Agreement;
  - (ii) The City shall exercise its right to draw on the Letter of Credit posted by the 22 John Owner pursuant to the Section 37 Agreement and shall reimburse the Landlord for its costs incurred to complete the Landlord's Work on draw basis based on actual costs incurred, subject to delivery to the City of a report of a qualified quantity surveyor (or other evidence satisfactory to the City, acting reasonably) confirming the costs incurred by the Landlord;
  - (iii) the Landlord shall complete the Landlord's Work in a commercially reasonable time frame (subject to Force Majeure and Tenant Delay);
  - (iv) the City shall not be obligated in any way to make payments to the Landlord in excess of the remaining Contribution Agreement Advances and the amount of the Letter of Credit; and
  - (v) in the event the total amount paid by the City to the Landlord in accordance with Section 15.7(d)(ii) is less than the remaining principal amount of the Letter of Credit (as the same may have been reduced from time to time in accordance with the Section 37 Agreement), the Letter of Credit shall be returned to the 22 John Owner for cancellation.
- (e) In the event that the Landlord's Work is not completed by the 22 John Owner such that the Commencement Date has not occurred on or before the Outside Date, the following shall apply:
  - (i) If the Landlord does not exercise the Landlord Work Option, then:
    - (A) the City shall exercise its right to draw on the Letter of Credit to complete or cause to be completed, the Landlord's Work; and
    - (B) the Outside Date shall be extended by three (3) years and six (6) months from the date of the Work Default Notice is issued to the 22 John Owner.
  - (ii) If the Landlord exercises the Landlord Work Option, then
    - (A) Outside Date shall be extended to the later of (a) the then effective Outside Date, or (b) the date which is eighteen (18) months after the day the Landlord so notifies the Tenant and the City;
    - (B) if the Landlord subsequently defaults on its obligations to complete the Landlord's Work in accordance with Section 15.7(c), the provisions of Section 15.7(b) applying to the Landlord *mutatis mutandis*, then
      - (1) the City shall exercise its right to draw on the Letter of Credit to complete or cause to be completed, the Landlord's Work; and
      - (2) the Outside Date shall be extended by three (3) years and six (6) months from the date that a Work Default Notice is issued to the Landlord.
  - (iii) If the Landlord's Work is not completed by the City in accordance with subsections 15.7(e)(i)(A)15.7(e)(ii)(B)(1) on or before the Outside Date, as

extended, this Lease shall automatically terminate on the Outside Date, as so extended.

- (f) The Tenant and the City shall have full recourse in law or equity against the 22 John Owner for damages incurred or specific performance to compel the 22 John Owner to complete the Landlord's Work or the Leasehold Improvements, and the Landlord shall have no liability or obligation whatsoever in respect of the Landlord's Work and the Tenant and the City shall not have recourse in law or equity against the Landlord in this regard. Notwithstanding the forgoing, if the Landlord exercises the Landlord Work Option, the Landlord shall be fully responsible to the Tenant and the City for the portion of the Landlord's Work completed by the Landlord and for the warranty period contemplated in Schedule C to this Lease. In the event the Landlord is in default, the Tenant and the City shall have full recourse in law or equity against the Landlord for damages incurred in this regard.

## ARTICLE 16- MISCELLANEOUS

### 16.1 Intent and Interpretation

- (a) Gender and Number - Words importing the singular include the plural and vice versa. Words importing gender include all genders.
- (b) Captions and Headings - The captions and headings contained herein are for reference only and in no way affect this Lease or its interpretation.
- (c) Obligations as Covenants and Severability- Each obligation or agreement of the Landlord or the Tenant expressed in this Lease, even if not expressed as a covenant, is considered to be a covenant for all purposes. If any provision of this Lease is or becomes unenforceable, it shall be considered separate and severable from the Lease and the remaining provisions shall remain in force and be binding upon the parties as though such provision had not been included. Each covenant, obligation and agreement in this Lease shall be separately valid and enforceable to the fullest extent permitted by law.
- (d) Entire Agreement and Amendment or Modification - This Lease and the Schedules, and riders, if any, set forth all covenants, promises, agreements, conditions or understandings, either oral or written, between the Landlord and the Tenant, in their capacity as landlord and tenant.
- (e) Further Assurances - Each of the parties shall from time to time hereafter and upon any reasonable request of the other party make or cause to be made all such further acts, deeds, assurances and things as may be required or necessary to more effectually implement and carry out the true intent and meaning of this Lease.
- (f) Amendments to this Lease - No supplement or amendment of this Lease shall be binding unless executed in writing by the parties hereto or their respective solicitors on their behalf.
- (g) Governing Law - This Lease will be construed and enforced in accordance with and governed by the law of the Province of Ontario.
- (h) Time of the Essence - Time is of the essence of this Lease and of every part of it.
- (i) Currency - All references to currency in this Lease are references to Canadian dollars.
- (j) Counterparts - This Lease may be executed by the parties in separate counterparts, each of which so executed shall be deemed to be an original. Such counterparts together shall constitute one and the same instrument and, notwithstanding the date of execution, shall be deemed to bear the effective date set forth above.
- (k) Schedules – The following Schedules form part of the Lease:
  - Schedule A - Definitions
  - Schedule B - Leased Premises
  - Schedule C - Landlord's Work

Schedule D -	Legal Description and Permitted Encumbrances
Schedule E -	Plans and Specifications
Schedule F -	Residential Lease Form
Schedule G -	DELETED
Schedule H	Initial Operating Cost Categories
Schedule I	Form of Non-Disturbance Agreement

#### 16.2 Waiver

Except as otherwise expressly provided herein, no waiver of any provision of this Lease shall be valid unless it is in writing signed by the party sought to be bound thereby or by its Solicitors on its behalf. No waiver of any of the provisions of this Lease shall be deemed, or shall constitute a waiver of any other provision (whether or not similar) nor shall any waiver constitute a continuing waiver unless otherwise expressed or provided.

#### 16.3 Force Majeure

Notwithstanding anything in this Lease, if either party is bona fide delayed or hindered in or prevented from the performance of any term, covenant or act required hereunder by reason of strikes; inability to procure materials or services; power failure; riots; insurrection; sabotage; rebellion; war; act of God; or other reason whether of a like nature or not which is not the fault or within the reasonable control of the party affected ("Force Majeure"), then the delayed party shall immediately notify the other party of the delay and the reason therefor and the estimated time of the delay and thereafter the performance of that term, covenant or act is excused for the period of the delay and the time for performing that term, covenant or act will be extended accordingly. For greater certainty, lack of funds by either party does not constitute Force Majeure. In addition, the provisions of this Paragraph do not operate to excuse the Tenant from the prompt payment of Rent or the Landlord from the prompt payment of any monies hereunder.

#### 16.4 Notices

Any notice, demand, request or other instrument required or permitted to be given under this Lease shall be in writing and may be given by personal delivery, electronic mail, or by facsimile, addressed or sent as set out below to such other address or facsimile number as a party may from time to time give the other party notice of:

Landlord:

100 Wellington Street West  
Suite 1204  
Toronto, Ontario  
M5K 1H6  
Attention: President  
Fax: (416) 867-9119

Tenant:

171 East Liberty Street, Suite 224, Toronto, Ontario M6K 3P6  
Attention: President/CEO  
Fax: (416) 535-6260  
Email: tjones@artcape.ca

22 John Owner:

22 John Street Developments Inc.  
170 The Donway West  
Suite 307  
Toronto, Ontario  
M3C 2G3

Attention: Jack Winberg  
E-mail: jack@rockportgroup.net

City of Toronto:

Real Estate Services  
Metro Hall  
55 John Street, 2<sup>nd</sup> Floor  
Toronto, Ontario M5V 3C6  
Attention: Director of Real Estate Services  
Fax: (416) 392-1880

Any notice, if personally delivered or sent by electronic mail, shall be deemed to have been validly and effectively given and received on the date and at the time of such delivery if it is delivered before 5:00 p.m. Toronto time on a Business Day, and otherwise shall be deemed to have been validly and effectively given and received on the next following Business Day. Any Notice, if sent by facsimile with confirmation of transmission at or before 5:00 p.m. Toronto time on a Business Day, shall be deemed to have been validly and effectively given and received on the day and at the time it was transmitted, and otherwise shall be deemed to have been validly and effectively given and received on the Business Day following the day it was transmitted.

Any notice, approval, waiver, agreement, instrument, document or communication permitted, required or contemplated in this Lease may be given or delivered and accepted or received by the Tenant's Solicitors on behalf of the Tenant and by the Landlord's Solicitors on behalf of the Landlord.

#### 16.5 Compliance with the *Planning Act*

This Lease and the transaction contemplated herein are subject to and conditional upon compliance with the subdivision control provisions of the *Planning Act* of Ontario. The Landlord shall use commercially reasonable efforts to obtain any necessary consent at its expense.

#### 16.6 Consent and Approval

- (a) The Landlord and each person acting for or on behalf of the Landlord, making a determination, designation, calculation, estimate, conversion or allocation under this Lease, will, except where otherwise contemplated in this Lease, act reasonably and in good faith and each accountant, architect, engineer or surveyor, or other professional person employed or retained by the Landlord will act in accordance with the applicable principles and standards of that person's profession.
  - (i) The Tenant and each person acting for or on behalf of the Tenant, will, except where otherwise contemplated in this Lease, act reasonably and in good faith in carrying out the Tenant's lease obligations and where any approval or consent from it is required.
  - (ii) If the Tenant is required to provide its approval with respect to any matter contemplated in this Lease, it shall do so within five (5) Business Days of the Landlord's written request for the same, failing which it shall be deemed to have granted its approval.

#### 16.7 Light and Air

The Tenant covenants and agrees that no diminution of light, air or view by any structure that may now or hereafter be erected, or the noise, dust, vibration or other ordinary incidents to the modification or demolition of existing or new construction of improvements, in either case on the Lands, or the Building, or lands or buildings adjacent thereto or in the proximity thereof, whether or not by the Landlord, shall entitle the Tenant to any reduction of Rent or any other sums due under this Lease, result in any liability of the Landlord to the Tenant, or in any other way affect this Lease or the Tenant's obligations hereunder.

#### 16.8 Successors and Assigns

This Lease shall be binding upon, extend to and enure to the benefit of the Landlord and the Tenant, and to each of their respective administrators, successors and permitted assigns.

#### 16.9 Registration of Lease

Neither the Tenant nor anyone on the Tenant's behalf or claiming under the Tenant shall register this Lease or any Transfer against the Lands. The Tenant shall register a short form notice of this Lease provided that: (a) a copy of the Lease is not attached but the notice shall include the information in Attachment 4 of EX10.6, adopted by City Council on December 9 and 10, 2015; (b) no financial terms are disclosed other than the terms as set out in Attachment 4 of EX10.6; (c) the City is noted as a party to the Lease; and (d) the Landlord gives its prior written approval to the notice (such approval not to be unreasonably withheld). Upon the expiry or termination of the Term, the Tenant shall immediately discharge or otherwise vacate any such notice or caveat.

#### 16.10 Obligations Survive

To the extent appropriate (as dictated by the context), the obligations of the parties shall survive any termination of this Lease.

#### 16.11 Confidentiality and Return of Information

- (a) The Tenant, for itself, its directors, officers, employees, engineers, surveyors, consultants and any other advisers, representatives and agents, agrees that they shall not, except as required by law, disclose to anyone or use for any purpose other than the leasing and financing of the Leased Premises, where expressly permitted in the Lease, any information, save information which is or becomes generally available to the public or becomes so available through no fault of the Tenant; was known to the Tenant on a non-confidential basis and is not subject to another obligation of secrecy and non-use, concerning the Landlord or the Leased Premises, whether such information was disclosed by the Landlord or obtained by the Tenant or its representatives through their own investigations and inquiries. If the Tenant is the City, the provisions herein are subject to *Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, chap. M.58*, as same may be amended or replaced from time to time.
- (b) If this Lease is terminated for any reason whatsoever, the Tenant shall deliver forthwith to the Landlord all documents, records and reports and all other information or data relating to the Leased Premises, including all copies thereof, which the Tenant obtained from the Landlord or otherwise obtained in the course of their own investigations, and shall, save such information which is or becomes generally available to the public or becomes so available through no fault of the Tenant; was known to the Tenant on a non-confidential basis and is not subject to another obligation of secrecy and non-use, keep and cause its representatives to keep in strict confidence all such information and all discussions between the Landlord and the Tenant with respect to the Leased Premises and the transaction contemplated by this Lease. If the Tenant is the City, the provisions herein are subject to *Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, chap. M.58*, as same may be amended or replaced from time to time.

#### 16.12 City as Municipal Corporation

The City is a party to this Lease for the purpose of protecting its rights under the Lease. Nothing in this Lease derogates from, interferes with, or fetters the exercise by the City of all of its rights and obligations as a municipality (whether discretionary or mandatory), or imposes any obligations on the City in its role as a municipality, and the City shall not be prevented from or prejudiced in carrying out its statutory rights and responsibilities, including its planning rights and responsibilities. Nothing in this Lease derogates from, interferes with, or fetters the exercise by the City's officers, employees, agents, representatives or elected and appointed officials of all of their rights, or imposes any obligations on the City's officers, employees, agents, representatives or elected and appointed officials, other than as expressly set out in this Lease.

#### 16.13 Independent Legal Advice

- (a) The Tenant acknowledges that the Landlord has advised the Tenant to obtain advice from independent legal counsel prior to signing this Lease. The Tenant further acknowledges that any information provided by the Landlord is not to be construed as legal, tax or any other expert advice and the Tenant is cautioned not to rely on any such information without seeking legal, tax or other expert advice.
- (b) The Landlord and the Tenant understand, acknowledge and agree that this Lease has been freely negotiated by both parties and that, in any dispute or contest over the meaning, interpretation, validity or enforceability of this Lease or any of its terms or conditions, there shall be no inference, presumption or conclusion drawn whatsoever against either party by virtue of that party having drafted this Lease or any portion thereof.

**SIGNATURE PAGE FOLLOWS**



IN WITNESS WHEREOF the Landlord, the Tenant and the City have signed this Lease as of the date first above written.

**2295477 ONTARIO INC.**

Per:

\_\_\_\_\_  
Name: Jason Rootenberg  
Title: Secretary

Per:

\_\_\_\_\_  
Name: Ron Marek  
Title: CFO  
*I/ We have the authority to bind the Corporation*

**TORONTO ARTSCAPE INC.**

Per:

\_\_\_\_\_  
Name: LoriAnn Girvan  
Title: C.O.O.

Per:

\_\_\_\_\_  
Name: Timothy Robert Jones  
Title: C.E.O.  
*I/ We have the authority to bind the Corporation*

Authorized by Item No. EX10.6 of the Executive Committee, adopted by City of Toronto Council on December 9 and 10, 2015, and EY10.1 of the Etobicoke York Community Council, adopted City of Toronto Council on December 9 and 10, 2015.

.....

City Clerk

**22 JOHN STREET DEVELOPMENTS INC.**

Per:

\_\_\_\_\_  
Name: Jack Winberg  
Title: President

Per:

\_\_\_\_\_  
Name:  
Title:  
*I/ We have the authority to bind the Corporation*

**CITY OF TORONTO**

Per:

\_\_\_\_\_  
Name:  
Title:

Per:

\_\_\_\_\_  
Name:  
Title:  
*I/ We have the authority to bind the Corporation*

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**2295477 ONTARIO INC.**

Per:

\_\_\_\_\_  
Name:  
Title:

Per:

\_\_\_\_\_

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**2295477 ONTARIO INC.**

Per:

\_\_\_\_\_  
Name:  
Title:

Per:

\_\_\_\_\_  
Name:  
Title:

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.....  
City Clerk

**TORONTO ARTSCAPE INC.**

Per:

  
\_\_\_\_\_  
Name: LoriAnn Girvan  
Title: C.O.O.

Per:

  
\_\_\_\_\_  
Name: Timothy Robert Jones  
Title: C.E.O.

*I/ We have the authority to bind the Corporation*

**22 JOHN STREET DEVELOPMENTS INC.**

Per:

\_\_\_\_\_  
Name: Jack Winberg  
Title: President

Per:

\_\_\_\_\_  
Name:  
Title:

*I/ We have the authority to bind the Corporation*

**CITY OF TORONTO**

Per:

\_\_\_\_\_  
Name: Ulli S. Watkiss  
Title: City Clerk

Per:

\_\_\_\_\_  
Name: Roberto Rossini  
Title: Deputy City Manager & Chief Financial Officer

*I/ We have the authority to bind the Corporation*

IN WITNESS WHEREOF the Landlord, the Tenant and the City have signed this Lease as of the date first above written.

**2295477 ONTARIO INC.**

Per:

Name:  
Title:

Per:

Name:  
Title:

*I/ We have the authority to bind the Corporation*

*JK*

**TORONTO ARTSCAPE INC.**

Per:

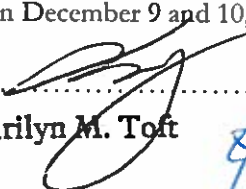

Name: LoriAnn Girvan  
Title: C.O.O.

Per:

Name: Timothy Robert Jones  
Title: C.E.O.

*I/ We have the authority to bind the Corporation*

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.....  
  
**Marilyn M. Toft**  City Clerk

**22 JOHN STREET DEVELOPMENTS INC.**

Per:

Name: Jack Winberg  
Title: President

Per:

Name:  
Title:

*I/ We have the authority to bind the Corporation*

**CITY OF TORONTO**

Per:

  
**Marilyn M. Toft**

Name: Ulli S. Watkiss  
Title: City Clerk

Per:

**S. Murji for** 

Name: Roberto Rossini  
Title: Deputy City Manager & Chief Financial Officer

*I/ We have the authority to bind the Corporation*

SCHEDULE A  
DEFINITIONS

In this Lease the following definitions are applicable:

1. **22 John Lands** means the lands municipally known as 22 John Street, Toronto (former City of York), Ontario, shown as Parts 2, 8, 10, 11, 12, 13, 14, 19, 20, 22, and 24 on the Reference Plan.
2. **Additional Rent** has the meaning assigned to it in Section 3.3.
3. **Area Re-Development** has the meaning assigned to it in Section 6.2(b).
4. **Artists' Courtyard** means Part 9 on the Reference Plan.
5. **Authority** means any governmental authority, body, agency, department, whether federal, provincial or municipal and any board of fire underwriters having or claiming jurisdiction over the Leased Premises.
6. **Basic Rent** means the payments to be made pursuant to Paragraph 3.2 of the Lease.
7. **Building** means the existing building located on the Lands, and municipally known as 33 King Street, Toronto, Ontario.
8. **Building Requirements** mean the following, in relation to the Leased Premises:
  - a. all utilities and services and access available to the units in normal working order;
  - b. only minor corrective work required to the interior of the Residential Units and hallways required to be used for access to the units or Parkade;
  - c. the Landlord shall have delivered to the Tenant the following:
    1. all project keys, in a number-coded key box;
    2. mylar reproducible "as built" plans and the specifications, including all units and electrical and mechanical systems;
    3. product information issued by the manufacturer, where available, with respect to each of the various products used and in particular those upon which any type of maintenance and care might be required in the future;
    4. instructions to the Tenant's staff by written or oral communication as to appropriate operation of all mechanical and electrical equipment;
    5. a clearance certificate from the Workplace Safety and Insurance Board for the Landlord and all contractors whose contracts are with the Landlord;
    6. fire plan of the Building in locations required by the Authority;
    7. all warranties and guarantees, enforceable by the Tenant, as provided by manufacturers and installers of all equipment, fixtures, and appliances; and

8. valid proof that the contractor has published a copy of the certificate of substantial performance, in accordance with the *Construction Lien Act*;
  - d. there shall be no outstanding work orders, requirements or deficiency notices or objections of the relevant Authority which would in any way impede the occupancy of any of the units or suggest the need for more than minor corrective work save for work which cannot be performed because of the season;
  - e. all systems and equipment shall have been started up and tested except for final balancing;
  - f. all life safety systems shall have been verified by the Landlord and the Tenant as complying with the requirements of the Plans and Specifications;
  - g. the fire authorities shall have inspected and confirmed that life safety systems are acceptable;
  - h. the mechanical and electrical consultants have been made available to the Tenant's maintenance staff to provide information and hands-on instructions regarding the equipment installed in units and the common areas; and
9. **Business Day** means a day other than a Saturday or Sunday on which chartered banks in the City are open for the transaction of business with the public.
  10. **Commencement Date** has the meaning assigned to it in Section 1.3 of this Lease.
  11. **Common Areas** means those parts of the Property provided by Landlord for the common use of all tenants and, where applicable, the general public, including the sidewalks, Parkade, landscaping, pool area, stairwells, loading areas, or lighting facilities used or maintained in connection with the Building.
  12. **Consultant** means a qualified architect, quantity surveyor or construction cost consultant retained by the Tenant.
  13. **Contribution Agreement** means an agreement between the Tenant and the City of Toronto of even date herewith, which provides for, among other things, the payment to the Tenant of funds and other financial benefits intended to be contributed to capital cost of the Landlord's Work, and the advances made thereunder being referred to as the "**Contribution Agreement Advances**".
  14. **Default Rate** means the prime rate set by the Royal Bank of Canada for its customers of the highest credit standing for unsecured Canadian Dollar loans, plus five (5%) percent.
  15. **Environmental Laws** means any law, by-law, order, ordinance, ruling, regulation, certificate, approval, consent or directive of any applicable federal, provincial or municipal government, governmental department, agency or regulatory authority or any court of competent jurisdiction: (i) relating to pollution or the protection of human health or the environment (including laws and regulations established for workplace health and safety); (ii) dealing with filings, registrations, emissions, discharges, spills, releases or threatened releases of Hazardous Substances or materials containing Hazardous Substances; (iii) regulating the import, storage, distribution, labelling, sale, use, handling, transport or disposal of a Hazardous Substance; (iv) the law of private nuisance resulting from the presence of a Hazardous Substance; or (v) requiring that the residential premises be fit for habitation.
  16. **Escrow Agent** has the meaning assigned to it in the Contribution Agreement;
  17. **Event of Default** has the meaning assigned to it in Section 15.1.
  18. **Force Majeure** has the meaning assigned to it in Section 16.3.
  19. **Hazardous Substance** means any substance capable of posing a risk or damage to health, safety, property or the environment including, without limitation, any contaminant, pollutant now or hereafter declared, defined or deemed to be regulated or controlled under any Environmental Law.

20. **HVAC Equipment** means equipment, machinery, installations and facilities used for or in connection with the supply of heating, ventilating or cooling or any combination thereof to the Leased Premises from time to time existing.
21. **Landlord's Architect** means Graziani & Corazza Architects Inc. or such other qualified architect retained by the Landlord and acceptable to the Tenant and the City, each acting reasonably.
22. **Landlord's Work** means the work contemplated in Schedule C to this Lease and as detailed in the Plans and Specifications.
23. **Lands** means the lands on which the Building has been built, legally described as set out in Schedule C to this Lease.
24. **Lease** means this agreement and all the terms, covenants, schedules and conditions set out herein.
25. **Leased Premises** means the premises described in Section 1.2 of this Lease.
26. **Leasehold Improvements** means all fixtures, improvements, installations, alterations and additions from time to time made, erected or installed by or on behalf of the Tenant or any former occupant of the Leased Premises, including doors, hardware, partitions (including moveable partitions) and wall-to-wall carpeting, but excluding trade fixtures and furniture and equipment not in the nature of fixtures.
27. **Leasehold Mortgage** means the first mortgage or similar security executed by the Tenant of the Tenant's leasehold interest in the Project as may be extended, modified, renewed or replaced from time to time.
28. **Leasehold Mortgagee** means the holder of a Leasehold Mortgage.
29. **Letter of Credit** means the Letter of Credit posted by the 22 John Owner in accordance with the Section 37 Agreement.
30. **Operating Costs** means, for any period, the total of all costs and expenses attributable to the maintenance, repair, replacement, administration, management and operation of the Building (including the Common Areas) during such period including, without limiting the generality of the foregoing:
  - a. all charges for Utilities charged as an Operating Cost in accordance with Article 5 of this Lease, and all charges for utilities and similar services to the Common Areas including, without limiting the generality of the foregoing, water, gas, heat, electrical power or energy, steam or hot water used upon or in respect of the Common Areas and associated costs;
  - b. all costs incurred by the Landlord in connection with the maintenance, repair, replacement (other than capital repairs and replacements unless chargeable in accordance with Section 9.1) and operation of the Building and the Common Areas, and of complying with all applicable laws, directions, rules and regulations of the governmental authorities having jurisdiction and in connection therewith including, without limiting the generality of the foregoing, the cost of providing garbage removal and maintenance services, the cost of heating and cooling and ventilating the Common Areas and the cost of maintaining, repairing and replacing all HVAC Equipment and any HVAC equipment servicing the Common Areas, the cost of window cleaning, and any and all other costs incurred by the Landlord in connection with the maintenance, repair and operation of the Common Areas, including the costs of any machinery, supplies, tools and materials used in connection with such services;
  - c. the cost of providing security, landscaping, pest control, fire equipment, fire suppression systems, window cleaning, waste collection, disposal and recycling, painting/plastering, and snow and

debris removal services, and the costs of machinery, supplies, tools, equipment and materials used in connection with such services or any rentals thereof, and the amount of salaries, wages and fringe benefits paid to employees directly engaged in the maintenance or operation of the Property, and amounts paid to independent contractors for any services in connection with such maintenance or operation;

- d. the cost of on-site direct supervision and management and indirect expenses, to the extent applicable to the maintenance and operation of the Property including office supplies, telephone, legal and consulting fees, bad debts, and all expenses of every nature incurred in connection with the management, maintenance and operation of the Common Areas;
- e. the cost of insuring the Property in accordance with the terms of this Lease;
- f. all costs and expenses (including legal and other professional fees, interest and penalties on deferred payment) incurred in good faith by the Landlord in contesting, resisting or appealing any Taxes, provided that so long as the Leased Premises are exempt from realty taxes, this subparagraph shall not apply to any contest of realty taxes; and
- g. an administrative fee not greater than fifteen percent (15%) of the aggregate of all Operating Costs, save the wages paid pursuant to subparagraph d;

provided that Operating Costs shall exclude:

- (i) any capital costs related to structural components not related to the Leased Premises;
- (ii) all such costs determined by separate metering or assessment, or otherwise incurred for the exclusive benefit of the premises leased by the Tenant or any other tenant of the Property and billed to and paid for directly by the Tenant or such other tenant, including charges to tenants for above-normal utilization of utilities;
- (iii) the cost to the Landlord of debt service in connection with any mortgage registered on title to the Lands (excluding any Leasehold Mortgages);
- (iv) taxes on the income of the Landlord;
- (v) the cost of executive level management, which services are included in the Property Management Fee;
- (vi) costs incurred to enforce Building construction warranties and to complete the construction of the Building; and
- (vii) the cost of improvements to particular premises intended for leasing and real estate, or other commissions relating to leasing premises within the Property;

- 31. **Outside Date** has the meaning assigned to it in Section 1.3.
- 32. **Parkade** means the above ground parking structure located on the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> floor of the Building.
- 33. **Permitted Encumbrances** means the encumbrances listed on Schedule "D" to this Lease.
- 34. **Plans and Specifications** means the Plans and Specifications for the Leased Premises generally set out in Plans dated August 17, 2015 by Graziani & Corazza Architects Inc., and generally described in Schedule E to this Lease, together with such changes as are mutually

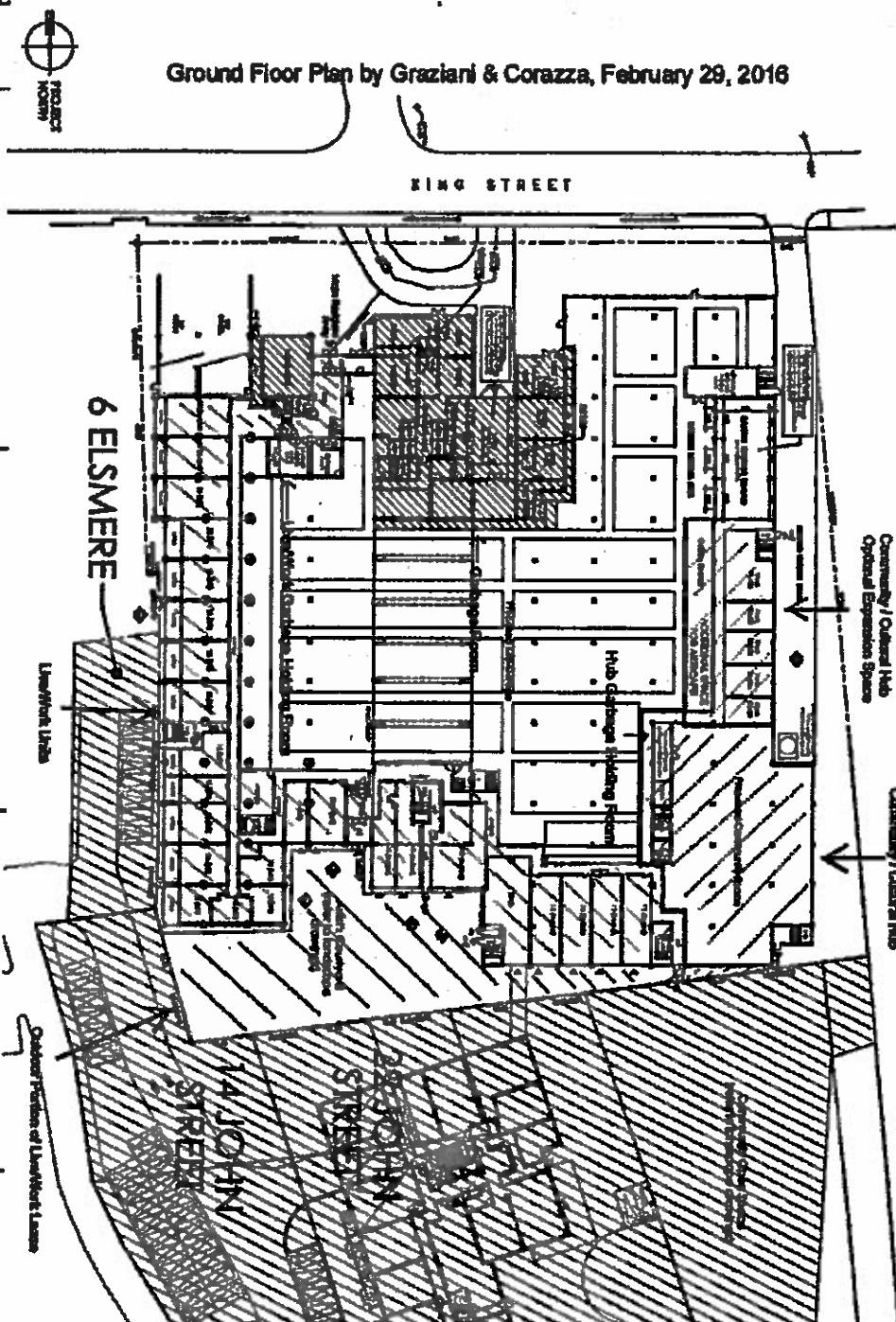
agreed by the parties in accordance with Schedule C to this Lease. Where there is a conflict between the Plans and Specifications and Schedule E, Schedule E shall prevail.

35. **Property** means the Lands and the Building.
36. **Property Management Fee** has the meaning assigned to it in Section 3.3
37. **Reference Plan** means the reference plan registered as Plan 66R-28757 in the Land Titles Division of the Toronto Land Registry Office (No. 66).
38. **Rent** means any and all Basic Rent, Additional Rent, Property Management Fee and all other amounts payable by the Tenant under the Lease whether or not expressly stated.
39. **Residential Lease** means the form attached hereto as Schedule H.
40. **Residential Tenants** means the residential sub tenants of the Tenant occupying the Residential Units from time to time.
41. **Residential Units** means the twenty-six (26) residential units to be constructed in the Leased Premises as part of the Landlord's Work.
42. **Section 37 Agreement** has the meaning given to it in Recital C.
43. **Substantially Complete** means that the Landlord has achieved Substantial Performance of the Landlord's Work (as that term is defined in the *Construction Lien Act (Ontario)*), as certified by the Landlord's Architect and the Building Requirements have been met, provided that the Landlord may exclude exterior work, such as landscaping from the value of the Landlord's Work for the purposes of determining Substantial Performance, where the Landlord is not able to complete such work due to its seasonal nature.
44. **Taxes** means all real property taxes, rates, duties and assessments (including local improvement taxes), imposts, charges or levies, whether general or special, that are levied, rated, charged or assessed against the Leased Premises or any part thereof or Rent therefrom from time to time by any lawful taxing authority, whether federal, provincial, municipal, school or otherwise, and any taxes or other amounts which are imposed in lieu of, or in addition to, any such real property or whether of the foregoing character or not and whether in existence at the Commencement Date or not, and any such real property or commercial concentration taxes levied or assessed against the Landlord on account of its interest in or ownership of the Leased Premises or any part thereof, calculated on the basis of the Building being assessed as a fully leased and operational building, and the costs and expenses incurred for consulting, appraisal, legal and other services to the extent they are incurred in an attempt to minimize or reduce any of the real property or commercial concentration taxes referred to above, in all cases, excluding: (i) any penalty incurred as a result of a failure of the Landlord to pay Taxes in a timely manner; (ii) all development, local improvement and like charges associated with the initial construction and installation of municipal services to the Building; and (iii) all Landlord Taxes from time to time. None of the foregoing costs shall be borne by the Tenant.
45. **Tenant Delay** means:
  - (a) a delay by Tenant beyond five (5) days after Landlord request for Tenant information or approvals (in which case the Tenant Delay shall be deemed to have commenced when the request was issued);
  - (b) a delay resulting from undue interference with completion of Landlord's Work by Landlord in connection with activities of Tenant within the Premises prior the Outside Date; or
  - (c) a delay resulting from an change to the Plans and Specifications which Tenant approved.
46. **Tenant's Share** has the meaning assigned to it in Section 3.7(a).
47. **Tenant's Proportionate Share** has the meaning assigned to it in Section 3.7(a).
48. **Term** has the meaning assigned to it in Section 1.3 of this Lease.



49. **Utilities** means all gas, electricity, water, sewer, steam, fuel, power, telephone, telecommunications, alternative heating and cooling utilities and other utilities used in or for or allocated by the Landlord to the Leased Premises, as the case may be.

SCHEDULE B  
LEASEHOLD PREMISES



Legend and project information:

- Legend: Symbols for various elements like walls, doors, and furniture.
- Project Name: 3000 6th Street
- Client: [Logo]
- Architect: GRAZIANI & CORAZZA
- Date: February 29, 2016
- Scale: 1/8" = 1'-0"
- Sheet: 1 of 1

SCHEDULE C  
LANDLORD'S WORK

**ARTICLE 122 JOHN OWNER'S RESPONSIBILITIES**

1.1 Landlord's Work

- (a) The 22 John Owner shall construct improvements to the Leased Premises in accordance with the Plans and Specifications and all applicable municipal, building code and other requirements, laws and regulations in a good and workmanlike manner (the "Landlord's Work").
- (b) Subject to the receipt by the 22 John Owner or its designate of the Contribution Agreement Advances, the 22 John Owner shall be responsible for all work and materials required for the proper completion of the Landlord's Work, including
  - (i) federal or provincial sales, excise or other taxes;
  - (ii) all permit fees;
  - (iii) utility or service connection costs, fees and charges or similar expenses; and
  - (iv) the requirements of any site plan agreement entered into with the City of Toronto.
- (c) It is acknowledged that the Landlord's Work will be completed in conjunction with the construction of the Rental Building by the 22 John Owner and although there is no fixed date for completion of the Landlord's Work, the Landlord's Work shall be completed on or before the Outside Date, subject only to Force Majeure and Tenant Delay. The 22 John Owner shall keep the Landlord, the Tenant and the City fully informed of its construction schedule during the course of construction by providing progress reports at least quarterly, and shall notify the Tenant and the City in writing of the date it expects the Landlord's Work to be Substantially Complete (the 'Contemplated Substantial Completion Date'), which notice shall be delivered at least sixty five (65) days prior to the Contemplated Substantial Completion Date.
- (d) If any construction lien is registered or asserted in writing against the place of the Landlord's Work, or any trust fund claim or other claim under the *Construction Lien Act (Ontario)*, or any other claim in connection with the Landlord's Work, is made by or to anyone (other than claims that arise out of the wrongful, or alleged wrongful, act or omission of the Tenant), the 22 John Owner shall cause any lien or claim to be forthwith discharged or vacated from the title to the place of the work. Any costs, expenses or legal fees (as between a solicitor and his or her own client) incurred by the Tenant in connection with any such lien or claim shall be paid to it by the 22 John Owner forthwith after demand by the Tenant. This clause does not apply to a claim by the Tenant arising as a result of the failure of the 22 John Owner to pay a subcontractor when the Tenant was in arrears of payment under this Lease, including failing to enforce the Contribution Agreement Advances, or failing to pay the Tenant's Contribution.

1.2 Construction Changes

- (a) Except as set out below, the Plans and Specifications shall not be changed by the 22 John Owner without the prior consent of the Tenant (not to be unreasonably withheld), but the Tenant shall have the right to require reasonable changes therein with the consent of the 22 John Owner (not to be unreasonably withheld) provided that: (a) the change is feasible having regard to the stage of construction; (b) the Tenant pays for any additional costs arising from such changes as determined, if necessary, by the 22 John Owner's architect, acting reasonably and; (c) any delay resulting from such changes shall not result in any change to the Commencement Date (which shall be the date it would have been but for the delay resulting from such change). The 22 John Owner agrees to advise the Tenant of its *bona fide* estimate of the length of the delay that will result from any such change.
- (b) Following consultation with the Tenant, and provided the proposed changes do not materially diminish the scope and quality of the Landlord's Work from that set out in the Plans and Specifications, the 22 John Owner may make changes to the Plans and Specifications where such changes are required by reason of (i) the provisions of codes, agreements or requirements of or administered by the City, or any utility or any other Authority regardless of whether any of such changes would be apparent on an inspection, and whether or not within the knowledge of the Tenant or (ii) the implementation of a value engineering exercise carried out by the 22 John Owner, and any such changes shall be made in the Plans and Specifications and the 22 John Owner shall complete the Landlord's Work in accordance with the amended Plans and Specifications.

- (c) Should the 22 John Owner seek approval of the Tenant to any change, it shall notify the Tenant of such change in writing and the Tenant shall provide its response within five (5) Business Days, failing which the Tenant shall be deemed to have given the approval requested by the 22 John Owner.

### 1.3 Inspections and Completion

- (a) The 22 John Owner shall arrange to meet with the Tenant and the City for a deficiency review of the Leased Premises at least ten (10) Business Days prior to the Contemplated Substantial Completion Date in order to compile a list of readily visible defects and deficiencies (the 'Punch List'). The Punch List shall be provided to the Landlord's Architect for consideration in its determination that the Landlord's Work is Substantially Complete. In the event of a dispute as to whether a deficiency or defect noted by the Tenant or its Consultant is or is not a deficiency or defect, the determination of the Landlord's Architect shall be final. The Landlord's Work shall be Substantially Complete when the Landlord's Architect has certified Substantial Performance of the Work in accordance with the *Construction Lien Act* (Ontario) and the Builder Requirements have been delivered.
- (b) Any Landlord's Work not completed prior to the Commencement Date, including any items on the Punch List, shall be completed as soon as possible.
- (c) The 22 John Owner shall be responsible for inspecting the work of its subcontractors from time to time and ensuring that they or the 22 John Owner's own forces correct all defects or deficiencies shown on the lists resulting from such reviews prior to the further review procedure set out below.
- (d) Upon total performance of all exterior work and landscaping, and at least one month prior to the expiration of any warranty period, the parties shall meet and compile a list of readily visible defects or deficiencies, which items shall be fully repaired in accordance with the obligations of the 22 John Owner under the Plans and Specifications. Failure to so meet shall not prejudice the rights of the Tenant or the 22 John Owner.
- (e) In addition to the reviews referred to above, the 22 John Owner shall be responsible, in terms of both cost and undertaking, for all electrical, plumbing, Fire Marshal and other inspections required by any code or authority and paying for all permits and inspection fees required by any authority. The 22 John Owner shall be responsible for making appropriate arrangements with the Tenant for all reviews as required by the Plans and Specifications or by law to the extent such reviews or inspections occur after the Commencement Date.

### 1.4 Warranty of Landlord's Work

- (a) Without limiting any other obligation of the 22 John Owner in this Lease, the 22 John Owner warrants that, for a period of two (2) years from the Commencement Date, all items of Landlord's Work will be free of defect and deficiency in workmanship and materials. All costs of rectification and repair in such warranty period shall be borne by the 22 John Owner and not charged by the Landlord as Additional Rent.
- (b) The 22 John Owner assigns, or agrees to cause to be assigned, to the Tenant all warranties for work, services or materials performed or supplied by any subcontractor, material supplier or other person in or about the Building. The 22 John Owner shall ensure that all subcontractors or other engagements are made subject to this assignment. The Tenant assumes no liability for payment of any such person or any other liability by virtue of this assignment. Until expiry of the relevant warranty and other rights of the Tenant against the 22 John Owner, the Tenant shall hold the warranties on behalf of both the Tenant and the 22 John Owner, and the Tenant shall not directly exercise any rights under any such warranty, guarantee or other obligation prior to default by the 22 John Owner.

### 1.5 Workplace Safety and Insurance Act

The 22 John Owner will ensure that it is in full compliance with requirements of the *Workplace Safety and Insurance Act*, 1997, and will use its best efforts to ensure that any subcontractor is not in arrears of any contributions or amounts payable under the *Workplace Safety and Insurance Act*, 1997. The 22 John Owner will indemnify and save harmless the Tenant and the Consultant from and in respect of all claims made under the *Workplace Safety and Insurance Act*, 1997 by the Workplace Safety and Insurance Board, or otherwise in respect of arrears of assessments or other amounts payable by the 22 John Owner or any of its subcontractors.

### 1.6 Extension of Outside Date

- (a) The Outside Date shall be extended by one day for each day of delay in the 22 John Owner's construction of the Landlord's Work as a result of Tenant Delay or Force Majeure.
- (b) In order for the 22 John Owner to claim any extension or additional time due to a "Tenant Delay", the 22 John Owner must give the Landlord, the Tenant and the City written notice (the "Tenant Delay Notice") of:
  - (i) the specific act or failure which constitutes a "Tenant Delay" within fifteen (15) days after the occurrence of same, and
  - (ii) the 22 John Owner's good faith estimate of the number of days of delay in Landlord's construction which will result from the Tenant Delay.
- (c) The 22 John Owner may issue Tenant Delay Notices from time to time, and in the event its good faith estimate is incorrect, or there is continuing Tenant Delay, may amend a Tenant Delay Notice by increasing its estimate of the number of days of delay in the 22 John Owner's construction which will result from the Tenant Delay.

SCHEDULE D  
LEGAL DESCRIPTION AND PERMITTED ENCUMBRANCES

LEGAL DESCRIPTION

Part of PIN 10323-0002 (LT)

PART OF LOT 15, PLAN 38 YORK AND PART OF LOT 6, CONCESSION 5, WYS YORK,  
DESIGNATED AS PARTS 9, 26, 33, 34 AND 36 ON PLAN 66R-28757; CITY OF TORONTO.

PERMITTED ENCUMBRANCES

1. Notice of Lease registered as Instrument No. AT1966161 on December 3, 2008, between Coinmatic Canada Inc., as tenant and 458676 Ontario Inc., as landlord;
2. Charge registered as Instrument No. AT4232351 on May 31, 2016 between 2295477 Ontario Inc., and chargor, and Computershare Trust Company of Canada, as chargee, for the sum of \$35,742,610.00;
3. Notice of Assignment of Rents – General registered as Instrument No. AT4232352 on May 31, 2016, between 2295477 Ontario Inc. and Computershare Trust Company of Canada;
4. Charge registered as Instrument No. AT4253925 registered on June 21, 2016 between 2295477 Ontario Inc., as charger, and CMLS Financial Ltd., as chargee, for the sum of \$8,500,000.00; and
5. Notice of Assignment of Rents – General registered on June 21, 2016 as Instrument No. AT4253926, between 2295477 Ontario Inc. and CMLS Financial Ltd.

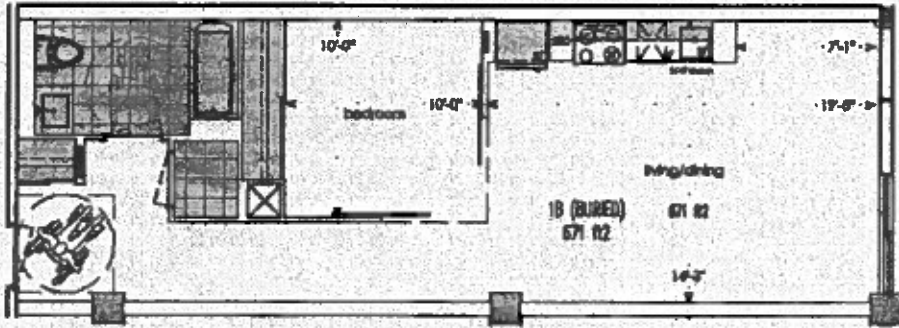
SCHEDULE E  
PLANS AND SPECIFICATIONS

**Finish Specifications for Artscape Live/Work Units:**

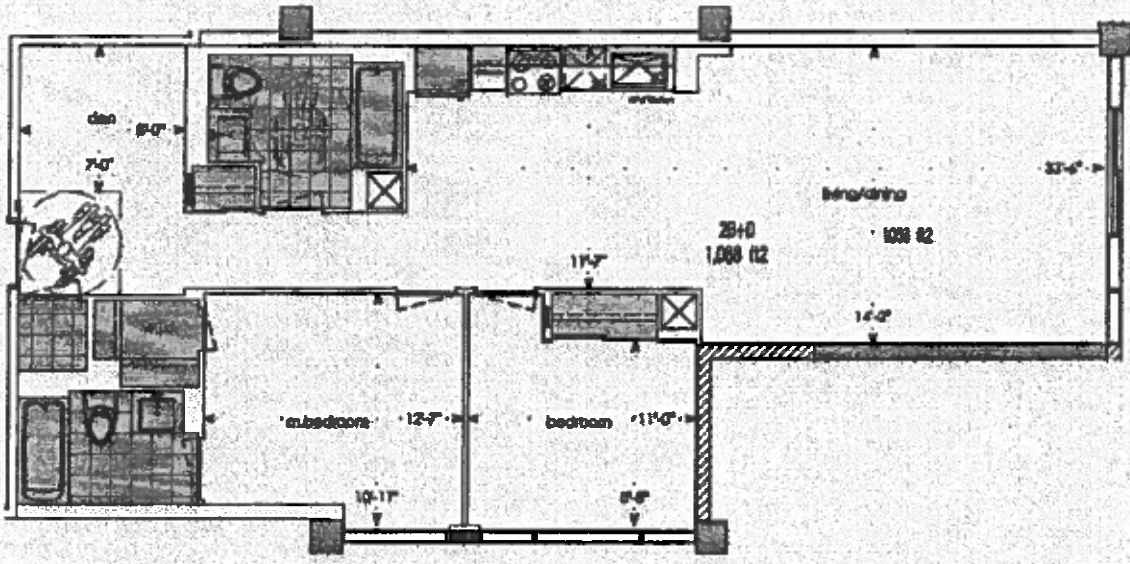
**Units completed to full level of occupancy including:**

- Complete kitchen with single sink, base countertop, standard fixtures, cupboards, 30 inch fridge, stove/oven, and dishwasher (white)
  - Complete bathroom with shower/bath with exhaust fan, 1 piece vanity, porcelain tile on floor and ceramic tile on wall and tub area
  - Roughed in plumbing and vent for washer/dryer (not included) and utility sink (sink will be provided). Drain to be provided in laundry room. Concrete floor.
  - Operable windows, Low E thermal glazed
  - Glazing will be window wall with beam
  - Fully distributed electrical and functional light fixtures in every room (standard condo quality)
  - Polished and sealed concrete floors throughout unit
  - In suite controls for HVAC
  - Separately metered electricity usage (thermal and water will be bulk)
  - Conduit for cable/IT/telephone
  - Minimum ceiling height 9 feet for ground floor space and 8 feet in loft space
  - Single storey units will have a minimum ceiling height of 12 Feet
  - Standard door widths
  - Electrical capacity of 60AMP
  - Demising wall STC rating of 55-60
  - Fire & life safety features including in suite sprinkler, combined smoke and carbon monoxide alarm. Smoke detectors in corridor.
  - Enterphone system
  - Terrace unit to include light, electrical outlet and hose bib
  - Railing or fence to have pull station at exit
  - Accessible units to have pull station at exit per Code
  - Accessible units to have swing door to exterior
  - Loft units to have glass or wood picket railing between storeys
- 
- Floor Plans to be consistent with Exhibit 1 to this Schedule.

EXHIBIT 1



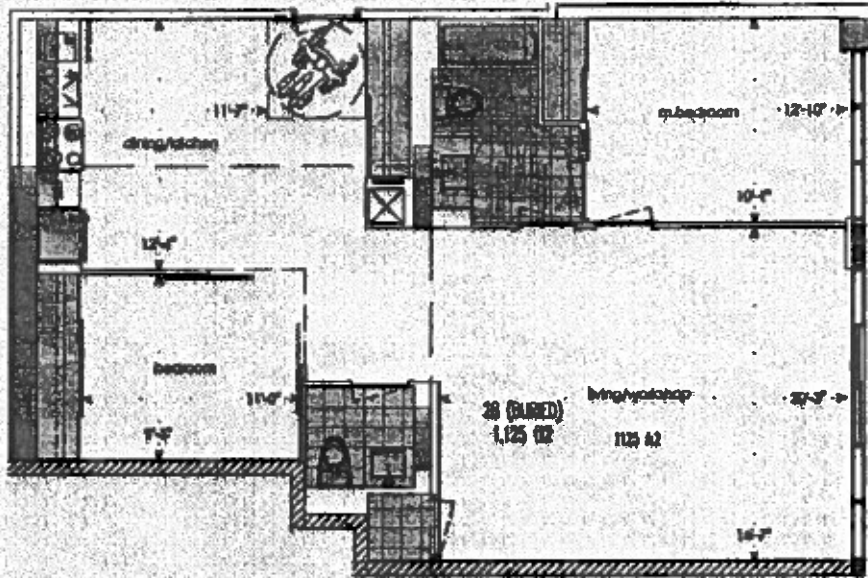
1 BEDROOM (BED) - 671 02 (B.F.)  
WOODBRIDGE/CHRYSLER/AMVIC/STC - 25-01-02-002 - 10/7/12 - App. 12, 2012



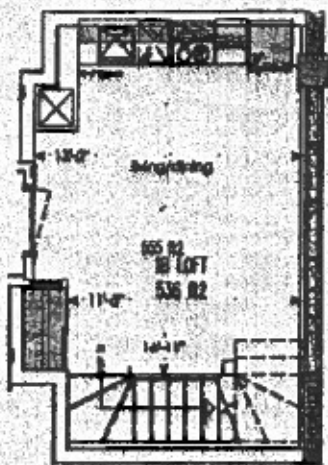
2 BEDROOMS + DEN - 1,088 02 (B.F.)  
WOODBRIDGE/CHRYSLER/AMVIC/STC - 25-01-02-002 - 10/7/12 - App. 14, 2012



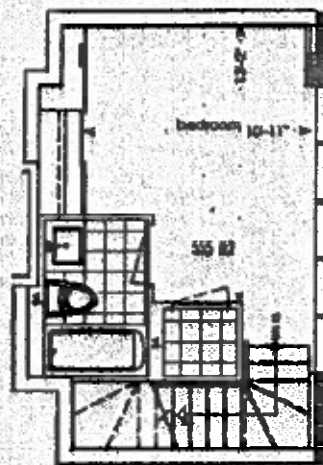




2 BEDROOMS (MURBEDI) - 1,125 SQ. FT.



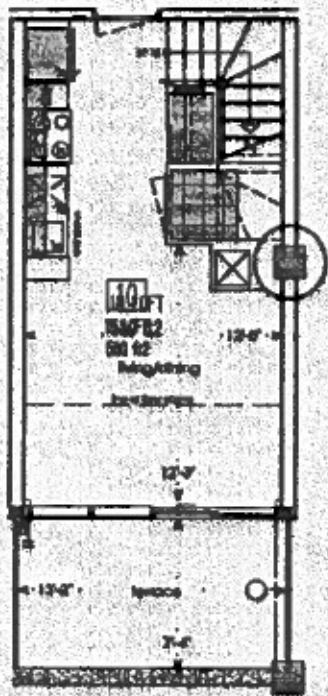
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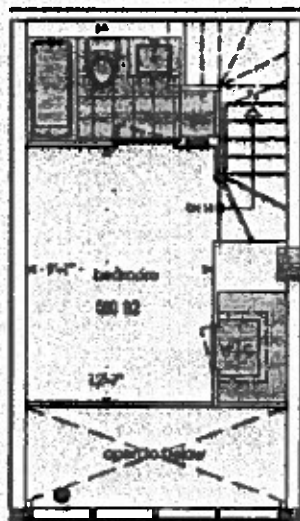
UPPER FLOOR

1 BEDROOM - 536 SQ. FT.





LOWER FLOOR



UPPER FLOOR

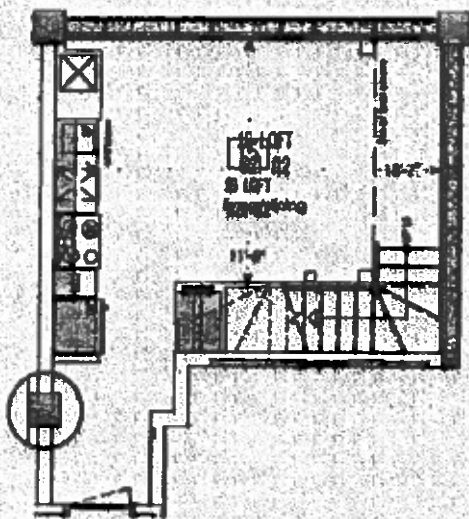
1 BEDROOM - 82 SQ FT LOFT

1000 W. 10TH AVENUE, SUITE 1000, DENVER, CO 80202

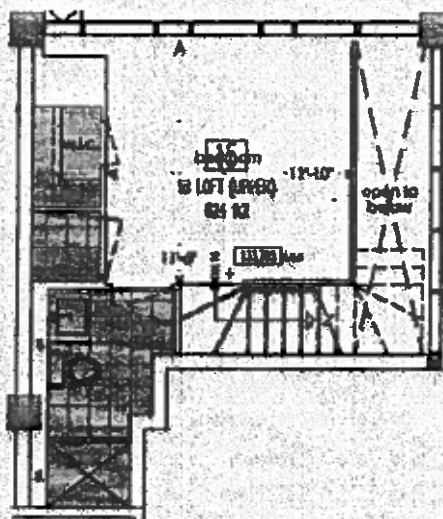
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BRIGHT  
REALTY



LOWER FLOOR



UPPER FLOOR

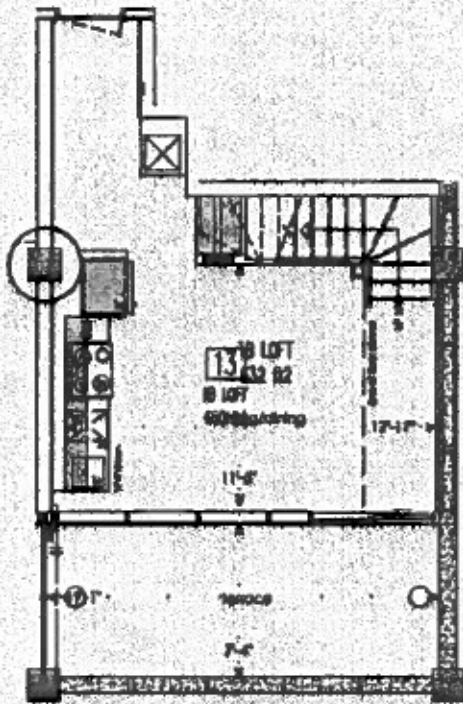
1 BEDROOM - 82 SQ FT LOFT

1000 W. 10TH AVENUE, SUITE 1000, DENVER, CO 80202

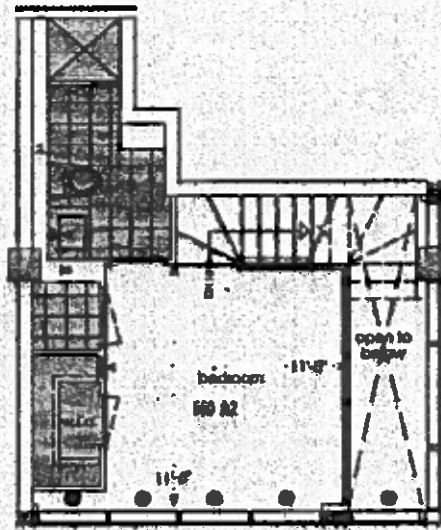
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BRIGHT  
REALTY

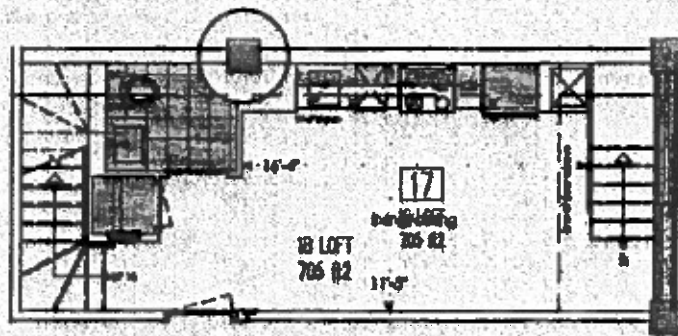


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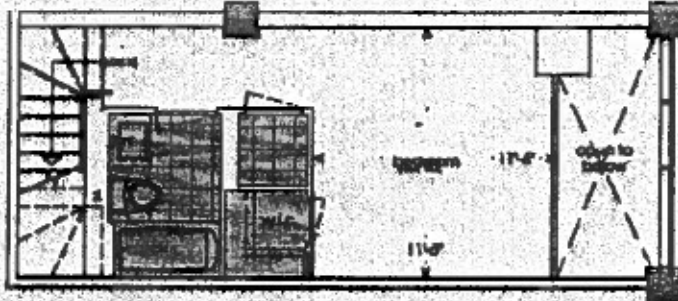


UPPER FLOOR

1 BEDROOM - 632 (2 LOFT)  
APARTMENT C/ENCL/STANDARD INC. • 300-450-1000 • 10/1/13 • 6/11/13



LOWER FLOOR

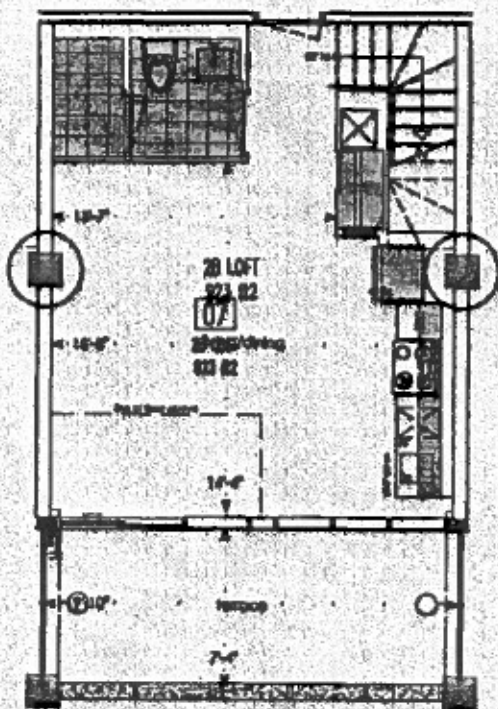


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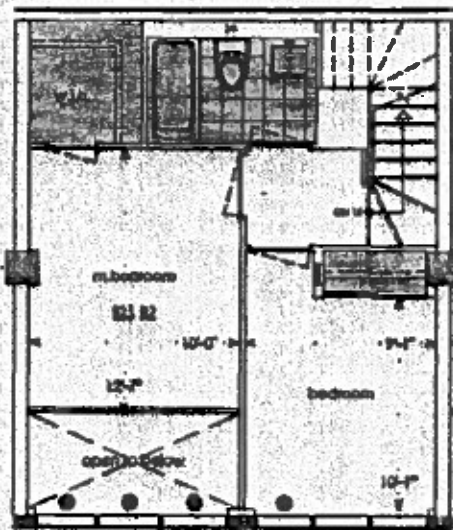
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APARTMENT C/ENCL/STANDARD INC. • 300-450-1000 • 10/1/13 • 6/11/13








LOWER FLOOR

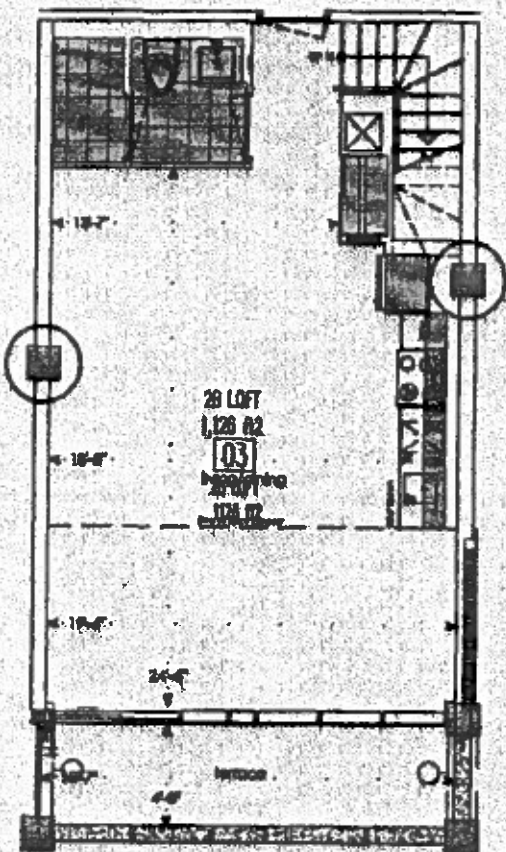


UPPER FLOOR

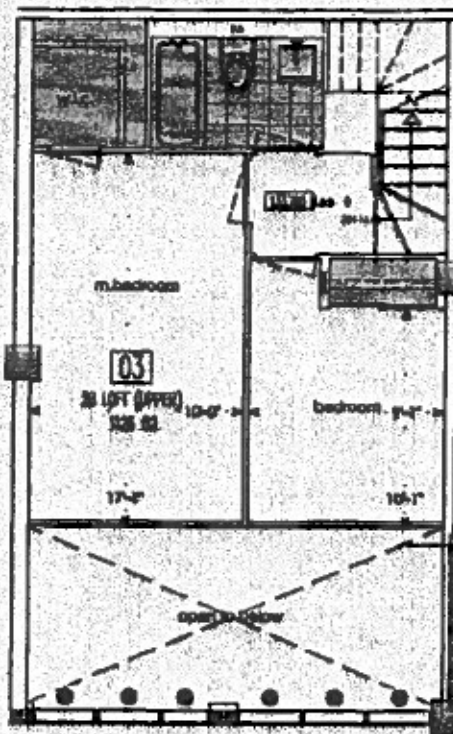
2 BEDROOMS - 922 SQ. FT. (LOFT)

1000 UNIVERSITY AVENUE, SUITE 1000, SAN FRANCISCO, CA 94133 • 415.774.1234 • www.1000u.com

100  GRAZIANNI CORAZZA



LOWER FLOOR

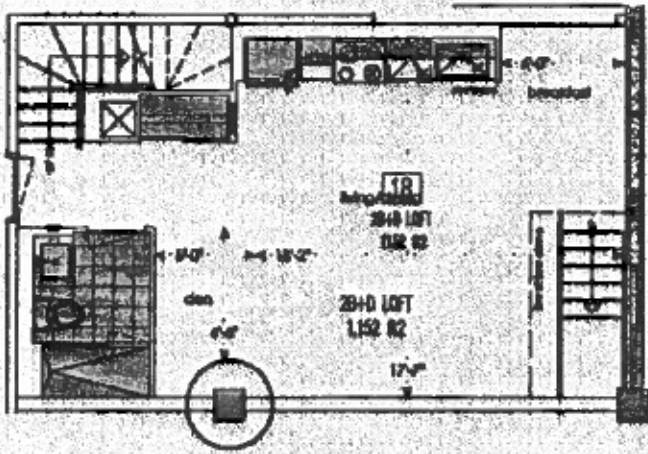


UPPER FLOOR

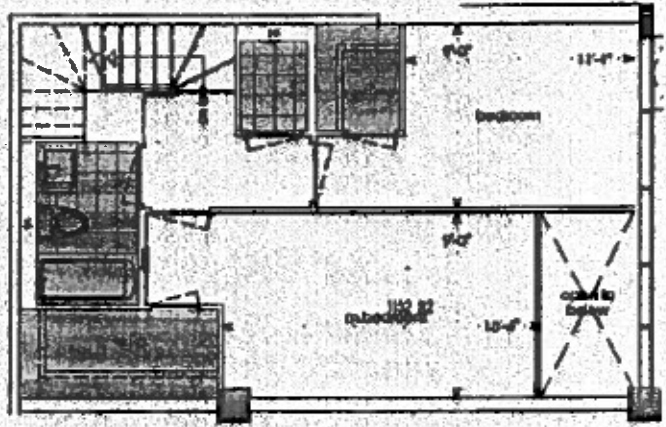
2 BEDROOMS - 1124 SQ. FT. (LOFT)

1000 UNIVERSITY AVENUE, SUITE 1000, SAN FRANCISCO, CA 94133 • 415.774.1234 • www.1000u.com

100  GRAZIANNI CORAZZA

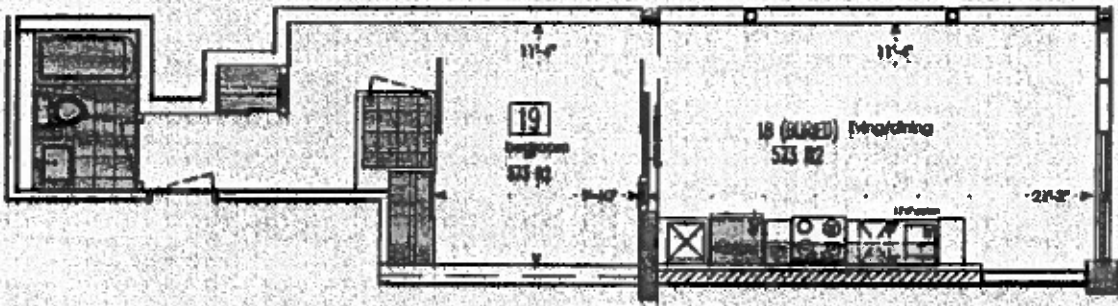


LOWER FLOOR



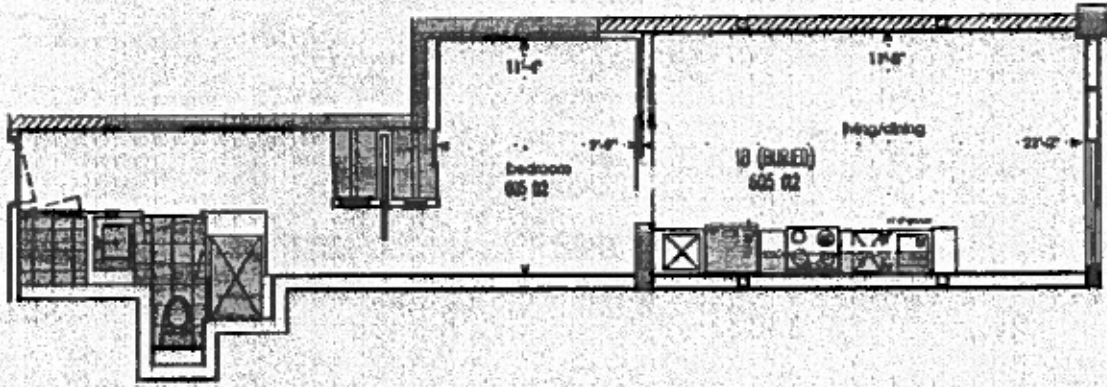
UPPER FLOOR

2 BEDROOMS + DEN - 1152 SQ FT  
1152 SQ FT (1152 SQ FT) - 1152 SQ FT - 1152 SQ FT



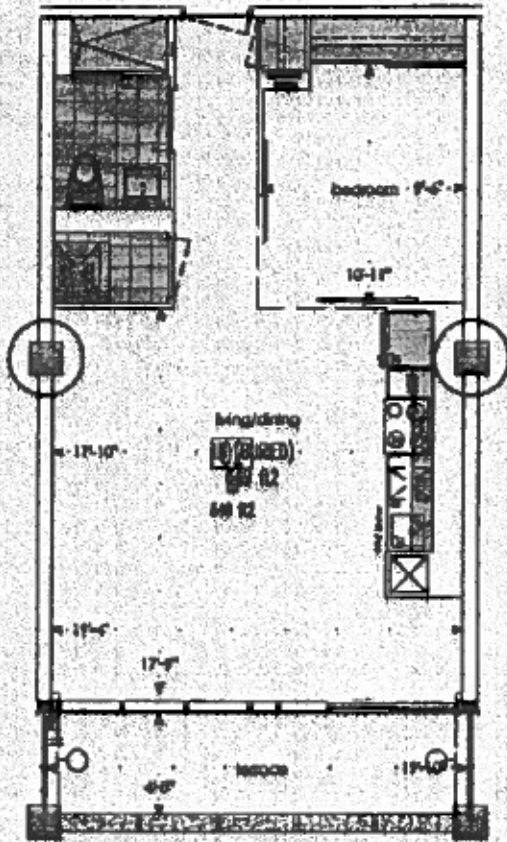
1 BEDROOM (BUREAU) - 573 SQ FT  
573 SQ FT (573 SQ FT) - 573 SQ FT - 573 SQ FT





1 BEDROOM (BURIED) - 605 B2

1/24/2018 10:11 AM Page 14/14



1 BEDROOM (BURIED) - 607 B2

1/24/2018 10:11 AM Page 14/14



## SCHEDULE F

## SAMPLE RESIDENTIAL LEASE

ARTSCAPE WESTON VILLAGE  
TENANCY AGREEMENT

This Tenancy Agreement (called the "Agreement") is a legal agreement made between us, Toronto Artscape Inc. (called the "Landlord" or simply referred to as "we", "us" or "our" in this Agreement), and you, \_\_\_\_\_ (individually and collectively called the Tenant or simply referred to as "you" or "your" in this Agreement) under the *Residential Tenancies Act*.

The Landlord's address for the purposes of this agreement and for service of any notices from you required under this agreement, or the *Residential Tenancies Act* is:

171 East Liberty Street, Suite 224, in the City of Toronto, M6K 3P6

## 1. BASIC TERMS

- 1.1 You have agreed to rent Unit \_\_\_ (called the Unit), in Artscape's Weston Village located at 33 King Street, Toronto (North York), Ontario (called the Building) and we have agreed to rent the Unit to you on the terms and the conditions contained in this Agreement.
- 1.2 The Landlord is a "not for profit" organization which provides "live/work space" to individuals who are recognized by the Landlord as artists, who will occupy and use such space as a place to carry out their work as artists and as their principal residence. The Tenant acknowledges and agrees that amongst the other qualifications for occupancy considered by the Landlord in assessing the eligibility of the Tenant for housing at the Artscape Weston Village, a primary concern was and shall continue to be the qualification that the Tenant is an artist who is recognized by the Landlord, who lives and is engaged in a work activity in the Premises, subject to the provisions of this Agreement.
- 1.3 The basic terms of this Agreement are as follows:
- (a) the initial term of this Agreement begins on \_\_\_\_\_ (being the day the Tenant is first entitled to occupy the Unit) and ends on \_\_\_\_\_ (called the "Initial Term").

If we are unable to give possession of the Unit on the date you are entitled to have possession, we shall not be subject to any liability for failure to give possession and shall give possession as soon as we are able to do so. The Rent shall abate until we offer possession of the Unit to you. Our failure to give you possession on the date listed above shall not in any way affect the validity of this Agreement, and your obligations or in any way be construed to extend the term of this Agreement.

- (b) only the following people can live in the Unit in addition to the persons listed above:

**Please list the names of all occupants of the unit in the space**

- (c) you agree to immediately inform the Landlord in writing, of any persons who cease to occupy the Unit after this Unit is signed.

These persons listed in this section are Occupants and not Tenants. Their occupancy rights end when the Tenancy is terminated. Should the Tenants cease to occupy the Unit for any reason, it is understood that the persons set out above did not and will not occupy the Unit as Tenants and will be overholding.

You agree that any amendment to the list of Occupants must have our written consent.

Upon the death of a sole Tenant, this Agreement or any renewal thereof shall terminate 30 days after the death of the sole Tenant. In the event that there is more than one Tenant and upon the death of one of them, the tenancy shall be deemed to be amended to include the remaining Tenant(s) as Tenant(s), along with the Estate of the deceased Tenant for a period of 30 days after the death of the Tenant, after which the tenancy of the estate only shall be terminated and the Agreement and any renewal thereof shall be deemed to be amended in the name of the surviving Tenant(s) only.

Guests shall not be permitted to remain in the unit longer than seven days without the prior written consent of the Landlord. In the event that guests of the Tenant occupy the Unit for a period longer than seven days without the written approval of the Landlord, they shall be deemed to be illegal occupants and the Tenant shall no longer qualify for occupancy of the Unit.

- 1.4 The Tenant shall use the Premises as a private residence and for the purpose of \_\_\_\_\_, being a Work Activity recognized by the Landlord. The Work Activities must be undertaken in strict compliance with all relevant requirements, codes, regulations, by-laws, health and safety standards and other applicable law and must not be in violation of or contravene the requirements of the insurers of the Landlord providing any insurance coverage in respect of the Landlord, the Building and/or the operations of the Landlord. The Tenant acknowledges and agrees that the Landlord has made no representation or warranty to the Tenant that the Work Activities may be conducted in the Premises or that the Premises are suitable for such Work Activities,



as the Tenant is responsible to satisfy himself/herself with regard to all such matters. The Tenant shall not change the Work Activity referred to above without the written approval of the Landlord, although the Landlord shall not unreasonably withhold its consent to such a change if such a proposed Work Activity is within the list of Work Activities permitted by such Landlord at the time of such request.

- 1.5 The Tenant acknowledges and agrees that at no time shall the Unit be used for any or more of the following activities or purposes:
- (a) the dispensing of any kind of narcotic, such as, by way of example, a methadone clinic, or the dispensing of alcohol unless permitted in accordance with applicable law;
  - (b) an auction, flea market, arcade, bingo hall, casino or other similar gaming establishment, pawn shop, bulk or liquidation sales;
  - (c) any unlawful purpose or activity;
  - (d) the featuring of full or partial nudity or a body rub parlour;
  - (e) an addiction clinic or centre of housing for addicts or recovering addicts;
  - (f) any other businesses, purposes, or activities that would reasonably be seen as lowering the character and reducing the value of the Building or neighbouring redevelopment;
  - (g) any use involving or requiring the consumption, storage, manufacture or utilization of any toxic waste or contaminant;
  - (h) any treatment, procedure and/or use which requires secondary ventilation; or
  - (i) any treatment, procedure and /or use determined to be obnoxious, offensive or hazardous by the Landlord in its sole and unfettered discretion.
- 1.6 There is no promise or undertaking to alter, remodel, decorate or install any additional equipment or fixtures other than as agreed to by the Landlord in writing. If you do not give the Landlord written notice within ten days of moving into the Unit of any damage to the Unit or to the appliances that we provide with the Unit or the need to repair something, then you shall be conclusively deemed to have accepted their condition.
- 1.7 You acknowledge and understand that the Unit and the Building is occupied and used as live/work space which may affect the levels of noise, odour, vibration levels and other activities in experienced in the Unit.
- 1.8 You acknowledge and understand that, at the Landlord and Head Landlord's discretion, you have access to the Artist's Courtyard which is a non-exclusive portion of the premises leased by the Head Landlord to the Landlord and access to the Artist's Courtyard shall also be available to the public.

## 2. RENT

- 2.1 The monthly market rent for your unit as of the Initial Term of this agreement is: \$\_\_\_\_\_. You have been approved to rent your unit at 80 per cent of Canada Mortgage and Housing Canada (CMHC) Average Market Rent (AVR). As of the first day of the initial term, you will pay us rent calculated as follows:

CMHC AVR		\$
minus rent subsidy	-	\$
plus or minus other charges <i>[list each additional charge separately]</i> +/-		
equals monthly rent	=	\$

The monthly rent paid by you as of the first day of the Initial Term includes only:

<u>Appliances/Facilities</u>	Yes/No	<u>Utilities</u>	Yes/No
a refrigerator	( Yes )	water/sewage charges	( Yes )
a stove	( Yes )	cable/satellite television	( No )
a dishwasher	( Yes )	heating equipment charges	( Yes )
coin free laundry facilities	( No )	hydro electric charges	( No )
a locker	( No )	hot water tank rental	( Yes )
a parking space	( No )	natural gas	( Yes )
bicycle storage	( Yes )	building insurance	( Yes )
		property tax	( TBA )*
		liability insurance	( No )
		Internet	( No )
		Telephone	( No )
		other _____	( )
		<i>(please identify)</i>	

\* Artscape is working closely with the City of Toronto to arrange for property tax exemption at Artscape Weston Village. If Artscape is unsuccessful in this task, tenants will be responsible for paying a proportionate share of the property taxes assessed on the Building.

Any expenses, charges, services and/or appliances you may need which are not included in your monthly rent, are your responsibility to arrange for, pay for and/or supply to the Unit, subject to the other terms of this Agreement;

You will have to pay additional charges for any of the following:

- (a) additional keys \$5.00
- (b) replacement keys \$5.00
- (c) Any other separate service or facility that we both agree that we will provide for an additional charge

Item \_\_\_\_\_ Charge \$ \_\_\_\_\_

- 2.2 You have paid us a deposit equal to the monthly rent in the amount of \$\_\_\_\_\_. This deposit shall be maintained as security for payment of the last month's charges. You agree to increase this deposit as the monthly rent increases. We will apply this deposit to the rent you will have to pay for the last month you occupy the Unit. We will pay you annual interest on this deposit each year at the rate prescribed by law. You authorize the Landlord to apply the annual interest, at its option, to top-up the deposit, if a top-up is required.
- 2.3 Rent must be paid every month on or before the first day of each calendar month by cheque or money order or electronic funds transfer. If a cheque you give us is not honoured, then you must pay us a service charge of \$20.00. Further, you agree to pay any charge from the Landlord's financial institution, for any fees or costs that result from any cheque or payment not honoured.
- 2.4 If your monthly charges are not paid when due, the amount unpaid will bear interest from 15 days after the due date until full payment at the rate of 2% per month (24% per year).
- 2.5 It is understood that any payment you make to us will be applied against your account in a manner at our sole discretion, and will generally be applied to the oldest outstanding debt, whether that debt is rent, interest, services charges or fees, unpaid utilities that you may be responsible for, or any other monies owing to us which we are entitled to collect.

### 3. SOME TENANT OBLIGATIONS

- 3.1 You, as Tenant, agree:
  - (a) to use the Unit as your personal residence for occupancy by you, together with only the people listed in section 1.02(ii) or anyone we may approve of from time to time in writing;
  - (b) not to assign, sublet, rent or part with possession of the Unit or any portion of the Unit without the consent of the Landlord, which consent may be arbitrary withheld, if the effect of the assignment or subletting would be to admit a person to Landlord's contrary to the occupancy requirements or guidelines set by it;
  - (c) to keep the Unit (including any appliances and other areas or facilities we rent to you) clean and maintained in a way a reasonable person would and leave the Unit and any appliances and other areas or facilities clean and in good state of repair and vacant of any belongings when you move out (except for normal wear and tear);
  - (d) to pay us the cost of any repairs for any damage to the Unit and/or the Building or that of other occupants, caused by any act or neglect by you, your guests and/or your pets, except for normal wear and tear; and that you agree to pay an administrative charge of 5% of the cost of any repairs or damages for which you are responsible that are performed by the Landlord;
  - (e) to give us written notice of any damage which exists or any repairs which may be needed in the Unit or the Building as soon as you become aware of it, and give us a reasonable chance to fix it; and you agree that we are not liable for any repairs for which we have not received a written notice;
  - (f) that if you do not give us written notice within ten days of moving into the Unit of the need to repair something, we can assume that no repairs were needed when you moved in;
  - (g) to respect the rights of other tenants and occupants of the Building, as well as of our staff, so that you and your guests will not make unreasonable noise, nor will you or they interfere with the reasonable enjoyment of the Building by others;

- (h) to comply with the rules (and make your guests comply with the rules) set out in the Artscape Tenant Charter (Schedule B) , as well as the Rules and Regulations set out in Schedule A as we may amend them from time to time;
- (i) to comply with all rules and regulations of the Head Landlord that may be made from time to time; and
- (j) to comply with your obligations and exercise your rights as a tenant under the *Residential Tenancies Act* in a reasonable way.

3.2 If you decide to keep a pet you are responsible for your pet, what your pet does and the effect your pet has on other residents. You will not allow your pet or any pet you bring on the premises to disturb the reasonable enjoyment of the premises by us or other tenants. You agree that you will be responsible for the cost of repair of any damage or any loss to the Unit, the Building or property of other occupants which may be caused by your pet.

3.3 You agree not to:

- (a) make any changes or alterations to the Unit (like the attachment of shelves or the building of a partition in the Unit), or any Building systems (like plumbing or electrical services) without our prior written consent. If we do consent to a change or alteration to the Unit, then whatever you have installed becomes our property, which you cannot remove and for which we will not pay you; or
- (b) bring into the Unit or use in the Unit any large appliance or other large machine, which uses a lot of electricity or water, like a stove, dishwasher, refrigerator, freezer, air conditioner, clothes washing machine or clothes dryer, without getting our prior written consent. If we give you that consent, you must follow whatever conditions we specify concerning bringing in and use of the appliance.

#### 4. ACCESS

4.1 Artscape is a party to a Commercial Lease dated \_\_\_\_\_ (the **Head Lease**) with 2295477 Ontario Inc, (the **Head Landlord**), being the owner of the Building and the City of Toronto (the **City**). You agree that we, our employees, agents, contractors and others expressly authorized by us from time to time, including the Head Landlord, may enter the Unit and shall be allowed free and uninterrupted access to the Unit from time to time and at any time:

- (a) without notice if we or our employee, agent, contractor or other person expressly authorized by us to enter, believe that an emergency may exist;
- (b) without notice if you consent at the time of entry;
- (c) between 8:00 a.m. and 8:00 p.m. every day in accordance with written notice served upon you at least twenty-four hours prior to the time of entry specified in such notice for any purpose, including:
  - (i) to undertake repairs and/or to perform work (including pest control) and other alterations and/or improvements;
  - (ii) to allow a potential mortgagee (or a mortgagee), a potential purchaser (or a purchaser), an insurance adjuster, a real estate agent, an appraiser, an insurance adjuster and/or a potential insurer (or insurer) of the Building to view the Unit;
  - (iii) to inspect the Unit, from time to time; and
- (d) between 8:00 a.m. and 10:00 p.m. every day, without written notice, to show the Unit to people who may want to rent it after a notice of termination has been given by us or given by you and/or we and you have agreed to terminate this Agreement, provided that we inform or make a reasonable effort to inform you beforehand.

4.2 When entering the unit in accordance with 4.1, we, our employees, agents, contractors and others expressly authorized by us from time to time, may record the results of such entry through notes, photographs and/or video recording.

4.3 The locks on the door of the Unit or within the Unit must not be changed and no new locks can be installed without our prior written permission. If we want to change the locks or the security system at the Building (as well as the locks on the door to the Unit), you agree that we can do it without asking for your permission, as long as we give you notice of the change and we offer you a new key or access mechanism.

#### 5. REPAIRS, RENOVATIONS AND ALTERATIONS

5.1 We can perform whatever repairs, renovations or other alterations we think are reasonable or beneficial to the Unit and/or the rest of the Building.

- 5.2 You are advised and you acknowledge that maintenance, repairs and replacement of the concrete structures above the Building and Unit will be required from time to time. Such maintenance, repaired and replacements may, during the term, cause noise and vibration which may be disturbing to occupants or user. Further there may be occasions where vacant possession of a Residential Unit is required for support of structure above the Unit and Building. The Head Landlord will carry on such work in a commercially reasonable manner so as to minimize the disruption to you. Except in the event of an emergency, any such access by the Head Landlord will be planned with full consultation with us and with you.
- 5.3 You acknowledge that the Head Landlord, may require access to the Unit as set out in section 4.1, for the purpose of inspecting and making repairs, alterations or improvements to the Unit, or for the purpose of having access to the under floor ducts, to the access panels to mechanical shafts and fire suppression systems (which you agree not to obstruct).

## 6. HOW LONG YOU CAN LIVE IN THE UNIT

- 6.1 If we do not make another agreement with you, in writing, before the last day of the initial term (and neither you nor we have terminated your tenancy in accordance with this Agreement), then on the first day after the initial term, your tenancy will continue on a "month-to-month" basis in accordance with the *Residential Tenancies Act*.
- 6.2 If you are moving out, you must give us at least sixty days written notice prior to the date you will be leaving, which date must be the last day of a tenancy period. If you are living in the Unit on a month-to-month basis, the last day of a tenancy period will be the last day of a calendar month. You are responsible for paying rent until the end of the 60-day notice period. Once you give us the notice that you are moving out, you cannot change your mind. If you do not move out when you are supposed to we can evict you and you will have to pay any damages that we or any person suffers.
- 6.3 We can also terminate this Agreement by providing you with written notice for any other reason allowed under the *Residential Tenancies Act*. The notice will tell you the reason for the termination and if there are any actions you can take to avoid the termination of the tenancy.
- 6.4 Our right to terminate your tenancy will not be enforced until we have given you the sort of notice of termination we are supposed to give you and we have done what the *Residential Tenancies Act* requires us to do in order to evict a tenant.
- 6.5 If there is damage to the Unit or the Building, like a fire, so that the Unit and/or Building is not fit to live in, then this Agreement will be at an end and you must move out.
- 6.6 Termination of this Agreement does not relieve you from liability for any monies you owe to the Landlord for rent or other charges.

## 7. ABANDONED BELONGINGS

- 7.1 If your rent is 10 days late and you have removed your personal belongings (except for things which appear to be rubbish, which we may dispose of immediately), we are entitled to assume that you have permanently left the Unit. In that event, we will immediately take possession of the Unit so that we can rent it to someone else, without your permission or an order from the Landlord and Tenant Board, and without limiting all of our other rights against you for any breach by you of this Agreement or any law.
- 7.2 If any furniture, clothes or other personal belongings are left in the Unit after you:
- (a) have moved out or appear to have moved out (so that we, acting reasonably, believe that you have abandoned the Unit) and we have either obtained an order from the Landlord and Tenant Board or given the proper notice referred to in the *Residential Tenancies Act*; or
  - (b) have moved out of the Unit as a result of an agreement to terminate or a notice of termination; or
  - (c) are evicted from the Unit; or
  - (d) die and the tenancy is deemed to have been terminated as a result of your death,
- we may remove such goods immediately and store them elsewhere (although we shall be entitled to dispose of any unsafe or unhygienic items immediately).
- 7.3 In the event you abandon the Unit pursuant to 7.1 we are entitled to dispose of your property (including selling or keeping it for our own use) 30 days after we have mailed you a letter telling you we are disposing of the property, to the last known address that we have for you, or 30 days after an order has issued from the Landlord and Tenant Board declaring your Unit abandoned. You agree that you will pay to us all of our costs and expenses in storing and/or disposing of your clothes, furniture or other personal belongings.
- 7.4 If you have moved out of the Unit as a result of an agreement to terminate or a notice to terminate, or an order of the Landlord and Tenant Board, we may dispose of your belongings (including selling or keeping them for our own use) immediately and without notice to you.

- 7.5 If you are locked out of the Unit by a court enforcement officer as a result of an order of the Landlord and Tenant Board, we may dispose of your property (including selling or keeping it for our own use) after 72 hours from the time the locks were changed and without notice to you.
- 7.6 If you are the sole tenant and you die, we are entitled to dispose of (including selling or keeping it for our own use) your property after 30 days from the date of your death and without notice to your estate.

## 8. NO LIABILITY

- 8.1 You agree that we are not responsible for any damage caused to your property in the Unit, or elsewhere in the Building, no matter what the cause is, unless it can be proven that our negligence was the sole cause. We are also not responsible for any injury to you or any other person, which occurs for any reason, whether it occurs in the Unit or anywhere else in the Building, unless it can be proven that our negligence was the sole cause. If something breaks down (even if we are responsible to fix it), we are also not responsible for any personal injury, illness or discomfort that anyone may suffer because something is broken, as long as we try to fix it when we are supposed to. We are also not responsible if you or one of your guests is hurt or any damage is caused because of the act or negligence of another tenant/resident and/or one of her/his guests.

You also agree that if we do repairs or renovations to your Unit or the Building, we are not liable to you for any claim that we are disturbing your reasonable enjoyment of the premises, or withholding or discontinuing any vital service, so long as we do the work in a timely manner.

- 8.2 You agree that you must obtain your own insurance coverage to insure your property against loss or damage, or the cost of any claims against you for damage to your Unit or injury to other people in an amount of not less than \$1,000,000 per occurrence, and otherwise on commercially reasonable terms for insurance. You acknowledge that the Landlord's insurance does not cover any of these items.
- 8.3 Notwithstanding anything contained in this Agreement, in no event, whether or not the result of the wilful act or negligence of the Head Landlord, its agents, officers, employees or others for whom it is legally responsible and irrespective of any insurance that may or may not be carried or required to be carried, shall the Head Landlord be liable:
- (a) damage to your property or others the property of others located in the Building or the Unit;
  - (b) any injury or damage to persons or property resulting from fire, explosion, steam, water, rain, snow or gas which may leak into or issue or flow from any part of the Building or from the water, steam or drainage pipes or plumbing works of the Building or from any other place or quarter;
  - (c) any damage caused by or attributable to the condition or arrangement of any electrical or other wiring (except as warranted as part of the Head Landlord's Work as defined in Schedule C of the Head Lease);
  - (d) any damage caused by anything done or omitted to be done by any other tenant of the Building;
  - (e) any indirect or consequential damages suffered by you; or
  - (f) any inconvenience or damage arising out of the exercise of the Head Landlord's rights to enter the Unit.

In the event of a default under the Head Lease, you shall, on notice from the Head Landlord and without limitation to any other rights the Head Landlord may have, attorn to and pay all rents to the Head Landlord.

## 9. DISCLOSURE OF INFORMATION

- 9.1 You consent to us providing information on any orders obtained from the Landlord and Tenant Board or divisional court against you for payment of rent arrears or money owing as a result of any damage caused by a member of the household to any municipal department, agency administering social housing waiting lists in accordance with the *Residential Tenancies Act* or credit information company.
- 9.2 You consent to us disclosing to the City, the Province of Ontario, and/or Canada Mortgage and Housing Corporation, by us, your personal information including your household income. You acknowledge and agree that the City will have access to all the information obtained by us from you concerning your household income and family composition and that the City may verify such information.

## 10. NOTICES AND AUTHORITY

- 10.1 We can deliver notices to you about anything having to do with the Unit, this Agreement or any other matter by delivering a written notice directly to you at the Unit. If you are away or if you are trying to avoid receiving a notice, we can give the notice to any person who looks like an adult who is in the Unit. We can also leave the notice in the mail box or other place where mail is ordinarily delivered to

you or send it to you by mail at the Unit or deliver it by any other means allowed by the *Residential Tenancies Act*.

- 10.2 Our legal name for the purpose of giving notice or other documents to us, as the landlord, is **Toronto Artscape Inc.** If you want to give us notice of something, it is best to deliver it personally to our **Manager of Tenant Services** or someone who works for us in the **Head Office at 171 East Liberty Street, Suite 220, Toronto, Ontario, M6K 3P6**. Notices can be sent by mail to our legal address for the purposes of giving notice or other documents to us under the *Residential Tenancies Act*, which is **171 East Liberty Street, Suite 220, Toronto, Ontario, M6K 3P6**. If you mail a notice to us, then you can't hold us responsible for not acting on it until after we have actually received the notice. We can change the address where notices or other documents are supposed to be delivered to us by giving you notice telling you what our new address is.
- 10.3 You understand that not everyone who works for us has the authority to speak for us. Therefore, if you have to make an agreement or arrangement with respect to the Unit and/or the Building or anything else related to this Agreement, it is only binding on us if it is in writing and signed by our President and CEO.

## 11. GENERAL

- 11.1 This Agreement is meant to complement our rights under the *Residential Tenancies Act*, but it does not limit or modify our rights under the *Residential Tenancies Act* and other relevant laws. If, for some reason, a part of this Agreement can't be enforced, the rest of the Agreement will not be affected, and will still be enforceable. All references to the *Residential Tenancies Act* in this Agreement include any regulations under that law and any successor laws which might be enacted to replace or add to it.
- 11.2 Even if we accept payments from you, or let you stay in the Unit after we have an order evicting you, you will have to leave the Unit unless we agree in writing that you can stay. Also, if you have given us notice that this Agreement has ended, or if we agree with you to end this Agreement, and you change your mind about moving out, you will have to leave the Unit, unless we agree in writing that you can stay. If we give you extra time to do something that has to be done under this Agreement, or if we do not complain when you do something that is not permitted in the Unit or at the Building, we can still later insist that you do everything that you are supposed to do according to this Agreement.
- 11.3 This Agreement creates rights and obligations for you and us, which are binding upon and which can be enforced and enjoyed by our successors and assigns and by your heirs, executors, administrators, successors and authorized assigns.
- 11.4 If more than one person is a "tenant" of the Unit, each person is fully responsible to comply with this Agreement. Therefore, if, for example, one tenant does not pay her or his share of rent, the other tenant or tenants are not excused from their obligation to make sure that we are paid the entire monthly rent. This is called a "joint and several" tenancy agreement which means that each tenant is equally responsible and individually responsible for all the obligations under this Agreement.
- 11.5 The Tenant acknowledges receipt of a copy of the Head Lease and that this Lease is subject to all of the terms and conditions of the Head Lease. If there is any conflict between a provision of this Agreement and a provision of the Head Lease which would permit the Tenant to do or cause or be done or suffer or permit any act or thing to be done which is prohibited by the Head Lease, then the provisions of the Head Lease shall prevail. The exercise by the Head Landlord of any of its rights contained in the Head Lease shall, upon written notice by the Head Landlord or the Landlord to the Tenant of such exercise, be binding upon the Tenant.

## 12. AGREEMENT AND ACKNOWLEDGMENT

We, the Landlord, have read this Agreement and understand what we have to do as the owner of the Building.

**Toronto Artscape Inc.**

Date:

By:

Name:

Title: President and CEO

I have authority to bind the corporation.

I/We, the Tenant, have had a chance to read this Agreement and I/we have been encouraged to read this Agreement very carefully. I/We understand my/our rights and responsibilities as a tenant at the Building, which I/we agree to fully, obey as the Tenant. I/We agree that any Schedules to this Agreement form a part of this Agreement and that I/we will comply with the terms and conditions of the Schedules, as well as this Agreement. I/We acknowledge that the Landlord may change these schedules from time to time, and we agree to comply with any new schedule when we receive a copy of it. I/We confirm and agree that Tenant's Certificate that I/we have signed is accurate and complete as for today's date.

Date:

Tenant

Tenant

I (we) have received a copy of this Agreement signed by Toronto Artscape Inc. and by me (us); a copy of the Rules and a copy of the Tenants Certificate.

Date:

Tenant

Tenant

SCHEDULE G

DELETED



SCHEDULE H  
OPERATING COST CHARGES AS OF DATE OF LEASE

**OPERATING EXPENSES****SALARIES AND BENEFITS**

Salaries

Training

Benefits

Apartment Benefit

**TOTAL SALARIES AND BENEFITS****UTILITIES**

Hydro

Water / Sewer

Gas/Oil

**TOTAL UTILITIES****SECURITY**

Security

**TOTAL SECURITY****REPAIRS & MAINTENANCE**

Intercom

Elevator

Garbage Removal

Pest Control

Snow Removal &amp; Landscaping

Garage Cleaning

Fire Equipment &amp; Plans

Painting &amp; Plastering

Pool &amp; Recreation Area

Cleaning

General Repairs

Cleaning Supplies

HVAC Contracts

Mechanical &amp; Plumbing Repairs

Appliance Repairs

Electrical Repairs

Mechanical and Plumbing Supplies

Electrical Supplies

**TOTAL REPAIRS AND MAINTENANCE****GENERAL & ADMINISTRATION**

Delivery

Office Supplies

Miscellaneous

Telephone

**TOTAL GENERAL AND ADMINISTRATION**

**PROFESSIONAL FEES**

Legal

Consulting

**TOTAL PROFESSIONAL FEES**

**INSURANCE**

Insurance

**TOTAL INSURANCE**

**REALTY TAXES**

Realty Taxes

Note: Assumed to be NIL provided exemption is obtained

SCHEDULE I  
NON-DISTURBANCE AGREEMENT

**SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT**

**THIS AGREEMENT** made as of the  day of , 20, among  Insert as applicable, i.e. for CMBS – Computershare Trust Company of Canada (the “Mortgagee”) and  (the “Tenant”) and the City of Toronto (the “City”).

**WHEREAS:**

- A. The Mortgagee holds, as security for a loan made by it to  (the “Mortgagor”), a mortgage and other security (collectively the “Mortgage”) on the real property with the buildings and improvements erected thereon and known as , in the Province of  and more particularly described in Schedule “A” (the “Mortgaged Premises”) which Mortgage is dated  and was registered in the Land Titles Office for  (No. ) as Instrument No.  on the  day of , 20
- B. The Mortgagor is the owner of the Mortgaged Premises;
- C. The Tenant is a tenant of the Mortgagor in respect of certain premises referred to as the Live/Work premises located on part of the Mortgaged Premises (the “Leased Premises”), for a term of Fifty (50) years, less one day (the “Term”), pursuant to the terms and conditions of a lease dated \_\_\_ (the “Lease”);
- D. The City is a party to the Lease with certain rights to secure the Term of the Lease, including the right to assign the Lease, assume the Lease, or terminate the Lease, on the terms and conditions set out in the Lease, and is a party to this Agreement for the sole purpose of protecting its rights under the Lease;
- E. The Tenant and the Mortgagee desire to confirm their understanding with respect to the Lease and the Mortgage;

**NOW THEREFORE, in consideration of the premises, mutual covenants and agreements herein contained, the Tenant and the Mortgagee hereby covenant and agree as follows:**

- 1. Subordination. Except as otherwise expressly provided in this Agreement, the Lease and the Tenant's interest in the Leased Premises are now and will at all times continue to be in each and every respect subject and subordinate to the Mortgage, and to any and all increases, renewals, amendments, modifications, supplements, extensions, consolidations and replacements of the Mortgage, including without limitation, amendments which increase the amount of the indebtedness secured by the Mortgage. Any and all such increases, renewals, amendments, modifications, supplements, extensions, consolidations and replacements of the Mortgage shall be subject to and entitled to the benefits of the terms of this Agreement. Notwithstanding the foregoing, nothing contained in this Agreement shall be deemed to affect the obligations of the landlord under the Lease.
- 2. Non-Disturbance. So long as the Lease is in full force and effect and Tenant is not in default (beyond any period given the Tenant to cure such default) in the payment of rent or any other amount owing under the Lease or in the performance of any of the terms, covenants or conditions of the Lease on the Tenant's part to be performed, and does not prepay rent or any other amount owing under the Lease except as currently required under the Lease, the Tenant's possession and occupancy of the Leased Premises and the Tenant's rights and privileges under the Lease, or any extensions or renewals thereof which may be effected in accordance with any option therefore in the Lease, shall not be disturbed, diminished or interfered with by the Mortgagee, and the Mortgagee will not join the Tenant or the City as a party defendant in any action or proceeding for the purpose of terminating the Tenant's or the City's interest and estate under the Lease because of any default under the Mortgage.
- 3. The Mortgagee acknowledges that the City is a party to the Lease, and the Mortgagee has reviewed and is familiar with Article 12 of the Lease, which sets out the City's rights to assign the Lease, assume the Lease or terminate the Lease, in accordance with its rights set out in Article 12 of the Lease. The City is a party of this Agreement for the sole purpose of protecting its rights under the Lease. Notwithstanding anything contained herein, the City may exercise its rights to assign the Lease, assume the Lease or terminate the Lease, in accordance with its rights set out in the Lease, without any interference or disturbance whatsoever from the Mortgagee.
- 4. Attornment. In the event that the Mortgagee or a third party (including, without limitation, a receiver) acquires the interest of the Mortgagor in or takes possession of the Mortgaged Premises or succeeds to the interest of the Mortgagor under the Lease as a result of a default under the Mortgage,

the Tenant shall be bound to the Mortgagee or the third party under all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining and any extensions or renewals thereof which may be effected in accordance with any option therefore in the Lease, with the same force and effect as if the Mortgagee or the third party were the landlord under the Lease, and the Tenant hereby attorns to the Mortgagee or the third party as its landlord under the Lease. Such attornment shall be effective without the execution of any further instruments on the part of any of the parties hereto immediately upon the Mortgagee or the third party taking possession of the Mortgaged Premises or acquiring the interest of the Mortgagor in the Mortgaged Premises or succeeding to the interest of the Mortgagor under the Lease. The Tenant shall be under no obligation to pay rent or any other amount owing under the Lease to the Mortgagee or the third party until the Tenant receives written notice from the Mortgagee or the third party that it has acquired the interest of the Mortgagor in or taken possession of the Mortgaged Premises or succeeded to the interest of the Mortgagor under the Lease. Upon receipt of such written notice, Tenant shall make all payments of rent and of any other amount owing under the Lease directly to the Mortgagee or the third party. Notwithstanding that the Tenant has attorned to the Mortgagee or the third party as its landlord under the Lease, the Mortgagee or the third party shall not be:

- (a) liable for any act or omission of, or any breach of any representation or warranty by, any prior landlord (including the Mortgagor);
  - (b) subject to any set-offs or defences that the Tenant might have against any prior landlord (including the Mortgagor);
  - (c) bound by any rent which the Tenant might have paid for more than the current month to any prior landlord (including the Mortgagor) or any other amount owing under the Lease which the Tenant might have paid in advance of its due date except as currently required under the Lease to any prior landlord (including the Mortgagor);
  - (d) bound by any amendment, modification or assignment of the Lease made without its' written consent, provided that the Tenant shall not require the consent of the Lender where a sublet or assignment is permitted without the consent of the Landlord, in accordance with the Lease;
  - (e) responsible for the return of any security deposit delivered to any prior landlord under the Lease (including the Mortgagor) and not subsequently received by the Mortgagee; or
  - (f) responsible to make repairs in or to the Mortgaged Premises, or apply any insurance proceeds or cash condemnation awards to make such repairs, in the case of damage or destruction of the Mortgaged Premises, or any part thereof, including, without limitation, due to fire or other casualty or by reason of condemnation, provided that any right of the Tenant under the Lease to terminate the Lease in such circumstances shall be preserved.
5. Tenant Representations. The Tenant certifies, represents and warrants that:
- (a) the term of the Lease shall commence in accordance with the terms of the Lease;
  - (b) the Tenant shall accept possession of the Leased Premises and any improvements required by the terms of the Lease in accordance with the terms of the Lease;
  - (c) no rent or any other amount owing under the Lease has been paid in advance of its due date except as currently required by the Lease;
  - (d) to the best knowledge of the Tenant the Mortgagor is not in default under the Lease; and
  - (e) the Tenant, as of the date of this Agreement, has no charge, lien or claim of set-off under the Lease or otherwise against the rents or any other amount owing thereunder.
6. Notices under the Lease and Mortgagee Right to Cure. Tenant shall give Mortgagee, concurrently with giving any notice to landlord under the Lease, a copy of any such notice in the manner set forth below. In addition, the Tenant agrees that, until the Mortgage is released by Mortgagee, it will not exercise any remedies under the Lease for landlord defaults without having first given to Mortgagee:
- (a) written notice of the details of the alleged landlord default; and
  - (b) the opportunity to cure such default within the longer of:
    - (i) 30 days after the cure period provided under the Lease to landlord,
    - (ii) 30 days from Mortgagee's receipt of Tenant's notice to Mortgagee of a landlord default, or

- (iii) if cure of such default requires possession of the Mortgaged Premises, 30 days after Mortgagee has obtained possession of the Mortgaged Premises provided that Mortgagee diligently commences an action or proceeding to obtain possession.
- 7. Tenant acknowledges that Mortgagee is not obligated to cure any landlord default, but if Mortgagee so elects to do so, Tenant agrees to accept cure by Mortgagee as that of landlord under the Lease and will not exercise any right or remedy under the Lease for a landlord default. Performance rendered by Mortgagee on landlord's behalf is without prejudice to Mortgagee's rights against landlord under the Mortgage or any other documents executed by landlord in favour of Mortgagee in connection with the Mortgage. Mortgagee shall have and is granted by Tenant the right to enter upon the Leased Premises for the purpose of causing any cure for which this Agreement provides.
- 8. Tenant's Covenants. The Tenant covenants and agrees with the Mortgagee that the Tenant will not:
  - (a) prepay rent or any other amount owing under the Lease, except as currently required under the Lease;
  - (b) surrender the Lease, except as provided for under the Lease;
  - (c) amend, modify, or assign the Lease or sublease the Leased Premises without the Mortgagee's written consent, provided that (i) the Lease may be assigned by the City in accordance with its rights set out in Article 12 of the Lease and (ii) the Tenant shall not require the consent of the Lender where a sublet or assignment is permitted without the consent of the Landlord, in accordance with the Lease;
  - (d) consent to the termination of the Lease by landlord, other than a termination by landlord pursuant to the express provisions of the Lease; or
  - (e) exercise any right, power, or privilege which it may have to terminate the Lease including, without limitation, by reason of any act or omission of the Mortgagor or by reason of the bankruptcy or insolvency of the Mortgagor, until the Tenant shall have given written notice to the Mortgagee pursuant to section 5 hereof.
- 9. Notice of Mortgage. To the extent that the Lease shall entitle the Tenant to notice of any mortgage, this Agreement shall constitute such notice to the Tenant with respect to the Mortgage and to any and all other mortgages which may hereafter be affected by this Agreement.
- 10. Notices. All notices under this Agreement will be effective only if made in writing and personally delivered to the office of the other party or delivered by courier or sent by facsimile transmission or email to the applicable address set out in Schedule "A" attached hereto, or to such other address as may be specified by notice by either party to the other. Any party may change its address for the foregoing purposes by giving the other party notice of such change of address as provided aforesaid. Any notices personally delivered shall be deemed to have been given upon the day of delivery. Any other notices shall be deemed to be received on the business day next following the day it is delivered or sent. A "business day" means any day of the week except a Saturday, a Sunday or a statutory holiday in the province in which the Mortgaged Premises is located.
- 11. Governing Law & Interpretation. This Agreement shall be governed by the laws of the province in which the Mortgaged Premises is located and the laws of Canada applicable therein, without regard to the choice of law rules of such province. References herein to Mortgagor, Mortgagee and Tenant shall mean and include their respective successors and assigns. The headings of paragraphs in this Agreement are provided for convenience only and shall not affect the interpretation of the paragraphs.
- 12. Waiver. No waiver of any of the provisions hereof shall be effective unless such waiver is in writing and signed by the party so waiving and any such waiver shall not be construed as a waiver in respect of any other failure, breach or default not expressly identified by such written waiver. No failure or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall be construed as a waiver thereof.
- 13. Further Assurances. Each party will from time to time, upon any reasonable request of the other, make, execute and deliver, or cause to be made, executed and delivered, all such further acts, deeds, assurances and things as may be required or necessary to more effectually implement and carry out the true intent and meaning of this Agreement.
- 14. Miscellaneous. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto or their respective successors in interest. This Agreement shall enure to the benefit of and be binding upon the parties hereto, their successors and assigns. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision

of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

- 15. Entire Agreement. This Agreement constitutes the entire understanding and agreement between the parties regarding the subject matter hereof, including the subordination of the Lease, and supersedes all prior oral and written understanding or agreement, with respect to the subject matter hereof.
- 16. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together constitute a fully executed agreement even though all signatures do not appear on the same document. A signed copy of this Agreement delivered by facsimile or e-mail shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

IN WITNESS HEREOF the parties hereto have executed this Agreement.

**Mortgagee**

**Tenant**

Per: \_\_\_\_\_  
 Name:  
 Title:

Per: \_\_\_\_\_  
 Name:  
 Title:

Per: \_\_\_\_\_  
 Name:  
 Title:

Per: \_\_\_\_\_  
 Name:  
 Title:

*I/We have the authority to bind the Corporation*

*I/We have the authority to bind the Corporation*

**City of Toronto**

Per: \_\_\_\_\_  
 Name:  
 Title:

Per: \_\_\_\_\_  
 Name:  
 Title:

*I/We have the authority to bind the Corporation*

**SCHEDULE "A"**

**LEGAL DESCRIPTION OF MORTGAGED PREMISES**

Municipal Address: , Ontario

Legal Description:

PIN:

Registry Office: Land Titles Division of  (No. ) at

**ADDRESS FOR NOTICE**

**MORTGAGOR ACKNOWLEDGEMENT**

In consideration of the loan made to it by the Mortgagee and other valuable consideration, the undersigned Mortgagor under the Mortgage and landlord under the Lease hereby acknowledges and agrees to the terms of this Subordination, Non-Disturbance and Attornment Agreement.

Date: \_\_\_\_\_

Mortgagor/Landlord

Per: \_\_\_\_\_

Name:

Title:

Per: \_\_\_\_\_

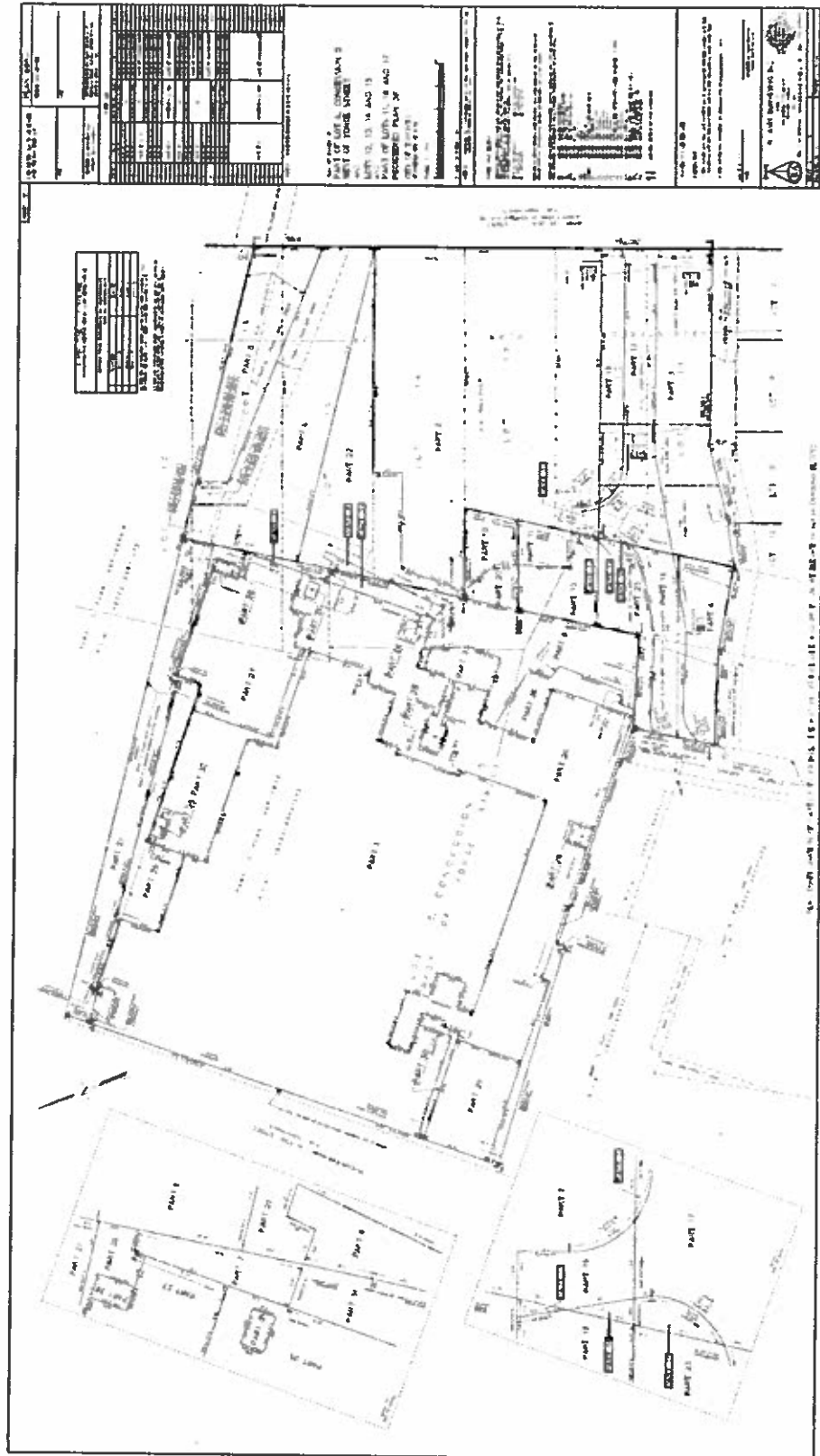
Name:

Title:

I/We have authority to bind the Corporation



# SCHEDULE J DRAFT REFERENCE PLAN



This is Exhibit "G" referred to in the Affidavit of Ben Macintosh, affirmed by Ben Macintosh, at the City of Toronto, in the Province of Ontario, before me on this 3<sup>rd</sup> day of January, 2024, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

*Christopher J. Henderson*

Christopher J. Henderson  
*Commissioner for Taking Affidavits*

## **CITY OF TORONTO**

- and -

## **TORONTO ARTSCAPE INC.**

---

## **CONTRIBUTION AGREEMENT**

**210 Simcoe Street, Toronto**

This Agreement made the        day of November, 2014.

**BETWEEN:**

**CITY OF TORONTO**

(hereinafter called the "City")

-and-

**TORONTO ARTSCAPE INC.**

(hereinafter called the "Artscape")

**WHEREAS:**

- A. A public benefit, in the form of fourteen residential condominium units ("the Units") in a new development at 210 Simcoe Street, has been secured by the City entering into an agreement under section 37 of the *Planning Act*, R.S.O. 1990, c. P. 13 with the developer of the Units;
- B. Artscape has developed a model for delivering affordable home ownership units to the arts community which includes a means of securing the ongoing affordability for subsequent owners of the condominium units; and
- C. At its meeting held on July 12, 13 and 14, 2011, Council passed Item No. TE11.8 naming Artscape as the party to deliver the public benefit and, as a result, Artscape and the City wish to enter into this agreement to set out the terms and conditions under which the public benefit will be administered.

**NOW THEREFORE**, the City and Artscape agree with each other as follows:

**1. INTERPRETATION**

In this Agreement, including all Schedules attached hereto, unless the context requires otherwise, the following terms have the meaning set out in this section.

**"Affordability Period"** means for so long as this Agreement remains in effect;

**"Affordable Ownership Housing"** means Housing that is affordable to individuals and households with an income at or below the sixtieth (60<sup>th</sup>) percentile of income for the

City of Toronto or the Province of Ontario, whichever is lower, as defined by the Ministry of Municipal Affairs and Housing on an annual basis under the Affordable Housing Program;

**"Artscape's Administration Costs"** means the administrative, legal, project management and legal fees reasonably incurred directly in relation to the development at 210 Simcoe Street, which shall be capped at \$210,000;

**"Average Market Rents" or "Average Rents" or "AMR"** means average monthly Toronto-wide rents by unit type as determined in the end-of-year survey of City-wide rents for the prior calendar year published by CMHC; if CMHC does not publish a survey of City-wide rents, then "average market rents" for the calendar year shall be City-wide average rents as determined by the City acting reasonably;

**"Artscape Home Ownership Program" or "the Program"** means the model for affordable home ownership developed by Artscape and approved by the City;

**"Director"** means the Director responsible for the Affordable Housing Office and includes his or her designate or successor, if any;

**"Disposition"** means the Eligible Purchaser ceasing to occupy a Unit as his principle residence for more than a period of six months by leasing, selling, or otherwise;

**"Eligible Purchaser"** means a purchaser who satisfies the Purchaser Eligibility Criteria as defined in Schedule "A";

**"Housing"** means residential accommodation and facilities, common areas and services used directly with the residential accommodation. Housing does not include commercial or institutional premises, social or recreational services, and services or facilities related to mental or physical health care, education, corrections, food services, social support or public recreation;

**"Household Income"** means total gross household income from all sources of all persons who reside in a Rental Unit or who will reside in a Rental Unit, if it is rented to them.

**"Maximum Price"** means the average resale price for a home in the City of Toronto at the time an Eligible Purchaser enters into an assignment of or an agreement to purchase a Unit, such Maximum Price being \$542,075.00 at the time of the entering into of this Agreement;

**"Monthly Occupancy Costs"** means the total of the monthly rent payable to the Landlord for a housing unit including hydro, heat, water and hot water; "Monthly Occupancy Costs" do not include charges for parking, cable, telephone and condominium common expenses or any other like charges;

**"Monthly Shelter Costs"** means the total of mortgage principal and interest, based on a 25 year amortization, a minimum 10% down payment and the chartered administered mortgage rate for a conventional 5-year mortgage as reported by the Bank of Canada, plus property taxes calculated on a monthly basis;

**"Ownership Units"** means the 3 or 4 Units which will be disposed of by the Proponent pursuant to the Proponent's Home Ownership Program and the terms and conditions of this Agreement;

**"Parties"** means the City and Artscape and **"Party"** means any one of them, as the context may require;

**"PIPEDA"** means the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c 5, including any amendments thereto;

**"PIPEDA Protected Information"** means any "Personal Information" or "Personal Health Information", as defined under PIPEDA;

**"Planning Agreement"** means the agreement between the parties dated July 12, 2011, entered into pursuant to Section 37 of the *Planning Act*, R.S.O. 1990, c P.13;

**"Rental Unit"** means the one or 2 Units that will be retained by the Proponent and rented, in accordance with the terms of this Agreement;

**"Restriction"** means the restriction on sale and transfer to be registered on title to the Units pursuant to section 118 of the *Land Titles Act*, R.S.O., 1990, C.1.5;

**"Tenant Selection Policy"** means a policy established by the Proponent and approved by the Director, which Policy shall specify how tenants are to be selected and how information about such process is disseminated to the Proponent's constituency;

**"Units"** means the five residential condominium units located at 210 Simcoe Street being purchased by the Parties from 210 Simcoe Holdings Inc.

1.2 The following Schedules are attached to and form part of this Agreement:

Schedule "A" Purchaser Eligibility Criteria

Schedule "B" Annual Declaration of Occupancy

Schedule "C" Progress Report

Schedule "D" Final Report on Unit Sales

Schedule "E" Resale, Repayment and Activity Report

1.3 In the event of a conflict or inconsistency between the provisions of this Agreement and the provisions of a Schedule, the provisions of this Agreement shall prevail.

1.4 All references in this Agreement to section numbers are references to sections of this Agreement unless stated otherwise.

**2. AGREEMENT**

2.1 The parties have entered into agreements of purchase and sale with Simcoe Holdings Inc. for the purchase of the five Units at (the "Purchase Agreements"), in accordance with the terms of the Planning Agreement

2.2 Artscape agrees to use its best efforts to market the Units and assign the Purchase Agreements for the Ownership Units and to rent the Rental Units prior to the closing date set out in the Agreements.

2.3 Within 90 days of the execution of this Agreement, Artscape will submit to the City for approval Artscape's Tenant Selection Policy and Home Ownership Program for the Units, which Ownership Program shall include details of:

- a) an open and transparent marketing plan;
- b) purchaser eligibility criteria, which will include, at a minimum, the criteria set out in Schedule "A" to this agreement;
- c) income verification process;
- d) how affordability of the Units can be sustained during resale of the Units including the capital appreciation sharing scheme;
- e) a home ownership education plan;
- f) how requests for consents required by the Restriction will be handled; and
- g) how monitoring of owner occupation of the units will be handled and remedies for non-compliance.

2.4 Any Purchase Agreement not assigned to an Eligible Purchaser 180 days prior to the closing date set out in the Purchase Agreement, will be assigned to the City as sole purchaser and the City shall indemnify Artscape with respect to any liability for the Purchase Agreement or the Unit.

**3. CONDITIONS PRECEDENT TO RELEASE OF PURCHASE AGREEMENTS**

3.1 The City agrees to release its interest in each of the Purchase Agreements, by way of executing a Direction with respect to title in favour of an Eligible Purchaser, on no less than 15 business days notice from the Artscape, upon the following terms and conditions:

- a) the City having approved Artscape's Tenant Selection Policy and its Home Ownership Program, as set out above.

- b) the City being provided with a fully executed assignment of a Purchase Agreement, accompanied by the statutory declaration of the Artscape that the assignee is an Eligible Purchaser and which assignment;
  - i. indicates that the purchase price to be paid by the Eligible Purchaser does not exceed the Maximum Price;
  - ii. contains a provision for a second mortgage in favour of Artscape the principal amount of which shall be the difference between the amount payable to 210 Simcoe Holdings Inc. and the Eligible Purchaser's purchase price, less Artscape's Administration Costs, and which mortgage results in the Eligible Purchaser's Monthly Shelter Costs being equal to or less than Average Market Rent; and
  - iii. contains a clause wherein the Assignee acknowledges the registration of a restriction under section 118 of the *Land Titles Act* (the "Assignment") on title; and
- c) the City being provided with proof that 210 Simcoe Holdings Inc., has registered the Restriction.

#### **4. OBLIGATIONS OF ARTSCAPE**

##### **4.1 With respect to the Ownership Units, Artscape agrees to:**

- a) follow the Program as that Program may be amended from time to time as approved by the City, when assigning the Purchase Agreements and reselling the Units as they become available;
- b) promote and make information available about the Program and the Units in a fair and equitable manner including providing information about the process for determining Eligible Purchasers;
- c) adjust the principal amount of Artscape's home ownership assistance loan on the subsequent sale of a Unit, only to the extent the sale price of a Unit requires;
- d) not sell a Unit to Artscape or to a shareholder or a director of Artscape, or any individual not at arm's length to Artscape, a shareholder or a director of Artscape;
- e) provide the City with a minimum of ten (10) days notice that a consent is required, pursuant to the Restriction, which notice to be accompanied by the following information:
  - (i) copy of an assignment of or an agreement of purchase and sale;
  - (ii) copy of draft deed to new Eligible Purchaser; and

(iii) draft of Artscape's Charge from new Eligible Purchaser.

such other information or documentation as the City may request, acting reasonably

- f) maintain an adequate and appropriate administrative organizational structure sufficient to discharge its obligations pursuant to the Program and this Agreement;
- g) assign a representative of Artscape to act as a liaison with City staff for the purposes of this Agreement and will co-operate and work with City staff to evaluate the services which Artscape provides pursuant to this Agreement; and
- h) comply with the reporting requirements set out in this Agreement.

4.2 With respect to the Rental Units, Artscape agrees to

- a) ensure that, when first entering into a tenancy agreement, that the tenant has a Household Income that does not exceed four times the annual equivalent of the Monthly Occupancy Cost to be paid pursuant to the tenancy agreement. The verification of the Household Income will be determined in accordance with the City's Affordable Rental Housing – Income Verification Guide and in a form acceptable to the Director;
- b) ensure that each tenancy agreement with a residential tenant shall provide that the tenancy agreement is exempt from Section 8, paragraphs 6, 7 and 8 of subsection 30(1), sections 51, 52, 54, 55, 56 and 95 to 99, subsection 100(2) and sections 101, 102, 104, 111 to 115, 117, 120, 121, 122, 126 to 133, 140, 143, 149, 150, 151, 159, 165 and 167 of the Residential Tenancies Act, 2006;
- c) not rent a Rental Unit to the Proponent or shareholder or director of the Proponent, or any individual not at arm's length to the Proponent, shareholder or director of the Proponent;
- d) operate and maintain the Project, in accordance with the terms and conditions of this Agreement and in a good state of repair and fit for occupancy in the same manner as a prudent owner would do;
- e) manage the Project so the total average of the Monthly Occupancy Costs for the Project is maintained at a maximum of eighty percent (80%) of Average Market Rents for the Affordability Period;



- e) not increase the Monthly Occupancy Costs during the Affordability Period by more than the prevailing rent increase guideline established each calendar year pursuant to the Rent Acts, *Tenant Protection Act, 1997*, the *Residential Tenancies Act, 2006* or any successor legislation (the "Acts"), to an amount not to exceed Average Market Rent. The Proponent acknowledges that the rent increase guideline of the Rent Acts does not apply to the Project and agrees that the rent increase guideline applies by virtue of the contractual terms of this Agreement;
- f) ensure that each lease with a residential tenant shall:
  - i. provide that the disclosure to the City, by the Proponent of the tenant's personal information including Household Income, has been consented to by the tenant;
  - ii. provide the City with access to all information obtained from the tenant concerning the Household Income and family composition of each housing unit, which information the City may verify; and
  - iii. complies with the provisions of PIPEDA, in its collection and sharing of any PIPEDA Protected Information, collected and shared, in accordance with the terms of this Agreement.
- g) provide representatives of the City, with access to its books, records, and to the Project, subject to the rights of the residential tenants, if any, of the Project; and

## **5. REPORTING REQUIREMENTS**

- 5.1 During the period in which Artscape is negotiating assignments of the Purchase Agreements, Artscape shall quarterly, the first quarter to commence on the first day of the month following the execution of this Agreement, provide the City with a Progress Report substantially in the form attached hereto as Schedule "C" and such other information as may be determined by the Director, acting reasonably, from time to time.
- 5.2 Artscape shall provide to the City, no later than three (3) months from the date set for closing the last Assignment of the Purchase Agreements for the Units, with a Final Report on Unit Sales substantially in the form of the report attached hereto as Schedule "D", together with the following:
  - a. copies of all Transfers with respect to the Units;
  - b. copies of all Charges in favour of Artscape; and
  - c. such other information as may be determined by the Director, acting reasonably, from time to time.

- 5.3 Artscape shall provide to the City annually, with the first report being due one year from the date of registration of the last assignment of Purchase Agreement and every year thereafter on the anniversary of that day:

***Ownership:***

- a. copies of Annual Declarations of Occupancy attached hereto as Schedule "B" for each of the Units sold by Artscape;
- b. a report on any changes made to the Program since the date the last of the Purchase Agreements was assigned, or since the last report on changes; and
- c. such other information as may be determined by the Director, acting reasonably, from time to time.

***Rental:***

- d. the Gross Household Income and household composition for the Rental Units rented to new tenants during the year, in a form acceptable to the Director.
- 5.4 Artscape shall provide a report to the City, substantially in the form of the Resale, Repayment and Activity Report attached as Schedule "E", any sales or repayments of Artscape's Charge, within sixty (60) days of the transaction.
- 5.5 Artscape agrees to provide such other information, documentation or reports as reasonably requested by the City from time to time.

**6. RECORD KEEPING REQUIREMENTS**

- 6.1 Artscape is responsible for retaining the following documents for a minimum period of seven years:
- a. all approved applications;
  - b. the Canada Revenue Agency Notice of Assessment or other documentation verifying household income for all members of the Eligible Purchaser's household or other proof of income;
  - c. copies of photo identification for each Eligible Purchaser;
  - d. annual Declarations of Occupancy;
  - e. records of actions taken by Artscape with respect to any defaults under the terms of Artscape's Charge;
  - f. income verification documentation for the tenants of the Rental Units; and

- g. any other documentation pertinent to the administration of the Program with respect to the Units, as determined by the Director or Artscape, from time to time.

## **7. INDEMNITY AND LIMITATION OF LIABILITY**

- 7.1 Artscape agrees to indemnify the City and save it harmless from one hundred percent (100%) of all damages, losses, costs and expenses incurred by the City as a result of the negligence or willful misconduct of Artscape, or those for whom Artscape is, in law, responsible.

## **8. EVENTS OF DEFAULT**

The following shall be considered events of default by Artscape under this Agreement:

- a. failure to follow the Program as determined by the City, in its sole discretion;
- b. entering into an Assignment with a purchaser who Artscape knew or ought to have know is not as an Eligible Purchaser;
- c. failure to obtain an Annual Declarations of Occupancy in accordance with the terms of this Agreement;
- d. failure to verify the Household Income for a Rental Unit, on initial occupancy;
- e. renting a Rental Unit to a tenant who Artscape knew or ought to have known did not qualify to rent a Rental Unit;
- f. failure to report to the City, in accordance with the terms of this Agreement; and
- g. failure to keep the records required by the terms of this Agreement.

## **9. REMEDIES**

- 9.1 If an event of default occurs and the default is not corrected within thirty (30) days after written notice has been given to Artscape, the Director may, by written notice to Artscape:
  - a. request specific corrective or clarifying actions be taken, as determined by the Director, in his sole discretion; or
  - b. terminate this Agreement, demand assignment of all Artscape's Charges and a transfer of the Rental Units to the City.

9.2 All of the remedies available to the City under this Agreement, at equity and/or at law are cumulative and are not alternative and the City shall not be precluded from availing itself simultaneously of some or all of the said remedies.

9.3 Notwithstanding any of the terms of this Agreement, the City shall have the option of waiving any or all of his remedies under this Agreement, but no waiver of a provision shall be deemed to constitute a continuing waiver unless otherwise provided.

## 10. NOTICE

10.1 Any notice or other communication required, desired or permitted to be given by this Agreement shall be in writing and shall be effectively given if:

(a) sent by facsimile communication and confirmed by mailing the original document so sent by prepaid mail on the same or following day, addressed as follows:

**(i) in the case of notice to the City:**

City of Toronto  
Metro Hall, 55 John Street  
7<sup>th</sup> Floor  
Toronto, Ontario  
M5V 3C5

Attention: Director, Affordable Housing Office

Fax No.: 416-392-4219

**(ii) in the case of notice to Artscape:**

Toronto Artscape Inc.  
171 East Liberty Street  
Suite 224  
Toronto, Ontario  
M6K 3P6

Attention: Chief Executive Officer

Fax No.: 416-392-1059

- (b) or at such other address as the party to whom notice or other communication is to be given shall have advised the party giving same in the manner provided in this section. Any notice or other communications transmitted by facsimile communication shall be deemed to have been given and received on the day of its transmission, provided that such day is a Business Day and such transmission is completed before 4:30 p.m. on such day, failing which such notice or other communication shall be deemed to have been given and received on the first (1<sup>st</sup>) Business Day after its transmission. If there has been a mail stoppage and if a party sends a notice or other communication by facsimile communication, such party shall be relieved from the obligation to mail the original document in accordance with this paragraph.

## 11. GENERAL

- 11.1 Artscape shall, on seventy-two (72) hours prior written notice, give the City free access to such staff, documents, books, records and accounts as may be reasonably required by the City, for the purpose of verifying compliance with this Agreement. It is understood and agreed that this right to access for documents books, records and accounts shall exist for each unit for a period of up to five (5) years after each Artscape mortgage is discharged or each lease is terminated for a unit.
- 11.2 Artscape represents that it has not knowingly provided the City with any false or misleading information respecting the subject matter of this Agreement and agrees that it shall not knowingly provide any false or misleading information to the Minster in the performance of its obligations under this Agreement.
- 11.3 It is understood that the *Freedom of Information and Protection of Privacy Act* shall apply to all records submitted to or created by the City pursuant to this Agreement.
- 11.4 Artscape represents and warrants that:
  - (a) it shall preserve the PIPEDA compliance of all PIPEDA Protected information transferred to it by the City;
  - (b) it shall ensure the PIPEDA compliance of all PIPEDA Protected Information that it collects in the course of performing its contractual obligations; and
  - (c) it shall ensure the PIPEDA compliance of all Protected Information that it transfers to the City.
- 11.5 Nothing in this Agreement is to be construed as authorizing one party to contract for or incur any obligations on behalf of the other to act as agent for the other and nothing in this Agreement shall be construed to constitute the City and Artscape as partners of each other.
- 11.6 No officer, director, shareholder or member of Artscape, or any family of any officer, director, shareholder or member of Artscape shall be entitled to any benefit arising from

this Agreement, including without limitation, any contract, agreement or commission arising from or related to the Program.

- 11.7 Time shall in all respects be of the essence in this Agreement, provided that the time for doing or completing any matter provided for under this Agreement may be extended or abridged by agreement in writing signed by the City and their respective solicitors on their behalf, who are hereby expressly appointment in this regard.
- 11.8 This Agreement is made pursuant to and shall be governed by and construed in accordance with the laws of the Province of Ontario.
- 11.9 Any reference to a statute in this Agreement includes a reference to all regulations made pursuant to such statute, all amendments made to such statute and regulations in force from time to time and to any statute or regulation which may be passed and which has the effect of supplementing or superseding such statute or regulations.
- 11.10 The headings and subheading contained in this Agreement are inserted for convenience and for reference only and in no way define, limit or describe the scope or intent of this Agreement or form part of this Agreement.
- 11.11 The parties agree that there are no representations, warranties, covenants, agreements, collateral agreements or conditions affecting this Agreement other than as expressed in writing in this Agreement.
- 11.12 This Agreement shall be read with all changes of gender and number required by the context.
- 11.13 Each of the parties shall, at any time and from time to time, upon not less than twenty (20) Business Days prior written notice by the other Parties, execute and deliver to the other Parties a statement in writing confirming that this Agreement is in good standing, unmodified and in full force and effect, or if there have been modifications that the same are in good standing and in full force and effect, as modified, and stating the modifications. Where applicable, the statement shall state the defaults, if any, known to the Party to whom such request has been made and the action taken or proposed to be taken by such requested Party with respect to same.
- 11.14 Artscape shall not assign this Agreement without the prior written consent of the City, which consent may be withheld by the City, acting in its sole discretion.

11.15 This Agreement shall enure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns, provided that this paragraph shall in no way derogate from the provisions of Section 10.4 restricting Artscape's ability to assign this Agreement.

IN WITNESS THEREOF this Agreement has been executed by the Parties.

**CITY OF TORONTO**

per: 

Name: Sean Gadon

Title: Director, Affordable Housing Office

I have the authority to bind the Corporation.

**TORONTO ARTSCAPE INC.**

per: 

Name: Tim Jones

Title: President

Per: 

Name: Celia Smith

Title: Executive Vice President

I have the authority to bind the Corporation.

APPROVED AS TO FORM

For Anna Kinastowski  
City Solicitor

Authorized by Toronto and East York Community  
Council Item 8.1 as adopted by City of Toronto  
Council on July 12, 13 and 14, 2011

## **SCHEDULE "A"**

### **PURCHASER ELIGIBILITY CRITERIA**

A person seeking to be approved as an Eligible Purchaser must meet each of the following criteria at the time he or she applies for such approval:

- 1) be at least 18 years old and be a legal, permanent resident of Canada;
- 2) is currently renting his or her home and neither owns a home nor has an ownership interest in a home;
- 3) is not living in a spousal relationship with a person who owns a home or who has an ownership interest in a home;
- 4) meets the definition of Artist or Non-Profit Art Professional as that term is defined from time to time by Artscape's Advisory Committee for the purpose of its Program;
- 5) the total household annual income of all members of the individual's household cannot exceed at the time of application \$84,000.00 or such amount as the City may set from time to time. The household of an Eligible Purchaser shall be deemed to include and be limited to:
  - (i) the Eligible Purchaser;
  - (ii) any person with whom the Eligible Purchaser is living in a spousal relationship; and
  - (iii) any person over the age of eighteen (18) expected to be normally resident with the Eligible Purchaser at the time of the first occupancy of the Unit.
- 6) is qualified to obtain his or her own primary financing for the purchase of the Eligible Unit; and
- 7) is able to provide the following:
  - i) copy of photo identification;
  - ii) an original notice of assessment from Canada Revenue Agency or other equally reliable evidence of a stable source of income, as determined by Artscape; and
  - iii) a declaration that all information provided in the application is true and correct.



**SCHEDULE "B"**

**ANNUAL DECLARATION OF OCCUPANCY**

Artscape will use a declaration of occupancy substantially in the form below:

This will confirm that the undersigned [name of Eligible Purchaser] continues to occupy the property known as [Unit # \_\_\_\_\_, 210 Simcoe Street, Toronto] as my principal residence and at no time in the past year have I rented the property or ceased, in any way to occupy the property as my principal residence.

**DATED** at the City of Toronto this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
[signature of Eligible Purchaser]

**SCHEDULE "C"**

**PROGRESS REPORT**

Artscape will use a form substantially in the form below for reporting to the City on a quarterly basis during the Sales period and until all Assignments for Agreement for Units have closed.

Units: 210 Simcoe Street

Date: \_\_\_\_\_

Report Number: \_\_\_\_\_

Unit No.	Purchaser Name	Household Size		Household Income	From Social Housing	From Social Housing Waiting List	Loan Amount	Purchase Price	Scheduled Closing Date
		Adults	Children						

I hereby confirm that the above Purchasers and Units comply with all provisions and eligibility requirements set out in Schedule "A".

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**SCHEDULE "D"**

**FINAL REPORT ON UNIT SALES**

Artscape will use the following reporting form when all Units sales have been completed:

**Units:** 210 Simcoe Street

**Date:** \_\_\_\_\_

Unit No.	Purchaser Name	Client Type	Household Size		Household Income	From Social Housing	From Social Housing Waiting List	Purchase Price	Loan Amount	Closing Date
			Adults	Children						

**Legend**

**1. Client Type**

Family, Senior, Single, Aboriginal, Disabled, Recent Immigrant, or non-specific clientele

I hereby confirm that the above mentioned Purchasers comply with all provisions and eligibility requirements of the Artscape Home Ownership Assistance Program and the agreement with the City.

\_\_\_\_\_  
 Name Title Signature Date

**SCHEDULE "E"**

**RESALE, REPAYMENT AND ACTIVITY REPORT**

Artscape will use a form substantially in the form below for reporting to the City after any resale, repayment or other material activity affecting the Units as it occurs.

Units: 210 Simcoe Street

Date: \_\_\_\_\_

With respect to any resale of an Eligible Unit, cessation of occupancy by Eligible Purchaser:

Unit No.	Original Purchaser Name	Original Purchase Price	New Purchaser Name	Resale Price (if applicable)	Current Fair Market Value	Appreciation Since Original Purchase	Appreciation Payable under Artscape Mortgage	Reason for Payment	Date Payment Received

With respect to new purchasers through the resale of an Eligible Unit:

Unit No.	Purchaser Name	Client Type	Household Size		Household Income	From Social Housing	From Waiting List	Purchase Price	Loan Amount	Closing Date
			Adults	Children						

This is Exhibit "H" referred to in the Affidavit of Ben Macintosh, affirmed by Ben Macintosh, at the City of Toronto, in the Province of Ontario, before me on this 3<sup>rd</sup> day of January, 2024, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

*Christopher J. Henderson*

Christopher J. Henderson  
*Commissioner for Taking Affidavits*

## **HOME OWNERSHIP ASSISTANCE PROGRAM**

### **DELIVERY AGREEMENT**

**CITY OF TORONTO**

- and -

**TORONTO ARTSCAPE INC.**

---

**155-163 Dundas Street East**

**and**

**210 Simcoe Street**

**HOME OWNERSHIP ASSISTANCE PROGRAM  
DELIVERY AGREEMENT**

This Agreement made the                      day of November, 2014.

**BETWEEN:**

**CITY OF TORONTO**

(hereinafter called the "City")

-and-

**TORONTO ARTSCAPE INC.**

(hereinafter called the "Proponent")

**WHEREAS:**

- A. In order to assist not-for-profit housing corporations with the creation of new affordable home ownership housing units, Council of the City of Toronto approved a report Item EX 46.18 "Standardizing City Support for New Assisted Ownership Housing Opportunities" at its meeting held May 11, 2010 and, thereby, established the Home Ownership Assistance Program;
- B. The City has established a revolving fund to assist not-for-profit housing corporations that have an established method of delivering home ownership to lower income families and that converts the City's development cost assistance into down payment assistance for home buyers; and
- C. The City issued Request for Proposal 9155-13-7046, seeking non-profit housing corporations to deliver its Home Ownership Assistance Program Funding and the Proponent has been chosen to deliver the Program at the properties currently municipally known as **155-163 Dundas Street East** and **210 Simcoe Street** in accordance with the terms of this Agreement.

**NOW THEREFORE**, the City and the Proponent agree as follows:

**1. INTERPRETATION**

In this Agreement, including all Schedules attached hereto, unless the context requires otherwise, the following terms have the meaning set out in this section.

**"Affordable Housing"** means Housing that is affordable to individuals and households with an income at or below the sixtieth (60<sup>th</sup>) percentile of income for the City of Toronto or the Province of Ontario, whichever is lower, as defined by the Ministry of Municipal Affairs and Housing on an annual basis under the Affordable Housing Program;

**“Business Day”** means each Monday, Tuesday, Wednesday, Thursday and Friday except when any such day occurs on a statutory holiday observed in Ontario;

**“Charge”** means the second charge to be provided by an Eligible Purchaser to secure the Loan;

**“Director”** means the Director, Affordable Housing Office, City of Toronto;

**“Eligible Purchaser”** means a purchaser who satisfies the Purchaser Eligibility Criteria as defined in Schedule “A”;

**“Eligible Unit”** means a Unit that meets the Unit Eligibility Criteria as defined in Schedule “B”;

**“HOAP”** or **“the Program”** means the City of Toronto’s Home Ownership Assistance Program, as enabled by the City’s Home Ownership Assistance Fund;

**“Housing”** means residential accommodation and facilities and including parking, storage lockers, common area, and services used directly with the residential accommodation. Housing does not include commercial or institutional premises, social or recreational services and services or facilities related to mental or physical health care, education, corrections, food services, social support or public recreation;

**“Loan”** means a home purchase assistance loan under the Home Ownership Assistance Program made by the Proponent to an Eligible Purchaser for an Eligible Unit, pursuant to the terms of this Agreement;

**“Loan Agreement”** means the agreement entered into between the Proponent and an Eligible Purchaser with respect to the Loan and containing, at minimum, the terms set out in Schedule “D” hereof;

**“Non-Profit”** means a corporation without share capital as that term is defined by the Ontario *Corporations Act*, R.S.O., 1990 Chapter 38;

**“Parties”** means the City, the Proponent, and **“Party”** means any one of them, as the context may require;

**“PIPEDA”** means the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c 5, including any amendments thereto;

**“PIPEDA Protected Information”** means any “Personal Information” or “Personal Health Information”, as defined under PIPEDA;

**“Predevelopment or Development Costs”** means any costs incurred in negotiating for, acquiring, and selling the Affordable Housing Units in the Projects;

**“Program Fund(s)”** means the City of Toronto fund for City’s Home Ownership Assistance Program;

**“Project”** means any of the up to 14 Affordable Housing Units in the property currently municipally known as 155-163 Dundas Street East or any of the up to 4 Affordable Housing Units in the property currently municipally known as 210 Simcoe Street, and that will be the

recipients of Home Ownership Assistance Program funding, in accordance with the terms and conditions of this agreement;

**“Unit”** means a self-contained residential dwelling in the Project.

1.2 The following Schedules are attached to and form part of this Agreement:

Schedule “A” Purchaser Eligibility Criteria

Schedule “B” Unit Eligibility Criteria

Schedule “C” Application Form

Schedule “D” Terms of Loan Agreement

Schedule “E” CMHC Notice

Schedule “F” Quarterly Sales Report

Schedule “G” Annual Declaration of Occupancy

Schedule “H” Letter to Eligible Purchaser

Schedule “I” Solicitor's Letter

Schedule “J” Final Report on Completed HOAP Loans

Schedule “K” Annual Report on Resale, Repayment, Defaults and Activity

Schedule “L” Minimum Terms for Charge Given as Security for Loan

1.3 In the event of a conflict or inconsistency between the provisions of this Agreement and the provisions of a Schedule, the provisions of this Agreement shall prevail.

1.4 All references in this Agreement to section numbers are references to sections of this Agreement unless stated otherwise.

## **2. AGREEMENT**

2.1 The Proponent agrees to assist the City by delivering the Program, on the terms and conditions set out herein and with all due diligence, in a professional and competent manner and in accordance with the terms and conditions of this Agreement and any City guidelines, as they exist from time to time.



- 2.2 The City agrees to provide Program Funds to the Proponent, as follows:
- a) up to **THREE HUNDRED FIFTY THOUSAND DOLLARS (\$350,000.00)**, for the Project at the property currently municipally known as **155 -163 Dundas Street East**, and
  - b) up to **ONE HUNDRED THOUSAND DOLLARS (\$100,000.00)**, for the Project at the property currently municipally known as **210 Simcoe Avenue**.
- 2.3 The Proponent agrees to use the Program Funds provided under this Agreement for the following purposes, only:
- a) towards Predevelopment or Development Costs relating to each of the Projects; and
  - b) in lieu of repayment, for providing Loans to home buyers averaging, overall, Twenty-five Thousand Dollars (\$25,000.00) each. No Loan shall be less than Five Thousand Dollars (\$5,000).
- 2.4 Any Program Funds not assigned as a Loan within five years from the date of the advance of the Program Funds for the property currently municipally known as 155-163 Dundas Street East, and within four years from the date of the advance of the Program Funds for the property currently municipally known as 210 Simcoe Street, will be repaid by the Proponent to the City within 15 days of the respective anniversary of the advance.
- 2.5 Any Loans that are declined by Eligible Purchasers prior to advance will be repaid by the Proponent forthwith to the City.
- 2.6 The Proponent is not liable to the City for repayment to the City of any Loans, or portions thereof, or for any other amounts, except as provided hereunder.

### 3. **CONDITIONS PRECEDENT TO ADVANCE OF PROGRAM FUNDS**

- 3.1 The Program Funds will be made available within twenty-one (21) days of the satisfaction of the following conditions, for each of the two Projects:
- (a) the approval by the Director of Artscape's Home Ownership Program, which Program shall include details of:
    - (i) an open and transparent marketing plan;
    - (ii) purchaser eligibility criteria, which will include, at a minimum, the criteria set out in Schedule "A" to this agreement;
    - (iii) income verification process;
    - (iv) how affordability of the Units can be sustained during resales of the Units including the capital appreciation sharing scheme;
    - (v) a home ownership education plan;
    - (vi) how requests for consents required by the Restriction will be handled; and
    - (vii) how monitoring of owner occupation of the units will be handled and remedies for non-compliance.

- (b) the approval by the Director of a marketing plan which promotes applications from those who are social housing tenants or are households on the social housing waiting list and which plan, upon the request of the Director will be prepared after consultations with City Staff, Toronto Housing Connections, non-profit and co-operative rental housing providers and/or others in the vicinity of each of the Projects

#### **4. OBLIGATIONS OF THE PROPONENT**

- 4.1 The Proponent will promote the Program providing information to potential homebuyers about the process for determining purchaser and unit eligibility, application procedures and the registration of the Charge.
- 4.2 The Proponent shall open and maintain a revolving fund into which the advance of Program Funds will be deposited.
- 4.3 The Proponent shall:
  - a. assist potential homebuyers in completing applications for Loans, substantially in the form of the application attached hereto as Schedule "C";
  - b. review all applications for Loans received by it;
  - c. determine purchaser eligibility in accordance with the Program and any City guidelines in existence;
  - d. ensure the Unit Eligibility Criteria set out in Schedule "B" have been met.
  - e. inform applicants whether or not they have been approved for a Loan, in a timely manner and substantially in the form of the letter attached as Schedule "H";
  - f. review the terms and conditions of the Loan, with applicants to ensure such terms and conditions are fully understood;
- 4.4 Prior to making an advance of a Loan, the Proponent shall have entered into a Loan Agreement with the Eligible Purchaser that satisfies the minimum requirements as set out in Schedule "D";
- 4.5 On the date of completion of the agreement of purchase and sale for an Eligible Unit, the Eligible Purchaser will receive a credit for the principal amount of the Loan on the statement of adjustments for the Unit.
- 4.6 The Proponent will ensure that each Loan Agreement is secured by a charge, registered on the title to the Eligible Unit, the minimum terms of which are set out in Schedule "L" and that an opinion as to registration and priority of that charge, substantially in the form of the solicitor's opinion set out in Schedule "I" or a satisfactory policy of title insurance in favour of the Proponent, is provided by the solicitor for the Eligible Purchaser.
- 4.7 The home ownership assistance loan provided by the Proponent and the Loan may be secured by one charge, in favour of the Proponent.
- 4.8 The Charge and all Loan Agreements shall be taken by the Proponent in its own name, but the Proponent shall receive and hold all amounts payable to or received by the Proponent under or in

respect of a Loan Agreement or under or in respect of any policy of insurance on the Eligible Unit as trustee for the City to the extent of the City's beneficial interest in each Loan Agreement up to the principal amount of the Loan and any Capital Appreciation Amount attributable thereto.

- 4.9 It shall be the responsibility of the Proponent to administer the Loan Agreement and Charge, including, but not limited to preparing mortgage information and discharge statements, processing requests for postponements and registering discharges, as circumstances dictate, in a timely and reasonable manner.
- 4.10 The Proponent shall use commercially reasonable efforts to recover all monies due and owing to it under each Loan. In the event the Proponent has contributed to the principal amount of the charge, the Proponent shall assign proportionately to each beneficial interest in the Charge the costs to receive or to recover all monies due and owing under that Mortgage.
- 4.11 The Proponent is responsible for implementing any City guidelines and making such adjustments to procedures, purchase price and income levels as amendments thereto dictate, within 30 days of receipt of notice from the City of such amendments, provided that such amendments shall not affect Loans previously approved by the Proponent under prior City guidelines.
- 4.12 Any of the following received by the Proponent will be reallocated to the Eligible Purchasers on the resale of the unit.
  - a. all funds on account of repayment of the principal amount of the Loan received as a result of a sale of the Eligible Unit;
  - b. all funds on account of repayment of the principal amount of the Loan received as a result of proceedings to remedy default under the Charge;
  - c. all funds on account of repayment of the principal amount of the Loan received as a result of the repayment of the principal of the Charge prior to the end of its term; and
  - d. the Capital Appreciation Amount (as defined in Schedule "D") payable by Eligible Purchasers upon the occurrence of any event listed in 4.12 (a), (b) or (c).
- 4.13 The Proponent will assign a representative of the Proponent to act as a liaison with City staff for the purposes of this Agreement and will co-operate and work with City staff to evaluate the services provided by the Proponent pursuant to this Agreement.
- 4.14 The Proponent shall monitor the occupancy of each Eligible Unit so long as there is an outstanding Loan in a manner and with such frequency as is deemed appropriate by the Proponent and will obtain, at least annually, a Declaration of Occupancy substantially in the form of the declaration attached as Schedule "G".
- 4.15 The Proponent agrees to comply with all reporting requirements set out herein.
- 4.16 The Proponent acknowledges that, pursuant to the terms of this Agreement, it shall be deemed to be acting on the City's behalf in delivering the Program and the Proponent will ensure that any person (including but not limited to the employees and volunteers of the Proponent) providing services under this Agreement:
  - a. act with all due and reasonable diligence, professional skill and competence, all to the satisfaction of the Director, acting reasonably;

- b. comply with all directions of the City, which directions shall be given reasonably; and
  - c. refrain from making representations on behalf of the City which are beyond the scope of this Agreement.
- 4.17 The Proponent will maintain an adequate and appropriate administrative organizational structure sufficient to discharge its obligations pursuant to this Agreement, including those related to maintaining the on-going affordability of the Eligible Units from one Eligible Purchaser to the next, such as maintaining a waiting list of eligible purchasers and protocols regarding the timely resale of the Eligible Units.

## **5. REPORTING REQUIREMENTS**

- 5.1 The Proponent shall, quarterly, the first quarter to commence on the first day of the month following the execution of this Agreement, provide the City with a written report with respect to each Project's development and the allocation of the Loans, in the form of the report attached hereto as Schedule "F" and provide such other information as may be determined by the Director, acting reasonably, from time to time.
- 5.2 In the interest of ensuring access to Loans by tenants of social housing or who are households on the Housing Connections waiting list, the Proponent shall provide a written report on the efficacy of this marketing plan within 60 days of the execution of the last Loan Agreement
- 5.3 The Proponent shall, within thirty (30) days of the date of the registration of the last Charge, registered pursuant to the terms of this Agreement, provide the City with a final report on the use of the Program Funds, in the form of the report attached hereto as Schedule "J" and provide to the City:
- a. copies of all Loan Agreements;
  - b. copies of all Charges; and
  - c. such other information as may be required by the Director, Affordable Housing Office, acting reasonably, from time to time.
- 5.4 The Proponent shall provide the following to the City on an annual basis, commencing on the date of the first anniversary of the report set out in Section 5.2 above:
- a. a report on sales, repayments, and default activity substantially in the form of the report attached hereto as Schedule "K"; and
  - b. copies of Declarations of Occupancy for each outstanding Loan (the Proponent shall monitor the occupancy of each Eligible Unit, so long as there is an outstanding Loan, in a manner and with such frequency as is deemed appropriate by the Proponent and will obtain, at least annually, a Declaration of Occupancy substantially in the form of the declaration attached as Schedule "G").
- 5.5 The Proponent shall provide to the satisfaction of the Director, acting reasonably, a statement regarding the measures taken to monitor the occupancy of Eligible Units to ensure Eligible Units

are occupied by Eligible Purchasers, and such other information as may be determined by the Director, acting reasonably, from time to time.

## **6. RECORD KEEPING REQUIREMENTS**

6.1 The Proponent is responsible for retaining the following documents for each Loan, while that Loan is outstanding and for a period of three years after the security for such the Loan is discharged:

- a. signed application, including the declaration that all information is accurate;
- b. Canada Revenue Agency Notice of Assessment for all members of the Eligible Purchaser's household or other acceptable proof of income;
- c. copies of photo identification for each Eligible Purchaser;
- d. information used to determine Unit Eligibility;
- e. copy of the purchase and sale agreement;
- f. copy of the Loan Agreement;
- g. copy of the Charge;
- h. the Eligible Purchasers solicitor's opinion letter or title insurance policy;
- i. records of all payments and any defaults;
- j. annual Declarations of Occupancy; and
- k. records of actions taken by the Proponent with respect to any defaults, including demand letter, Notices of the Sale Under Mortgage;

in addition to any other documentation pertinent to the administration of the Loan, as determined by the Director or the Proponent, from time to time.

## **7. INDEMNITY AND LIMITATION OF LIABILITY**

7.1 The Proponent agrees to indemnify the City and save it harmless from one hundred percent (100%) of all damages, losses, costs and expenses incurred by the City as a result of the negligence or willful misconduct of the Proponent, or those for whom the Proponent is, in law, responsible.

7.2 Notwithstanding the foregoing, this indemnity shall not apply to claims that are covered by CMHC or other insurance or to claims to the extent that they are attributable to the negligence, bad faith or willful misconduct of the City or those for whom the City is in law responsible. The Proponent's liability under this Section shall not exceed the total amount of funding advanced to the Proponent, and not include indirect, consequential economic damages.

## **8. EVENTS OF DEFAULT**

The following shall be considered events of default by the Proponent under this Agreement:

- (a) failure to use the Program Funds in accordance with the terms of this Agreement;
- (b) failure to enter into a Loan Agreement for each Loan;
- (c) failure to obtain the required security for the Loan Agreement;
- (d) failure to take the required steps hereunder to obtain an annual Declaration of Occupancy;
- (e) failure to initiate appropriate mortgage remedies, where required;
- (f) making a Loan to a purchaser who the Proponent knew or ought to have known did not qualify as an Eligible Purchaser or with respect to a Unit that does not qualify as an Eligible Unit;
- (g) failure to act, in a businesslike manner, with respect to the default of any Loan made in accordance with this Agreement;
- (h) failure to comply with the reporting requirements of its Contribution Agreements with the City with respect to the Projects; and
- (i) failure to keep the records required by the terms of this Agreement.

## **9. REMEDIES**

- 9.1 If an event of default by the Proponent occurs and the default is not corrected within thirty (30) days after written notice has been given to the Proponent, the Director may, by written notice to the Proponent:
- a. request specific corrective or clarifying actions be taken, as determined by the Director, in his sole discretion; or
  - b. terminate this Agreement and demand immediate repayment of all Program Funds.
- 9.2 All of the remedies available to the City under this Agreement, at equity and/or at law are cumulative and are not alternative and the City shall not be precluded from availing itself simultaneously of some or all of the said remedies.
- 9.3 Notwithstanding any of the terms of this Agreement, the City shall have the option of waiving any or all of his remedies under this Agreement, but no waiver of a provision shall be deemed to constitute a continuing waiver unless otherwise provided.

## 10. NOTICE

10.1 Any notice or other communication required, desired or permitted to be given by this Agreement shall be in writing and shall be effectively given if:

(a) sent by facsimile communication, and confirmed by mailing the original document so sent by prepaid mail on the same or following day, addressed as follows:

(i) in the case of notice to the City:

City of Toronto  
Attention: Director, Affordable Housing Office  
Metro Hall, 55 John Street, 7<sup>th</sup> Floor  
Toronto, Ontario  
M5V 3C5 Fax No.: 416-392-4219

(ii) in the case of notice to the Proponent:

Toronto Artscape Inc.  
Attention: Chief Executive Officer  
171 East Liberty Street, Suite 224  
Toronto, Ontario  
M6K 3P6 Fax No.: 416-392-1059

(b) or at such other address as the party to whom notice or other communication is to be given shall have advised the party giving same in the manner provided in this section. Any notice or other communications transmitted by facsimile communication shall be deemed to have been given and received on the day of its transmission, provided that such day is a Business Day and such transmission is completed before 4:30 p.m. on such day, failing which such notice or other communication shall be deemed to have been given and received on the first (1<sup>st</sup>) Business Day after its transmission. If there has been a mail stoppage and if a party sends a notice or other communication by facsimile communication, such party shall be relieved from the obligation to mail the original document in accordance with this paragraph.

## 11. GENERAL

11.1 The Proponent shall, on forty-eight (48) hours prior written notice, give the City free access to such staff, documents, books, records and accounts as may be reasonably required by the City, for the purpose of verifying compliance with this Agreement. This section shall survive any expiry or termination of this Agreement.

11.2 The Proponent represents that it has not knowingly provided the City with any false or misleading information respecting the subject matter of this Agreement and agrees that it shall not knowingly provide any false or misleading information to the Minister in the performance of its obligations under this Agreement.

11.3 It is understood that the *Freedom of Information and Protection of Privacy Act* shall apply to all records submitted to or created by the City pursuant to this Agreement.

11.4 The Proponent represents and warrants that:

- a. it shall preserve the PIPEDA compliance of all PIPEDA Protected information transferred to it by the City;
  - b. it shall ensure the PIPEDA compliance of all PIPEDA Protected Information that it collects in the course of performing its contractual obligations; and
  - c. it shall ensure the PIPEDA compliance of all Protected Information that it transfers to the City.
- 11.5 Nothing in this Agreement is to be construed as authorizing one Party to contract for or incur any obligations on behalf of the other to act as agent for the other and nothing in this Agreement shall be construed to constitute the City and the Proponent as partners of each other.
- 11.6 No member of:
- a. the House of Commons or Senate of Canada; or
  - b. the Legislative Assembly of Ontario; or
  - c. the Municipal Council of the City; or
  - d. any officer, director, shareholder or member of the Proponent, nor any family member of any officer, director, shareholder or member of the Proponent
- shall be entitled to any benefit arising from this Agreement, including without limitation, any contract, agreement or commission arising from or related to the Program.
- 11.7 Time shall in all respects be of the essence in this Agreement, provided that the time for doing or completing any matter provided for under this Agreement may be extended or abridged by agreement in writing signed by the Parties or their respective solicitors on their behalf, who are hereby expressly appointment in this regard.
- 11.8 This Agreement is made pursuant to and shall be governed by and construed in accordance with the laws of the Province of Ontario.
- 11.9 Any reference to a statute in this Agreement includes a reference to all regulations made pursuant to such statute, all amendments made to such statute and regulations in force from time to time and to any statute or regulation which may be passed and which has the effect of supplementing or superseding such statute or regulations.
- 11.10 The headings and subheading contained in this Agreement are inserted for convenience and for reference only and in no way define, limit or describe the scope or intent of this Agreement or form part of this Agreement
- 11.11 The Parties agree that there are no representations, warranties, covenants, agreements, collateral agreements or conditions affecting this Agreement other than as expressed in writing in this Agreement.
- 11.12 This Agreement shall be read with all changes of gender and number required by the context.

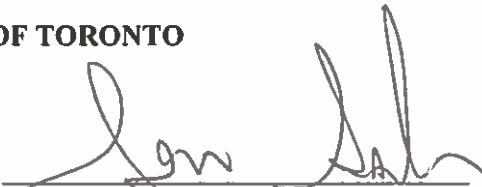


- 11.13 Each of the Parties shall, at any time and from time to time, upon not less than twenty (20) Business Days prior written notice by the other Parties, execute and deliver to the other Parties a statement in writing confirming that this Agreement is in good standing, unmodified and in full force and effect, or if there have been modifications that the same are in good standing and in full force and effect, as modified, and stating the modifications. Where applicable, the statement shall state the defaults, if any, known to the Party to whom such request has been made and the action taken or proposed to be taken by such requested Party with respect to same.
- 11.14 The Proponent shall not assign this Agreement without the prior written consent of the City, which consent may be withheld by the City, acting in its sole discretion. Notwithstanding the foregoing or any other provisions of this agreement, it is agreed by the Parties that if and to the extent that any matters, obligations or actions to be performed or undertaken by the Proponent under this Agreement require a brokerage licence pursuant to the Ontario Mortgage Brokerages, Lenders and Administrators Act, 2006, such matters, obligations and actions shall be undertaken and carried out by HOA Mortgage Services Inc. in place of the Proponent.
- 11.15 This Agreement shall ensure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns, provided that this paragraph shall in no way derogate from the provisions of Section 11.14 restricting the Proponent's ability to assign this Agreement.

IN WITNESS THEREOF this Agreement has been executed by the Parties.

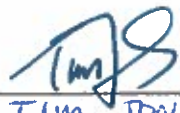
APPROVED AS TO FORM  
  
 For Anna Kinastowski  
 City Solicitor

**CITY OF TORONTO**

Per:   
 Name: Sean Gadon  
 Title: Director, Affordable Housing Office  
 Date: Nov. 17 2014

I have the authority to bind the Corporation.

**TORONTO ARTSCAPE INC.**

per:   
 Name: TIM JONES  
 Title: PRESIDENT + CEO  
 Date: NOV 12, 2014

I have the authority to bind the Corporation.

Authorized by Executive Committee  
 Item 42.18 as adopted by City of  
 Toronto Council on June 11, 12 and  
 13, 2014

## **SCHEDULE "A"**

### **PURCHASER ELIGIBILITY CRITERIA**

A person seeking to be approved as an Eligible Purchaser must meet each of the following criteria at the time he or she applies for such approval:

- 1) must be at least 18 years old and be a legal, permanent resident of Canada;
- 2) is currently renting his or her home and neither owns a home nor has an ownership interest in a home;
- 3) the individual cannot be living in a spousal relationship (including a same-sex relationship) with a person who owns a home or who has an ownership interest in a home;
- 4) must be purchasing an Eligible Unit;
- 5) the individual must be vacating a residential tenancy and must agree to occupy the Eligible Unit as his or her principal residence for the term of the HOAP Loan;
- 6) the total household annual income of all members of the individual's household cannot exceed at the time of application the sixtieth (60th) percentile of income for the City of Toronto or the Province of Ontario, whichever is lower, (currently \$85,800.00) as defined by the Ministry of Municipal Affairs and Housing under the Affordable Housing Program, the exact figure which will be communicated to the Proponent by the City, or such amount as the City may set from time to time. The household of an Eligible Purchaser shall be deemed to include and be limited to:
  - (i) the Eligible Purchaser;
  - (ii) any person with whom the Eligible Purchaser is living in a spousal relationship (including a same-sex spousal relationship); and
  - (iii) any person over the age of eighteen (18) expected to be normally resident with the Eligible Purchaser at the time of the first occupancy of the Unit.
- 7) the application for the Loan must be supported by:
  - i) copy of photo identification;
  - ii) an original notice of assessment from Canada Revenue Agency or other equally reliable evidence of a stable source of income, as determined by the Proponent; and
  - iii) a declaration that all information provided in the application is true and correct.
- 8) the individual agrees to obtain his or her own primary financing for the purchase of the Eligible Unit.

## **SCHEDULE "B"**

### **UNIT ELIGIBILITY CRITERIA**

To be an Eligible Unit, a Unit must satisfy each of the following requirements:

- a) it is either detached, semi-detached, town (condominium and freehold), a stacked home, a row house or an apartment within one of the Projects;
- b) the developer must not have received an exemption from City Planning fees, Development Charges, or other city incentives;
- c) the purchase price must be at or below the average price of a resale home in the City of Toronto (currently \$542,075.00) as defined by the Ministry of Municipal Affairs and Housing under the Affordable Housing Program, the exact figure which will be communicated to the Proponent by the City, or such amount as the City may set from time to time, and;
- d) it must be located at 155-163 Dundas Street East or 210 Simcoe Street (or such address as may be assigned by the City of Toronto during the development process) in the City of Toronto

**SCHEDULE "C"**

**HOME OWNERSHIP ASSISTANCE PROGRAM LOAN APPLICATION FORM**

The Proponent will use a Program loan Application Form substantially in the form below:

_____ NAME OF APPLICANT	_____ TELEPHONE NUMBER
_____ CURRENT ADDRESS – APT. NO., STREET	_____ E-MAIL ADDRESS
_____ CITY OR TOWN	_____ POSTAL CODE

CHECK YES OR NO OR ANSWER FOR THE FOLLOWING:

	Yes	No
ARE YOU AT LEAST 18 YEARS OLD?	_____	_____
DO YOU PLAN TO BUY A HOME WITHIN THE CITY OF TORONTO?	_____	_____
DO YOU CURRENTLY OWN A HOME OR AN INTEREST IN A HOME?	_____	_____
ARE YOU CURRENTLY RENTING?	_____	_____
ARE YOU CURRENTLY RENTING IN SOCIAL HOUSING?	_____	_____
ARE YOU CURRENTLY ON THE SOCIAL HOUSING WAITING LIST?	_____	_____
HAVE YOU BEEN PRE-QUALIFIED FOR A MORTGAGE?	_____	_____
IF "YES" NAME THE LENDER, INTEREST RATE QUOTED, AND THE AMOUNT THAT WAS APPROVED	_____	_____
HAVE YOU ATTENDED A MORTGAGE WORKSHOP?	_____	_____
IF "YES" WHO HOSTED THE WORKSHOP AND WHEN?	_____	_____
DOES YOUR SPOUSE CURRENTLY OWN A HOME OR AN INTEREST IN A HOME?	_____	_____
WHAT IS YOUR GROSS TOTAL HOUSEHOLD ANNUAL INCOME?	\$ _____	

INCLUDE THE INCOME FROM ALL MEMBERS OF THE HOUSEHOLD OVER 18 YEARS OF AGE. PLEASE SPECIFY INDIVIDUAL AMOUNTS BELOW.

\$ \_\_\_\_\_ \$ \_\_\_\_\_ \$ \_\_\_\_\_ \$ \_\_\_\_\_ \$ \_\_\_\_\_  
 YOURSELF SPOUSE OTHER OTHER OTHER

**NOTE: A HOUSEHOLD IS CONSIDERED TO INCLUDE THE FOLLOWING:**

- (1) THE APPLICANT;
- (2) ANY PERSON WITH WHOM THE APPLICANT IS LIVING IN A SPOUSAL RELATIONSHIP;
- (3) ANY PERSON OVER THE AGE OF SEVENTEEN EXPECTED TO BE NORMALLY RESIDENT WITH THE APPLICANT AT THE TIME OF FIRST OCCUPANCY OF THE HOME INCLUDING CHILDREN, GRANDPARENT, OTHER RELATIVES;
- (4) ATTACH A COPY OF YOUR CRA NOTICE OF ASSESSMENT FOR THE LAST TAXATION YEAR AND A LETTER OF EMPLOYMENT FROM YOUR EMPLOYER CONFIRMING EMPLOYMENT AND SALARY;

**ELIGIBILITY CRITERION—PLEASE REVIEW**

- APPLICANT'S GROSS HOUSEHOLD INCOME CANNOT EXCEED \$ \_\_\_\_\_ (85,800.00)
- HOMES UNDER CONSIDERATION FOR PURCHASE MUST NOT EXCEED \$ \_\_\_\_\_ (542,075.00)
- THE HOME TO BE PURCHASED MUST BE WITHIN THE CITY OF TORONTO.

**Acknowledgement**

I/we hereby declare and certify that the above information is correct. I/we understand that this is an application for a forgivable loan under the City of Toronto's Home Ownership Assistance Program. Final confirmation of eligibility will be made after a firm and binding agreement of purchase and sale for an eligible unit is provided to representatives of TORONTO ARTSCAPE INC.

Personal information contained in this form or any attachments hereto is collected by TORONTO ARTSCAPE INC. for the express purpose of determining eligibility for Homeownership Funding under the Home Ownership Assistance Program. Any questions regarding the collection or release of this information should be directed to representatives of TORONTO ARTSCAPE INC. at 416 -392-1038.

_____ SIGNATURE	_____ PRINT NAME	_____ DATE
_____ SIGNATURE	_____ PRINT NAME	_____ DATE

## SCHEDULE "D"

### TERMS OF LOAN AGREEMENT

The following terms shall be set out in the Loan Agreement between the Proponent and the Eligible Purchaser with respect to the Loan, where applicable

#### *Definitions*

**"Original Purchase Price"** means the purchase price set out in the agreement of purchase and sale for the Eligible Unit;

**"Charge"** means the charge given by the Eligible Purchaser to secure the Loan Agreement; and

#### *Default*

- (1) Upon an event of default occurring as described in Loan Agreement, including the Eligible Purchaser leasing the Eligible Unit, ceasing to occupy the Eligible Unit as his or her principal residence, allowing a writ of execution to become binding against the Eligible Unit, becoming bankrupt, if it is learned that the Eligible Purchaser misrepresented his or her eligibility the outstanding principal shall be repayable in full on demand;

#### *Repayment of Principal on Sale – Increase in Value*

- (2) If, in accordance with Artscape's Home Ownership Program, the Eligible Unit is sold for more than the Original Purchase Price, the Loan shall become repayable.

#### *Forgiveness of Principal on Sale – Decrease in Value*

- (3) If, in accordance with Artscape's Home Ownership Program, the Eligible Unit is sold for less than the Original Purchase Price minus the principal amount owing under the Loan, the principal amount owing under the Loan, together with any interest, in any form shall be forgiven.

#### *Partial Repayment of Principal on Sale – Decrease in Value Less than the Amount of the Loan*

- (4) If, in accordance with Artscape's Home Ownership Program, the Eligible Unit is sold for less than the Original Purchase Price and the depreciation from the Original Purchase Price is not more than the principal amount owing under the Loan, the difference between the amount of depreciation and the loan amount shall be repayable, as follows:

Amount repayable = principal loan amount - (Original Purchase Price - resale price)

For example, if the principal amount owing under the Loan was \$10,000 and the Original Purchase Price \$100,000, a sale for \$92,000 results in a repayable amount of \$2,000, as  $\$10,000 - (\$100,000 - \$92,000) = \$2,000$ .

#### *Interest Payable*

- (7) If, in accordance with Artscape's Home Ownership Program, the Eligible Unit is sold for more than the Original Purchase Price, the Eligible Purchaser shall pay to the Proponent, an amount that is equal to the percentage that the principal amount of the Loan is of the Original Purchase Price of the Eligible Unit as applied to the differential between the selling price of the Eligible

Unit and the Original Purchase Price of the Eligible Unit (the "Capital Appreciation Amount").

***Loan and Interest Payable on Default***

- (8) Upon an event of default occurring, as described in the Loan Agreement, including the Eligible Purchaser leasing the Eligible Unit, ceasing to occupy the Eligible Unit as his or her principal residence, allowing a writ of execution to become binding against the Eligible Unit, becoming bankrupt or if it is learned that the Eligible Purchaser misrepresented his or her eligibility or that the proceeds of the Loan were used for a purpose other than the acquisition of the Eligible Unit, the Eligible Purchaser shall pay to the Proponent an amount that is equal to the percentage that the principal amount of the Loan is of the Original Purchase Price of the Eligible Unit as applied to any positive differential between the current fair market value (determined by the Proponent acting reasonably) of the Eligible Unit and the Original Purchase Price of the Eligible Unit. All other resale provisions under Artscape's Home Ownership Program would remain the same.
- (9) Notwithstanding anything to the contrary contained in the Loan Agreement, amounts payable under the Loan Agreement with respect to capital appreciation shall not exceed the maximum amount of interest that does not violate applicable laws.
- (10) The Eligible Purchaser shall be responsible for any processing charges associated with the discharge of a Charge.
- (11) The Eligible Purchaser shall provide proof annually to Proponent, in the form of a declaration that the Eligible Purchaser continues to reside in the Unit.

**SCHEDULE "E"**

**CMHC NOTICE**

The Proponent will use the below notice to CMHC:

**Canada-Ontario Affordable Housing Program Homeownership  
Notice to CMHC**

<b>Attention: Patty Doraty</b>	<b>CMHC Fax #: 416-218-3449</b>	
<b>Lender Name:</b>	<b>Borrower Name:</b>	
<b>Property Address:</b>	<b>Property Type:</b> <input type="checkbox"/> Single Family <input type="checkbox"/> Semi-Detached <input type="checkbox"/> Townhouse <input type="checkbox"/> Condo	
<b>Postal Code:</b>	<b>Sale Price:</b>	
<b>Below CMHC maximum price:</b>	<input type="checkbox"/> Yes	<input type="checkbox"/> No (provide details)
<b>Construction:</b>	<input type="checkbox"/> New	<input type="checkbox"/> Existing
<b>Amortization Period:</b>	<input type="checkbox"/> 25 years	<input type="checkbox"/> 35 years
<b>Flexibilities Requested:</b>	<input type="checkbox"/> Downpayment assistance to be deemed as equity for premium purposes. <input type="checkbox"/> 35 years amortization be allowed <input type="checkbox"/> N/A	
<b>SM Name:</b>	<b>Phone #:</b>	
	<b>Fax #:</b>	



**SCHEDULE "F"**

**HOAP QUARTERLY SALES REPORT**

The Proponent will use a form substantially in the form below for reporting to the City on a quarterly basis during the pre-development, construction and sales period and until home purchases close:

**Project:** \_\_\_\_\_ **Date:** \_\_\_\_\_ **Report Number:** \_\_\_\_\_

**1) New Loan Allocations**

Reference No.	Purchaser Name	Client Type <sup>1</sup>	Household Size		Household Income	From Social Housing	From Waiting List	Eligible Unit Address	Type of Unit <sup>2</sup>	Purchase Price	Amount of LTTR	HOAP Loan Amount	Closing Date
			Adults	Children									
1													
2													
3													

**2) Changes to Loans Previously Allocated (e.g. Purchasers withdrawing, altered loan amounts, etc.)**

Reference No.	Purchaser Name	Nature of Change	Original Loan Allocation Report (Date and Number)	HOAP Loan Amount
1				
2				
3				

Total HOAP allocation: loans: \_\_\_\_\_ funds: \_\_\_\_\_  
 Total new allocations in this report: loans: \_\_\_\_\_ funds: \_\_\_\_\_  
 Total HOAP Loans allocated to date: loans: \_\_\_\_\_ funds: \_\_\_\_\_  
 Balance to be allocated: loans: \_\_\_\_\_ funds: \_\_\_\_\_

**Legend**

**1. Client Type**  
 Family, Senior, Single, Aboriginal, Disabled, Recent Immigrant, or non-specific clientele

**2. Type of Unit**  
 Semi-detached, town (condominium or freehold), stacked house, row house or an apartment

I hereby confirm that the above Purchasers and Units comply with all provisions and eligibility requirements of the Home Ownership Assistance Program.

\_\_\_\_\_  
 Name Title Signature Date

**SCHEDULE "G"**

**ANNUAL DECLARATION OF OCCUPANCY**

The Proponent will use a declaration of occupancy substantially in the form below:

This will confirm that the undersigned [the Eligible Purchaser who has received an HOAP loan] continues to occupy the property known as [insert address of property purchased] as my principal residence and at no time in the past year have I rented the property or ceased, in any way to occupy the property as my principal residence.

**DATED** at the City of Toronto this            day of            , 201

---

[signature of Eligible Purchaser]

**SCHEDULE "H"**

**LETTER TO ELIGIBLE PURCHASERS**

The Proponent will use a letter to eligible purchasers substantially in the form below:

*[on Proponent letterhead]*

name  
address  
of applicant

Dear Sir:

**Re: CITY OF TORONTO HOME OWNERSHIP ASSISTANCE PROGRAM LOAN**

This will confirm that we have reviewed your application for an Home Ownership Assistance Program loan. We are pleased to inform you that you have qualified for a loan in an amount of \$[XX,XXX.XX] towards the purchase of a home.

Please use this information to pre-qualify for a bank mortgage and to begin negotiations for the purchase of a home. Your agreement of purchase and sale must be conditional upon securing the first mortgage and the Home Ownership Assistance Program loan.

Final confirmation of your qualification for the loan will be provided once you have submitted an executed agreement of purchase and sale to us for approval by the City of Toronto's Affordable Housing Office.

Note that the loan amount will be made out to your lawyer in trust and will be applied in full toward the purchase of your home on closing. Your lawyer will register a no-payment second mortgage in the amount of the loan payable to the *(insert Proponent's name)* under the terms of your agreement with *(insert Proponent's name)*.

If you have any questions or concerns, do not hesitate to contact us. Also, you may refer your potential lender to us as well to discuss this program and verify your status with us.

Yours truly,

*(insert Proponent's name)*

**SCHEDULE "I"**  
**SOLICITOR'S LETTER**

The Proponent will use a Eligible Purchaser's solicitor's letter substantially in the form below:

**[on letterhead of Eligible Purchaser's Solicitor]**

**[Date]**

**[Proponent – Name and Address]**

Dear Sirs,

**Re: Home Ownership Assistance Program Mortgage/Charge of Land from [insert name of Eligible Purchaser] (the "Mortgagor") to [insert Proponent's name] [insert municipal address]**

---

This will confirm that I have registered, a Mortgage/Charge of Land (the "Charge") against the above mentioned lands and premises owned by the Mortgagor and described as [insert legal description of land] (the "Charged Premises").

The Charge secures the principal amount of \$[insert loan amount] and was registered as Instrument No. [insert instrument number], on [insert date]. A copy of the receipted instrument is enclosed. I also verified that no executions affect the title to the Charged premises.

As of the date of registration of the Charge, only the following encumbrances against the Charged Premised have priority to the Charge: [insert details].

I trust this transaction has been completed to your satisfaction.

Yours truly,

**SCHEDULE "J"**

**FINAL REPORT ON COMPLETED HOAP LOANS**

The Proponent will use the following reporting form when all home sales receiving an HOAP loan have closed:

**Project:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Total (\$) HOAP allocation: loans:** \_\_\_\_\_

**funds:** \_\_\_\_\_

Reference No.	Purchaser Name	Client Type <sup>1</sup>	Household Size		Household Income	From Social Housing	From Waiting List	Eligible Unit Address	Type of Unit <sup>2</sup>	Purchase Price	Amount of LTTR	HOAP Loan Amount	Date HOAP Loan Advanced to Purchaser	Date Security Registered on Title	20 Year Anniversary Date	
			Adults	Children												
1																
2																
3																

**Legend**

**1. Client Type**  
Family, Senior, Single, Aboriginal, Disabled, Recent Immigrant, or non-specific clientele

**2. Type of Unit**  
Semi-detached, town (condominium or freehold), stacked house, row house or an apartment

I hereby confirm that the above mentioned Purchasers and Units comply with all provisions and eligibility requirements of the Home Ownership Assistance Program.

\_\_\_\_\_  
Name Title Signature Date

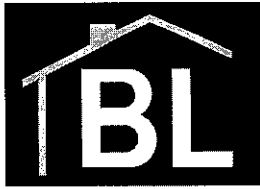


## **SCHEDULE "L"**

### **MINIMUM TERMS FOR CHARGE GIVEN AS SECURITY FOR LOAN**

Each Second Charge shall include the following terms which charge shall include the following provisions:

- (i) **Principal Amount** – stating the principal amount of the Loan and all other indebtedness of the Eligible Purchaser to the Proponent;
- (ii) **Payments** – a provision outlining that no payments of principal or interest are due under the terms of the Loan until disposition or other event of repayment (as defined in the Loan Agreement) at which time payment of the principal amount of the Loan is due in full, unless otherwise consented to by the City;
- (iii) **Residence** – a provision requiring that the Eligible Purchaser shall provide proof annually to Proponent, in the form of a declaration that the Eligible Purchaser continues to reside in the Eligible Unit;
- (iv) **Standard Charge Terms** registered as Number 200033 shall be included in the Second Charge.
- (v) **The City reserves the right to review the terms of the Charge.**



**BRYKMAN LEFLER  
LAWYERS**

Practicing in Association

**Bobby Brykman , Lawyer**

Telephone: 905-300-4991

Facsimile: 289-475-5562

Email: Bobby@Brykmanlaw.ca

Website: www.brykmanlaw.ca

100 - 7676 Woodbine Avenue  
Markham, Ontario  
L3R 2N2

May 26, 2016

Toronto Artscape Inc.  
171 East Liberty Street  
Suite 224  
Toronto, Ontario  
M6K 3P6

Dear Sirs,

RE: Home Ownership Assistance Program Charge/Charge of Land from Jenna Harris (the Mortgagor) to Artscape 311-159 Dundas Street East, Toronto, Ontario M5B 0A9

This will confirm that I have registered, a Charge/Charge of Land (the "Charge") against the above mentioned lands and premises owned by the Mortgagor and described as [insert legal description of land] (the "Charged Premises").

The Charge secures the principal amount of \$221,650.00 and was registered as Instrument No. AT4236950, on June 2, 2016. A copy of the receipted instrument is enclosed. I also verified that no executions affect the title to the Charged premises.

As of the date of registration of the Charge, only the following encumbrances against the Charged Premised have priority to the Charge: AT4236947. I trust this transaction has been completed to your satisfaction

AT4236948  
AT4236949

Yours truly,

BRYKMAN LAW PROFESSIONAL CORPORATION

This is Exhibit "T" referred to in the Affidavit of Ben Macintosh, affirmed by Ben Macintosh, at the City of Toronto, in the Province of Ontario, before me on this 3<sup>rd</sup> day of January, 2024, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

*Christopher J. Henderson*

Christopher J. Henderson  
Commissioner for Taking Affidavits



**Properties**

*PIN* 76514 - 0016 LT *Interest/Estate* Fee Simple  
*Description* UNIT 11, LEVEL 3, TORONTO STANDARD CONDOMINIUM PLAN NO. 2514 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4200673; CITY OF TORONTO  
*Address* 311 UNIT  
 159 DUNDAS STREET EAST  
 TORONTO

**Consideration**

*Consideration* \$ 403,600.00

**Transferor(s)**

The transferor(s) hereby transfers the land to the transferee(s).

*Name* GREAT GULF (DUNDAS) LTD.  
*Address for Service* 3751 Victoria Park Avenue, Toronto, ON, M1W 3Z4

I, Harry Rosenbaum (A.S.O.), have the authority to bind the corporation.

This document is not authorized under Power of Attorney by this party.

<b>Transferee(s)</b>	<b>Capacity</b>	<b>Share</b>
----------------------	-----------------	--------------

<i>Name</i> HARRIS, JENNA	Registered Owner	
<i>Date of Birth</i> 1979 01 19		
<i>Address for Service</i> 311 - 159 Dundas Street East Toronto, Ontario M5B 0A9		

STATEMENT OF THE TRANSFEROR (S): The transferor(s) verifies that to the best of the transferor's knowledge and belief, this transfer does not contravene the Planning Act.

STATEMENT OF THE SOLICITOR FOR THE TRANSFEROR (S): I have explained the effect of the Planning Act to the transferor(s) and I have made inquiries of the transferor(s) to determine that this transfer does not contravene that Act and based on the information supplied by the transferor(s), to the best of my knowledge and belief, this transfer does not contravene that Act. I am an Ontario solicitor in good standing.

STATEMENT OF THE SOLICITOR FOR THE TRANSFEREE (S): I have investigated the title to this land and to abutting land where relevant and I am satisfied that the title records reveal no contravention as set out in the Planning Act, and to the best of my knowledge and belief this transfer does not contravene the Planning Act. I act independently of the solicitor for the transferor(s) and I am an Ontario solicitor in good standing.

**Signed By**

Leonard Efreem Baranek	145 King Street West, Suite 2200 Toronto M5H 4G2	acting for Transferor(s)	Signed	2016 06 02
<i>Tel</i> 416-362-3711				
<i>Fax</i> 416-864-9223				

I am the solicitor for the transferor(s) and I am not one and the same as the solicitor for the transferee(s).

I have the authority to sign and register the document on behalf of the Transferor(s).

The applicant(s) hereby applies to the Land Registrar.

**Signed By**

Robert Paul Brykman 7676 Woodbine Ave, Suite 100 acting for Signed 2016 06 02  
Markham Transferee(s)  
L3R 2N2

Tel 905-300-4991  
Fax 289-475-5562

I am the solicitor for the transferee(s) and I am not one and the same as the solicitor for the transferor(s).

I have the authority to sign and register the document on behalf of the Transferee(s).

**Submitted By**

BOBBY BRYKMAN, BARRISTER & SOLICITOR 7676 Woodbine Ave, Suite 100 2016 06 02  
Markham  
L3R 2N2

Tel 905-300-4991  
Fax 289-475-5562

**Fees/Taxes/Payment**

Statutory Registration Fee \$62.85  
Provincial Land Transfer Tax \$2,547.00  
Municipal Land Transfer Tax \$72.00  
Total Paid \$2,681.85

**File Number**

Transferee Client File Number : B7394-311

**PROVINCIAL AND MUNICIPAL LAND TRANSFER TAX STATEMENTS**

In the matter of the conveyance of: 76514 - 0016 UNIT 11, LEVEL 3, TORONTO STANDARD CONDOMINIUM PLAN NO. 2514 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4200673; CITY OF TORONTO

BY: GREAT GULF (DUNDAS) LTD.

TO: HARRIS, JENNA

Registered Owner

%(all PINs)

1. HARRIS, JENNA

I am

- (a) A person in trust for whom the land conveyed in the above-described conveyance is being conveyed;
- (b) A trustee named in the above-described conveyance to whom the land is being conveyed;
- (c) A transferee named in the above-described conveyance;
- (d) The authorized agent or solicitor acting in this transaction for \_\_\_ described in paragraph(s) ( ) above.
- (e) The President, Vice-President, Manager, Secretary, Director, or Treasurer authorized to act for \_\_\_ described in paragraph(s) ( ) above.
- (f) A transferee described in paragraph ( ) and am making these statements on my own behalf and on behalf of \_\_\_ who is my spouse described in paragraph ( ) and as such, I have personal knowledge of the facts herein deposed to.

2. I have read and considered the definition of "single family residence" set out in subsection 1(1) of the Act. The land being conveyed herein: contains at least one and not more than two single family residences.

3. The total consideration for this transaction is allocated as follows:

(a) Monies paid or to be paid in cash	181,885.00
(b) Mortgages (i) assumed (show principal and interest to be credited against purchase price)	0.00
(ii) Given Back to Vendor	0.00
(c) Property transferred in exchange (detail below)	0.00
(d) Fair market value of the land(s)	0.00
(e) Liens, legacies, annuities and maintenance charges to which transfer is subject	0.00
(f) Other valuable consideration subject to land transfer tax (detail below)	221,715.00
(g) Value of land, building, fixtures and goodwill subject to land transfer tax (total of (a) to (f))	403,600.00
(h) VALUE OF ALL CHATTELS - items of tangible personal property	0.00
(i) Other considerations for transaction not included in (g) or (h) above	0.00
(j) Total consideration	403,600.00

6. Other remarks and explanations, if necessary.

- 1. c) Consideration (f) - Other valuable consideration subject to land transfer tax: The purchaser is receiving a Mortgage from Toronto Artscape Inc. in this amount, which does not form part of the consideration paid to the Transferor.
- 2. Fraction of parties who are qualifying home purchasers: ALL and the agreement of purchase and sale was entered into after December 13, 2007,
- 3. JENNA HARRIS is/are (a) first time home purchaser(s) as defined in the Land Transfer Tax Act, and
- 4. The purchaser(s) will occupy the qualifying home as his/her/their principal residence on 2016/06/02 (Note: must be within 9 months of the date of registration or disposition), and
- 5. Where the qualifying home is a "newly constructed home" in respect of which the purchasers are entitled to a warranty under the Ontario New Home Warranties Plan Act, the registration number for the builder of the newly constructed home is 41207. NOTE: If proof of entitlement to a warranty is based on evidence other than a registration number, the claim must be submitted directly to the Ministry of Finance and evidence must accompany the claim.
- 6. No purchaser(s) is/are a "spouse" as defined in section 29 of the Family Law Act

7. Statement pertaining only to Municipal Land Transfer Tax:

Fraction of parties who are first time home buyers: ALL (evidence must be retained).

JENNA HARRIS is/are (a) first time purchaser(s) as defined by the City of Toronto's Municipal Land Transfer Tax By-law (Chapter 760 of the City of Toronto Municipal Code)

The purchaser(s) will occupy the eligible home as his/her/their principal residence on 2016/06/02 (Note: must be within 9 months of the date of registration or disposition)

No purchaser(s) is/are a "spouse" as defined in section 29 of the Family Law Act

PROPERTY Information Record

A. Nature of Instrument: Transfer

LRO 80 Registration No. AT4236947 Date: 2016/06/02

B. Property(s):

PIN 76514 - 0016 Address 159 DUNDAS STREET EAST UNIT 311 TORONTO Assessment Roll No

C. Address for Service:

311 - 159 Dundas Street East Toronto, Ontario M5B 0A9

D. (i) Last Conveyance(s): PIN 76514 - 0016 Registration No. AT4114944

(ii) Legal Description for Property Conveyed : Same as in last conveyance? Yes  No  Not known

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**PROVINCIAL AND MUNICIPAL LAND TRANSFER TAX STATEMENTS**

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E. Tax Statements Prepared By: Robert Paul Brykman  
7676 Woodbine Ave, Suite  
100  
Markham L3R 2N2

**Properties**

*PIN* 76514 - 0016 LT *Interest/Estate* Fee Simple  
*Description* UNIT 11, LEVEL 3, TORONTO STANDARD CONDOMINIUM PLAN NO. 2514 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4200673; CITY OF TORONTO  
*Address* 311  
 159 DUNDAS STREET EAST  
 TORONTO

**Consideration**

*Consideration* \$ 2.00

**Party From(s)**

*Name* HARRIS, JENNA  
*Address for Service* 311-159 Dundas Street East  
 Toronto, Ontario  
 M5B 0A9

This document is not authorized under Power of Attorney by this party.

**Party To(s)***Capacity**Share*

*Name* TORONTO ARTSCAPE INC.  
*Address for Service* 171 East Liberty Street  
 Suite 224  
 Toronto, Ontario  
 M6K 3P6

**Statements**

The agreement is dated 2016/06/02 and the option expires on the completion of the transfer of the Property in accordance with Option to Purchase attached to this Notice.

This notice may be deleted by the Land Registrar after 2115/06/01

Provision for renewal or extension, n/a

The following is the complete option to purchase See Schedules

**Signed By**

Robert Paul Brykman 7676 Woodbine Ave, Suite 100 acting for Signed 2016 06 02  
 Markham  
 L3R 2N2 Party From(s)  
 Tel 905-300-4991  
 Fax 289-475-5562

I have the authority to sign and register the document on behalf of the Party From(s).

**Submitted By**

BOBBY BRYKMAN, BARRISTER & SOLICITOR 7676 Woodbine Ave, Suite 100 2016 06 02  
 Markham  
 L3R 2N2  
 Tel 905-300-4991  
 Fax 289-475-5562

**Fees/Taxes/Payment**

*Statutory Registration Fee* \$62.85

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd

Page 2 of 2

**Fees/Taxes/Payment**

Provincial Land Transfer Tax	\$0.00
Municipal Land Transfer Tax	\$0.00
Total Paid	\$62.85

**File Number**

Party To Client File Number : B7394-311

**PROVINCIAL AND MUNICIPAL LAND TRANSFER TAX STATEMENTS**

In the matter of the conveyance of: 76514 - 0016 UNIT 11, LEVEL 3, TORONTO STANDARD CONDOMINIUM PLAN NO. 2514 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4200673; CITY OF TORONTO

BY: HARRIS, JENNA

TO: TORONTO ARTSCAPE INC.

%(all PINs)

1. SHELINA ALI

I am

- (a) A person in trust for whom the land conveyed in the above-described conveyance is being conveyed;
- (b) A trustee named in the above-described conveyance to whom the land is being conveyed;
- (c) A transferee named in the above-described conveyance;
- (d) The authorized agent or solicitor acting in this transaction for TORONTO ARTSCAPE INC. described in paragraph(s) (c) above.
- (e) The President, Vice-President, Manager, Secretary, Director, or Treasurer authorized to act for \_\_\_\_\_ described in paragraph(s) ( ) above.
- (f) A transferee described in paragraph ( ) and am making these statements on my own behalf and on behalf of \_\_\_\_\_ who is my spouse described in paragraph ( ) and as such, I have personal knowledge of the facts herein deposed to.

3. The total consideration for this transaction is allocated as follows:

(a) Monies paid or to be paid in cash	2.00
(b) Mortgages (i) assumed (show principal and interest to be credited against purchase price)	0.00
(ii) Given Back to Vendor	0.00
(c) Property transferred in exchange (detail below)	0.00
(d) Fair market value of the land(s)	0.00
(e) Liens, legacies, annuities and maintenance charges to which transfer is subject	0.00
(f) Other valuable consideration subject to land transfer tax (detail below)	0.00
(g) Value of land, building, fixtures and goodwill subject to land transfer tax (total of (a) to (f))	2.00
(h) VALUE OF ALL CHATTELS - items of tangible personal property	0.00
(i) Other considerations for transaction not included in (g) or (h) above	0.00
(j) Total consideration	2.00

4.

Explanation for nominal considerations:

s) other: consideration for Option to Purchase Agreement included in consideration for Transfer and Land Transfer Tax has been paid on Transfer.

5. The land is subject to encumbrance

7. Statement pertaining only to Municipal Land Transfer Tax:

Explanation: consideration for Option to Purchase Agreement included in consideration for Transfer and Land Transfer Tax has been paid on Transfer.

**PROPERTY Information Record**

- A. Nature of Instrument: Notice Of Option To Purchase  
LRO 80 Registration No. AT4236948 Date: 2016/06/02
- B. Property(s): PIN 76514 - 0016 Address 159 DUNDAS STREET EAST 311 TORONTO  
Assessment Roll No -
- C. Address for Service: 171 East Liberty Street  
Suite 224  
Toronto, Ontario  
M6K 3P6
- D. (i) Last Conveyance(s): PIN 76514 - 0016 Registration No. AT4114944  
(ii) Legal Description for Property Conveyed : Same as in last conveyance? Yes  No  Not known
- E. Tax Statements Prepared By: Robert Paul Brykman  
7676 Woodbine Ave, Suite 100  
Markham L3R 2N2

## OPTION TO PURCHASE

### BACKGROUND

- I. Toronto Artscape Inc. (**Artscape**) acquired an interest in units located in Toronto Standard Condominium Corporation No. 2514 comprising the real property municipally known as 155-163 Dundas Street East, Toronto, Ontario;
- II. Artscape entered into and subsequently assigned its rights and interest in a Purchase Agreement for residential Unit 11, Level 3, Toronto Standard Condominium Plan No. 2514 (the **Property**) to Jenna Harris (the **Purchaser**), and
- III. Artscape is interested in acquiring the Property in the event the Purchaser wishes to sell it to ensure that the Property remains affordable for artists and non-profit arts professionals.

IN CONSIDERATION of the sum of TWO DOLLARS (\$2.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Purchaser grants to Artscape the irrevocable first option to purchase the Property on the terms and conditions set out below:

#### 1. Definitions

The capitalized terms defined below shall, for all purposes of this Option Agreement, have the following meanings, unless the context expressly or by necessary implication otherwise requires:

**Artscape** is defined above.

**Artscape Charge** means the charge/mortgage of the Property from the Purchaser to and in favour of Artscape, which is registered against title to the Property.

**By-laws** mean the by-laws that are from time to time enacted by the Condominium and registered against the title to the Property.

**Child of an individual** includes

- i. a person of whom the individual is the legal parent,
- ii. a person who is wholly dependent on the individual for support and of whom the individual has, or immediately before the person attained the age of 19 years had, the custody and control and
- iii. a child of the individual's spouse or Common-law partner.

**Common-law partner** of an individual at any time means a person who cohabits at that time in a conjugal relationship with the individual and has so cohabited with the individual through-out the 12 month period that ends at that time.

**Condominium** means Toronto Standard Condominium Corporation No. 2514.

**Declaration** includes the declaration registered in the Land Titles Division for the Toronto Registry Office (No. 66), together with the description, which created Toronto Standard Condominium Corporation No. 2514.

**Fair Market Rate** means the fair market purchase price that a similar residential unit and, if applicable, ancillary parking unit in a similar building as that in which the Property is located with similar amenities would command between arm's length parties if there were no subsidies, taking into account and applying those criteria and parameters that an accredited appraiser would be required to take into account in determining a fair market value for the Property.

**Option** has the meaning set out in Article 2, below.

**Purchaser** is defined above.

**Property** is defined above.





**Purchase Price** means the purchase price for the Property pursuant to the exercise of the Option, as determined in accordance with paragraph 2.4, below.

**Qualified Artist** means an individual who satisfies Artscape's criteria for being an artist or non-profit arts professional and who has been qualified as such by Artscape.

**Qualified Transferee** means a person or persons in whose name Artscape may direct the Purchaser to convey title to the Property.

**Relation of an individual** means another person who is the spouse, Common-law partner, parent or Child of the individual.

**Referral Fee** means the amount that is 3% of the Purchase Price.

**Triggering Event** is defined below, in paragraph 2.3.

2. **Option**

- 2.1 Subject to and upon the terms and provisions herein set out, the Purchaser hereby gives to Artscape, and its successors and assigns, an irrevocable option to purchase the Property free from encumbrances (except as otherwise provided herein), including without limitation the first right of refusal described below in Article 3.
- 2.2 The Option, as provided for herein, shall, in the event that at any time Artscape fails to exercise the Option, remain irrevocable at all times until the Purchaser completes the transfer of the Property to a third-party.
- 2.3 At all times and from time to time, the Purchaser shall give to Artscape notice in writing (referred to as the **Triggering Notice**) of any one or more of the following (a **Triggering Event**):
- a. the Purchaser's desire or intention to make payment of all or part of the balance owing under Artscape Charge,
  - b. the Purchaser's desire to sell, transfer, lease or otherwise dispose of his or her interest in the Property (including where any of the foregoing involves the disposition or dealing with any beneficial interest in the Property and including any agreement to do any of the foregoing), or desire (or agreement) to give an option to purchase or lease the Property (except the option given to Artscape), or desire (or agreement) to list or advertise the Property for sale or lease (or actually doing so), or desire to part possession of the Property (or actually doing so),
  - c. there is no Purchaser who actually and personally occupies the Property as his or her primary place of residence who is also a Qualified Artist, and
  - d. the Purchaser's receipt of an offer from a third party to acquire the Purchaser's interest in the Property.
- 2.4 Upon the happening of any one or more of the following events (referred to as a **Crystallizing Event**),
- i. Artscape's receipt of a **Triggering Notice**,
  - ii. Artscape's receipt of notice of the death of any registered Purchaser of the Property, and
  - iii. Artscape acquires knowledge of a **Triggering Event** (with "knowledge" meaning actual knowledge of a senior executive of Artscape),

Artscape may, in its absolute discretion, on written notice (the **Purchase Notice**) to the Purchaser or his or her personal representative given, except in the circumstances described in paragraph 2.5, below, within six months after the date of the **Crystallizing Event**, purchase the Property upon the following terms:

- 1. the purchase price shall be the Fair Market Rate, as determined by an accredited appraiser selected by Artscape;
- 2. the purchase of the Property shall be completed on a date to be fixed by Artscape and set out in the **Purchase Notice**;



3. Artscape's completion of the purchase of the Property is subject to a condition (referred to as the **Qualifying Condition**) for the sole benefit of Artscape, for a period of 90 days (the **Conditional Period**) from the date of delivery of the Purchase Notice, during which period Artscape may satisfy itself, in its absolute discretion, that there is a Qualified Transferee, provided that Artscape may, upon written notice to the Purchaser given not later than 30 days prior to the end of the Conditional Period, extend the Conditional Period, once, for a further period of time not to exceed 60 days, and, furthermore, provided that Artscape may waive the Qualifying Condition;
4. the payment of the Purchase Price shall be by certified cheque of the balance due on closing and is subject to the usual adjustments, to be proportioned and allowed to the date of completion;
5. title to the Property shall be good and marketable and free and clear from all liens, encumbrances and interests except for
  - (a) local rates,
  - (b) all rights and easements registered against title to the Property for the supply and installation telephone services, electricity, gas, sewers, water, television cable facilities and other related services;
  - (c) registered restrictions or covenants that run with the Property, including any encroachment agreement(s) with any governmental authorities or adjacent land owner(s), provided that same are complied with as at the closing date;
  - (d) the provisions of the *Condominium Act, 1998* (amended or replaced) and its regulations and the terms, conditions and provisions of the Declaration, Description, by-law and rules and regulations of the Condominium corporation;
  - (e) any existing municipal agreements, zoning by-laws and / or rules and regulations; and (v) this Option, together with all of its terms and provisions;
6. Artscape shall be allowed until 15 days before the date scheduled for the completion of the purchase of the Property to examine title to the Property, at Artscape's own expense, and until five days prior to the date scheduled for the completion of the purchase of the Property to satisfy itself that there are no outstanding work orders or deficiency notices affecting the Property and that the Property's then present use as a live/work dwelling residence may be lawfully continued. If within that time any valid objection is made in writing to the Purchaser which the Purchaser shall be unable or unwilling to remove, and which Artscape will not waive, then the agreement for the purchase of the Property arising from the exercise of the Option shall be at an end, and all money paid by Artscape thereunder shall be returned with interest and without deduction;
7. Artscape shall be entitled to direct in writing that title to the Property be taken in the name of any other person and
8. upon the exercise of the Option, the Purchaser shall enter into a written purchase and sale agreement with Artscape, without deposit, containing the foregoing terms and provisions, together with the following additional provisions:



- (a) there shall be a warranty in writing from the Purchaser to Artscape (and any other person taking title pursuant to a title direction from Artscape) setting out the amount payable monthly to the Condominium on account of the common expenses in respect of the Property;
- (b) the Purchaser shall retain a solicitor who is both an authorized Teraview electronic registration system user and in good standing with the Law Society of Upper Canada to represent the Purchaser in connection with the completion of sale of the Property pursuant to the Option, and shall authorize her or his solicitor to enter into a document registration agreement in the form that is recommended from time to time by the Law Society of Upper Canada;
- (c) there shall be a representation and warranty from the Purchaser to Artscape (and any other person taking title pursuant to a title direction from Artscape) that :
  - (i) there are no special assessments contemplated by the Condominium,
  - (ii) there are no legal actions pending by or against or contemplated by the Condominium;
- (d) the Purchaser shall consent to a request by Artscape or Artscape's authorized representative for a status certificate (the **Status Certificate**) from the Condominium in respect of the Property and such other matters as may be provided for in such status certificate;
- (e) there shall be a representation and warranty from the Purchaser to Artscape (and any other person taking title pursuant to a title direction from Artscape) that at the time of the exercise of the Option the Purchaser will not have received a notice convening a special or general meeting of the Condominium respecting:
  - (i) the termination of the government of the Condominium property;
  - (ii) any substantial alteration in or substantial addition to the common elements or the renovation thereof; or
  - (iii) any substantial change in the assets or liabilities of the Condominium, and the Purchaser shall covenant that if the Purchaser receives such notice prior to the date of completion of the sale of the Property pursuant to the Option, then the Purchaser shall forthwith notify Artscape in writing of such notice;
- (f) there shall be an insurance provision that will provide that the Property and all other things being purchased shall be and remain at the risk of the Purchaser until completion of the sale pursuant to the Option, and if there is substantial damage to the Property, then Artscape may at its option either permit the proceeds of insurance to be used for repair of such damage in accordance with the provisions of the Insurance Trust Agreement, if any, or terminate the agreement of purchase and sale, in which case and all deposit monies paid by Artscape, if any, shall be refunded without interest or deduction;
- (g) there shall be a provision that the Transfer/Deed shall, save for the Land Transfer Tax Affidavit, be prepared in registrable form at the expense of Purchaser;



- (h) there shall be a warranty from the Purchaser to Artscape (and any other person taking title pursuant to a title direction from Artscape that spousal consent is not necessary to the complete the sale of the Property pursuant to the Option under the provisions of the *Family Law Act*, R.S.O. 1990, or if required, then the Purchaser provide the necessary consent in writing in order to comply with the said *Family Law Act*,
- (i) there shall be a representation and warranty from the Purchaser to Artscape (and any other person taking title pursuant to a title direction from Artscape) that during the time the Purchaser has owned the Property, the Purchaser has not caused any building on the Property to be insulated with insulation containing urea formaldehyde, and that to the best of the Purchaser's knowledge no building on the Property contains or has ever contained insulation that contains urea formaldehyde, which warranty shall survive and not merge on the completion of the sale of the Property pursuant to the Option;
- (j) there shall be a covenant and warranty from the Purchaser that any and all renovations and alterations made to the Property comply and conform with the requirements of the Condominium, the *Condominium Act, 1998*, the Declaration, the By-laws and the rules and regulations of the Condominium that are in effect;
- (k) there shall be a covenant from the Purchaser that no improvements, additions or repairs in the Property or upon its exclusive use common elements that require the consent of the Condominium have been carried out without such consent;
- (l) there shall be a covenant from the Purchaser that, if known to the Purchaser and undisclosed to Artscape at the time of the entering into the agreement of purchase and sale, the Purchaser shall pay from the sale proceeds on closing any special assessments or increases in common expenses for the current fiscal year up to the date of closing, as disclosed in the status certificate, or contemplated prior to closing by the board of directors of the Condominium or by the management of the Condominium;
- (m) there shall be a covenant of the Purchaser to discharge any outstanding mortgages or liens on or before the closing of the transaction;
- (n) Artscape shall be permitted to inspect the Property immediately prior to the date of closing;
- (o) there shall be a covenant from the Purchaser to provide vacant possession of the Property on the date of closing;
- (p) all fixtures in the Property as of the date of the exercise of the Option, shall be included in the Purchase Price; and
- (q) there shall be a covenant that time shall be of the essence.

2.5 If the Triggering Event described in paragraph 2.3c above (that is, there is no Purchaser who actually and personally occupies the Property as his or her primary place of residence who is also a Qualified Artist), is the result of the death of the sole Purchaser actually and personally occupying the Property who is a Qualified Artist (in this clause referred to as the **Deceased Qualified Artist**), and at the time of the death of the Deceased Qualified Artist at least one of the remaining individuals actually and personally occupying the Property as their primary place of residence is a Relation of the Deceased Qualified Artist, then Artscape may give the



Purchase Notice no earlier than 24 months following the date of the Crystallizing Event and no later than 30 months following the date of the Crystallizing Event.

3. Right of Refusal

Despite the Option not being exercised or, if exercised, Artscape's failure to complete the purchase of the Property:

- (a) Artscape shall, at any time and from time to time, have the right to appoint a third-party appraiser for the purpose of determining the Fair Market Rate of the Property; and
- (b) if the Purchaser intends to sell, transfer or otherwise part possession of the Property for a purchase price or any consideration that is less than the Fair Market Rate of the Property as determined by the third-party appraiser appointed by Artscape pursuant to the immediately preceding sub-paragraph (a), then the Purchaser will, before entering any binding agreement for the sale, transfer or other disposition of the Property, give Artscape notice (the Offer Notice) of the amount of the purchase price or consideration that is less than the Fair Market Rate, and Artscape will have 60 days following receipt of such notice to give the Purchaser written notice (the First Right of Refusal Purchase Notice) of its desire to purchase the Property for the same purchase price or consideration set out in the Offer Notice. If Artscape gives the Purchaser a First Right of Refusal Purchase Notice, the completion of the transfer of the Property shall occur in accordance with the terms set out above, in clause 2.4 (save and except for the Purchase Price, which shall be the amount as set out in the Offer Notice), and if Artscape does not give a First Right of Refusal Purchase Notice within the period stipulated for doing so, then the Purchaser may transfer his or her interest and title in the Property to the third party at the same purchase price or consideration set out in the Offer Notice.

4. Referral Fee

Upon the completion of the sale of the Property pursuant to the Option, the Purchaser shall pay Artscape the Referral Fee as an adjustment on closing or by the purchaser of the Property.

5. Artscape's Right to Charge

Artscape may, at any time, assign, pledge, charge or grant security in the Option and all of the rights of Artscape under the Option, including, without limitation, any agreement of purchase and sale arising therefrom.

6. Purpose

The Purchaser acknowledges and agrees that the underlying purpose of this Option is to ensure that the Property remains affordable for artists and non-profit arts professionals.

7. Transfer of Property

In the case of a transfer of title in the Property, the Purchaser shall cause the registered Transfer to include the terms herein of the Option. Without limiting the generality of the foregoing, in the event that Artscape fails to complete the purchase of the Property pursuant to the Purchase Notice or the First Right of Refusal Purchase Notice, as hereinbefore provided, or if Artscape does not, for whatever reason, exercise the Option, then, in any such event, if title or any other interest in and to the Property is transferred to or disposed of in favour any other person (in this clause, the Third-party Purchaser) other than Artscape or a person designated by Artscape, then the Purchaser (or any person acting in and through the Purchaser, including any mortgagee/chargee) shall ensure that all of the terms and provisions of this Option, as herein set out, shall be reserved in the Transfer/Deed registered in connection with the transfer of title to Property to the third-party purchaser and that, if required by Artscape, such Third-party Purchaser shall execute and deliver to Artscape an agreement in respect of the Option containing all of the terms and conditions herein, together with such other properly executed documents to register notice of such agreement on title to the Property.



**Properties**

*PIN* 76514 - 0016 LT *Interest/Estate* Fee Simple  
*Description* UNIT 11, LEVEL 3, TORONTO STANDARD CONDOMINIUM PLAN NO. 2514 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4200673; CITY OF TORONTO  
*Address* 311 UNIT  
 159 DUNDAS STREET EAST  
 TORONTO

**Chargor(s)**

The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.

*Name* HARRIS, JENNA  
*Address for Service* 311-159 Dundas Street East  
 Toronto, Ontario  
 M5B 0A9

I am at least 18 years of age.

I am not a spouse

This document is not authorized under Power of Attorney by this party.

**Chargee(s)***Capacity**Share*

*Name* TORONTO ARTSCAPE INC.  
*Address for Service* 171 East Liberty Street  
 Suite 224  
 Toronto, Ontario  
 M6K 3P6

**Provisions**

*Principal* \$ 221,650.00 *Currency* Cdn\$  
*Calculation Period* See Schedule Attached  
*Balance Due Date* Refer to Sched.  
*Interest Rate* See Schedule Attached  
*Payments*  
*Interest Adjustment Date*  
*Payment Date* See Schedule Attached  
*First Payment Date*  
*Last Payment Date*  
*Standard Charge Terms* 200033  
*Insurance Amount* Full insurable value  
*Guarantor*

**Additional Provisions**

See Schedules

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 2 of 6

**Signed By**

Robert Paul Brykman 7676 Woodbine Ave, Suite 100 acting for Signed 2016 06 02  
Markham  
L3R 2N2 Chargor(s)

Tel 905-300-4991

Fax 289-475-5562

I have the authority to sign and register the document on behalf of the Chargor(s).

**Submitted By**

BOBBY BRYKMAN, BARRISTER & SOLICITOR 7676 Woodbine Ave, Suite 100 2016 06 02  
Markham  
L3R 2N2

Tel 905-300-4991

Fax 289-475-5562

**Fees/Taxes/Payment**

Statutory Registration Fee \$62.85

Total Paid \$62.85

**File Number**

Chargee Client File Number : B7394-311



**TERMS OF ARTSCAPE CHARGE**  
**SCHEDULE TO CHARGE OF LAND**

**1. DEFINITIONS**

**Act** means the Condominium Act, 1998, S.O. c.19, and regulations made under the Act, as they may be amended from time to time.

**Allowable Selling Costs** means real estate sales commission costs in respect of the Chargor's transfer or other disposition of the Property, calculated and determined by the Chargee as a percentage of the gross sale price expressed in the agreement of purchase and sale in respect of such transfer or disposition, such calculation and determination to be consistent with the then prevailing rate but in any event not to exceed 3 per cent of the gross sale price, and, furthermore, provided that the Chargor actually incurs real estate sales commission costs, together with applicable value-added taxes paid on such costs.

**Charge** means the charge, as amended from time to time, to which this Schedule is attached by reference.

**Chargee** means Toronto Artscape Inc. and its Successors and assigns.

**Chargor** means the person or persons so identified in the Charge and his, her or their Successors and assigns, as the case may be.

**Corporation** means Toronto Standard Condominium Corporation No. 2514.

**Date of Discharge** means each date on which the Chargee has exercised its option to require payment of the monies payable under this Charge or each date on which the Chargor has paid such amounts, whichever first occurs.

**First Charge** means all charges registered in priority to this Charge on title to the Property, as may be amended, replaced or extended from time to time.

**Interest Amount** means, without duplication, with respect to any period, the total amount of interest accrued as or in the nature of interest on the Principal Amount by the Chargor in that period, as calculated and determined in accordance with Section 10 of these Charge Terms.

**Loan Agreement** means, the agreement entered into between the Chargor and Chargee with respect to the home purchase assistance loan made by the Chargee to the Chargor.

**Offer** means an offer to purchase the Property made in good faith by a person who is at arm's length from the Chargor.

**Original Purchase Price** means the purchase price paid by the Chargor for the purchase of the Property, as set out in the registered electronic transfer of the Property to the Chargor.

**Principal Amount** means the principal amount of money set out in this Charge.

**Property** means the unit or units and the appurtenant common elements, as described in the Charge.

**Qualified Artist** means a person who is at least 18 years of age and a resident of Canada and who satisfies the Chargee's criteria for being an artist and who has been qualified as such by the Chargee.

**Selling Price** means the total of:

- (a) the greater of:
  - i. with respect to the transfer or agreement to transfer or other disposition of the Property, the gross sale price or the amount expressed in money of any consideration given or to be given by or on behalf of the transferee and the value expressed in money of any liability assumed or undertaken by or on behalf of the transferee as part of the arrangement relating to the transfer or agreement to transfer or other disposition of the Property; and
  - ii. the fair market value of the Property as determined by the Chargee, acting reasonably, as of a date that is 15 days prior to the Date of Discharge

less

- (b) Allowable Selling Costs.

**Successor** means an heir, executor, personal representative, administrator, successor or assign, as applicable.

**Transfer** means (a) an assignment, sale, lease, conveyance, sublease, licensing or other disposition of, or a mortgage, charge or debenture (floating or otherwise) or other encumbrance of, the Property or any interest in it or all or any part of the Property whether by operation of law or otherwise; (b) a parting with or sharing of possession of all or part of the Property; or (c) a merger, amalgamation or other similar corporate reorganization involving the Chargor.

**Transferee** means the transferee of a Transfer, and includes a proposed transferee.

**2. GENERAL PROVISIONS**

- 2.1 The Chargor agrees that the common elements pertaining to the Property and any other interest the Chargor may have in the assets of the Corporation form part of the Property and are subject to this Charge.
- 2.2 The Chargor agrees to comply with the Act and the declaration, by-laws and rules of the Corporation.
- 2.3 The Chargor will pay, when due, all amounts payable pursuant to the declaration and the Corporation's by-laws, including common expenses and special assessments, and, if requested, the Chargor will provide the Chargee with evidence that all common expenses and special assessments assessed against the Property have been paid. If the Chargor fails to make any such payments, the Chargee may (but does not have to) pay such amount or amounts, and such amounts shall be added to the Principal Amount.
- 2.4 In addition to the insurance that the Act requires the Corporation to obtain, the Chargor must keep all improvements which the Chargor or previous owners have made to the Property (and if the Corporation fails to obtain the required insurance, the Property itself) insured with an insurance company and for the amounts acceptable to the Chargee against loss or damage caused by fire, against other risks usually covered by fire insurance policies, and against those risks requested by the Chargee. If the Chargor does not obtain and maintain insurance coverage, as set out above, the Chargee may (but does not have to) obtain such insurance coverage and pay the premiums, and such premium amounts shall be added to the Principal Amount. The Chargor transfers to the Chargee the Chargor's right to receive the proceeds of any such insurance, and the Chargee may apply them against the amount required to discharge this Charge whether or not that amount is then due. Every policy of insurance relating to the Property must include a standard mortgage clause stating that the loss is payable to the Chargee. This paragraph replaces the paragraph dealing with the Chargor's obligation to insure set out in standard charge terms referred to in the Charge.
- 2.5 This Charge is void on payment to the Chargee of the Principal Amount, plus interest and any other amounts paid on behalf of the Chargor and added to the Principal Amount, as set out in this Charge.
- 2.6 The discharge of this Charge shall be prepared by the Chargee and all legal and other expenses for the preparation, execution and registration of such discharge shall be borne by the Chargor.
- 2.7 Any notice required to be given to the Chargor or to the Chargee may be made by giving it at the respective address for each stated on the Charge, and shall be deemed to have been given on the day of personal delivery or facsimile transmission or the fourth next business day after the date of mailing.

**3. RESIDENCY DECLARATION**

- 3.1 The Chargor shall provide proof annually to the Chargee that the Chargor continues to reside at the Property as his or her principal residence together with a form of declaration as required by the Chargee, in the Chargee's sole discretion.

**4. SALE OR OTHER DISPOSITION OF PROPERTY**

- 4.1 The Chargor agrees, forthwith upon receiving an offer for the Transfer of the Property (or of any part thereof) by way of a sale, to provide the Chargee with notice of the Selling Price, together with any details that the Chargee may reasonably request for the purpose of ascertaining the Selling Price.
- 4.2 For the purpose of determining the Increase, the Chargee has the right, up until the completion of the transfer or other disposition of or dealing with the Property, to determine the Selling Price in accordance with clause "i." of paragraph "(a)" of the definition of Selling Price.

**5. WHEN MONEY IS PAYABLE**

- 5.1 If
- a. the Chargor makes a Transfer of the Property without first complying with paragraphs 4.1 or 6.1, as applicable, or otherwise deals with all or part of the Property (or agrees to do any of the foregoing), including, without limitation, where any of the foregoing involves the disposition or dealing with any beneficial interest in the Property,

- b. the Chargor ceases to occupy the Property as his or her Principal Residence,
- c. the Chargor dies or becomes bankrupt, or
- d. the Chargor ceases to be a Qualified Artist,

then, at the option of the Chargee, all amounts outstanding under this Charge shall become immediately due and payable. If the Chargor has died (meaning all of the persons named as Chargor in the Charge), and the Chargor's children wish to assume the Charge, then the Chargee may, at its option, waive this requirement.

**6. RESTRICTIONS ON CEASING TO OCCUPY THE PROPERTY**

6.1 This Charge is intended to assist artists to own the Property for their own personal and actual use. Accordingly, the Chargor shall immediately notify the Chargee, in writing, when the Chargor proposes to make a Transfer of the Property or any part of the Property, or if any Chargor who is a Qualified Artist ceases to personally and actually occupy the Property his or her principal residence. The Chargor is not permitted to enter into a Transfer of the Property without the prior written approval of the Chargee, and the Chargee shall have sole and unfettered discretion in deciding whether to give such approval. Without in any way limiting the discretion of the Chargee, the Chargee will be deemed to be reasonable in withholding its consent to any Transfer if:

- a. the Transfer is, as of the date thereof, contrary to or could result in a violation of any restrictions on the use of the Property under the declaration of the Corporation;
- b. the Transfer could result in the use of the Property for any purposes other than as (or in addition to) a community service facility or a cultural and arts facility; or
- c. the Transferee is not a Qualified Artist.

If the Chargee gives its approval, as aforesaid, then such approval shall be conditional upon such approved Transferee entering an assumption agreement in form satisfactory to the Chargee. Acceptance of any payments from a Transferee not approved in writing by the Chargee shall not constitute an approval or waiver by the Chargee.

**7. CHARGEES REMEDIES**

7.1 The Chargee may

- a. pay or satisfy any existing or future charge, lien or other encumbrance against the Property,
  - b. pay the fees and expenses of any receiver or of any lawyers (on a substantial indemnity basis), real estate broker, realtor or agency appointed or retained by the Chargee in connection with collecting the amount secured by the Charge, or
  - c. take any other proceedings or exercise any of its other rights under this Charge,
- and all costs, fees or expenses that the Chargee incurs in taking any one or more of these steps shall be added to the Principal Amount.

7.2 Any amount that the Chargor pays from time to time to the Chargee on account of the outstanding balance under this Charge shall be applied first to the total amount of interest accrued on the Principal Amount. If the payment exceeds the total amount of accrued interest, then the balance of the payment shall be applied in reduction of the Principal Amount.

**8. PAYMENT**

8.1 No payment on account of the Principal Amount or interest shall be required from the Chargor until this Charge is to be discharged, unless otherwise consented to by the City of Toronto.

**9. FIRST CHARGE RENEWAL / REPLACEMENT**

9.1 The Chargor shall have the privilege of renewing or replacing the First Charge upon its maturity, at the then current rate of interest, in continuing priority over this Charge, on condition that any increase in the principal amount beyond the principal balance then owing under the First Charge shall require the prior written consent of the Chargee. The Chargee shall execute all documents that may be necessary or desirable for that purpose, and the Chargor shall pay all reasonable related costs of the Chargee.

- 9.2 If the Chargor increases the principal amount or amounts under the First Charge without obtaining the prior written consent of the Chargee, then, at the option of the Chargee, all amounts under this Charge shall become immediately due and payable.

**10. INTEREST**

- 10.1 If the Property is sold for more than the Original Purchase Price, the Chargor shall pay the Chargee an Interest Amount on the Principal Amount that is equal to the percentage that the Principal Amount of the Original Purchase Price of the Property as applied to the differential between the Selling Price of the Property and the Original Purchase Price of the Eligible Unit (the Capital Appreciation Amount).
- 10.2 Notwithstanding paragraph 10.1, the Interest Amount payable under paragraph 10.1 shall not exceed the maximum amount of interest permitted under applicable laws.
- 10.3 If the Selling Price is less than the Original Purchase Price, then no Interest Amount is payable hereunder, provided that this clause shall apply, and the Chargor may rely on it, only in the circumstance in which the Chargor makes a Transfer of all of the Chargor's right, title and interest in the Property, and the Transfer of the Property is completed, pursuant to an Offer.

**11. REPAYMENT OF PRINCIPAL ON SALE**

- 11.1 If the Property is sold for more than the Original Purchase Price, the Principal Amount shall be repayable with interest as set out in paragraph 10.1.
- 11.2 If the Property is sold for less than the Original Purchase Price minus the Principal Amount owing under the Charge, the Principal Amount owing under the Charge, together with any interest, in any form shall be forgiven.
- 11.3 If the Property is sold for less than the Original Purchase Price and the depreciation from the Original Purchase Price is not more than the Principal Amount owing under the Charge, the difference between the amount of the depreciation and the Charge amount shall be repayable as follows:

$$\text{Amount repayable} = \text{principal loan amount} - (\text{Original Purchase Price} - \text{resale price})$$

For example, if the principal amount owing under the Charge was \$10,000 and the Original Purchase Price is \$100,000, a sale for \$92,000 results in a repayable amount of \$2,000, as  $\$10,000 - (\$100,000 - \$92,000) = \$2,000$ .

**12. LOAN AND INTEREST PAYABLE ON DEFAULT**

- 12.1 Upon the occurrence of an Event of Default as set out in the Loan Agreement, the Principal Amount owing under the Charge shall become owing and shall be paid to the Chargor in full, on demand, together with any interest.

**13. RIGHT TO AMEND THE TERMS OF THE CHARGE**

The City of Toronto reserves the right to review and amend the terms of the Charge at any time.



**CLEAR CERTIFICATE / CERTIFICAT LIBRE**

**SHERIFF OF / SHÉRIF DE :** CITY OF TORONTO (TORONTO)

**CERTIFICATE # / N° DE CERTIFICAT :** 28491904-7602538B

**DATE OF CERTIFICATE / DATE DU CERTIFICAT :** 2016-JUN-02

**SHERIFF'S STATEMENT**

THIS CERTIFIES THAT THERE ARE NO ACTIVE WRITS OF EXECUTION, ORDERS OR CERTIFICATES OF LIEN FILED WITHIN THE ELECTRONIC DATABASE MAINTAINED BY THIS OFFICE IN ACCORDANCE WITH SECTION 10 OF THE *EXECUTION ACT* AT THE TIME OF SEARCHING AGAINST THE REAL AND PERSONAL PROPERTY OF:

**DÉCLARATION DU SHÉRIF**

CE CERTIFICAT ATTESTE QU'IL N'Y A AUCUNE ORDONNANCE ACTIVE OU AUCUN BREF D'EXÉCUTION FORCÉE OU CERTIFICAT DE PRIVILÈGE ACTIF DANS LA BASE DE DONNÉES ÉLECTRONIQUE MAINTENUE PAR CE BUREAU AUX TERMES DE L'ARTICLE 10 DE LA *LOI SUR L'EXÉCUTION FORCÉE* AU MOMENT DE LA RECHERCHE VISANT LES BIENS MEUBLES ET IMMEUBLES DE :

**NAME SEARCHED / NOM RECHERCHÉ**

#	PERSON OR COMPANY / PERSONNE OU SOCIÉTÉ	NAME OR SURNAME, GIVEN NAME(S) / NOM OU NOM DE FAMILLE, PRÉNOM(S)
1.	COMPANY / SOCIÉTÉ	GREAT GULF (DUNDAS) LTD.

**CAUTION TO PARTY REQUESTING SEARCH:**

1. IT IS THE RESPONSIBILITY OF THE REQUESTING PARTY TO ENSURE THAT THE NAME SEARCHED IS CORRECT.
2. BY VIRTUE OF THIS CERTIFICATE, THE SHERIFF IS ASSURING THAT THIS NAME WILL REMAIN CLEAR UNTIL THE END OF CLOSE OF THIS BUSINESS DATE, UNLESS THE SHERIFF IS DIRECTED OTHERWISE UNDER AN ORDER OF THE COURT.

**AVERTISSEMENT À LA PARTIE QUI DEMANDE LA RECHERCHE :**

1. IL INCOMBE À LA PARTIE QUI DEMANDE LA RECHERCHE DE S'ASSURER QUE LE NOM RECHERCHÉ EST EXACT.
2. EN VERTU DU PRÉSENT CERTIFICAT, LE SHÉRIF ASSURE QUE CE NOM DEMEURE LIBRE JUSQU' À LA FIN DE CETTE JOURNÉE DE TRAVAIL, À MOINS DE RECEVOIR DES DIRECTIVES CONTRAIRES AUX TERMES D'UNE ORDONNANCE DU TRIBUNAL.

**CHARGE FOR THIS CERTIFICATE / FRAIS POUR CE CERTIFICAT :** CDN 11.50

**SEARCHER REFERENCE / REFERENCE CONCERNANT L'AUTEUR DE LA DEMANDE :**

**CERTIFICATE # / N° DE CERTIFICAT:** 28491904-7602538B

This is Exhibit "J" referred to in the Affidavit of Ben Macintosh, affirmed by Ben Macintosh, at the City of Toronto, in the Province of Ontario, before me on this 3<sup>rd</sup> day of January, 2024, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

*Christopher J. Henderson*

Christopher J. Henderson  
*Commissioner for Taking Affidavits*

**CITY OF TORONTO**

(hereinafter called the "Landlord")

OF THE FIRST PART

and

**TORONTO ARTSCAPE FOUNDATION**

(hereinafter called the "Tenant")

OF THE SECOND PART

---

**LEASE**

Re: Arts Barns at 76 Wychwood  
Toronto, Ontario

---

THIS LEASE made in quadruplicate this 28<sup>th</sup> day of June 2006, and effective from the day of

**IN PURSUANCE OF THE Short Forms of Leases Act**

BETWEEN:

**CITY OF TORONTO**

(hereinafter called the "Landlord")

OF THE FIRST PART

-and-

**TORONTO ARTSCAPE FOUNDATION**

(hereinafter called the "Tenant")

OF THE SECOND PART

**WHEREAS:**

- A. The Landlord is the registered owner of the lands and buildings known municipally as 76 Wychwood Avenue (TTC Wychwood Car Barns), City of Toronto;
- B. The Landlord has agreed to lease to the Tenant and the Tenant has agreed to lease from the Landlord lands and buildings currently known as four of the Wychwood Car Barns legally described in Schedule "A" (the "Demised Premises") in accordance with the terms and conditions herein contained;
- C. The Council of the City of Toronto has deemed it expedient to grant authority to the Landlord to enter into a Lease of the Lands.

**NOW THEREFORE IN CONSIDERATION OF** the rents, covenants and agreements hereinafter reserved and contained on the part of the Tenant to be paid, observed and performed, the Landlord does hereby demise and lease the Demised Premises to the Tenant, in accordance with the following terms and conditions, and the Landlord and the Tenant covenant and agree, each with the other, as follows:

1. (1) The Landlord hereby demises and leases to the Tenant hereof the Demised Premises for a term of FIFTY (50) YEARS LESS ONE (1) DAY commencing ten days following receipt by the Tenant of a Notice from the Landlord that a record of site condition has been signed by the Landlord with respect to the Property or such other date mutually agreed to by the Landlord and the Tenant, but in any event a date no sooner than the execution of this Lease;
- (2) The Landlord and any of its local boards and Commissions, any agency (whether governmental or otherwise) owning or operating a public utility as that term is defined in the Public Utilities Act (Ontario) or the Public Utilities Corporations Act (Ontario) and their respective successors and assigns shall have the right:
  - (a) to install, maintain, repair, replace, reconstruct, enlarge, inspect and/or test any pipes, cable, metres or other plant whatsoever on, under or adjacent to the Demised Premises as part of, appurtenant to or in connection with any such public utility and any damage caused as a result thereof shall be the responsibility of the Landlord, the agency, board or Commission, as the case may be;
  - (b) by their respective officers, employees, agents and contractors, to enter upon the Demised Premises, with or without all necessary or convenient gear and equipment, for the purposes set out in clause (a) hereof.
2. (1) From and after the Commencement Date, and throughout the Term, the Tenant shall pay to the Landlord at the office of the Landlord, or at such other place designated by the Landlord, in lawful money of Canada, without any prior demand therefor and, unless otherwise expressly set out herein, without any deduction, abatement, set-off or compensation whatsoever, as Basic Rent, monthly rent equal to the current fair market rent for the highest and best use of the Demised Premises, as of the time when the Landlord invokes its right to receive payment and to be agreed to by the Landlord and the Tenant ;
- (2) If the Landlord and the Tenant cannot reach agreement, as provided for in section 2(1), as to the rent payable, within three months of when such rent becomes due and payable, then the rent payable will be determined by Arbitration. The Landlord and the Tenant will each pay one-half of the fees and expenses of the Arbitration (except for the separate costs of each of the Parties; and

(3) Notwithstanding the provision contained in (2)(1), provided the Tenant is Toronto Artscape Foundation and for so long as the Tenant has not received a notice of default which default has not been remedied within the time specified under any other provisions of this Agreement, or any other agreements entered into with either the City or the Leasehold Mortgage, the Tenant shall not be obligated to pay Basic Rent, and the Landlord hereby waives its right to receive payment of Basic Rent.

(4) The Tenant acknowledges and agrees that it is intended that this Lease is a completely carefree net lease to the Landlord, save and except as is otherwise provided for in this Lease, that the Landlord is not responsible during the Term for any costs, charges, expenses and outlays of any nature whatsoever arising from or relating to the Demised Premises including, without limitation, the building, or the use and occupancy thereof, or the contents thereof or the business or operation carried on therein, and the Tenant shall pay all charges, impositions, costs and expenses of every nature and kind whatsoever relating to the Demised Premises and the use thereof by the Tenant including, without limitation, the costs of all insurance and all taxes, as Additional Rent.

3. (1) The Tenant covenants with the Landlord:

- (a) to pay rent and additional rent, when due;
- (b) to pay all taxes, including any Goods and Services Tax if applicable, rates, duties, levies, assessments and impositions whatsoever, whether municipal, parliamentary or otherwise levied, charged or assessed upon the Demised Premises, and where the Demised Premises is assessed for separate school support by reason of the tenancy or occupation of the Tenant or of any person claiming under the Tenant, to pay to the Landlord, or as it may direct, the excess taxes resulting from such support for the remainder of the calendar year in which a termination occurs except to the extent that such excess taxes are recovered from a subsequent tenant;
- (c) to pay, when due, the Tenant's proportionate share of the cost of the demolition of the raised floor and partial demolition of wall in the interior of the Demised Premises;
- (d) to arrange for and pay to the appropriate suppliers, all costs (including penalties) of supplying the Demised Premises with heat, water, electrical power, gas, telephone services, heating fuel and any other services desired by the Tenant;
- (e) to pay all water and gas rates, electric lighting, hydro charges, utility and sewer hook ups, taxes and all other rates and charges (including interest and penalties) arising from or related to the construction, occupation, operation, maintenance and repair of the Demised Premises which shall be assessed or chargeable upon the Demised Premises during the Tenant's use or occupancy of the Demised Premises;
- (f) to operate, heat and repair, maintain and keep the Demised Premises in good and substantial repair and condition, both inside and outside, including all fixtures and equipment and structures which are at any time during the Term or any renewal thereof erected thereon, reasonable wear and tear and damage by fire, lightning and tempest only excepted, save in so far as the aforesaid is compensated for by the insurance coverage maintained by the Tenant pursuant to section 13 herein;
- (g) that upon not less than two (2) business days prior written notice to the Tenant, the Landlord's employees, agents and/or contractors may enter the Demised Premises and view the state of repair and shall have the right to conduct soil and other tests as the Landlord in its sole discretion, deems necessary or appropriate;
- (h) at the expiration of the Term to peaceably surrender and yield up to the Landlord the Demised Premises, together with all buildings, structures and fixtures erected thereon in good and substantial repair and condition, reasonable wear and tear and damage by fire, lightning and tempest only excepted, save in so far as the aforesaid is compensated for by the insurance coverage maintained by the Tenant pursuant to section 13 herein;
- (i) that during the Term or any renewal thereof the Tenant will not assign, sublet, transfer or otherwise part with possession of the Demised Premises or any part thereof, except to another entity associated with and controlled by the Tenant and acceptable to the Landlord without the prior written consent of the Landlord, which consent may not be unreasonably and arbitrarily withheld;
- (j) subject to the easements set out in Schedule "A", to use and occupy the Demised Premises only as a not-for-profit arts and cultural centre in which artists and community based arts and environmental groups can rent space as follows:



**Studio Barn** – 15 work only artist studios, and some multipurpose community space;

**Covered Street Barn** – a publicly accessible multi-purpose area to be used for exhibitions, receptions, art fairs, and the primary pedestrian circulation area for the project;

**Community Barn** - 15 to 20 community spaces to be used for gallery space, cultural and community events, meeting and administration space, artist studio space, performing arts studios, rehearsal space, and would also contain public washrooms;

**Green Barn** - a Greenhouse to be used for planting and seedling production, educational activities, and a community gathering space. The Green Barn to also contain an exterior Sheltered Garden to be used for planting areas, a community bake oven, and a community gathering space;

and such ancillary uses as may be contemplated by the Tenant and for no other purpose whatsoever without the prior written consent of the Landlord, which consent may not be unreasonably and arbitrarily withheld.

- (k) subject to availability, determined on the basis that the Tenant is acting reasonably the Tenant shall make one of Parts H, E, C and/or J, available one day per month but for no fewer than twelve (12) days per year on a pro bono basis, requests for which will be processed through the Community Board that will be comprised of representatives of Artscape, tenants of the Demised Premises and the related residential complex and members of the community;
- (l) to comply, at its sole expense, with all Federal, Provincial and Municipal laws, by-laws, policies, rules and regulations (including, without limitation, regulations of the Toronto and Region Conservation Authority, zoning by-laws, building codes, the Ontario Fire Code, the *Environmental Protection Act* and *Ontario Heritage Act*, R.S.O. 1990, c.018 and any other environmental legislation) affecting the Demised Premises and/or its operation and use by the Tenant and those authorized by or under the Tenant, including the obtaining of all necessary permits and licences and to indemnify and save the Landlord harmless from any liability or cost suffered by it as a result of the Tenant's failure to comply. It is further understood and agreed that the Tenant, at its sole expense, shall obtain necessary zoning approval, if required for its intended use;
- (m) to ensure that nothing is done or kept at or on the Demised Premises which is or may be a nuisance, or carry on any activity or do anything else, which causes disturbance to or interferes with the users or occupants of any neighbouring property, or which in the opinion of the Landlord may cause damage to the Demised Premises or any neighbouring property and without limiting the generality of the foregoing, the release from the Demised Premises of ten (10) or more balloons within any 24-hour period shall be considered a nuisance and the Tenant shall not engage in such activity at any time;
- (n) to ensure that no signs are installed, placed or painted on or at the Demised Premises without the prior written approval of the General Manager, which shall not be unreasonably withheld or delayed, and that upon expiry or other termination of the Term same are removed and the sign location(s) restored to the original condition in a good and workerlike manner to the satisfaction of the General Manager. No further approval shall be required for an identically sized and designed sign where the replacement is necessitated by destruction or reasonable wear and tear of the originally installed sign;
- (o) to ensure that no ashes, refuse, garbage or other loose or objectionable material accumulate on the Demised Premises, and to keep the Demised Premises clean and tidy, and to comply with all of the Landlord's waste disposal and recycling policies;
- (p) to take at its own expense all measures necessary to ensure to the General Manager's satisfaction that the plant of or appurtenance to any municipal service or public utility now or in the future on, under or adjacent to the Demised Premises, is adequately protected against damage, impairment, destruction or loss; and
- (q) upon termination of the tenancy, at the Tenant's own risk and expense, to remove from the Demised Premises within Forty-Five (45) Days, all fixtures and chattels belonging to the Tenant, with all damage, if any, caused by such removal made good by the Tenant, and to leave the Demised Premises in good repair and neat, clean,

level and free of all waste material/debris/rubbish, all to the satisfaction of the General Manager.

- (2) The Tenant shall not remove, or permit to be removed, except in the ordinary course of business, any fixtures, goods or chattels of any kind from the Demised Premises without the Landlord's consent, until all rent, including rent in arrears and all rent to become due during the remainder of the Term is fully paid or the payment thereof secured to the satisfaction of the Landlord.
- (3) The Tenant warrants that it shall remain a non-profit organization throughout the Term and any renewal thereof. In the event that the Tenant ceases to be a non-profit organization, the Landlord, at its sole discretion, may elect to terminate this Lease upon ten (10) days written notice, or require the Tenant to pay market rent for the Demised Premises as determined by the General Manager.
- (4) Notwithstanding clause (i) of subsection 3(1) herein, the Tenant may, without the consent of the Landlord, sublet or assign individual units within the Demised Premises to qualified artists, community based groups or arts organizations, or to tenants approved by the Tenant and/or the Tenant's Advisory Council and Tenant Selection Committee, however, the Tenant shall not be permitted to sublet or assign the Demised Premises as a whole.
- (5) The Tenant shall comply with the Landlord's "Fair Wage Policy" attached hereto as Schedule "B" in relation to all work performed at the Demised Premises.
- (6) The Tenant accepts the condition of the Demised Premises in "as is" condition. The Tenant further acknowledges and agrees that it shall not call upon the Landlord at any time during the Term or any renewal thereof to effect any maintenance or to make any repairs or replacements to the Demised Premises, or any part thereof, whether interior or exterior, structural or otherwise, extraordinary as well as ordinary, foreseen as well as unforeseen and all such expenses shall be the sole responsibility of the Tenant.
4. (1) If the Term hereby granted or the goods and chattels of the Tenant or any assignee or subtenant are at any time seized or taken in execution or attachment or if the Tenant or any assignee or subtenant makes an assignment for the benefit of creditors, or becomes bankrupt or insolvent, or makes a proposal to its creditors, or makes a sale under the *Bulk Sales Act* or any successor legislation of the goods and chattels on the Demised Premises without the Landlord's prior written consent, such consent not to be unreasonably withheld, or if any corporate assignee is subjected to voluntary or compulsory liquidation or winding up, the Term shall immediately terminate.
- (2) Notwithstanding any present or future Act of the Ontario Legislature, none of the Tenant's goods and chattels on the Demised Premises shall at any time during the Term be exempt from levy by distress for rent in arrears, and the Tenant, having waived any such exemption, shall by this subsection be estopped from setting up any such exemption in any proceedings between the parties; and the Landlord and its agents shall for the purpose of all acts and things done pursuant to clause (b) hereof be the agent(s) of the Tenant (who alone shall be responsible therefor) and be accountable only for monies actually received despite any act, neglect, omission or default in the performance of such agency.
5. (1) The following events ("Events of Default") shall be deemed a default (a "default") under this Lease:
- (a) the Tenant fails to pay the Landlord any amount due and payable under this Lease and does not remedy such default within thirty (30) business days of receipt by the Tenant of written notice from the Landlord to the Tenant to such effect;
  - (b) the Tenant fails to fulfil any other term or condition of the Lease and does not remedy such default within sixty (60) business days of receipt by the Tenant of a written notice from the Landlord to the Tenant to such effect, except if the nature of such default is such that it cannot be remedied within such delay of sixty (60) business days, in which case the Tenant shall immediately commence the remedy of such default following receipt of such written notice and thereafter shall diligently continue to remedy such default until such time that, in the opinion of the Landlord, acting reasonably, such default has been remedied;
  - (c) the Tenant is in default of any of its obligations pursuant to any agreements entered into with the City of Toronto with respect to the development and operation of the Demised Premises, including, but not limited to, cultural use agreement and a heritage easement agreement;
  - (d) the Tenant has not commenced making the Improvements within eighteen (18) months following the Commencement Date, unless otherwise agreed to by the General Manager;

- (e) if at any time prior to the completion of the Improvements, work ceases for a period of three months or more, or if the Tenant abandons the Demised Premises, then the Landlord shall have the right, on written notice to the Tenant, to terminate this Lease.

(2) In addition to all rights and remedies of the Landlord available to it by any provision of this Lease or given by law to the Landlord, upon an Event of Default the Landlord shall have the right to terminate this Lease upon ten (10) days notice in writing to the Tenant without the necessity of any legal proceeding whatsoever. The Tenant shall thereupon quit and surrender the Demised Premises to the Landlord, or if not in possession of the Demised Premises, the Tenant shall no longer have any right to possession of the Demised Premises, and the Landlord, its agents and servants, shall have the right to enter the Demised Premises and dispossess the Tenant and remove any persons or property therefrom without the necessity of legal proceeding whatsoever and without being liable to the Tenant therefor in damages, or otherwise.

(3) If the Landlord shall terminate this Lease as provided in subsection 5(2) herein, (i) the Tenant shall pay to the Landlord on demand, rent hereunder up to the time of re-entry or termination, whichever shall be the later, and (ii) in addition to any other remedies it may have, the Landlord may recover from the Tenant damages it incurs by reason of the Tenant's default including, without limitation, all expenses incurred in performing any of the Tenant's obligations under this Lease, and in re-entering the Demised Premises or terminating this Lease, in collecting sums due or payable by the Tenant, and the expense of keeping the Demised Premises in good order and repairing the same, all of which amounts shall be paid by the Tenant to the Landlord as additional rent forthwith on demand.

(4) In addition to all rights and remedies of the Landlord available to it by any provision of this Lease or given by law, upon an Event of Default, the Landlord shall have the right at all times to remedy or attempt to remedy any Event of Default, and in so doing may enter upon the Demised Premises to do any work or other things therein on not less than five (5) business days prior written notice to the Tenant or it may do so without prior notice in the event of an emergency. All expenses of the Landlord in remedying or attempting to remedy such Event of Default plus a sum equal to fifteen percent (15%) of the cost thereof representing the Landlord's overhead shall be paid by the Tenant to the Landlord as additional rent forthwith upon demand.

(5) The Landlord may take possession of the whole or any part of the Demised Premises, may let and manage the same, including granting of any lease(s) on such terms as appear to it to be reasonable, may demand, collect, receive and distrain for all rents payable in respect thereof and apply the net amount remaining after deduction of all expenses in connection therewith (including commissions and management fees) toward the rent reserved under this Lease.

6. It is hereby declared and agreed by and between the Landlord and the Tenant that:

- (a) the Landlord shall not be responsible in any way for any injury to any person or for any loss of or damage to any property belonging to the Tenant or to employees, invitees or licensees of the Tenant (while acting as such) while such person or property is in or about the Demised Premises, including without limiting the foregoing any loss of or damage to any property caused by theft or breakage, or by steam, water, rain or snow which may leak into, issue or flow from any part of the building or any adjacent or neighbouring lands or from the water, steam or drainage pipes or plumbing works thereof or from any other place or quarter or for any loss or damage caused by or attributable to the condition or arrangement of any electric or other wiring or for any other loss whatsoever of the Tenant with respect to the Demised Premises and the activities of the Tenant carried on therein, and the Tenant covenants to indemnify the Landlord against all loss, costs, claims or demands in respect of any injuries, loss or damage referred to in this subsection unless caused or contributed to by the Landlord or those for whose negligence the Landlord is at law responsible;
- (b) subject to subsection (c) of this section, upon the termination of the Term and any renewal thereof, the improvements to the Demised Premises shall become the sole property of the Landlord without payment of any compensation whatever therefor by the Landlord to the Tenant; and
- (c) if during the Term or any renewal thereof the building or any part thereof shall be damaged or destroyed by fire, lightning or other casualty or peril covered by the insurance maintained during the term by the Tenant as more particularly provided for in section 13 hereof, the Tenant shall be entitled to elect to not repair or rebuild the building or any part thereof that requires restoration. If the Tenant elects to not restore such damage, the Term shall thereupon be terminated as of the sixtieth (60) day after the occurrence thereof, and this Lease shall thereupon cease and become null and void and the Tenant shall immediately vacate and surrender the Demised Premises to the Landlord. Provided however, that notwithstanding the foregoing provisions of this section if the Landlord shall notify the Tenant in writing within such sixty (60) day period after the occurrence of such damage or destruction that it requires the Tenant to restore the damage or destruction, then in such event the

Tenant shall proceed diligently to repair or rebuild, as the case maybe, the building as nearly as possible to the condition in which it was before such damage or destruction occurred.

7. (1) The Tenant shall have the right at any time and from time to time to mortgage this Lease and the Tenant's leasehold interest in the Demised Premises, with the consent of the Landlord, such consent not to be unreasonably withheld or delayed (the "Leasehold Mortgage"). The Leasehold Mortgage may be granted by way of sublease, assignment or otherwise. The Tenant shall also have the right to extend, modify, renew or replace any such Leasehold Mortgage with another Leasehold Mortgage, provided however that with respect to such Leasehold Mortgage:

- (a) the term of the Leasehold Mortgage shall not extend beyond the end of the Term and shall be on terms and conditions equivalent to commercial term loans for similar Demised Premises, but with no affordable housing component;
  - (b) the Leasehold Mortgage shall provide that it is expressly subject and subordinate to the Landlord's rights hereunder and in the Demised Premises, and in all ancillary agreements between the parties pertaining to the Demised Premises in existence as of the date of the Leasehold Mortgage, except as expressly provided in this Lease;
  - (c) the Tenant has received a notice of default and which default has not been remedied within the time stipulated in the notice under this Lease or the Affordable Housing Agreement at the time the Leasehold Mortgage is given;
  - (d) the Tenant shall observe and perform all of the Tenant's obligations under any Leasehold Mortgage and keep any Leasehold Mortgage in good standing at all times;
  - (e) nothing contained in this Lease shall in any way bind the Landlord to subordinate its reversionary interest in the Demised Premises to any Leasehold Mortgage.
- (2) The Tenant shall observe and perform all of the Tenant's obligations under any Leasehold Mortgage and keep any Leasehold Mortgage in good standing at all times.
  - (3) Provided that the Leasehold Mortgage has not been increased, the Tenant shall be entitled at any time to refinance the Leasehold Mortgage and the provisions of Section 7.1 shall be amended mutatis mutandis.
  - (4) Nothing contained in this Agreement shall in any way bind the Landlord to subordinate its reversionary interest in the Demised Premises to any Leasehold Mortgage.
  - (5) Notwithstanding any other provisions of this Lease:
    - (a) The Landlord shall not exercise any right of re-entry or distress or right to terminate this Lease until:
      - (i) the Landlord gives to the Leasehold Mortgagee at least 45 days notice in writing of the intention to re-enter or to distress or to terminate specifying the full particulars of the grounds therefor; and
      - (ii) the Leasehold Mortgagee does not during that 45 day period either remedy all specified proper grounds for re-entry or distress or termination or give to the Landlord notice in writing that the Leasehold Mortgagee intends to take, or has taken, formal proceedings for the enforcement of the Leasehold Mortgage and the protection of its position; and
      - (iii) the Leasehold Mortgagee, having given the notice specified in (ii) has had reasonable time to pursue to its conclusion all reasonable proceedings for the enforcement of the Leasehold Mortgage and the protection of its position.
    - (b) If upon the conclusion of proceedings by the Leasehold Mortgagee for the enforcement of the Leasehold Mortgage and the protection of its position, the rights of the Tenant have been released to the Leasehold Mortgagee or foreclosed or sold, thereupon all then existing grounds for re-entry or distress or termination based on any default by the Tenant and all then existing rights (if any) of re-entry or distress or termination based on such grounds shall terminate and the Leasehold Mortgagee or purchaser shall become the Tenant free of all liability for such grounds;
    - (c) Where the Landlord, at the request of the Tenant, intends to terminate the Lease either by surrender of lease or otherwise, notice of such intention shall be given in writing to the Leasehold Mortgagee, allowing the Leasehold Mortgagee at least 60 days to obtain repayment in full of the outstanding Leasehold Mortgage, inclusive of

interest and penalties, or take mortgage default enforcement action. If the Leasehold Mortgagee provides to the Landlord notice of its intention to commence or the commencement of mortgage default enforcement action to realize on its security, including but not limited to foreclosure proceedings, the Landlord shall not accept the surrender of the Lease;

- (d) Throughout any period of time during which, as a result of proceedings for default under the mortgage the Leasehold Mortgagee as successor is in leasehold possession of the Demised Premises or holds leasehold title to the Demised Premises:
- (i) the Landlord waives, as against the Leasehold Mortgagee and its successors and assigns, all Basic Rent and Additional Rent and interest accruing and otherwise required to be paid under this Lease, but for the purpose of this waiver, Basic Rent and Additional Rent do not include municipal real estate taxes, school taxes, local improvement charges, water rates and utility charges and any other amounts or costs required to be paid by the Landlord or the Tenant and the actual costs of construction, maintenance and repair of damage that are the responsibility of the Tenant;
  - (ii) the review and approval of the Landlord shall not be required with respect to plans, specifications, contractors, workers, tradesmen, materials, proposals, details and drawings for repairs, replacements, maintenance, improvements, alterations, and decorations unless the repair will materially affect the building's structure or the mechanical, heating, ventilating, air-conditioning or other base systems; and
  - (iii) the consent of the Landlord shall not be required with respect to any vacancy of or removal of goods from the Demised Premises.
- (e) No restriction on assignment or subletting of this Lease by the Tenant applies to any assignment or subletting or release of this Lease by the Leasehold Mortgagee and the Leasehold Mortgagee shall not remain liable on the Lease after assignment or release by it;
- (f) If at any time the Demised Premises are damaged or destroyed to the extent of twenty-five (25%) per cent or more of its full insurable value, then the Leasehold Mortgagee may, within 60 days of its receipt of notice of the event and extent of damage or destruction and appropriate amount of available insurance proceeds, elect to require that the insurance proceeds not be applied towards the repair or rebuilding or restoration of the Project, and in the event of such an election, the Lease shall be terminated, and the insurance proceeds shall be applied, in priority;
- (i) first, but only if and to the extent required by the Landlord or the Tenant, toward clearing and restoring the Demised Premises as nearly as possible to their condition prior to the commencement of construction;
  - (ii) second, towards payment of all moneys owing on the Leasehold Mortgage. Notwithstanding section 7.5(f)(i) above, the Landlord confirms and agrees with any Leasehold Mortgagee that so long as the Leasehold Mortgage remains in full force and effect and the Leasehold Mortgagee elects in writing as hereinafter provided and provides written notice of such election to the Landlord and the Tenant, the provisions of section 7.5(f)(ii) will rank in priority to section 7.5(f)(i) hereof so that should the Leasehold Mortgagee elect that insurance proceeds on damage or destruction of any Building(s) on the Lands not be applied to the repair or rebuilding or restoration of the Project, then, in such event, such proceeds will be applied first to the payment of all moneys then owing on the Leasehold Mortgage and then in the manner and to the extent provided in section 7.5(f)(i), section 7.5(f)(iii), section 7.5(f)(iv) and section 7.5(f)(v) of this Agreement;
  - (iii) third, towards payment of all moneys payable to the Landlord under this Lease;
  - (iv) fourth, in payment to the Landlord and the Tenant in accordance with their interests herein;
- and neither the Landlord nor the Tenant shall be obligated to repair or rebuild or restore.
- (g) Subject to Section 13.11, there shall be no obligation on the Leasehold Mortgagee to arrange or maintain any insurance, and, if for the purpose of paragraph (f), because the Leasehold Mortgagee has not arranged or maintained insurance there

are no or insufficient insurance proceeds and the Leasehold Mortgagee makes the election specified, then the Leasehold Mortgagee shall not be required to do more than clear and restore the Lands as nearly as possible to their condition prior to the commencement of construction and shall be entitled to apply to that end whatever insurance proceeds may be available;

- (h) There shall be no obligation on the Leasehold Mortgagee to indemnify the Landlord except where the Leasehold Mortgagee would be so obligated under the terms of this Lease;
- (i) In the event the Landlord or Tenant requires arbitration pursuant to the Lease, the party requiring arbitration shall give timely notice of all arbitration proceedings to the Leasehold Mortgagee and the Leasehold Mortgagee may participate fully in the proceedings if in its reasonable opinion the outcome may affect its security;
- (j) If the Leasehold Mortgagee wishes to take proceedings under its security to assign the Lease, then:
  - (i) the Leasehold Mortgagee will use reasonable commercial best efforts to find an assignee or purchaser that is a non-profit corporation that will carry on the operation of the Tenant on a non-profit basis in accordance with Section 9.1 of the Lease.
  - (ii) If, after having conducted reasonable commercial best efforts over a period of six (6) months, the Leasehold Mortgagee is unable to enter into an agreement of purchase and sale satisfactory to the Leasehold Mortgagee, acting reasonably, with a purchaser as referred to in clause (i), and then obtain the consent of the City, the Leasehold Mortgagee may assign or sell the Tenant's interest in the Lease to any person, subject to the consent of the City, which consent may not be unreasonably or arbitrarily withheld.
  - (iii) If the Leasehold Mortgagee assigns the Lease under clause (ii), then at the request of the Leasehold Mortgagee on completion of the assignment or sale transaction, in addition to any other documents that may be required, the City will enter into an agreement with the assignee or purchaser amending the Lease to allow the proposed new use.
- (k) If the Leasehold Mortgagee is in possession of the Demised Premises as a mortgagee in possession, then the Leasehold Mortgagee shall be responsible for the obligations of the Tenant under this Lease for so long as it is in possession of the Demised Premises, but neither the Leasehold Mortgagee nor a Transferee under a transfer entered into pursuant to 7.5 (j) will have any liability with respect to any matter or thing occurring before the Leasehold Mortgagee's possession of the Demised Premises.

8. (1) For the purposes of this Lease, Improvements shall mean any construction and/or renovations to the Demised Premises and all ancillary services connected thereto.
- (2) Before commencing the Improvements the Tenant will provide the General Manager with a complete copy of the final drawings and specifications and obtain his approval in relation thereto (and following such approval by the General Manager to be called the "Building's Plans and Specifications").
- (3) The Improvements will be completed at the sole cost and expense of the Tenant and without cost to the Landlord, and in a first class manner and in accordance with the Building's Plans and Specifications and with due diligence.
- (4) The Tenant shall, at its own expense, do all acts and things required for the performance and completion of the Work in accordance with all applicable building and zoning ordinances and all Applicable Laws, by-laws, orders, rules, regulations and other requirements of all federal, provincial and municipal authorities and in accordance with the Plans and Specifications, as approved by the Landlord;
- (5) The Tenant shall, at its own expense, do all acts and things required to be done in the performance of the Work in compliance with the insurance requirements;
- (6) The Tenant shall, at its own expense, construct the buildings with care and in such a manner so that no damage or injury occurs to the Demised Premises or to the structures or other improvements located on abutting lands and if such damage or injury occurs, repair and restore the Demised Premises or such abutting lands and the structures and other improvements located thereon;

- (7) The Tenant shall, at its sole expense, obtain all necessary planning approvals and agreements with any authorities and utilities relating specifically to the building so as to be in a position to obtain a full building permit. Each party shall execute all such reasonable agreements as may be requested by the other. It is, however, expressly understood that if the Landlord is requested to execute any planning applications or permits, it will do so in its capacity only as the owner of the Demised Premises and will not thereby fetter any of its statutory or other powers or mandates. The Tenant shall perform all obligations under any such agreement as applicable to the building at no cost to the Landlord, except to the extent otherwise expressly provided herein and the failure by the Tenant to perform all such obligations under any such agreement shall constitute a default under this Lease. The Tenant shall pay all municipal and regional levies and similar charges relating to the Demised Premises.
9. (1) The building's Plans and Specifications shall not be modified, revised, amended or added to (hereinafter, in this section, collectively called a "Change") by the Tenant without the prior written consent of the General Manager. If the Tenant desires to effect such a Change, it shall notify the General Manager in writing of such proposed Change and shall provide to the General Manager, with such notice, such drawings, soil tests, plans and specifications as may reasonably be required to permit the General Manager to properly determine the nature and extent of such Change. The General Manager's consent, as aforesaid, shall not be unreasonably withheld or delayed, unless the Change represents a material change in the size, nature or character of the building.
- (2) For the purposes of this section, any Change which if implemented would increase or decrease the useable area of the building from the original building's Plans and Specifications approved by the Landlord, shall be deemed to be a Change representing a "material change in the size of the building".
- (3) The Landlord acknowledges that notwithstanding anything to the contrary contained in this section, the Landlord's consent is not required to any Change or future renovations or redevelopment limited to the interior of the building, unless such change has implications for site utilities which could affect the rest of the Park. Notwithstanding the aforesaid, all Changes, whether interior or exterior, shall be recorded on the "as-built" drawings.
- (4) The Tenant shall not be entitled to redevelop the building or expand the building without the prior written approval of the Landlord, including, without limitation, approval of the outline plans, drawings, sketches and specifications of the proposed redevelopment. It is a condition precedent to the approval by the Landlord being given that the Landlord and the Tenant shall have agreed to such amendments (if any) to this Lease as shall be requisite, in all of the circumstances, to give effect to this section.
10. Subject to prior consultation with the Landlord, the Tenant, at its sole expense, shall provide site services to the Demised Premises as may be required.
11. The Tenant covenants with the Landlord that no trees will be cut or otherwise removed from the Demised Premises by the Tenant without the prior written consent of the General Manager and that all due care will be taken by the Tenant to ensure that no trees on the Demised Premises or on adjacent lands owned by the Landlord will be damaged by the Tenant or those for whom the Tenant is at law responsible. The Tenant further covenants that it will not permit the storage or use of any explosive or inflammable substances, pollutants, contaminants or hazardous or environmentally sensitive materials any time on the Demised Premises during the Term or any renewal thereof, except those normally used in the creation of art.
12. (1) The Tenant shall at all times indemnify and save harmless the Landlord of and from any and all manner of claims, demands, losses, costs, charges, actions and other proceedings whatsoever (including those under or in connection with the *Workplace Safety and Insurance Act, 1997* or any successor legislation), made or brought against, suffered by or imposed on the Landlord or its property in respect of any loss, damage or injury (including fatal injury) to any person or property (including, without restriction, employees, agents and property of the Landlord or of the Tenant) directly or indirectly arising out of, resulting from or sustained as a result of the Tenant's construction, occupation or use of, or any operation in connection with, the building and/or the Demised Premises, and/or the Park or any fixtures or chattels thereon (including water left running, gas that escapes or imperfect or insufficient installation of any construction or other improvement thereon).
- (2) The Tenant shall fully indemnify and save harmless the Landlord against and from all liens and other claims under the *Construction Lien Act* or any successor legislation related to any work performed by or at the direct or indirect request of the Tenant at the building and/or the Demised Premises, and shall at its own expense see to the removal from the registered title to the Demised Premises and/or surrounding lands, by discharge or Order, of any claim for such lien or Certificate of Action in connection therewith, promptly and in any event within ninety (90) Days of being notified in writing by the Landlord to do so, failing which the Landlord may see to such removal and recover the expense and all attendant costs from the Tenant as rent owing and in arrears.

13. (1) Prior to the commencement of the Improvements, the Tenant shall effect, maintain or cause to be maintained and keep in force, until completion of such Improvement, insurance insuring the Landlord and the Tenant and their employees and all those for whom they are at law responsible (without rights of cross-claim as between the Landlord and the Tenant) from damage to the Improvements, building, fixtures, equipment and building materials forming part of the Demised Premises from time to time during the making of the Improvements, by an "all risks" form, including resultant damage from error or design and faulty workmanship and, to the extent available and as would be obtained by a prudent owner of such a Demised Premises, to the Replacement Cost thereof at all times and in any event in an amount sufficient to prevent the Landlord or the Tenant from being deemed to be a co-insurer.
- (2) Except as to any portion of the building under construction which is insured by the insurance coverage provided pursuant to subsection 13.1, the Tenant shall, at all times during the Term, insure and keep insured the Demised Premises and all other insurable property belonging to the Tenant and from time to time located on the Demised Premises in an amount not less than the Replacement Cost thereof against loss or damage by perils of "all risks" (being the perils from time to time included in the standard "all risks" policy issued by insurers from time to time), including resultant damage from error in design and faulty workmanship, to the extent available and as would be obtained by a prudent owner of such a Demised Premises, and in any event in an amount sufficient to prevent the Landlord or the Tenant from being deemed to be a co-insurer.
- (3) The Tenant shall, at all times during the Term, maintain or cause to be maintained comprehensive general liability insurance including contractual liability on an occurrence basis against claims for personal or bodily injury, death or property damage suffered by others arising in connection with the Demised Premises or out of the operations of the Tenant or its sublessees in, on or about the Demised Premises, indemnifying and insuring the Landlord and the Tenant and their employees and all others for whom each of them is at law responsible in such amounts and to such extent as a prudent owner of such a Demised Premises would, from time to time, carry (which amount shall initially be not less than Five Million Dollars (\$5,000,000.00) during any period of construction and thereafter not less than Five Million Dollars (\$5,000,000.00) for any personal or bodily injury, death, property damage or other claim in respect of any one accident or occurrence) and, without limiting the generality of the foregoing, with provisions for cross-liability and severability of interests. During the course of making any improvements, the liability insurance required under this section shall relate to property damage, death or injury arising out of the making of the Improvements and shall include non-owned automobile liability insurance covering all licensed vehicles owned by the Tenant or engaged in any manner by the Tenant in the construction or related work. All liability insurance policies shall cover the costs of defence or adjustment of claims over and above money limitations of the policies.
- (4) The Tenant shall maintain, or cause to be maintained, and shall keep in force during the Term such other insurance as may be reasonably required from time to time.
- (5) All policies of insurance required under this section and all renewals thereof shall contain a stated amount co-insurance clause effective for the term of the policy or the renewal so as to prevent the Tenant from becoming a co-insurer under the terms of such policy or policies and to permit full recovery of the amount insured in the event of loss.
- (6) The Landlord, acting reasonably, shall have the right, but not the obligation, to approve of the insurers and the insurance policies carried by the Tenant including the limits of coverage and the provisions thereof, provided that if the Landlord is named as loss payee on any insurance policies, and the leasehold mortgagee has approved such insurance policies, the Landlord's prior approval is not required.
- (7) Each of the policies of insurance provided pursuant to this section shall contain an agreement by the insurer to the effect that it will not cancel or alter or refuse to renew such policy prior to its expiration, whether by reason of non-payment of premium, non-fulfilment of condition or otherwise, except after thirty (30) clear days' prior written notice to the Landlord.
- (8) The Tenant shall duly and punctually pay or cause to be paid all premiums and other sums of money payable for maintaining the insurance to be provided pursuant to this section. The Tenant will produce to the Landlord as soon as reasonably feasible, and in any event within ten (10) clear days prior to the expiry of any policy of insurance placed pursuant to this section, evidence of the renewal or replacement of such insurance.
- (9) The Tenant shall cause any and all policies of insurance provided for in this Section include the Landlord as an additional insured and loss payee.
- (10) The Tenant shall advise the Landlord of any cancellation, material alteration or lapse of any policies of insurance required to be provided hereunder. If the Tenant fails to effect and keep such insurance in force, or if such insurance is in an amount less than the amount required under this Lease, the Landlord shall have the right, upon notice to the Tenant and without assuming any obligation in connection therewith, to effect such insurance at the cost of the Tenant and all outlays by the Landlord shall be payable by the Tenant to the Landlord as Rent forthwith upon demand without



prejudice to any other rights and recourses of the Landlord hereunder. No such insurance taken out by the Landlord shall relieve the Tenant of its obligations to insure hereunder and the Landlord shall not be liable for any loss or damage suffered by the Tenant in connection therewith.

(11) The Landlord shall not be liable for any death or injury arising from, or out of any occurrence in, upon, at, or relating to the Demised Premises or damage to property of the Tenant or of others located on the Demised Premises, nor shall it be responsible for any loss of or damage to any property of the Tenant or others from any cause, unless and to the extent that any such death, injury, loss or damage, results from the negligence of the Landlord, its agents, employees, contractors, or others for whom it may, in law, be responsible. Without limiting the generality of the foregoing, the Landlord shall not be liable for any injury or damage to persons or property resulting from fire, explosion, falling plaster, falling ceiling tile, falling fixtures, steam, gas, electricity, water, rain, flood, snow or leaks from any part of the Demised Premises or from the pipes, sprinklers, appliances, plumbing works, roof, windows or subsurface of any floor or ceiling of the building or from the street or any other place or by dampness or by any other cause whatsoever. The Landlord shall not be liable for any such damage caused by other Persons on the Demised Premises or by occupants of adjacent property thereto, or the public, or caused by construction or by any private, public or quasi-public work. All property of the Tenant kept or stored on the Demised Premises shall be so kept or stored at the risk of the Tenant only and the Tenant releases and agrees to indemnify the Landlord and save it harmless from any claims arising out of any damage to the same including, without limitation, any subrogation claims by the Tenant's insurers.

(12) Upon execution of this Lease, the Tenant shall deliver to the Landlord evidence of the insurance required hereby in the form of Certificates of Insurance, in form and detail satisfactory to the Landlord acting reasonably, signed by an authorized representative of the insurer. Certificates of insurance evidencing renewal or replacement of policies shall be delivered to the Landlord fifteen (15) days prior to the expiration of then current policies, without demand by the Landlord.

14. The Schedules to this Lease form a part hereof as if the provisions set forth therein were contained in the body of this Lease.

15. Wherever the provisions of this Lease require an approval or consent of or to any action, person, firm, corporation, document or plan by a party, this Lease shall (unless the text hereof expressly states that such approval or consent may be unreasonably or arbitrarily withheld, or unless the text hereof expressly states that the time periods are to be otherwise, in which latter event this section shall apply but the time periods shall be adjusted accordingly) be deemed to provide that:

- (a) such request for approval or consent shall:
  - (i) clearly set forth the matter in respect of which such approval or consent is being sought;
  - (ii) form the sole subject matter of the correspondence containing such request for approval or consent; and
  - (iii) clearly state that such approval or consent is being sought.
- (b) such approval or consent shall be in writing; and
- (c) such approval or consent shall not be unreasonably or arbitrarily withheld or delayed.

16. (1) Whenever in this Lease it is provided that anything be done or performed, such provisions are subject to an Unavoidable Delay and neither the Landlord nor the Tenant, as the case may be, shall be regarded as being in default in the performance of any obligation hereunder during the period of any Unavoidable Delay relating thereto and each of them shall notify the other of the commencement, duration and consequence (so far as the same is within the knowledge of the party in question) of any Unavoidable Delay affecting the performance of any of its obligations hereunder. The provisions of this section shall not operate to excuse the Tenant from the prompt payment of rent, or any other payments required by this Lease.

(2) "Unavoidable Delay" is defined as: strikes; inability to procure materials or services; power or mechanical failure; governmental laws, regulations or controls; riots; war; act of God or other reason which is not the fault of the party delayed in performing work or doing acts required under the terms of this Lease.

17. Nothing contained in this Lease shall be deemed or construed by the Landlord, or the Tenant or by any other person as creating the relationship of principal and agent or partnership or joint venturers between the Landlord and the Tenant, it being understood and agreed that none of the provisions contained in this Section or this Lease nor any acts of the Landlord or the Tenant shall be deemed to create any relationship between them other than the relationship of landlord and tenant as between the Landlord and the Tenant.

18. (1) All notices, demands, requests, agreements, consents, approvals and payments (hereinafter, individually or collectively called a "Notice") which may be or are required to be given pursuant to this

Lease shall be in writing and shall be delivered by personal service or facsimile to the following address:

- (a) to the Landlord at:  
 City of Toronto  
 Corporate Services – Attention: Director of Real Estate  
 55 John Street – 2nd Floor, Metro Hall  
 Toronto ON M5V 3C6  
 Facsimile: (416) 392-1880  
 with a copy to the City Solicitor at:

55 John Street, Metro Hall  
 Stn. 1260, 26<sup>th</sup> Floor  
 Toronto ON M5V 3C6  
 Attention: Anna Kinastowski  
 Facsimile: (416) 397-5624

- (b) to the Tenant at:

TORONTO ARTSCAPE FOUNDATION  
 60 Atlantic Avenue, Suite 111  
 Toronto, Ontario M6K 1X9

Attention: Executive Director  
 Facsimile: 416-392-1059

Any such notice given as aforesaid shall be deemed to have been effectively given if sent by facsimile or other similar form of telecommunications on the next business day following such transmission, or if delivered, to have been received on the third date of such delivery. Any Party may change its address for service from time to time by notice given in accordance with the foregoing and any subsequent notice shall be sent to the Party at its changed address.

(2) Any Notice shall be deemed to have been validly and effectively given and received: if personally delivered, on the date of delivery; if sent by prepaid registered mail, on the third (3<sup>rd</sup>) business day next following the date of mailing, provided, however, that during any postal disruption or threatened postal disruption, delivery shall be in person; and if sent by facsimile, on the business day next following the day on which it was sent.

(3) Any Notice permitted or required to be given by the City may be given by the General Manager. However, the General Manager specifically reserves the right to submit the issue of the giving of any Notice, or of the contents of any Notice, to City Council for its determination.

(4) Notwithstanding any consent or approval given by the City with respect to any plans, specifications or other construction-related matter, the City will not be in any way liable for the design or construction of any proposed structure, and the party that has obtained the consent or approval of the City shall be wholly liable for such design and construction.

(5) Either party under this Lease may from time to time by Notice to the other party change its address for service under this Lease.

19. (1) If the Tenant holds over after the expiration of the Term with the consent of the Landlord, the Tenant shall be a monthly tenant only but in all other aspects shall be subject to all the provisions of this Lease.

(2) If the Tenant holds over after the expiration of the Term without the Landlord's consent, the Landlord may take immediate action without notice to the Tenant, to recover possession of the Demised Premises. During such overholding period, the Tenant shall pay double the amount of rent set out in subsection 2(1) hereof.

(3) If the Tenant is obliged to vacate the Demised Premises by a certain date and fails to do so at a time when the Landlord is legally obliged to deliver possession thereof to a third party, the Tenant shall indemnify the Landlord fully for all losses suffered as a result of such failure.

20. (1) All sums, for rent or otherwise, payable to the Landlord under this Lease shall bear interest, at the then current rate of interest charged to the Landlord by its bankers from the date due until the actual date of payment, without prejudice to or in addition to any other remedy available to the Landlord under this Lease or at law.

(2) The Tenant shall pay to the Landlord all the Landlord's reasonable legal costs, on a solicitor-and-client basis, of all actions or other proceedings in which the Landlord participates in connection

with, or arising out of the obligations of the Tenant under the Lease or arising out of the Tenant's occupation of the Demised Premises, except to the extent that the Landlord is not successful therein.

(3) The Tenant expressly waives the benefits of the *Landlord and Tenant Act* and any amendments thereto and any present or future enactments of the Ontario Legislature permitting the Tenant to claim a set off against the rent for any cause whatsoever.

21. (1) No condonation, excusing or overlooking by the Landlord of any default, breach or non-observance of any of the Tenant's obligations under this Lease at any time or times shall affect the Landlord's remedies or rights with respect to any subsequent (even if by way of continuation) default, breach or non-observance.
- (2) No waiver shall be inferred from or implied by anything done or omitted by the Landlord.
- (3) Any written waiver by the Landlord shall have effect only in accordance with its express terms.
- (4) All rights and remedies of the Landlord under this Lease shall be cumulative and not alternative.
22. (1) The termination of the Term by expiry or otherwise shall not affect the liability of either party to this Lease to the other with respect to any obligation under this Lease which has accrued up to the date of such termination but has not been properly satisfied or discharged.
- (2) The Tenant acknowledges that there are no covenants, representations, warranties, agreements or conditions express or implied, collateral or otherwise forming part of or in any affecting or relating to this Lease other than as set out in this Lease, which constitutes the entire agreement between the parties concerning the Demised Premises and which may be modified only by further written agreement under seal.
- (3) The authority of the General Manager shall not be deemed to be exhausted by any individual exercise thereof, and any matter for which he is to be responsible under this Lease, the General Manager shall be the sole judge whose opinion and exercise of discretion shall not be subject to review in any manner whatsoever except as expressly otherwise indicated in this Lease.
23. All dollar amounts expressed in this Lease shall be of lawful money of Canada.
24. Reference in this Lease to the singular or masculine or neuter shall be construed as meaning plural or body politic or corporate and vice versa where the context so requires.
25. This Lease and rights and obligations of the parties hereto shall be interpreted in accordance with the laws of the Province of Ontario.
26. Every obligation of the Landlord or Tenant expressed in this Lease, even though not expressed as a covenant, shall be a covenant for all purposes. The word "Tenant" shall be deemed to mean each and every Person or party mentioned as Tenant herein, whether one or more.
27. Time shall be of the essence in all respects of this Lease.
28. If all or any part of any term, covenant or condition of this Lease or the application thereof to any person or circumstances is to any extent held or rendered invalid, unenforceable or illegal, the remainder of this Lease or the application of such term, covenant or condition to Persons or circumstances other than those with respect to which it is held invalid, unenforceable or illegal shall not be affected thereby and shall continue to be applicable and enforceable to the fullest extent permitted by law.
29. This Lease and the Schedules attached hereto and forming a part hereof, set forth all the covenants, promises, agreements, conditions and understandings between the Landlord and Tenant concerning the Demised Premises and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than as are set forth in this Lease. Except as otherwise provided herein, no subsequent alteration, amendment, change or addition to this Lease shall be binding upon the parties unless in writing and signed by each of them.
30. This Lease shall not be deemed to create any relationship between the parties other than that of Landlord and Tenant as to the Demised Premises. For greater certainty, the parties agree that they are not partners or joint venturers and that the Tenant is not the agent or representative of the Landlord and has no authority to bind the Landlord.
31. All rights and benefits and all obligations of the Landlord under this Lease shall be rights, benefits and obligations of the Landlord in its capacity as a party to this Lease and shall not derogate from or interfere or fetter with the rights, benefits and obligations of the Landlord, its Council or its elected and appointed officials and representatives in their respective functions and capacities.
32. The Tenant acknowledges that all references herein to the "General Manager" shall mean the Landlord's General Manager of Economic Development and Culture, his/her successor or designate from time

to time. The General Manager will administer the terms of this Lease on behalf of the Landlord. The General Manager shall administer and manage the lease agreement including the provision of any consents, approvals, waivers, notices and notices of termination provided that the General Manager may, at any time, refer consideration of such matter (including their content) to City Council for its determination and direction.

33. (1) Nothing in this Lease derogates from, interferes with, or fetters the exercise by the City of all of its rights and obligations as a municipality (whether discretionary or mandatory), or imposes any obligations on the City in its role as a municipality, and the City shall not be prevented from or prejudiced in carrying out its statutory rights and responsibilities, including its planning rights and responsibilities. Nothing in this Lease derogates from, interferes with, or fetters the exercise by the City's officers, employees, agents, representatives or elected and appointed officials of all of their rights, or imposes any obligations on the City's officers, employees, agents, representatives or elected and appointed officials, other than as expressly set out in this Lease.

(2) No communication or dealing between the Tenant and any department, committee, body, officer, employee, agent, representative or elected or appointed official of the City that is not clearly in respect of and in accordance with this Lease will be deemed to be a communication or dealing under this Lease between the Tenant and the City as parties to this Lease, or affect the City with notice of any such communication or dealings. It is intended and agreed that any communication or dealing between the Tenant and the City as parties to this Lease will only be effective if delivered in accordance with the notice provisions in this Lease. No communication or dealing between the City as a party to this Lease and the Tenant as a party to this Lease will relieve from the responsibility of discharging its lawful obligations to the City imposed by statute, regulation, by-law or by any other lawful manner separate and apart from the obligations imposed under this Lease.

34. This Lease shall enure to the benefit of and be binding upon the parties hereto and their respective successors and (where applicable) assigns.

IN WITNESS WHEREOF the parties hereto have executed this Lease under seal.

SIGNED, SEALED AND DELIVERED

APPROVED AS TO FORM

*Lana Lechow*  
For Anna Kinastowski  
City Solicitor

CITY OF TORONTO

*Weldon* c/s  
Name: WELDON  
Title: TREASURER

*Madeline Brown* c/s  
Name: *Ulli S. Watkiss*  
Title: City Clerk

TORONTO ARTSCAPE FOUNDATION

*Jim Jones* c/s  
Name: *Jim Jones*  
Title: CEO

*P.J. Taylor* c/s  
Name: *P.J. Taylor*  
Title: *Treasurer*

I/We have authority to bind the Corporation.

*DK*  
Authorized by Report No. 1(15) of the Policy and Finance Committee and adopted by Council on January 2, 2006. *February 1 and 2,*

*Madeline Brown*  
City Clerk

**SCHEDULE "A"**

**LEGAL DESCRIPTION**

**PIN:**

Part of Lots 21, 22, 23, 24, 32, 33 and 34 on registered Plan 119-York

All of Lots 31 to 38 (inclusive) and part of Lots 1, 2, 3, 4, 5, 30 and 39, part of McKinlay Avenue, registered Plan 945-York

Part of McKinlay Avenue, registered Plan 638-York

All of Lots 1 to 6 (inclusive), part of lane registered Plan M-144, City of Toronto

**SCHEDULE "B"**

**FAIR WAGE POLICY**



Chief Administrator's Office  
Shirley Hoy, Chief Administrative Officer

Strategic & Corporate Policy/Healthy City Office  
City Hall, 11th Floor, East  
100 Queen Street West  
Toronto, Ontario M5H 2N2

Rosanna Scotti  
Director

Tel: 416-392-8592  
Fax: 416-696-3645  
TTY: 416-338-0889

## Declaration of a Non-Discrimination Policy

The City of Toronto requires that all individuals and organizations adopt a policy of non-discrimination as a condition of receiving a grant or other support from the City. This declaration must be completed by individuals applying for grants or other support. Please note that this requirement does not pertain to artistic content.

Your name and the fact that you have adopted this policy will be included in a public report.

I hereby declare that I will uphold policies which prohibit discrimination and which protect the right to be free of hate activity based on race, ancestry, place of origin, colour, ethnic origin, disability, citizenship, creed, sex, sexual orientation, gender identity, age, marital status, family status, receipt of public assistance, political affiliation, religious affiliation, record of offences, level of literacy or any other personal characteristics in any business that I conduct regarding this project.

Please type or print where applicable

Name: \_\_\_\_\_

Complete Address: \_\_\_\_\_

Telephone No. \_\_\_\_\_

Fax No. \_\_\_\_\_

Postal Code \_\_\_\_\_

Name of Project (if applicable): \_\_\_\_\_

Signature: .....

Date: .....

The information requested on this form is collected pursuant to Clause 5 of Strategic Policies and Priorities Committee Report 26, and Clause 2 of Report 19 of Corporate Services Committee adopted by Council on December 16 and 17, 1998. Its purpose is to verify that you have adopted the Non-Discrimination Policy and to report this back to Council. If you have any questions about this declaration, please contact the Manager, Diversity Management and Community Engagement at 416-392-6824.

Text Telephony (TTY) 416-338-0889.

Pour tout renseignement en français concernant la présente, veuillez composer le 416-392-7342.

Para obter informação sobre este assunto, queira contactar o 416-392-7348.

查詢有關上述事宜，請致電 416-338-0338.

Please return to the address shown above

For Office Use Only  
**POLICY DECLARATION**

## CANADIAN CONTENT

To stimulate and encourage Canadian manufacturing activity and to assist Canadian suppliers in competition for the supply of goods and services to government.

The City may take into consideration the percentage of "**Canadian Content**" in goods offered when evaluating quotations.

The following definition of "**Canadian Content**" has been adopted by the City of Toronto:

"Canadian Content is the portion of the selling price (1) of a product or service that is related to the work performed in Canada. Canadian Content may also be calculated as the selling price less the cost of delivery (2) and Indirectly (3) imported materials, labour, services and overhead."

- (1) **SELLING PRICE** is the net selling price to the buyer after all discounts. It includes all applicable Goods and Services tax, Provincial Sales taxes, excise taxes and tariffs.
- (2) **COST OF DIRECT IMPORTS** is that portion of the selling price associated with directly imported materials, labour, services and overhead and includes tariffs and the cost of transportation to the Canadian place of importation. (See below for examples).
- (3) **COST OF INDIRECT IMPORTS** is that portion of the selling price associated with the cost of materials, labour, and services which while obtained through a Canadian supplier in fact originated outside Canada. (See below for examples).

For further information, refer to Canadian General Standards Board, Standard No. CAN2-147.3-82.

The "**Canadian Content**" of goods requested in a quotation must be calculated using the above definition and stated on the quotation sheet in the space provided.

For information of bidders, the following examples are provided to interpret several of the terms:

### COST OF DIRECT IMPORTS:

- (A) **DIRECTLY IMPORTED MATERIAL COST** – the cost of an electric motor bought directly from a firm producing it outside Canada. All duties paid and transportation costs to the Canadian place of importation and included in the cost of import.
- (B) **DIRECTLY IMPORTED LABOUR COST** – the labour cost of sewing together a glove in a facility outside of Canada from leather and other materials supplied from Canada.
- (C) **DIRECTLY IMPORTED SERVICE COST** – the cost of design work performed outside Canada.
- (D) **DIRECTLY IMPORTED OVERHEAD COST** – royalty or management fees paid outside Canada.

### COST OF INDIRECT IMPORTS

- (A) **INDIRECTLY IMPORTED MATERIAL COST** – the cost of an electric motor produced outside of Canada and purchased from a Canadian based distributor for incorporation into a product assembled or manufactured in Canada.
- (B) **INDIRECTLY IMPORTED LABOUR COST** – the cost of labour associated with a situation where a company with manufacturing facilities in Canada used facilities outside of Canada for testing products.
- (C) **INDIRECTLY IMPORTED SERVICE COST** – a Canadian firm providing computer services used a computer located outside of Canada in the provision of the service.
- (D) **INDIRECTLY IMPORTED OVERHEAD COST** – a pipeline contractor used equipment purchased from sources outside Canada.



## HOW THE POLICY WORKS

Let's say three suppliers submit acceptable bids on your intended purchase. They have also provided a statement of Canadian content, as requested. Company A distributes imported products; Company B assembles imported parts; Company C manufactures in Canada.

Price and Canadian Content of their Bids are:

	Company A	Company B	Company C
Total net bid price (including duty taxes and freight)	\$10,000	\$10,150	\$10,200
Less dutiable value of imported goods (per customs invoice)	-8,000	-5,000	-1,000
<b>CANADIAN CONTENT</b>	<b>\$2,000</b>	<b>\$5,150</b>	<b>\$9,200</b>

To recognize the preference for Canadian content, the bids are reduced by 10 percent of their Canadian Content.

	Company A	Company B	Company C
Total Net Bid Price	\$10,000	\$10,150	\$10,200
Less 10 percent Canadian Content	-200	-515	-920
<b>Evaluation Bid</b>	<b>\$9,800</b>	<b>\$9,635</b>	<b>\$9,280</b>

Applying the Canadian preference policy to the above group of bids means the award goes to Company C because it met all specifications and had the lowest \*evaluation bid.\*

The award to Company C, rather than the lowest bidder A, results in an increased value of Canadian content of \$7,200 at cost of \$200 (above lowest bid).

Note: Adopted by Council at their meeting of July 4, 5 & 6, 2000, Report No. 14, clause 3 of the Administration Committee.

1. The policy will be included in all Requests and Calls issued by the Finance Department, Purchasing and Materials Management Division.
2. Bidders will be requested, as part of their bid, to indicate the Canadian Content of goods/services they are offering to the City.
3. The Canadian Content indicated by the bidder is used to calculate the evaluation bid price, as per the policy.
4. The Request of Call is awarded to the lowest evaluation bid meeting specifications and/or requirements.

Paul Hewitt, Manager, Client and Support Services  
18<sup>th</sup> Floor, West Tower, City Hall, 392-1302

## Fair Wage Policy

### (A) The Purpose of Fair Wage Policy:

The Fair Wage Policy has as a central principle the prohibition of the City doing business with contractors and suppliers who discriminate against their workers. Originally implemented in 1893 to ensure that contractors for the City paid their workers the union rates or, for non-union workers, the prevailing wages and benefits in their field, the Fair Wage Policy has expanded over the years to other non-construction classifications such as clerical workers. The Policy also requires compliance with acceptable number of working hours and conditions of work in order to protect the rights of workers.

The intent of the Fair Wage Policy can be summarized as follows:

- to produce stable labour relations with minimal disruption;
- to compromise between the wage differentials of organized and unorganized labour;
- to create a level playing field in competitions for City work;
- to protect the public; and
- to enhance the reputation of the City for ethical and fair business dealings.

Establishing fair wage rates and schedules are intended to minimize potential conflicts between organized and unorganized labour in the tendering and awarding of civic contracts. Fair Wage rates are established through discussion with employee and employer groups and associations (having both union and non-union members). These rates are voted on by the above-noted groups and are recommended to Council for approval every three years. Certain designated construction related rates are based on the lowest rate established by collective bargaining, while the wage rates for other classifications are based on market and industrial surveys in accordance with the prevailing wages for non-union workers in the geographic area. Similarly, the City encourages contractors to hire and train apprentices under approved programs. In this regard, guidance on appropriate fair wage rates will be sought from employee and employer groups as part of establishing Fair Wage Schedules.

The fair wage rates do not apply to small businesses, typically those with owner-operators, or partnerships, or principals of company's as long as they undertake the work themselves.

### (B) City of Toronto Council Reference:

The City of Toronto Council on October 1 and 2, 1998, adopted the recommendation of The Corporate Services Committee (Report 13, Clause 1) which states: "the Fair Wage Policy be adopted for all City Departments, Agencies, Boards and Commissions and replace all existing fair wage policies of the former local municipalities".

It should be noted that, under the above authority, the conditions of the Fair Wage Policy cannot be waived, unless authorized by Council to do so.

### (C) Fair Wage Definitions:

1. Field Work: "field work" shall mean all work in performance of the Contract that is not shop work;
2. Shop Work: "shop work" shall mean any work in performance of the Contract that is done in or at any factory, foundry, shop or place of manufacture not located at or upon the Workers.
3. Workers: "workers" shall include mechanics, workers, labourers, owners and drivers of a truck or other vehicle employed in the execution of the Contract by the Contractor or by any subcontractor under them and clerical staff.
4. Fair Wage Schedule: "Fair Wage Schedule" shall mean stipulated rates of pay for different classifications of work produced and obtainable from the Fair Wage and Labour Trades Office.
5. Fringe Benefits: "Fringe Benefits" shall include such benefits as company pension plans, extended health care benefits, dental and prescription plans, etc. It does NOT include payroll burden deductions such as C.P.P., E.H.T., W.S.I.B. or E.I.C.

(D) Fair Wage Policy and Provisions:

- 1) The Contractor shall not discriminate against workers or applicants for employment as workers because of race, creed, colour national origin, political or religious affiliation, sex, sexual orientation, age, marital status, family relationship, and disability.
- 2) The contractor shall at all times comply with the Occupational Health and Safety Act and its regulations and take every precaution reasonable in the circumstances for the protection of workers. If the Contractor sub-contracts any or all of the work or services to be performed, the Contractor will ensure the sub-contractors are qualified to perform the work or services and comply with the Occupational Health and Safety Act and its regulations.
- 3) The Contractor shall or biweekly to pay or cause to be paid weekly every worker employed in the execution of the Contract (and shall see that every owner of a truck or other vehicle employed by the Contractor or by any subcontractor in the execution of the Contract shall pay or cause to be paid, weekly or biweekly to each of the owner's drivers) wages at the following rates, namely:
  - a) for workers employed in shop work, the Union rate of wages in the particular district or locality in which the work is undertaken for any class of work in respect of which there is such Union rate, and for any class of work for which there is no such Union rate, the rate of wages shall be the rate of wages prevailing in the particular district or locality in which the work is undertaken;
  - b) for workers employed in field work:
    - i) where the Contractor is in contractual relationship with a Union recognized by the Ontario Labour Relations Board as the bargaining agent for the relevant workers, the applicable rate of wages set out in the collective agreement, and
    - ii) where there is no such contractual relationship, a rate not less than that set out for such work in the Schedule of Wage Rates filed by the Manager, Fair Wage and Labour Trades Office, with the City Clerk of the Corporation after being first approved by Toronto Council (hereinafter called "the Fair Wage Schedule"),

and for the purpose of this paragraph, "wages" or "rate of wages" shall include any applicable amount for fringe benefits shown in the current Fair Wage Schedule, to be paid to the worker as part of the workers wages or for the worker's benefit as provided in any collective agreement as aforesaid applicable to such worker.

- 4) The Contractor shall:
  - a) at all times keep a list of the names of all workers employed in the Work and a record of the amounts paid to each;
  - b) from time to time, if demanded by the Manager, Fair Wage and Labour Trades Office, furnish a certified copy of all paysheets, lists, records and books relating to the work and keep the originals thereof open at all times for examination by the Manager; and
  - c) at all times furnish and disclose to the said Manager any other information respecting wages of workers that may be desired by the Manager in connection with the Work.
- 5) In case of a jurisdictional dispute or dispute as to rate of wages to be paid under the Contract or as to the amount to be paid to any worker, the decision of the Manager, Fair Wage and Labour Trades Office, shall be final and binding upon all parties
- 6) The Contractor shall not compel or permit any worker engaged for the Work to work more than the number of hours per day and the number of hours per week set out in the Fair Wage Schedule for the particular type of work involved except in case of emergency, and then only with the written permission of the Commissioner or head of the Department having charge of the Work or the person then acting as such.
- 7) If the Contractor fails to pay any worker (or if any owner of a truck or other vehicle fails to pay any driver) wages at the rate called for in paragraph (D), the Corporation may pay the balance necessary to make up the amount that should have been paid and may charge such balance, together with an administrative fee not in excess of ten per cent of such balance, to the Contractor.
- 8) If the Contract is to be for the purchase of supplies or materials to which the provisions in paragraph (D) respecting the rates of wages to be paid to workers engaged in shop work and field work do not apply, Toronto Council will, before awarding same, cause to be secured from the Manager, Fair Wage and Labour Trades Office, a report as to whether or not the Tenderer or Bidder maintains a fair wage level.
- 9) Workers engaged in clerical office work are to be paid a rate of wages no less than the surveyed standard for each classification of worker for the particular industry at the time of tendering.
- 10) The Contractor MUST display legible copies of this "Fair Wage Policy" in a prominent position in his/her workshop(s), accessible to all employees.
- 11) The contractor shall attach to all accounts rendered for payment of money upon the contract, a statutory declaration affirming that the requirements of the foregoing paragraphs have been fully complied with.

This is Exhibit "K" referred to in the Affidavit of Ben Macintosh, affirmed by Ben Macintosh, at the City of Toronto, in the Province of Ontario, before me on this 3<sup>rd</sup> day of January, 2024, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.  
*Christopher J. Henderson*  
Christopher J. Henderson  
Commissioner for Taking Affidavits

**THIS INDENTURE OF LEASE** made in quadruplicate this 28th day of September, 1999, and effective from the 1st day of October, 1999,

IN PURSUANCE OF THE *Short Forms of Leases Act*

BETWEEN:

**CITY OF TORONTO**  
(hereinafter called the "Landlord")

OF THE FIRST PART

-and-

**TORONTO ARTSCAPE INC.**  
(hereinafter called the "Tenant")

OF THE SECOND PART

**WHEREAS** the City is the owner of the land and building on Centre Island in the City of Toronto upon which the former Toronto Island Public School was located;

**AND WHEREAS** the Tenant proposes to establish the Gibraltar Point Centre for the Arts (the "Centre") at the former Toronto Island School;

**NOW THEREFORE IN CONSIDERATION OF** the mutual covenants herein contained the parties hereby agree as follows:

1. (1) The Landlord hereby demises and leases to the Tenant SUBJECT TO the rights in the nature of easements set out in subparagraph (2) hereof, the real property on Centre Island (the "Park") in the City of Toronto consisting of a building (the "Building") and adjoining lands, being Part of Park Lands, Registered Plan 700-E and Part of Lot 64, Registered Plan D-141, designated as Part 1 on Plan 63R-1025, as outlined in Schedule "A" hereof (the "Leased Property") for a Term of TWENTY (20) YEARS commencing on the 1st day of October, 1999, and expiring on the 30th day of September, 2019, on the terms and conditions set out in this Indenture.  
  
(2) The Landlord and any of its local boards and Commissions, any agency (whether governmental or otherwise) owning or operating a public utility as that term is defined in the **Public Utilities Act (Ontario)** or the **Public Utilities Corporations Act (Ontario)** and their respective successors and assigns shall have the right:
    - (a) to install, maintain, repair, replace, reconstruct, enlarge, inspect and/or test any pipes, cable, metres or other plant whatsoever on, under or adjacent to the Leased Property as part of, appurtenant to or in connection with any such public utility and any damage caused as a result thereof shall be the responsibility of the Landlord, the agency, board or Commission, as the case may be;
    - (b) by their respective officers, employees, agents and contractors, to enter upon the Leased Property, with or without all necessary or convenient gear and equipment, for the purposes set out in clause (a) hereof.
  - (3) Provided that the Tenant is not in default of any terms, conditions or covenants in this Indenture, the Landlord's Commissioner of Economic Development, Culture & Tourism or his designate (hereinafter referred to as the "Commissioner"), at his sole discretion, may grant to the Tenant the right to renew this Indenture for one (1) term of ten (10) years, on terms and conditions to be determined by the Commissioner, acting reasonably. The Tenant shall provide notice in writing to the Commissioner that the Tenant wishes to renew this Indenture at least six (6) but not more than twelve (12) months prior to the expiry thereof, and the Commissioner shall respond to the Tenant within two (2) months prior to the expiry of the Term.
2. (1) The Tenant shall pay the Landlord or as the Landlord may in this Indenture or otherwise in writing direct, without any deduction whatsoever, rent consisting of:
    - (a) a fixed annual payment of ONE DOLLAR (\$1.00) in advance on the first day of October in every year during the Term, commencing the 1st day of October, 1999; and
    - (b) a variable payment throughout the Term, being all other payments referred to in this Indenture, as and when due.
  - (2) The Tenant shall pay such administration fees for renewals, extensions, amendments, consents to assignment and/or any other matters relating to this Indenture as may be set by the Landlord's Council from time to time.

APPROVED AS TO FORM  
for H.W. OSWALD DOYLE  
City Solicitor  
LAAS: 2200-654-008 1999

3. (1) The Tenant covenants with the Landlord:

- (a) to pay rent;
- (b) to pay all taxes, including any Goods and Services Tax if applicable, rates, duties, levies, assessments and impositions whatsoever, whether municipal, parliamentary or otherwise levied, charged or assessed upon the Leased Property, and where the Leased Property is assessed for separate school support by reason of the tenancy or occupation of the Tenant or of any person claiming under the Tenant, to pay to the Landlord, or as it may direct, the excess taxes resulting from such support for the remainder of the calendar year in which a termination occurs except to the extent that such excess taxes are recovered from a subsequent tenant;
- (c) to pay all water and gas rates, electric lighting, hydro charges, utility and sewer hook ups, taxes and all other rates and charges (including interest and penalties) arising from or related to the construction, occupation, operation, maintenance and repair of the Leased Property which shall be assessed or chargeable upon the Leased Property during the Tenant's use or occupancy of the Leased Property;
- (d) to operate, heat and repair, maintain and keep the Leased Property (including without limiting the generality of the foregoing any fences defining the limits of the Leased Property) in good and substantial repair and condition, both inside and outside, including all fixtures and equipment and structures which are at any time during the Term or any renewal thereof erected thereon, reasonable wear and tear and damage by fire, lightning and tempest only excepted, save in so far as the aforesaid is compensated for by the insurance coverage maintained by the Tenant pursuant to paragraph 15 herein;
- (e) that upon not less than two (2) business days prior written notice to the Tenant, the Landlord's employees, agents and/or contractors may enter the Leased Property and view the state of repair and shall have the right to conduct soil and other tests as the Landlord in its sole discretion, deems necessary or appropriate;
- (f) at the expiration of the Term to peaceably surrender and yield up to the Landlord the Leased Property, together with all buildings, structures and fixtures erected thereon in good and substantial repair and condition, reasonable wear and tear and damage by fire, lightning and tempest only excepted, save in so far as the aforesaid is compensated for by the insurance coverage maintained by the Tenant pursuant to paragraph 15 herein;
- (g) that during the Term or any renewal thereof the Tenant will not assign, sublet, transfer or otherwise part with possession of the Leased Property or any part thereof without the prior written consent of the Landlord, which consent may be unreasonably and arbitrarily withheld;
- (h) to use and occupy the Leased Property only as a not-for-profit arts and cultural centre in which artists can rent affordable studio, rehearsal and performance space, including arts workshops, exhibitions, events, conferences, retreats, dormitory-style residences for stays not exceeding one month and such ancillary uses as may be contemplated by the Tenant in consultation with and subject to the approval of the Commissioner, and for no other purpose whatsoever without the prior written consent of the Landlord, which consent may be unreasonably and arbitrarily withheld, except that the Tenant may rent out the Centre for a maximum of twelve (12) private functions per calendar year, each of no longer than one (1) day in duration, without the prior approval of the Commissioner;
- (i) subject to subparagraph 8(3) herein, not to make any changes, alterations, additions or extensions, structural or otherwise (including, without limitation, landscaping changes, all of which are hereinafter collectively called "Improvements") in and to the Leased Property unless:
  - (i) the Improvements shall be such as will not when completed, significantly diminish the value or utility of the Leased Property;
  - (ii) no Improvements which involve structural or substantial changes, alterations, additions, extensions or rebuildings shall be commenced until detailed plans have first been submitted to and approved by the Commissioner in writing;
  - (iii) all Improvements shall be constructed expeditiously, in a good and workerlike manner, in compliance with detailed plans approved by the

Landlord and in compliance with all applicable municipal by-laws and other laws, regulations and requirements of all authorities having jurisdiction. The Tenant shall, at its sole expense, promptly restore the Leased Property, inclusive of structures and hard and soft surface areas affected as a result of any Improvements, to the condition existing prior to the Improvements; and

- (iv) all the costs of the Improvements shall be paid by the Tenant when due (subject only to the retention of any amounts which are required to be withheld under the *Construction Lien Act* (Ontario) or which the Tenant's architect has certified are properly to be retained in order to secure due performance of the work);
- (j) to comply, at its sole expense, with all Federal, Provincial and Municipal laws, by-laws, policies, rules and regulations (including, without limitation, regulations of the Toronto and Region Conservation Authority, zoning by-laws, building codes, the Ontario Fire Code, the *Environmental Protection Act* and any other environmental legislation) affecting the Leased Property and/or its operation and use by the Tenant and those authorized by or under the Tenant, including the obtaining of all necessary permits and licences and to indemnify and save the Landlord harmless from any liability or cost suffered by it as a result of the Tenant's failure to comply;
- (k) during the Term or any renewal thereof, the Tenant at its sole expense shall maintain and keep the landscaping of the Leased Property in a condition satisfactory to the Commissioner, acting reasonably;
- (l) to ensure that nothing is done or kept at or on the Leased Property which is or may be a nuisance, or carry on any activity or do anything else, which causes disturbance to or interferes with the users or occupants of any neighbouring property, or which in the opinion of the Landlord may cause damage to the Leased Property or any neighbouring property and without limiting the generality of the foregoing, the release from the Leased Property of ten (10) or more balloons within any 24-hour period shall be considered a nuisance and the Tenant shall not engage in such activity at any time;
- (m) to ensure that no signs are installed, placed or painted on or at the Leased Property without the prior written approval of the Commissioner, which shall not be unreasonably withheld or delayed, and that upon expiry or other termination of the Term same are removed and the sign location(s) restored to the original condition in a good and workerlike manner to the satisfaction of the Commissioner. No further approval shall be required for an identically sized and designed sign where the replacement is necessitated by destruction or reasonable wear and tear of the originally installed sign;
- (n) not to change the name of the Centre or name the retreat centre (which forms part of the Centre) or any other part of the Centre, the Building or the Leased Property without the prior written approval of the Commissioner, which shall not be unreasonably withheld or delayed;
- (o) to ensure that no ashes, refuse, garbage or other loose or objectionable material accumulate on the Leased Property, and to keep the Leased Property clean and tidy, and to comply with all of the Landlord's waste disposal and recycling policies;
- (p) to keep the sidewalks and areaways in, around and about the Leased Property free and clear of obstructions and, in the case of sidewalks, to keep them free and clear at all times of snow and ice and in the case of the areaways, closed and properly guarded;
- (q) to take at its own expense all measures necessary to ensure to the Commissioner's satisfaction that the plant of or appurtenance to any municipal service or public utility now or in the future on, under or adjacent to the Leased Property, is adequately protected against damage, impairment, destruction or loss; and
- (r) upon termination of the tenancy, at the Tenant's own risk and expense, to remove from the Leased Property within Forty-Five (45) Days, all fixtures and chattels belonging to the Tenant, with all damage, if any, caused by such removal made good by the Tenant, and to leave the Leased Property in good repair and neat, clean, level and free of all waste material/debris/rubbish, all to the satisfaction of the Commissioner.

(2) The Tenant shall, at its sole risk and expense, determine the existence of any contaminants, asbestos or other hazardous materials (the "Hazardous Materials") on the Leased Property and remove or manage same as required by and in compliance with all applicable laws. The Tenant shall indemnify and save harmless the Landlord of and from any and all manner of claims, demands, losses, costs, charges, actions and other proceedings whatsoever made or brought against, suffered by or imposed on the Landlord or its property in respect of any loss, damage or injury (including fatal injury) to any person or property (including without restriction, employees, agents and property of the Landlord or of the Tenant) directly or indirectly arising out of, resulting from, or sustained as a result of any of the Tenant's acts or omissions relating to the Hazardous Materials.

(3) The Tenant shall not remove, or permit to be removed, except in the ordinary course of business, any fixtures, goods or chattels of any kind from the Leased Property without the Landlord's consent, until all rent, including rent in arrears and all rent to become due during the remainder of the Term is fully paid or the payment thereof secured to the satisfaction of the Landlord.

(4) (a) The Tenant warrants that it shall remain a non-profit organization throughout the Term and any renewal thereof. In the event that the Tenant ceases to be a non-profit organization, the Landlord, at its sole discretion, may elect to terminate this Indenture upon ten (10) days written notice, or require the Tenant to pay market rent for the Leased Property as determined by the Commissioner.

(b) The Tenant shall operate the Centre on a cost-recovery basis, whereby the Tenant applies all income derived from the Centre to expenses associated with the operation, maintenance and overhead of, and repairs and capital improvements to, the Leased Property. The Tenant shall have the right to recoup shortfalls from previous years. The Tenant shall have the right to re-invest any surplus income derived from the Leased Property back into the Leased Property with the Commissioner's prior written approval. At the end of each lease year during the Term and any renewal thereof, the Tenant shall, at its sole expense, submit an audited statement prepared by a certified accountant in accordance with generally accepted accounting practices, showing all revenues and expenses associated with the Leased Property.

(5) (a) Notwithstanding clause (g) of subparagraph 3(1) herein, the Tenant may, without the consent of the Landlord, sublet or assign individual units within the Leased Property to qualified artists or arts organizations, or to tenants approved by the Tenant and/or the Tenant's Advisory Council and Tenant Selection Committee, however, the Tenant shall not be permitted to sublet or assign the Leased Property as a whole;

(b) In the event that the Tenant uses the Leased Property for any purpose(s) other than those set out in clause (h) of subparagraph 3(1) without the prior written consent of the Landlord, which consent may be arbitrarily and unreasonably withheld, the Landlord, in its sole discretion, may terminate this Indenture upon ten (10) days written notice.

(6) (a) The Tenant agrees to work cooperatively with the Commissioner to minimize additional vehicular traffic on the Island and the Tenant covenants to establish a system satisfactory to the Commissioner to resolve the transportation problem;

(b) The Tenant shall not set up any private water transportation service between the Park and the mainland without the prior written consent of the Commissioner, which consent may be unreasonably and arbitrarily withheld.

(c) The Tenant acknowledges and agrees that the Landlord is not responsible for providing, arranging or paying for any transportation services whatsoever for users and staff of the Centre between the ferry docks and the Centre.

(7) Notwithstanding any use permitted pursuant to clause (h) of subsection 3(1) herein, the Tenant acknowledges and agrees that the Leased Property may be subject to certain restrictions pertaining to the use thereof as set out in subsection 225(1) of the *Municipality of Metropolitan Toronto Act* (the "Metro Act"). In the event that any of the Tenant's uses of the Leased Property are deemed to violate the Metro Act, the Tenant shall immediately discontinue such use and the Landlord shall not be liable or responsible in any way for any losses, costs or damages suffered by the Tenant as a result thereof.

(8) The Tenant acknowledges and agrees that The Centre Island Food Services Ltd. (or its successor or permitted assignees) ("C.I. Foods") has a semi-exclusive right to provide food and beverage services to the Toronto Islands, including Centre Island, and that the Tenant may be obliged to arrange for and purchase all food and beverages for sale at the Centre from C.I. Foods. Failure to comply with this subsection 3(8) shall be grounds for termination of this Indenture pursuant to

section 5 hereof, and the Tenant shall be liable to the Landlord for any losses, costs, or damages suffered by it as a result thereof.

(9) The Tenant acknowledges and agrees that due to weather conditions, maintenance, labour disputes or other factors, ferry service to the Park may be restricted or cancelled from time to time and the Landlord accepts no responsibility for any losses incurred by the Tenant as a result thereof. The Tenant shall not be entitled to any compensation whatsoever for any ferry delays or cancellations.

(10) The Tenant shall retain two (2) ex-officio, non-voting seats on its Advisory Council for representatives from the Landlord's Economic Development, Culture & Tourism Department; one from Culture Division, and one from Parks & Recreation Division, to act as liaisons between the Landlord and the Tenant.

(11) The Tenant shall comply with the Landlord's "Fair Wage Policy" attached hereto as Schedule "B" in relation to all work performed at the Leased Property.

(12) The Tenant accepts the condition of the Leased Property "as is" and acknowledges and agrees that the Building is in a severe state of disrepair. The Tenant further acknowledges and agrees that it shall not call upon the Landlord at any time during the Term or any renewal thereof to effect any maintenance or to make any repairs or replacements to the Leased Property, or any part thereof, whether interior or exterior, structural or otherwise, extraordinary as well as ordinary, foreseen as well as unforeseen and all such expenses shall be the sole responsibility of the Tenant.

4. (1) If the Term hereby granted or the goods and chattels of the Tenant or any assignee or subtenant are at any time seized or taken in execution or attachment or if the Tenant or any assignee or subtenant makes an assignment for the benefit of creditors, or becomes bankrupt or insolvent, or makes a proposal to its creditors, or makes a sale under the *Bulk Sales Act* or any successor legislation of the goods and chattels on the Leased Property without the Landlord's prior written consent, such consent not to be unreasonably withheld, or if any corporate assignee is subjected to voluntary or compulsory liquidation or winding up, the Term shall immediately terminate and an amount equal to the next Three (3) Months' rental shall forthwith become due and payable.

(2) Notwithstanding any present or future Act of the Ontario Legislature, none of the Tenant's goods and chattels on the Leased Property shall at any time during the Term be exempt from levy by distress for rent in arrears, and the Tenant, having waived any such exemption, shall by this subparagraph be estopped from setting up any such exemption in any proceedings between the parties.

(3) If the Leased Property (or any part thereof) becomes and remains vacant and unoccupied for Fifteen (15) Consecutive Days or more, or is used by any person(s), or for any purpose(s) other than as set out in clause (h) of subparagraph 3(1) of this Indenture, without the Landlord's prior written consent, at the Landlord's option either:

(a) the Tenant's rights under this Indenture, and the Term created by it shall terminate, all monetary obligations between the parties shall be apportioned and the Landlord may re-enter and take possession of the Leased Property on the basis that the Tenant or other occupant(s), if any, is or are holding over beyond expiry of the Term; or

(b) the Landlord may take possession of the whole or any part of the Leased Property, may let and manage the same, including granting of any lease(s) on such terms as appear to it to be reasonable, may demand, collect, receive and distrain for all rental payable in respect thereof and apply the net amount remaining after deduction of all expenses in connection therewith (including commissions and management fees) toward the rent reserved under this Indenture,

and the Landlord and its agents shall for the purpose of all acts and things done pursuant to clause (b) hereof be the agent(s) of the Tenant (who alone shall be responsible therefor) and be accountable only for monies actually received despite any act, neglect, omission or default in the performance of such agency.

5. (1) The following events ("Events of Default") shall be deemed a default (a "default") under this Indenture:

(a) if the Tenant fails to pay the Landlord any amount due and payable under this Indenture and does not remedy such default within thirty (30) business days of receipt by the Tenant of written notice from the Landlord to the Tenant to such effect; or

(b) if the Tenant is in default by failing to fulfil any other term or condition of the Indenture and does not remedy such default within sixty (60) business days of



receipt by the Tenant of a written notice from the Landlord to the Tenant to such effect, except if the nature of such default is such that it cannot be remedied within such delay of sixty (60) business days, in which case the Tenant shall immediately commence the remedy of such default following receipt of such written notice and thereafter shall diligently continue to remedy such default until such time that, in the opinion of the Landlord, acting reasonably, such default has been remedied.

(2) In addition to all rights and remedies of the Landlord available to it by any provision of this Indenture or given by law to the Landlord, upon an Event of Default the Landlord shall have the right to terminate this Indenture upon ten (10) days notice in writing to the Tenant without the necessity of any legal proceeding whatsoever. The Tenant shall thereupon quit and surrender the Leased Property to the Landlord, or if not in possession of the Leased Property, the Tenant shall no longer have any right to possession of the Leased Property, and the Landlord, its agents and servants, shall have the right to enter the Leased Property and dispossess the Tenant and remove any persons or property therefrom without the necessity of legal proceeding whatsoever and without being liable to the Tenant therefor in damages, or otherwise.

(3) If the Landlord shall terminate this Indenture as provided in subparagraph 5(2) herein, (i) the Tenant shall pay to the Landlord on demand, rent hereunder up to the time of re-entry or termination, whichever shall be the later, and (ii) in addition to any other remedies it may have, the Landlord may recover from the Tenant damages it incurs by reason of the Tenant's default including, without limitation, all expenses incurred in performing any of the Tenant's obligations under this Indenture, and in re-entering the Leased Property or terminating this Indenture, in collecting sums due or payable by the Tenant, and the expense of keeping the Leased Property in good order and repairing the same, all of which amounts shall be paid by the Tenant to the Landlord as additional rent forthwith on demand.

(4) In addition to all rights and remedies of the Landlord available to it by any provision of this Indenture or given by law, upon an Event of Default, the Landlord shall have the right at all times to remedy or attempt to remedy any Event of Default, and in so doing may enter upon the Leased Property to do any work or other things therein on not less than five (5) business days prior written notice to the Tenant or it may do so without prior notice in the event of an emergency. All expenses of the Landlord in remedying or attempting to remedy such Event of Default plus a sum equal to fifteen percent (15%) of the cost thereof representing the Landlord's overhead shall be paid by the Tenant to the Landlord as additional rent forthwith upon demand.

6. (1) It is hereby declared and agreed by and between the Landlord and the Tenant that:

- (a) the Landlord shall not be responsible in any way for any injury to any person or for any loss of or damage to any property belonging to the Tenant or to employees, invitees or licensees of the Tenant (while acting as such) while such person or property is in or about the Leased Property, including without limiting the foregoing any loss of or damage to any property caused by theft or breakage, or by steam, water, rain or snow which may leak into, issue or flow from any part of the Building or any adjacent or neighbouring lands or from the water, steam or drainage pipes or plumbing works thereof or from any other place or quarter or for any loss or damage caused by or attributable to the condition or arrangement of any electric or other wiring or for any other loss whatsoever of the Tenant with respect to the Leased Property and the activities of the Tenant carried on therein, and the Tenant covenants to indemnify the Landlord against all loss, costs, claims or demands in respect of any injuries, loss or damage referred to in this subparagraph unless caused or contributed to by the Landlord or those for whose negligence the Landlord is at law responsible;
- (b) subject to sub-paragraph (c) of this paragraph, upon the termination of the Term and any renewal thereof, the improvements to the Leased Property shall become the sole property of the Landlord without payment of any compensation whatever therefor by the Landlord to the Tenant; and
- (c) if during the Term or any renewal thereof the Building or any part thereof shall be damaged or destroyed by fire, lightning or other casualty or peril covered by the insurance maintained during the term by the Tenant as more particularly provided for in paragraph 15 hereof, the Tenant shall be entitled to elect to not repair or rebuild the Building or any part thereof that requires restoration. If the Tenant elects to not restore such damage, the Term shall thereupon be terminated as of the sixtieth (60) day after the occurrence thereof, and this Indenture shall thereupon cease and become null and void and the Tenant shall immediately vacate and surrender the Leased Property to the Landlord. Provided however, that notwithstanding the foregoing provisions of this paragraph if the Landlord shall notify the Tenant in writing within such sixty (60) day period after the occurrence of such damage or destruction that it requires the Tenant to restore the damage or

destruction, then in such event the Tenant shall proceed diligently to repair or rebuild, as the case maybe, the Building as nearly as possible to the condition in which it was before such damage or destruction occurred.

(2) If the Tenant elects to terminate this Indenture pursuant to subparagraph 6(1)(c) herein then the Tenant covenants that it shall promptly demolish and/or remove the Building. Such obligation of the Tenant shall include the removal and disposal of all debris and the restoration of the Leased Property to a condition satisfactory to the Commissioner. The Tenant acknowledges that any unused sewers, watermains and foundations that remain after the demolition of the Building must also be removed at the Tenant's sole expense to the satisfaction of the Commissioner.

7. (1) The Tenant shall, at its sole expense, upgrade all existing systems, if necessary, and warrants and will ensure that all improvements, building systems, equipment and materials used in renovating the Leased Property shall conform to all building codes, material codes, rules, regulations, standards, laws and by-laws whether Federal, Provincial or Municipal, relating to design, construction and safety.

(2) Before commencing construction of the Improvements to the Building the Tenant will provide the Commissioner with a complete copy of the final drawings and specifications in relation thereto for the Commissioner's final review and approval (and following such approval by the Commissioner to be called the "Building's Plans and Specifications").

(3) If the Tenant elects to proceed with the Improvements to the Building, then it shall do so, at its sole cost and expense and without cost to the Landlord, and the Building shall be constructed in a first class manner and in accordance with the Building's Plans and Specifications. Upon commencement of the Improvements to the Building, the Tenant shall diligently proceed to fully complete such Improvements, subject to Unavoidable Delays.

(4) The Tenant acknowledges that if as a condition to the issue of a building permit for the Improvements to the Building there are any levies or charges to be paid to the City of Toronto or any other taxing authority, or any development charges to be paid pursuant to the *Development Charges Act* (Ontario) or any successor legislation that all such levies and charges are for the account of the Tenant.

(5) The Tenant warrants and will ensure that all Improvements, building systems, equipment and materials used in renovating the Building shall conform to all building and fire codes, material codes, rules, regulations, standards, laws and by-laws whether Federal, Provincial or Municipal, relating to design, construction and safety.

(6) The Tenant shall, at its sole expense, obtain all necessary planning approvals and agreements with any authorities and utilities relating specifically to the Building so as to be in a position to obtain a full building permit. Each party shall execute all such reasonable agreements as may be requested by the other. It is, however, expressly understood that if the Landlord is requested to execute any planning applications or permits, it will do so in its capacity only as the owner of the Leased Property and will not thereby fetter any of its statutory or other powers or mandates. The Tenant shall perform all obligations under any such agreement as applicable to the Building at no cost to the Landlord, except to the extent otherwise expressly provided herein and the failure by the Tenant to perform all such obligations under any such agreement shall constitute a default under this Indenture. The Tenant shall pay all municipal and regional levies and similar charges relating to the Leased Property.

8. (1) The Building's Plans and Specifications shall not be modified, revised, amended or added to (hereinafter, in this paragraph, collectively called a "Change") by the Tenant without the prior written consent of the Commissioner. If the Tenant desires to effect such a Change, it shall notify the Commissioner in writing of such proposed Change and shall provide to the Commissioner, with such notice, such drawings, soil tests, plans and specifications as may reasonably be required to permit the Commissioner to properly determine the nature and extent of such Change. The Commissioner's consent, as aforesaid, shall not be unreasonably withheld or delayed, unless the Change represents a material change in the size, nature or character of the Building.

(2) For the purposes of this paragraph, any Change which if implemented would increase or decrease the useable area of the Building from the original Building's Plans and Specifications approved by the Landlord, shall be deemed to be a Change representing a "material change in the size of the Building".

(3) The Landlord acknowledges that notwithstanding anything to the contrary contained in this paragraph, the Landlord's consent is not required to any Change or future renovations or redevelopment limited to the interior of the Building, unless such change has implications for site utilities which could affect the rest of the Park. Notwithstanding the aforesaid, all Changes, whether interior or exterior, shall be recorded on the "as-built" drawings of the Centre.

(4) The Tenant shall not be entitled to redevelop the Building or expand the Building without the prior written approval of the Landlord, including, without limitation, approval of the outline plans, drawings, sketches and specifications of the proposed redevelopment. It is a condition precedent to the approval by the Landlord being given that the Landlord and the Tenant shall have agreed to such amendments (if any) to this Indenture as shall be requisite, in all of the circumstances, to give effect to this paragraph.

(5) The Tenant acknowledges and agrees that due to the environmentally sensitive nature of the Leased Property, the environmental impact of any Change or future renovations or redevelopment proposed by the Tenant requiring the Landlord's approval must be considered by the Landlord, which may result in a delay in the Landlord providing its consent, or in the Landlord's refusal to provide its consent.

9. (1) The Tenant shall not enter into any lienable contracts in relation to the Leased Property without the prior consent of the Commissioner, which consent shall not be unreasonably withheld, provided that the amount of the letter of credit to be provided by the Tenant is sufficient to cover the cost thereof.

(2) Subject to subparagraph 8(3) herein, the Landlord shall have the right to monitor Improvements to the Building and to approve changes in exterior design (including exterior colour changes) and the Landlord's employees, agents and other representatives shall have access to the Leased Property at all times during construction for the purpose of inspection.

(3) The Tenant shall provide to the Landlord an unconditional and irrevocable revolving letter of credit from time to time may be required in an amount equal to 100% of all lienable contracts entered into by the Tenants for the supply of services and materials relating to the Leased Property, in favour of the Landlord and satisfactory to the Commissioner and/or the City Solicitor, for the purposes of providing security for:

- (a) completion of the Improvements and/or removal of any part thereof; and
- (b) the vacating of any valid claims for liens or Certificate of Action related to the Improvements;

which letter of credit shall be designed to provide the security as aforesaid throughout such phases of the Improvements as may be agreed between the Commissioner and the Tenant.

(4) The Tenant acknowledges and agrees that subsequent phases of the Improvements shall not commence until the Commissioner is satisfied that the previous phase has been satisfactorily completed and all lienable contracts have been paid in full. In any event, an amount equal to 10% of the initial amount of the letter of credit for each phase of construction of the Improvements shall be held back for not less than forty-five (45) days following the completion of each phase. The Landlord shall release the held back funds forthwith upon satisfying itself that any liens have been discharged.

(5) Each contractor engaged by the Tenant for the construction of the Improvements shall deliver a performance bond and a payment bond in a form satisfactory to the Landlord, in favour of the Tenant and the Landlord naming the Tenant and the Landlord as co-obligees, the face value of each of which bonds shall be no less than 50% of the full amount of the price payable to the contractor under the contract.

(6) The Tenant shall provide an assignment of each contract referred to in subparagraph 9(5) herein to the Landlord as security for the Tenant's obligation to perform the Improvements, in the form attached hereto as Schedule "C".

(7) All construction contracts shall provide for property damage and liability insurance satisfactory to the Landlord.

(8) In the event that any labour and/or materials for the Improvements are donated to the Tenant or provided at less than market cost, the Tenant shall provide to the Landlord a letter in the form attached hereto as Schedule "D", signed under seal by the Tenant and the donating party, prior to using the said labour and/or materials.

10. (1) Upon the expiry or other termination of this Indenture or any renewal thereof, the Tenant, at its sole expense, shall promptly demolish and/or remove the Building, if required to do so by the Commissioner. Such obligation of the Tenant shall include the removal and disposal of all debris and the restoration of the site upon which the Building is located to a condition satisfactory to the Commissioner. The Tenant acknowledges that any unused sewers, watermains, foundations that remain after the demolition of the Building must also be removed at the Tenant's sole expense to the satisfaction of the Landlord.

(2) The Tenant shall establish a reserve fund by the end of the tenth year of the Term in consultation with the Commissioner and the City's Treasurer, acting reasonably, in an amount sufficient to cover all costs associated with the demolition and removal of the Building and restoration of the land to parkland pursuant to subparagraph 10(1) herein.

11. Subject to prior consultation with the Landlord, the Tenant, at its sole expense, shall provide site services to the Leased Property as may be required.

12. (1) (a) The Tenant covenants with the Landlord that no trees will be cut or otherwise removed from the Leased Property by the Tenant without the prior written consent of the Commissioner and that all due care will be taken by the Tenant to ensure that no trees on the Leased Property or on adjacent lands owned by the Landlord will be damaged by the Tenant or those for whom the Tenant is at law responsible.

(b) In the event that any trees are damaged or destroyed, the Tenant shall compensate the Landlord for such damage by an amount to be established by the Commissioner in consultation with the Tenant and based upon the International Society of Arboriculture Tree Evaluation formula.

(2) The Tenant further covenants that it will not permit the storage or use of any explosive or inflammable substances, pollutants, contaminants or hazardous or environmentally sensitive materials any time on the Leased Property during the Term or any renewal thereof, except those normally used in the creation of art.

13. (1) The Tenant shall at all times indemnify and save harmless the Landlord of and from any and all manner of claims, demands, losses, costs, charges, actions and other proceedings whatsoever (including those under or in connection with the *Workplace Safety and Insurance Act, 1997* or any successor legislation), made or brought against, suffered by or imposed on the Landlord or its property in respect of any loss, damage or injury (including fatal injury) to any person or property (including, without restriction, employees, agents and property of the Landlord or of the Tenant) directly or indirectly arising out of, resulting from or sustained as a result of the Tenant's construction, occupation or use of, or any operation in connection with, the Building and/or the Leased Property, and/or the Park or any fixtures or chattels thereon (including water left running, gas that escapes or imperfect or insufficient installation of any construction or other improvement thereon).

(2) The Tenant shall fully indemnify and save harmless the Landlord against and from all liens and other claims under the *Construction Lien Act* or any successor legislation related to any work performed by or at the direct or indirect request of the Tenant at the Building and/or the Leased Property, and shall at its own expense see to the removal from the registered title to the Leased Property and/or surrounding lands, by discharge or Order, of any claim for such lien or Certificate of Action in connection therewith, promptly and in any event within Ten (10) Days of being notified in writing by the Landlord to do so, failing which the Landlord may see to such removal and recover the expense and all attendant costs from the Tenant as rent owing and in arrears.

14. (1) The Tenant at all times during the Term of this Indenture and any renewal thereof, at its own expense, shall take out and keep in full force and effect:

(a) insurance upon property of every description and kind owned by the Tenant or for which the Tenant is legally liable or installed by or on behalf of the Tenant, or located on the Leased Property including, without limitation, pressure vessels, mechanical and electrical equipment, fixtures, contents, the Building, and any other buildings and structures erected on the Leased Property, in an amount sufficient to cover the full replacement cost thereof, with coverage against all risks of physical damage and naming the Landlord as loss payee. Such insurance shall include damage as a result of flood and earthquake to the extent available and generally obtained by prudent owners of similar properties in the City of Toronto. Coverage shall also be provided for contingent liability from the enforcement of building by-laws including the demolition and replacement of undamaged portions of the buildings or structures and increased costs of construction and provisions for settling joint loss disputes with boiler and machinery insurers and a waiver of subrogation against the Landlord;

(b) comprehensive general liability insurance including owners' and contractors' protective, products, completed operations, intentional bodily injury for the protection of persons or property, personal injury including contractual liability, incidental medical malpractice, employer's liability, broad blanket contractual liability, occurrence property damage and provisions for cross liability and severability of interests with limits of not less than Five Million Dollars (\$5,000,000.00) and naming the Landlord as an additional insured;

(c) standard owner's automobile liability insurance with limits of not less than one million dollars (\$1,000,000.00) in respect of any one accident;

- (d) standard non-owned automobile liability insurance with limits of not less than one million dollars (\$1,000,000.00) in respect of any one accident;
  - (e) during any period of construction, builder's risk insurance (CCDC Form 201) insuring such construction for the full replacement cost thereof with deductibles on a defined occurrence basis for all risks of physical damage;
  - (f) any such other insurances as the Landlord acting reasonably, may require.
- (2) The aforementioned policies of insurance shall contain or shall be subject to the following terms and conditions:
- (a) All policies of insurance required to be taken out by the Tenant shall name the City of Toronto, and those persons for whom it is in law responsible, as additional insureds but only with respect to the operations of the Tenant under this Indenture.
  - (b) All policies of insurance required to be taken out by the Tenant shall contain a waiver of any subrogation rights that the Tenant's insurers may have against the Landlord and against those for whom they are in law responsible, whether any such damage is caused by the act, omission or negligence of the Landlord or those for whom it is in law responsible.
  - (c) All policies of insurance required to be taken out by the Tenant shall be placed with insurers to be approved by the Landlord, acting reasonably.
  - (d) Each policy shall contain an endorsement requiring the insurers to notify the Landlord in writing, by registered mail, at least thirty (30) days prior to any material change that restricts or reduces the insurance required under this clause, or cancellation thereof.
  - (e) Each policy will contain a waiver in favour of the Landlord of any breach of a policy condition or warranty such that the insurance policy in question will not be invalidated in respect of the interest of the Landlord by reason of a breach of any condition or warranty contained in such policies.
  - (f) The parties agree that insurance policies may be subject to deductible amounts, which deductible amounts shall be borne by the Tenant.
  - (g) The insurance policies required pursuant to this clause shall be primary and shall not call into contribution any insurance available to the Landlord.
  - (h) The Landlord, acting reasonably, may require the limits of the insurance policies provided by the Tenant to be increased from time to time. The Tenant shall cause the limits of its insurance on its physical assets located on the Leased Property to be adjusted for inflation from time to time.
- (3)
- (a) The Tenant shall promptly advise the Landlord of any cancellation, material alteration or lapse of any policies of insurance required under this clause. If the Tenant fails to obtain and keep in force the aforesaid policies of insurance, or should any such insurance not be approved by the Landlord acting reasonably, the Landlord may obtain such policies and shall give the Tenant a written notice setting out the amount and dates of payment of all costs and expenses incurred by the Landlord in connection therewith to the date of such notice. Any sum so expended by the Landlord shall be due and payable on demand without prejudice to any other rights or recourses of the Landlord hereunder.
  - (b) No such insurance taken out by the Landlord shall relieve the Tenant of its obligation to insure hereunder and the Landlord shall not be liable for any loss or damage suffered by the Tenant in connection therewith.
  - (c) If the Tenant fails to obtain and keep in force the insurance required by this Indenture and, if any similar insurance maintained by the Landlord shall be called into contribution at its option, and as a consequence thereof the Landlord's cost of effecting such insurance increases, any such additional cost shall be payable by the Tenant to the Landlord forthwith upon production of reasonable proof of such additional cost, without prejudice to any other rights of the Landlord as a result of the Tenant's failure to keep such insurance in place.
- (4) The Tenant agrees that it, its employees, agents, occupants and invitees will not keep in or upon the Leased Property any article or substance which may be prohibited by the insurance policy mentioned above, or do or omit, or permit to be done or omitted anything which will cause any

increase in the insurance premiums or the cancellation of any insurance policy. If any insurance policy should be cancelled or the coverage reduced or a threat of cancellation or reduction of coverage made by reason of anything arising out of the use or occupation of the Leased Property or the Building by the Tenant, whether or not the first sentence of this subclause (4) has been complied with, and if the Tenant fails to remedy the condition giving rise to such cancellation, reduction or threat, upon ten (10) days' notice thereof by the Landlord, the Landlord may enter the Leased Property and remedy the condition at the sole cost and expense of the Tenant which cost and/or expense shall be payable to the Landlord forthwith on demand as rent in arrears, and in addition or in the alternative, may exercise any other remedy available to it.

(5) The Tenant shall duly and punctually pay all premiums under the aforesaid policies as they become due and payable. In the event of default of payment by the Tenant, the Landlord may pay same and the amount so paid shall be forthwith payable as rent.

(6) Upon execution of this Indenture, the Tenant shall deliver to the Landlord evidence of the insurance required hereby in the form of Certificates of Insurance, in form and detail satisfactory to the Landlord acting reasonably, signed by an authorized representative of the insurer. Certificates of insurance evidencing renewal or replacement of policies shall be delivered to the Landlord fifteen (15) days prior to the expiration of then current policies, without demand by the Landlord.

15. The Landlord acknowledges that the Tenant, during the period of the Improvements to the Building, shall be entitled to use all designated roads on Toronto Island so as to be able to bring onto or remove from the Leased Property, as the case may be, all construction materials. The Tenant's rights pursuant to this paragraph shall be limited to the maximum load capacity for Island roads, which is currently set at a maximum weight of 20 tonnes, and is subject to change at the Commissioner's sole discretion.

16. (1) The Tenant may use the existing ferry service to and from Toronto Island during the construction period for the Building, subject to the Tenant making appropriate arrangements with the Landlord and subject to the Tenant paying all costs and administrative fees associated therewith, as determined by the Commissioner, acting reasonably. The Tenant shall also have the right to permit the general contractor, upon providing fourteen (14) days advance notice to the Commissioner, to arrange for the Landlord to provide a barge or other means of transporting construction materials, and the Tenant shall pay all costs and administrative fees associated therewith, as determined by the Commissioner, acting reasonably.

(2) All construction and other materials must be delivered to the Leased Property immediately upon being unloaded from the ferry or barge, and must not be left on the Park.

17. The Schedules to this Indenture form a part hereof as if the provisions set forth therein were contained in the body of this Indenture.

18. (1) Subject to subparagraph 8(5) herein, wherever the provisions of this Indenture require an approval or consent of or to any action, person, firm, corporation, document or plan by a party, this Indenture shall (unless the text hereof expressly states that such approval or consent may be unreasonably or arbitrarily withheld, or unless the text hereof expressly states that the time periods are to be otherwise, in which latter event this paragraph shall apply but the time periods shall be adjusted accordingly) be deemed to provide that:

(a) such request for approval or consent shall:

(i) clearly set forth the matter in respect of which such approval or consent is being sought;

(ii) form the sole subject matter of the correspondence containing such request for approval or consent; and

(iii) clearly state that such approval or consent is being sought.

(b) such approval or consent shall be in writing; and

(c) such approval or consent shall not be unreasonably or arbitrarily withheld or delayed.

19. (1) Whenever in this Indenture it is provided that anything be done or performed, such provisions are subject to an Unavoidable Delay and neither the Landlord nor the Tenant, as the case may be, shall be regarded as being in default in the performance of any obligation hereunder during the period of any Unavoidable Delay relating thereto and each of them shall notify the other of the commencement, duration and consequence (so far as the same is within the knowledge of the party in question) of any Unavoidable Delay affecting the performance of any of its obligations hereunder. The provisions of this paragraph shall not operate to excuse the Tenant from the prompt payment of rent, or any other payments required by this Indenture.

(2) "Unavoidable Delay" is defined as: strikes; inability to procure materials or services; power or mechanical failure; ferry delays or stoppages; ice breaking operations; governmental laws, regulations or controls; riots; war; act of God or other reason which is not the fault of the party delayed in performing work or doing acts required under the terms of this Indenture.

20. Nothing contained in this Indenture shall be deemed or construed by the Landlord, or the Tenant or by any other person as creating the relationship of principal and agent or partnership or joint venturers between the Landlord and the Tenant, it being understood and agreed that none of the provisions contained in this Article or this Indenture nor any acts of the Landlord or the Tenant shall be deemed to create any relationship between them other than the relationship of landlord and tenant as between the Landlord and the Tenant.

21. The Tenant acknowledges, covenants and agrees that, except to the extent otherwise expressly provided in this Indenture:

(1) it is intended that during the Term and any renewal thereof, this Indenture shall be absolutely net and carefree to the Landlord;

(2) the Landlord is not responsible during the Term or any renewal thereof, for any costs, charges, impositions, expenses and outlays of any nature whatsoever arising from or relating to the ownership, use and occupancy of the Leased Property or any part thereof or the contents of the Building or any business carried on therefrom; and

(3) the Tenant shall pay all costs, charges, impositions, expenses, outlays and obligations of every nature and kind relating to or affecting the Leased Property, or any part thereof, which may arise or become due during the Term, extraordinary as well as ordinary, and foreseen as well as unforeseen, to the same extent as if the Tenant was the sole owner of the Leased Property and all without prior notice or demand and without deduction, suspension, abatement, set-off, counter-claim or compensation whatsoever except as may be expressly provided in this Indenture.

22. The Tenant shall pay to the Landlord an amount equal to any and all goods and services taxes, sales taxes, value added taxes, business transfer taxes, or any other tax whether imposed on the Landlord or the Tenant with respect to Rent payable by the Tenant under this Indenture, or in respect of the rental of the Leased Property under this Indenture, whether characterized as goods and services tax, sales tax, value added tax, business transfer tax or otherwise (all of which are collectively hereinafter referred to as the "GST") it being the intention of the parties that the Landlord shall be fully reimbursed by the Tenant with respect to any and all GST. The amount of such GST so payable by the Tenant shall be calculated on a reasonable and equitable basis in accordance with the applicable legislation and shall be paid to the Landlord at the same time as the amounts to which such GST apply are payable to the Landlord under the terms of this Indenture or upon demand or at such other time or times as the Landlord from time to time reasonably determines.

23. All notices to be given hereunder by or to the Landlord and the Tenant shall be sufficient if in writing and delivered in person or mailed by prepaid registered post as follows:

in the case of the Tenant:

Toronto Artscape Inc.  
60 Atlantic Avenue, Suite 111  
Toronto, Ontario  
M6K 1X9

Attention: Executive Director

and in the case of the Landlord:

City of Toronto  
24th Floor, Metro Hall  
55 John Street  
Toronto, Ontario M5V 3C6

Attention: Director of Parks & Recreation - Central District

and such notice shall be deemed to have been received by the addressee on the third business day (excluding Saturdays) next following the date of mailing.

24. (1) If the Tenant holds over after the expiration of the Term with the consent of the Landlord, the Tenant shall be a monthly tenant only but in all other aspects shall be subject to all the provisions of this Indenture.

(2) If the Tenant holds over after the expiration of the Term without the Landlord's consent, the Landlord may take immediate action without notice to the Tenant, to recover possession of the

Leased Property. During such overholding period, the Tenant shall pay double the amount of rent set out in subparagraph 2(1) hereof.

(3) If the Tenant is obliged to vacate the Leased Property by a certain date and fails to do so at a time when the Landlord is legally obliged to deliver possession thereof to a third party, the Tenant shall indemnify the Landlord fully for all losses suffered as a result of such failure.

25. (1) All sums, for rent or otherwise, payable to the Landlord under this Indenture shall bear interest, at the then current rate of interest charged to the Landlord by its bankers from the date due until the actual date of payment, without prejudice to or in addition to any other remedy available to the Landlord under this Indenture or at law.

(2) The Tenant shall pay to the Landlord all the Landlord's legal costs, on a solicitor-and-client basis, of all actions or other proceedings in which the Landlord participates in connection with, or arising out of the obligations of the Tenant under the Indenture or arising out of the Tenant's occupation of the Leased Property, except to the extent that the Landlord is not successful therein.

(3) The Tenant expressly waives the benefits of the *Landlord and Tenant Act* and any amendments thereto and any present or future enactments of the Ontario Legislature permitting the Tenant to claim a set off against the rent for any cause whatsoever.

26. (1) No condonation, excusing or overlooking by the Landlord of any default, breach or non-observance of any of the Tenant's obligations under this Indenture at any time or times shall affect the Landlord's remedies or rights with respect to any subsequent (even if by way of continuation) default, breach or non-observance.

(2) No waiver shall be inferred from or implied by anything done or omitted by the Landlord.

(3) Any written waiver by the Landlord shall have effect only in accordance with its express terms.

(4) All rights and remedies of the Landlord under this Indenture shall be cumulative and not alternative.

27. (1) The termination of the Term by expiry or otherwise shall not affect the liability of either party to this Indenture to the other with respect to any obligation under this Indenture which has accrued up to the date of such termination but has not been properly satisfied or discharged.

(2) The Tenant acknowledges that there are no covenants, representations, warranties, agreements or conditions express or implied, collateral or otherwise forming part of or in any affecting or relating to this Indenture other than as set out in this Indenture, which constitutes the entire agreement between the parties concerning the Leased Property and which may be modified only by further written agreement under seal.

(3) The authority of the Commissioner shall not be deemed to be exhausted by any individual exercise thereof, and any matter for which he is to be responsible under this Indenture, the Commissioner shall be the sole judge whose opinion and exercise of discretion shall not be subject to review in any manner whatsoever except as expressly otherwise indicated in this Indenture.

28. All dollar amounts expressed in this Indenture shall be of lawful money of Canada.

29. Reference in this Indenture to the singular or masculine or neuter shall be construed as meaning plural or body politic or corporate and vice versa where the context so requires.

30. This Indenture and rights and obligations of the parties hereto shall be interpreted in accordance with the laws of the Province of Ontario.

31. Every obligation of the Landlord or Tenant expressed in this Indenture, even though not expressed as a covenant, shall be a covenant for all purposes. The word "Tenant" shall be deemed to mean each and every Person or party mentioned as Tenant herein, whether one or more.

32. Time shall be of the essence in all respects of this Indenture.

33. If all or any part of any term, covenant or condition of this Indenture or the application thereof to any Person or circumstances is to any extent held or rendered invalid, unenforceable or illegal, the remainder of this Indenture or the application of such term, covenant or condition to Persons or circumstances other than those with respect to which it is held invalid, unenforceable or illegal shall not be affected thereby and shall continue to be applicable and enforceable to the fullest extent permitted by law.

34. This Indenture and the Schedules attached hereto and forming a part hereof, set forth all the covenants, promises, agreements, conditions and understandings between the Landlord and Tenant



concerning the Leased Property and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than as are set forth in this Indenture. Except as otherwise provided herein, no subsequent alteration, amendment, change or addition to this Indenture shall be binding upon the parties unless in writing and signed by each of them.

35. This Indenture shall enure to the benefit of and be binding upon the parties hereto and their respective successors and (where applicable) assigns.

IN WITNESS WHEREOF the parties hereto have executed this Indenture under seal.

SIGNED, SEALED AND DELIVERED

Authorized by Report No. 2(9) of the Economic Development and Parks Committee adopted in Council on the 28, 29, 30 day of JULY, 1999

Jeffrey A. Abrams City Clerk

CITY OF TORONTO

Jeffrey A. Abrams c/s NOVINA WONG, CITY CLERK

[Signature] c/s

TORONTO ARTSCAPE INC.

[Signature] c/s Name: TIM JONES Title: EXECUTIVE DIRECTOR

[Signature] c/s Name: Jini Stolk Title: President

I/We have authority to bind the Corporation.

This is Exhibit "L" referred to in the Affidavit of Ben Macintosh, affirmed by Ben Macintosh, at the City of Toronto, in the Province of Ontario, before me on this 3<sup>rd</sup> day of January, 2024, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

*Christopher J. Henderson*

Christopher J. Henderson  
Commissioner for Taking Affidavits

**OPERATING L E A S E**  
**REGENT PARK ARTS NON-PROFIT DEVELOPMENT CORPORATION (RPAD)**  
**- AND -**  
**TORONTO ARTSCAPE INC. (Artscape)**

**1. LEASE SUMMARY**

The following contains the most important terms of this Lease. They should be read in conjunction with the balance of this Lease to understand all of the responsibilities and rights of the parties.

- a. **Demised Premises:** means the building and its outdoor performance court, café patio and third floor terrace known municipally as 585 Dundas Street East, Toronto and legally described as part of PIN 21082-0394, being that part of Block 24 on draft subdivision Plan prepared by George C. M. Lo, O.L.S., and dated June 24, 2011, City of Toronto designated as Part 2 on draft Reference Plan prepared by Sasa Krcmar, O.L.S., and checked September 19, 2011 which comprises the Regent Park Arts and Cultural Centre.
- b. **Commencement Date:** June 1, 2012.
- c. **Basic Rent:** \$1 per year, if demanded.
- d. **Address for Service of Notice on Artscape:**

171 East Liberty Street, Suite 224  
Toronto, Ontario M6K 3P6

Fax Number: 416-535-6260

**Address for Service of Notice on RPAD:**

171 East Liberty Street, Suite 224  
Toronto, Ontario M6K 3P6

Fax Number: 416-535-6260

**2. BACKGROUND**

- I. RPAD is a non-share capital corporation incorporated under the Laws of Ontario;
- II. RPAD is leasing the Demised Premises and its outdoor performance court, café patio and third floor terrace from Toronto Community Housing Corporation for a 50-year less one day term under the terms of the Ground Lease (the Ground Lease is found in Schedule A of this lease);

- III. Artscape has experience in the development and operation of arts and cultural facilities and, as a result of its submission to a request for proposals, has been selected to be the operator of the Premises;
- IV. The Regent Park Arts and Cultural Centre is intended to provide an important part of the social infrastructure of the redeveloped Regent Park community;
- V. The parties wish to allow for sub-sub-tenants and other community stakeholders to have a voice in the policies and management practices for the Premises and to build the foundation for a constructive relationship between the RPAD, Artscape and community stakeholders, as per the Community Stewardship Strategy contained in Schedule B of this lease); and
- VI. It is the intention of the parties to maintain below market basic rents and to operate the Demised Premises on a non-profit and cost-recovery basis.

### **3. LEASE**

IN CONSIDERATION OF the rents, covenants and agreements hereinafter reserved and contained on the part of Artscape to be paid, observed and performed, RPAD, as Landlord, leases the Demised Premises to Artscape, in accordance with the terms and conditions contained herein.

### **4. GROUND LEASE TERMS INCORPORATED**

This is a sublease.

Artscape acknowledges that RPAD has leased the Demised Premises from Toronto Community Housing Corporation, and this Lease is the sublease contemplated by that Ground Lease. Artscape is the Operator described in that lease. A true copy of that lease is appended to this Lease as Schedule A.

All of the terms of the Ground Lease are incorporated into this Lease, substituting RPAD for the Toronto Community Housing Corporation as landlord, and Artscape for RPAD, as tenant, with the following changes and clarifications:

- (a) This is the Operating Lease referred to in that lease.
- (b) The Term of this Lease shall be 50 years less two days from the Commencement Date.
- (c) References to Ground Rent shall mean Basic Rent.
- (d) The "Threshold Amount" in paragraph 1.1.50 shall mean "\$500,000 dollars which amount shall be adjusted annually based on changes to the Consumer Price Index" in this Operating Lease.
- (e) Paragraph 5.1.1 is excluded, as it is the parties' intention that the Building be owned by RPAD.
- (f) The obligations of RPAD to notify, or obtain consent from, Toronto Community Housing Corporation under the ground lease may be

satisfied by Artscape directly, if acceptable to Toronto Community Housing Corporation.

- (g) The obligation in Paragraph 7.2 to indemnify and insure Toronto Community Housing Corporation shall read "Toronto Community Housing Corporation and RPAD".
- (h) The parties shall co-operate to ensure that insurance coverage is obtained in satisfaction of the requirements of the Ground Lease and this Lease in a manner that is most cost-effective.
- (i) The obligations in paragraph 10.9 and 10.11 shall not be applicable. Instead, Artscape will report to RPAD as per the Community Stewardship Strategy, Section B iii (see 6(b) herein).
- (j) Paragraph 11.1.7 shall not be applicable.
- (k) This Lease shall not be encumbered.

## **5. RPAD COVENANTS**

RPAD covenants with Artscape:

- (a) for quiet enjoyment;
- (b) to pay the Basic Rent reserved by the Ground Lease;
- (c) to enforce, for the benefit of Artscape and other lawful occupants of the Demised Premises, the obligations of the landlord under the Ground Lease with the intent that the benefits of such covenants shall be enjoyed by Artscape and its permitted subtenants;
- (d) In the event of damage or destruction to the Demised Premises by any casualty or occurrence:
  - (i) Basic Rent and Additional Rent hereunder shall abate if and to the extent Ground Rent and Additional Rent under the Ground Lease abates under the terms of the Ground Lease;
  - (ii) this sublease shall terminate if the landlord under the Ground Lease or RPAD shall become entitled to terminate and shall terminate the Ground Lease; and
  - (iii) Artscape, if the Demised Premises are restored by the landlord under the Ground Lease in accordance with the provisions of the Ground Lease, shall perform all of the obligations of RPAD with respect to the repair and restoration of the Premises.

**6. ARTSCAPE COVENANTS**

Artscape shall be responsible for;

- (a) The development and implementation of curatorial and operational principles to guide the ongoing management of the Demised Premises, in consultation with stakeholders and in keeping with Section B. iii of the Community Stewardship Strategy in Schedule B of this lease. Those curatorial and operational principles will include but not be limited to tenant selection principles, programming principles and community stewardship;
- (b) Reporting to RPAD as outlined in Section B. iii of the Community Stewardship Strategy in Schedule B of this lease, including an annual financial report certified by an accredited third party auditor to verify the operational revenues and expenses for the Premises;
- (c) Coordinating tenant fit-out, move in and transition to operation to the extent not completed during the development phase;
- (d) Managing and operating the Leased Premises;
- (e) Supporting Toronto Community Housing Corporation's Community Economic Development Policy by incorporating local hiring practices;
- (f) Seeking RPAD's advice before re-leasing tenanted space that becomes vacant, based on Tenant Selection Criteria found in Schedule C of this lease;
- (g) Developing a Good Neighbour Policy to ensure that its programming and activities, and the programming and activities of its sub-tenants, does not disturb surrounding residents.

**7. ARTSCAPE AUTHORITY**

Subject to the terms of this Lease and provided its decisions are in compliance with the operational principles developed by Artscape and approved by RPAD, Artscape shall have decision making authority as to:

- (a) the types and mix of commercial, retail and community uses to be permitted within the Demised Premises;
- (b) the size and location of commercial, retail and community premises;
- (c) the rental rates to be charged to its tenants;
- (d) the terms, conditions, and provisions of the standard form lease to be used in connection with the Demised Premises;
- (e) programming of events and activities within the Demised Premises;
- (f) marketing and communications related to tenants, program, activities and the Demised Premises in general;

- (g) upon vacancy of a unit within the Demised Premises, selection of a replacement tenant in accordance with the tenant selection principles found in Schedule C of this lease;
- (h) any non-standard terms and conditions to be incorporated into subleases, such as, but without limitation, the scope, duration and terms of any exclusivity arrangements or options granted in favour of any tenant.

**8. ARTSCAPE COVENANTS TO ITS SUB-TENANTS**

Artscape agrees to the following covenants as outlined in its Offers to Sub-Lease to the sub-tenants of the Demised Premises.

Artscape is committed to revitalizing the Regent Park community and developing and operating an affordable space for creativity in the Centre which will generate positive cultural, economic, social and environmental impact.

**9.1 Capacity-Building Assistance:**

Artscape agrees to use its best efforts to assist its sub-tenants to develop a capacity building strategy to strengthen their organizational capacity and programming.

**9.2 Tenant Transition Fund:**

Artscape shall establish a Tenant Transition Fund in the amount of \$500,000 to assist sub-tenants of the Centre in graduating or stepping up to the full amount of Rent payable under the Lease, allocated on a per square foot basis based on the sub-tenant's Proportion less the performance event space and cafe space.

**9.3 Collaborative Fund-Raising**

Artscape will be coordinating a capital campaign to undertake capital fundraising needed to pay for the balance of construction costs of the Centre not covered by government grants already committed, tenant improvements, theatrical equipment and other items deemed important in the successful operation of the Centre, and wishes to do so in collaboration with the sub-tenants of the Centre.


**9.4 Community Stewardship**

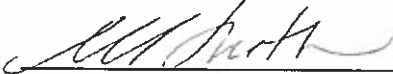
The Centre will be operated in a manner which will work toward revitalizing the Regent Park community and providing affordable spaces for creativity. To assist in achieving these objectives in the operation of the Centre, Artscape and its sub-tenants will work collaboratively with each other and with RPAD, to establish:

- (a) boards and committees to assist with governance, policy-making and coordination of programming and communications which will be comprised of representatives from Artscape, sub-tenants of the Centre, the Centre users and the broader community;
- (b) conflict of interest guidelines that will apply to these boards and committees to ensure fair and impartial decision making;
- (c) a Tenant Charter which will set out the values, principles and collaborative spirit for the operation of the Centre;
- (d) a Good Neighbour policy which will set out principles and policies for developing relationships amongst the Centre tenants and the Regent Park neighbourhood; and
- (e) other rules and policies which may be amended from time to time.

IN WITNESS the parties hereto have executed this Agreement this 19 day of December, 2011.

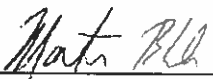
TORONTO ARTSCAPE INC.


Per:   
 Name: TIM JONES  
 Title: PRESIDENT & CEO

Per:   
 Name: CELIA SMITH  
 Title: EXECUTIVE VICE-PRESIDENT

We have authority to bind the Corporation.

REGENT PARK ARTS NON-PROFIT  
 DEVELOPMENT CORPORATION

Per:   
 Name: MARTIN BLAKE  
 Title: SECRETARY / TREASURER

Per:   
 Name: THOMAS BURR  
 Title: DIRECTOR + ASO

We have authority to bind the Corporation.

**SCHEDULE A**  
**Ground Lease**



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**GROUND LEASE**

**RE: REGENT PARK ARTS AND CULTURAL CENTRE**

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**DATE: December 19, 2011**

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THIS LEASE dated as of December 19, 2011.

BETWEEN:

**TORONTO COMMUNITY HOUSING CORPORATION**

(hereinafter called the "Landlord")

AND:

**REGENT PARK ARTS NON-PROFIT DEVELOPMENT CORPORATION**

(hereinafter called the "Tenant")

**RECITALS:**

- A. The City of Toronto has received certain funds under the ISF Contribution Agreement and has made these funds available to the Landlord for the construction of the Building on the Lands.
- B. The Building and its use for the Permitted Use are intended to provide an important part of the social infrastructure of the redeveloped Regent Park community.
- C. In order to facilitate the Permitted Use of the Building and to demonstrate continued community participation and oversight in the operation of the Building commensurate with stewardship obligations to various stakeholders therewith the parties have entered into this Lease.

**NOW THEREFORE** this indenture witnesses that for good and valuable consideration, the receipt and sufficiency of which is expressly acknowledged, the parties covenant and agree as follows:

**ARTICLE 1  
DEFINITIONS**

**1.1 Definitions**

In this Lease:

- 1.1.1 "**Additional Rent**" means all sums of money or charges required to be paid by the Tenant under this Lease (except Ground Rent) either to the Landlord or otherwise including, without limitation, payment of Taxes and charges for water, gas, electricity, telephone and other utilities and other charges which may give rise to a lien upon the interest of the Landlord in the Property, whether or not the same are designated as "Additional Rent".
- 1.1.2 "**Applicable Law**" means all statutes, laws, by-laws, regulations, ordinances and requirements having the force of law of governmental or other public authorities having jurisdiction over the Property, and all amendments thereto at any time and from time to time in force which are applicable in the circumstances.
- 1.1.3 "**Approved Plans and Specifications**" means the plans and specifications for any Work that has been approved by the Landlord as contemplated in this Lease

and upon which the issuance by the Authority of any Development Permit and building permits are to be based.

- 1.1.4 “**Architect**” means an independent, duly qualified architect named by the Landlord from time to time.
- 1.1.5 “**Authority**” means any city, municipal, provincial, federal or other governmental authority having jurisdiction.
- 1.1.6 “**Building**” means the building existing on the Lands that has been designed and constructed as an arts and cultural centre (with ancillary commercial and retail space) of approximately 60,000 square feet on three floors and its attendant exterior amenities including for clarity the outdoor performance court, outdoor café patio and third floor terrace which Building is municipally known as 585 Dundas Street East, Toronto, Ontario.
- 1.1.7 “**Business Days**” means any of the days of the week from Monday to Friday unless such day is a statutory holiday in the Province of Ontario.
- 1.1.8 “**City Grant Agreement**” means a City of Toronto Imagination, Manufacturing, Innovation and Technology Tax Increment Equivalent Grant Agreement entered into, or to be entered into, by the Landlord and the City of Toronto pursuant to which certain Development Grants (as that term is defined in the City Grant Agreement) and rebates of development charges may be payable in connection with the Property.
- 1.1.9 “**Commencement Date**” means June 1, 2012.
- 1.1.10 “**Consumer Price Index**” or “**CPI**” means the annual average consumer price index for the calendar year, not seasonally adjusted, for Ontario for all items, as determined by Statistics Canada or if such index ceases to be published at any time during the Term, such replacement index that most closely resembles the index that has ceased to be published.
- 1.1.11 “**DG/DC Agreement**” means an agreement entered into, or to be entered into, by the Landlord and the Tenant relating to certain development grants and rebates of development charges relating to the Property pursuant to the City Grant Agreement.
- 1.1.12 “**Development Permit**” means the development permit (or permits) issued by the applicable Authority relating to the development or redevelopment of the Property and any other permits necessary to construct the Improvements.
- 1.1.13 “**Dispute Expert**” is defined in Section 8.4.4.
- 1.1.14 “**Environment**” means the components of the earth and includes: (i) air, land and water; (ii) all layers of the atmosphere; (iii) all organic and inorganic matter and living organisms; and (iv) the interacting natural systems that include components referred to in this definition of Environment.

- 1.1.15        **“Environmental Law”** means any and all laws, standards, guidelines, policies and other lawful requirements of any governmental authority having jurisdiction over the Property, the Landlord or the Tenant, now or hereafter in force relating in any way to the Environment, Environmental assessment, health, occupational health and safety or the manufacture, use, transportation, storage, discharge, release and disposal of Hazardous Substances, including the related principles of common law and equity.
- 1.1.16        **“Force Majeure”** means an event causing a bona fide delay, notwithstanding the commercially reasonable efforts of the party delayed with respect thereto, in the performance of any obligation under this Lease arising from a cause or causes beyond the reasonable control of such party, including without limitation, the supply or provision of any service or utility or the doing of any work or the making of any repairs by reason of being unable to obtain the material, goods, equipment, service, utility or labour required to enable it to fulfil such obligation or by reason of any statute, law or order-in-council, or any regulation or order passed or made pursuant thereto or by reason of the order or direction of any administrator, controller or board, or any governmental department or officer or other Authority, or by reason of not being able to obtain any permission or authority required thereby, or by reason of strike, lockout, riot, insurrection, war, fire, tempest, act of God, or pandemic.
- 1.1.17        **“Gross Revenue”** means all revenues generated during the Term by activities at the Property including: (i) rents and other amounts received from tenants or other occupants permitted by this Lease to use and occupy any part of the Property; and (ii) the net proceeds of all receipts of donated funds.
- 1.1.18        **“Ground Rent”** is defined in section 3.2.
- 1.1.19        **“Hazardous Substance”** means any material or substance that may impair the quality of the Environment and as to which liabilities or standards of conduct are imposed pursuant to Environmental Laws, including any material or substance that is deemed pursuant to any Environmental Law to be “hazardous”, “toxic”, “deleterious”, “caustic”, “dangerous”, a “contaminant”, a “pollutant”, a “hazardous waste”, or a “source of contamination”.
- 1.1.20        **“Improvements”** means the Building and all fixed improvements, structures and other installations located on, in or under any portion of the Lands at any time throughout the Term, including equipment and machinery owned by the Tenant and including any additions, substitutions, alterations or replacements thereto or thereof. Improvements do not include any trade fixtures or chattels of the Tenant or any subtenant or assignee of the Tenant, or any item that is proprietary to a subtenant or assignee.
- 1.1.21        **“Infrastructure Stimulus Fund”** means that fund established by the Government of Canada and partnered with the Province of Ontario, as jointly announced by Canada and Ontario on June 5, 2009.
- 1.1.22        **“Interest Rate”** means the annual rate of interest equal to one percent plus the prime rate of interest charged by the Royal Bank of Canada to its most favoured commercial clients from time to time.

- 1.1.23 “**ISF Contribution Agreement**” means that certain agreement dated as of August 9, 2010 among the Province of Ontario and the City of Toronto and the Landlord pursuant to which the City of Toronto and the Landlord received a grant of funds under the Infrastructure Stimulus Fund for the development and construction of the Building for use as an arts and cultural centre and amendments thereto.
- 1.1.24 “**Joint Venture**” is defined in the Joint Venture Agreement.
- 1.1.25 “**Joint Venture Agreement**” means the agreement among the parties (and certain other Persons) with an effective date of July 28, 2011, in connection with the development, construction and operation of an arts and cultural centre referred to by the parties thereto as the Regent Park Arts and Cultural Facility. A true copy of the Joint Venture Agreement is attached to this Lease as Schedule “C”.
- 1.1.26 “**Landlord Indemnified Party**” includes the Landlord and, as applicable, its shareholder or Member, and each of their respective directors, officers, employees, contractors, agents or customers and their respective successors and assigns.
- 1.1.27 “**Landlord’s Address**” means 931 Yonge Street, 6th Floor, Toronto, Ontario M4W 2H2.
- 1.1.28 “**Landlord’s Mortgage**” means a mortgage or charge of the interest of the Landlord in the Property and includes a deed of trust and mortgage securing bonds.
- 1.1.29 “**Landlord’s Mortgagee**” means the holder of a Landlord’s Mortgage, and includes a trustee for bondholders under a deed of trust and mortgage securing bonds.
- 1.1.30 “**Lands**” means that part of Block 5 Plan 66M-2491 designated as Parts 2 and 3 on the Reference Plan.
- 1.1.31 “**Lease**” means this lease as from time to time amended in writing and includes all schedules hereto.
- 1.1.32 “**Member**” has the meaning ascribed to that term in the *Corporations Act* (Ontario) or any successor legislation.
- 1.1.33 “**Net Revenue**” means Gross Revenue less Operating Costs.
- 1.1.34 “**Notice**” means any notice, statement or request herein required or permitted to be given by either party to the other or to the Operator pursuant to this Lease or the Operating Lease Agreement and shall be in writing and, if to the Landlord, addressed to the Landlord at the Landlord’s Address and, if to the Tenant, addressed to the Tenant at the Tenant’s Address and, if to the Operator, at the Operator’s Address. Each Notice shall be either hand delivered (which for clarity, shall include commercial courier delivery), sent by facsimile transmission, or mailed by registered post (return receipt requested) and the date



of receipt of such Notice shall be deemed to be the date of such hand delivery, the date of transmission unless transmission occurs after 17:00 in the jurisdiction of the recipient or on a day which is not a Business Day in the jurisdiction of the recipient, in which event the date of receipt of such Notice shall be deemed to be the first following Business Day in the jurisdiction the recipient, or if mailed, four Business Days following the date of mailing, as the case may be. If postal service is interrupted or substantially delayed, all Notices shall be hand delivered or sent by facsimile transmission. Either party may change its address by Notice to the other.

- 1.1.35        “**Operating Costs**” means all costs reasonable required for the operation, maintenance and repair of the Property during the Term.
- 1.1.36        “**Operating Lease**” is defined in Section 10.7.
- 1.1.37        “**Operating Lease Agreement**” is defined in Section 10.7.2.
- 1.1.38        “**Operator**” means Toronto Artscape Inc.
- 1.1.39        “**Operator’s Address**” means 171 East Liberty Street, Suite 224, Toronto, Ontario M6K 3P6.
- 1.1.40        “**Permitted Encumbrances**” means:
- (a)        the reservations, limitations, provisos, terms, conditions, restrictions and exceptions in the letters patent or grant, as the case may be, from the Crown and statutory exceptions to title;
  - (b)        any right of expropriation conferred upon, reserved to or vested in Her Majesty The Queen in Right of Canada, Her Majesty The Queen in Right of any Province of Canada by any Governmental Authority under any Applicable Law;
  - (c)        unregistered liens for Taxes, assessments or similar charges incurred by the transferor that are not yet due and payable or, if due and payable, are to be adjusted between the Landlord and Tenant as of the on the Commencement Date;
  - (d)        inchoate mechanic’s, construction and carrier’s liens and other similar liens arising by operation of law for obligations which are not delinquent and will be paid or discharged by the Landlord or the Tenant;
  - (e)        zoning restrictions, easements and rights of way or other similar encumbrances or privileges in respect of real property which in the aggregate do not materially impede the value or use of the Lands and which are not violated in any respect by existing or proposed structures or land use;
  - (f)        any development, site plan or subdivision agreements and any agreements which arise in connection with the development or construction of the Improvements Tenant or which the Tenant has previously accepted and agreed to with the owner(s) of adjacent lands (including the adjacent (proposed) condominium corporation) respecting parking, access, rights-of-way, and similar matters which the Tenant has previously agreed to in writing;

- (g) title defects which are of a minor nature and in the aggregate do not materially impede the value or use of the Lands;
  - (h) usual easements for hydro, gas, telephone and like services whether registered or not, provided they do not materially impede the value or use of the Lands;
  - (i) any encumbrance which the Tenant has expressly agreed to assume or accept;
  - (j) any restrictive covenants entered into by or at the request of the Tenant, provided the same are complied with;
  - (k) any reciprocal agreement as contemplated in the Joint Venture Agreement;
  - (l) any Landlord's Mortgage;
  - (m) the easements referred to in Schedule A-Legal Description of the Lands that benefit or burden the Lands; and
  - (n) all registrations against title to the Property as disclosed by the records of the Land Titles Office where title to the Property is registered as of the date of this Lease.
  - (o) **"Permitted Use"** is defined in Section 4.1.
- 1.1.41 **"Person"** means any person, firm, partnership, corporation or other legal entity, or any group or combination of persons, firms, partnerships, corporations or other legal entities.
- 1.1.42 **"Property"** means the Lands and any Improvements erected thereon from time to time.
- 1.1.43 **"Reference Plan"** is defined in Schedule "A" and following deposit of the Reference Plan on title to the Lands will be referred to by the R-Plan number assigned to it by the Land Titles Office.
- 1.1.44 **"Rent"** includes Ground Rent and Additional Rent.
- 1.1.45 **"Sales Taxes"** means all goods and services, harmonized sales taxes, business transfer, value-added, national sales, multi-stage sales, sales, use or consumption taxes or other taxes of a similar nature imposed by any lawful taxing authority upon the Landlord or the Tenant with respect to Rent, this Lease, the rental of space pursuant to this Lease, or the goods and services provided by the Landlord to the Tenant, including, without limitation, the provision of administrative services to the Tenant hereunder.
- 1.1.46 **"Taxes"** means, in each year, the amount paid by the Landlord for all taxes, rates, duties and assessments whatsoever, whether municipal, provincial, parliamentary or otherwise, now charged or hereafter to be charged upon the Property or upon the Landlord in respect thereof. The total of such costs to the Landlord shall include, without duplication or limitation, school taxes, municipal taxes and taxes for local improvements or works assessed against the Property and any costs and

fees reasonably incurred by the Landlord in reasonably contesting or negotiating with the public authorities as to the same. Taxes shall not include capital taxes or large corporations taxes or any other taxes based upon or computed with reference to the Landlord's paid-up capital or place of business, income taxes of the Landlord to the extent such income taxes are not levied in lieu of taxes, rates, duties and assessments against the Property.

- 1.1.47      **"Tenant's Address"** means 171 East Liberty Street, Suite 224, Toronto, Ontario M6K 3P6 prior to the Commencement date and 585 Dundas Street East, Toronto, Ontario M5A 2B7 after the Commencement Date.
- 1.1.48      **"Tenant's Architect"** means an independent, duly qualified architect named by the Tenant from time to time and approved by the Landlord.
- 1.1.49      **"Tenant's Mortgage"** means a mortgage or charge of the interest of the Tenant in the Property and includes a deed of trust and mortgage securing bonds, as the same may be amended and supplemented from time to time.
- 1.1.50      **"Tenant's Mortgagee"** means the holder of a Tenant's Mortgage, and includes a trustee for bondholders under a deed of trust and mortgage securing bonds.
- 1.1.51      **"Term"** means a term of 50 years less one day commencing on the Commencement Date.
- 1.1.52      **"Termination Date"** means, the last day of the Term or such earlier date as this Lease may be terminated pursuant to the provisions hereof.
- 1.1.53      **"Threshold Amount"** means \$4,000,000 dollars which amount shall be adjusted annually based on changes to the Consumer Price Index.
- 1.1.54      **"Transfer"** shall be broadly interpreted and shall include:
- (a) an assignment of the Lease or Operating Lease in whole or in part;
  - (b) a sublease or licence of all or any part of the Property;
  - (c) any transaction whereby the rights of the Tenant under the Lease or to the Property or the Operator under the Operating Lease are transferred in whole or in part to another Person;
  - (d) any transaction involving the Tenant or the Operator by which any right of use or occupancy of all or any part of the Property is conferred upon any Person, provided that a transaction that involves the granting of possession for a period not exceeding 12 months to a Person in connection with Work on or to the Property in order to create a so-called "construction island" for occupational health and safety purposes shall not be considered as a Transfer that requires the Landlord's consent;
  - (e) any transaction in which the Lease or Operating Lease is charged, mortgaged, pledged or otherwise encumbered by the Tenant or the Operator; and

- (f) any transaction or occurrence whatsoever (including receivership proceedings, seizure by legal process and transfer by operation of law), which has changed or might change the identity of the Person having lawful use and occupancy of any part of the Property, but for clarity, not including changes to the composition of the board of directors of the Tenant.

1.1.55 “Work” includes all changes, rebuilding, restoration, renovation or repairs to the Improvements where the aggregate cost of all such changes, rebuilding, restoration, renovation or repairs to the Improvements for the year for which the calculation is being made is equal to or greater than the Threshold Amount in effect for the year in which the Work is to be started. For Clarity, “Work” does not include the initial construction of the Building.

## 1.2 Schedules

The following Schedules form part of this Lease:

- 1.2.1 SCHEDULE “A” - LEGAL DESCRIPTION OF THE LANDS
- 1.2.2 SCHEDULE “B” - FORM OF NON-DISTURBANCE AGREEMENT
- 1.2.3 SCHEDULE “C” - JOINT VENTURE AGREEMENT

## ARTICLE 2 DEMISE

### 2.1 Demise and Lands

- 2.1.1 In consideration of the covenants and agreements hereinafter set out, the Landlord hereby leases the Lands to the Tenant, to have and to hold during the Term upon the conditions contained in this Lease free and clear of any and all liens, charges and encumbrances, save and except Permitted Encumbrances
- 2.1.2 The Tenant covenants to pay Rent and to observe and perform all the covenants and provisos to be observed and performed by the Tenant pursuant to this Lease and otherwise comply with all of the terms and conditions of the Lease.
- 2.1.3 The parties further acknowledge and agree that, in addition to the rights of access otherwise afforded to the Landlord under the provisions of this Lease, the Landlord reserves for its employees, agents and contractors, upon reasonable Notice to the Tenant (except in the case of emergencies or urgent repairs or maintenance), a right of passage over the Lands for people, equipment, machinery and apparatus for the purpose of allowing access to the Lands to facilitate the Landlord’s performance of its obligations pursuant to this Lease, if any.
- 2.1.4 The parties acknowledge that:
  - (a) the Lands and the Tenant’s interest in the Lands under the Lease may include the benefit of or be subject to the rights associated with easements for access, water supply, electricity supply and district energy resulting or arising from or in

connection with the condominium corporation on lands that abut or adjoin the Lands and otherwise contemplated in the Joint Venture Agreement;

- (b) the Tenant shall be responsible for all of the Landlord's obligations, if any, in connection with all such easements and in connection with any reciprocal or similar agreement which the Landlord has or may at any time hereafter enter into in connection with such condominium corporation.

## 2.2 **Re-description of the Lands**

If the Lands on Schedule "A" to this Lease are described in accordance with a draft reference plan or sketch and subsequently a reference plan for the Lands is registered, the parties shall upon the request of the other enter into a further agreement to confirm the description of the Lands in accordance with the registered reference plan which agreement may include a regrant of the Property.

## 2.3 **Quiet Enjoyment**

The Tenant, upon paying the Rent hereby reserved and performing and observing the covenants and provisions herein required to be performed and observed on its part, shall peaceably enjoy the Lands for the Term.

## 2.4 **Examination of Lands**

The Tenant acknowledges having examined the Lands and Improvements and accepts same in their "as is" condition.

## 2.5 **Overholding by Tenant**

If the Tenant remains in possession of the Lands subsequent to the end of the Term without the execution and delivery of a new lease, there shall be no tacit renewal, and the Tenant shall be deemed to be occupying the Lands as a tenant from month-to-month upon the same terms and conditions as are set forth in this Lease insofar as the same are applicable to a month-to-month tenancy, subject to sections 58 and 59 of the *Commercial Tenancies Act* (Ontario) but at a rent equal to the last Rent payable hereunder.

## 2.6 **Termination by the Landlord**

In addition to any other right the Landlord may have elsewhere in this Lease to terminate the Lease, the Landlord may on Notice to the Tenant terminate this Lease if:

- 2.6.1 50% or more of the Property remains vacant for more than six months unless due to interruptions caused by Force Majeure events or during periods of rebuilding in connection with fire or other damage to the Property;
- 2.6.2 a Transfer that requires the Landlord's consent occurs without the Landlord's consent having been given;
- 2.6.3 There is a breach of the ISF Contribution Agreement as a result of any act or omission on the part of the Tenant or the Operator that if capable of cure is not cured by the Tenant or the Operator, as the case maybe, taking appropriate action in time to cure such default; or

- 2.6.4 A Force Majeure event that prevents the continuous use of the Property as required by this Lease occurs and continues for 180 days.

### ARTICLE 3 RENT

#### 3.1 Rent

The Tenant covenants and agrees to pay, from and after the Commencement Date during the Term, to the Landlord at the office of the Landlord or to such other person or at such other location as the Landlord shall direct by Notice, in lawful money of Canada, without any prior demand therefor and without any deduction, abatement or set-off whatsoever, the Rent plus applicable Sales Tax.

#### 3.2 Ground Rent

Ground Rent for the Term shall be the sum of one dollar. The Landlord hereby acknowledges receipt of the Ground Rent from the Tenant.

#### 3.3 Additional Rent

- 3.3.1 It is the intent of the parties that this Lease be absolutely net to the Landlord and that the Tenant shall pay all costs and expenses relating to the Property and the business carried on therein except as expressly provided in this Lease. Any amount or obligation herein relating to the Property which is not expressly declared to be that of the Landlord shall be deemed to be an obligation of the Tenant to be performed by the Tenant at the Tenant's expense or, at the election of the Landlord in its sole and absolute discretion, by the Landlord or its agents or contractors at the Tenant's expense, with the amount of said expense being payable by the Tenant to the Landlord upon demand. For clarity, the Tenant shall be responsible for paying any amounts that the Landlord would otherwise be responsible for pursuant to any reciprocal or similar agreement that relates to the condominium to be established on lands abutting or adjoining the Lands.
- 3.3.2 Without in any way limiting the generality of Section 3.3.1, in addition to the Ground Rent reserved in favour of the Landlord, the Tenant shall, throughout the Term, pay to the Landlord or as otherwise provided in this Lease, in lawful money of Canada, without any deduction, abatement or set-off whatsoever, as Additional Rent, the following costs:
- (a) Sales Taxes on the Ground Rent; and
  - (b) all other sums, amounts, costs, and charges specified in this Lease to be payable by the Tenant whether to the Landlord or to a third party.
- 3.3.3 All amounts payable under this Lease, unless otherwise provided, become due and payable upon demand. If the Tenant defaults in payment of any sum due hereunder the Landlord shall have the same rights and remedies upon default as if the sum were Rent in arrears. Upon request, the Landlord shall provide the Tenant with such evidence and back-up information as is sufficient to substantiate all amounts of Additional Rent.

3.4 **Taxes**

The Tenant covenants to pay to the lawful taxing authorities, on or before the due date therefor all Taxes. The obligation of the Tenant to pay Taxes shall commence on the Commencement Date and shall be apportioned for the first taxation year between the Landlord and Tenant as at such date on a *per diem* basis. Upon the expiry or termination of this Lease, Taxes during the taxation year of termination shall be similarly apportioned between the parties as at the termination date. If the Tenant fails to pay any Taxes when due to the appropriate taxing authorities in situations where the Tenant (or persons on its behalf) is not contesting Taxes in accordance with the provisions of Section 3.5, then the Landlord may itself, after Notice to the Tenant as required herein, pay the Taxes, and the amount paid by the Landlord on account of Taxes shall be immediately repaid by the Tenant to the Landlord as Additional Rent under this Lease.

3.5 **Contesting Realty Taxes and Sales Taxes**

The Tenant shall have the right, in the name of the Landlord or otherwise, at the Tenant's expense, by appropriate proceedings conducted diligently and in good faith, to contest or apply for the reduction of the amount, legality or mode of payment of any Taxes or Sales Taxes in respect of the Lands or any portion thereof or any assessments with respect thereto. The Landlord shall, forthwith and without cost to the Tenant, provide any consent, authorization and other assurance as may be required in order for such Taxes or Sales Taxes to be contested or such applications to be made and proceeded with. During the period of any *bona fide* contesting or application, the Tenant may defer the payment of Taxes or Sales Taxes to the extent permitted under applicable legislation, and no default shall be deemed to have occurred in the Tenant's obligations to pay Taxes or Sales Taxes by reason of such deferral. The Tenant shall be entitled to any rebate of any Taxes or Sales Taxes unless such Taxes have been paid by the Landlord in accordance with Section 3.4 and the Tenant has not reimbursed the Landlord. Landlord shall not appeal or challenge any assessment except with the written concurrence of the Tenant. The Tenant shall at the request of the Landlord keep the Landlord apprised of the status of any contest of Taxes or Sales Taxes by the Tenant

3.6 **Business Taxes and Sales Taxes**

3.6.1 The Tenant shall pay every tax and license fee imposed in respect of all business or other activities carried on in the Property or in respect of the use or occupancy thereof, and all such amounts shall be paid promptly to the Authority responsible for collection.

3.6.2 The Tenant shall pay all Sales Taxes. The amount of such Sales Taxes will be calculated by the Landlord in accordance with the applicable legislation and will be paid to the Landlord (or to the lawful taxing Authority, as the Landlord may direct) on the due date of the amounts in respect of which such Sales Taxes are payable. All such payments shall be made prior to the date that the same shall become due and payable and any interest and any penalties assessed as a result of any default in or late payment of same shall be the sole responsibility of the Tenant. Notwithstanding any other provision of this Lease, the amounts payable by the Tenant under this Section 3.6 shall be deemed not to be Rent but the Landlord shall have all of the same remedies for and rights of recovery of such amount as it has for the recovery of Rent under this Lease or otherwise.

3.7 **Sales Taxes in connection with the Building**

If:

- 3.7.1 any input tax credit relating to any Sales Taxes (including GST or HST) that has been claimed by the Landlord in connection with the construction of the Building is subsequently disallowed; and/or
- 3.7.2 the Landlord is assessed any Sales Taxes in connection with the transfer of the Building to the Tenant pursuant to this Lease,

then the Tenant shall:

- 3.7.3 within 30 days of Notice of demand being made by the Landlord reimburse the Landlord for all amounts, including any penalties thereon in connection with the foregoing that the Landlord is required to pay to the Authority entitled to receive such amounts plus any applicable penalty on such amounts (collectively, "Claims"); and
- 3.7.4 otherwise indemnify and save the Landlord harmless in connection with the Claims.

The Claims will not be Rent but the Landlord shall have the same remedies in connection with the Claims that it has for non payment of Rent.

### 3.8 Utilities and Services

The Tenant shall be solely responsible for and shall promptly pay to the appropriate suppliers all charges for water, gas, electricity, telephone, telecommunication, Internet and other utilities and services used or consumed in, and any other charges levied or assessed on or in respect of or services supplied to, the Property. In no event is the Landlord liable for, nor has the Landlord any obligation with respect to, an interruption or cessation of or a failure in the supply of any utilities, services or systems in, to or serving the Lands or the Improvements. Tenant shall retain a third party contractor to remove snow from the Lands, as necessary.

### 3.9 Third Party Services

The Tenant shall be solely responsible for and promptly pay to the appropriate third party all charges for services used or consumed in or provided to the Property, if any, but excluding services supplied by the Landlord and charged to the Tenant as Rent. In no event will the Landlord be liable to the Tenant in damages or otherwise for any failure to supply any third party services to the Lands.

### 3.10 Additional Services of the Landlord

The cost of all additional services requested in writing by the Tenant and elected by the Landlord, in its sole and absolute discretion, to be provided to the Tenant by the Landlord or its agents or contractors shall be payable forthwith by the Tenant upon demand by the Landlord together with the Landlord's management fee which shall not exceed five percent in respect thereof.

### 3.11 Waiver of Set-Off

The Tenant hereby waives and renounces any and all existing and future claims, offsets and compensation against any Rent, and agrees to pay all Rent regardless of any claim, offset or compensation which may be asserted by the Tenant or on its behalf. The Tenant agrees that the Landlord may at its option apply all sums received from the Tenant or due to the Tenant against amounts due or payable hereunder as the



Landlord determines notwithstanding any instructions or designations to the contrary. No endorsement on any cheque or statement in any letter accompanying a cheque shall be deemed an accord or satisfaction and the Landlord may accept any payment without prejudice to any rights the Landlord may have at law or under this Lease.

#### **ARTICLE 4 USE OF PROPERTY**

##### **4.1 Permitted Use**

During the Term the Property shall be continuously used only as a not for profit community based arts and cultural centre, including a performance /event centre, the provision of shared workspace and access to office facilities for not for profit social mission and arts organizations and entrepreneurs and an outdoor performance court and outdoor café patio and ancillary office and commercial uses provided that such ancillary office and commercial uses:

- 4.1.1 shall be compatible with and supportive of the predominant use of the Property as a community based arts and cultural centre;
- 4.1.2 shall not occupy more than 33% of the usable gross floor area of the Building; and
- 4.1.3 are in accordance with the operating principles and leasing plan developed by the Operator and approved by the Tenant.

(collectively, the “**Permitted Use**”).

##### **4.2 Net Revenue**

Net Revenue shall be used to support the community based arts and cultural activities at the Property.

##### **4.3 Type of Business Permitted**

The Tenant covenants not to use or permit the Property or any part thereof to be used for any purpose other than the Permitted Use.

##### **4.4 Compliance With Applicable Law and Government Requirements**

The Tenant shall at its own expense comply with all Applicable Law, including Environmental Laws, applicable to the Property and the business conducted therein, and all other present and future requirements of all municipal, provincial, federal and other applicable governmental authorities pertaining to the Property or the Tenant’s use thereof.

##### **4.5 Waste/Nuisance**

The Tenant shall not commit or permit any waste or injury to the Property. The Tenant shall not commit or permit any nuisance on the Property.

##### **4.6 Environment**

- 4.6.1 The Tenant’s storage, generation, use, handling, manufacture, processing, labelling, transportation, treatment, emission, discharge or release of general

wastes and Hazardous Substances in the Property shall be in compliance with Environmental Law. The Tenant's storage, generation, use, handling, manufacture, processing, labelling, transportation, treatment, emission, discharge or release of general wastes and Hazardous Substances in the Lands shall be in compliance with Environmental Law.

4.6.2 The Tenant shall immediately report to the Landlord any spill or other escape of Hazardous Substances that occurs at the Property and take immediate steps to contain or otherwise deal the event as required by Applicable Law including Environmental Law (including Remedial Work as hereinafter defined) and keep the Landlord fully advised as to the progress of the matter.

4.6.3 The Tenant shall not be liable for any Environment condition at the Property as of the Commencement Date, provided however, that the Tenant shall indemnify and save harmless the Landlord and the other Landlord Indemnified Parties from:

- (a) any claim resulting from, in connection with or arising out of or as a result of the Tenant's breach of Environmental Law as it relates to the Property; or
- (b) any claim (including any order or similar process issued by an Authority under Applicable Law) resulting from, in connection with or arising out of or as a result of any Hazardous Substances in, on, from, under or migrating from or to the Property prior to the Commencement Date but only to the extent any related contamination attributable to such Hazardous Substances was caused, permitted, emitted, contributed to or exacerbated, or any related environmental remediation obligations were triggered or made more costly:
  - (i) by acts or omissions of the Tenant or those for whom it is in law responsible or the Operator or
  - (ii) by a failure of the Tenant or those for whom it is in law responsible or the Operator its obligations pursuant to this Lease or the Operating Lease, as the case may be.

#### 4.7 **Signage**

The Tenant shall have the right to paint, display, inscribe or place any sign, symbol, notice or lettering of any kind anywhere on the Lands without the prior written consent of the Landlord but in compliance with all Applicable Law and the obtaining of all required consents and licenses relating thereto. Any signage permitted by this Section shall, be promptly removed by the Tenant at its sole cost and expense on the termination or other expiration of this Lease and the Tenant shall promptly make good any and all damage caused by either or both the installation and removal of such signage.

#### 4.8 **Rezoning or Amending the Official Plan**

The Tenant shall not and shall ensure that the Operator does not make any application to amend the zoning or Official Plan for the Property without the consent of the Landlord.

**ARTICLE 5  
OWNERSHIP OF IMPROVEMENTS AND FIXTURES**

**5.1 Transfer of the Building**

5.1.1 In consideration of the sum of one dollar the Landlord hereby grants, conveys, transfers and releases to the Tenant all of the Landlord's right, title and interest in the Building on an "as-is" and "where-is" basis as of the Commencement Date.

5.1.2 The Tenant acknowledges that it is accepting the Building on an "as-is" and "where-is" basis and hereby forever releases and discharges and agrees to indemnify and save harmless the Landlord and the other Landlord Indemnified Parties in respect of any claims made by any successors in title to the Building, Authorities or any other third parties in respect of any and all claims relating to, in connection with or arising out of any matter pertaining to the Building, including, without limitation, claims relating to the physical condition or state of repair of the Building, access and past, present or future environmental condition of the Property (including, but not limited to, the presence of Hazardous or non-Hazardous Substances located on, in, under or at the Property) (collectively referred to as the "Claims") regardless of whether any such Claim or the conditions, circumstances or events giving rise to the Claim are known or unknown, latent, or patent, and whether such Claim arises or may arise pursuant to or in connection with existing or future federal, provincial, municipal or local laws of common law.

**5.2 Ownership Of Improvements and Fixture at the End of or Upon Early Termination of the Term**

The Landlord and the Tenant agree the Improvements are intended to be and become the absolute property of the Landlord upon the expiration or earlier termination of the Term but shall be deemed, as between the Landlord and the Tenant during the Term, to be the separate property of the Tenant and not of the Landlord, but subject to and governed by all the provisions of this Lease applicable thereto. The Landlord's absolute right of property in the Improvements which will arise upon the expiration or termination of this Lease takes priority over any other interest in the Improvements which may now or hereafter be created by the Tenant or any Person claiming under or through the Tenant. Upon the expiration or earlier termination of Term, the Tenant shall turn over the Improvements to the Landlord in a condition as that in which the Improvements could reasonably be expected to be if the Tenant had complied with its obligations under the Lease with respect to the operation, repair and maintenance of the Property, including its obligations under Section 6.1, subject to reasonable wear and tear, and any leasehold encumbrance or other security affecting the Improvements that are to become the absolute property of the Landlord as contemplated in this Section shall be discharged by the Tenant.

**5.3 Removal of Tenant's Fixtures**

The Tenant may at its option immediately before the expiration of the Term, remove its furniture, chattels and other trade fixtures not forming any part of the Improvements and, provided the Tenant is not in default for which the Tenant has received Notice, the Tenant may from time to time remove such trade fixtures in the ordinary course of its business made pursuant to this Lease. Any such furniture, chattels and other trade fixtures remaining at the Property following the expiration or earlier termination of the Term may be dealt with by the Landlord as its own property.

**ARTICLE 6  
REPAIRS AND MAINTENANCE**

**6.1 Repairs and Maintain**

The Tenant shall operate, repair and maintain the Property in a manner which is consistent with that exercised by a prudent owner of a property similar to the Property in the City of Toronto, including keeping all appropriate records and preserving and keeping in good standing all permits required for the operation of the Property. In so doing, the Tenant shall carry out such operation, repair and maintenance in accordance with Applicable Law and in a manner which will not result in the Landlord suffering or incurring any civil or criminal liability and in compliance with the requirements specified in any insurance policy relating to the Property.

**6.2 Information**

The Tenant shall:

- 6.2.1 within a reasonable period after a written request by the Landlord, provide to the Landlord information on the state of repair, condition and operation of any part of the Property which request shall not, unless the circumstances require, be made more frequently than annually; and
- 6.2.2 promptly notify the Landlord of any material loss or any material damage to or defect in the Property or any portion thereof including those situations in which the Tenant is obliged to give notice to an Authority or to an insurer under a policy of insurance required to be maintained under the Lease of which the Tenant becomes aware and which may cause or result in death or injury to any person or damage to property.

**6.3 Right of Access and Method of Re-Entry and Repair by Tenant on Notice**

- 6.3.1 The Landlord and its representatives, employees, contractors and agents shall have the right to enter the Property upon reasonable prior Notice or at any time without Notice during an emergency, as determined by the Landlord acting reasonably on information known to the Landlord at the time of entry, to examine the state of the Property and equipment and fixtures therein.
- 6.3.2 The Landlord and its representatives, employees or agents shall have the right to enter the Property in the company of a representative of the Tenant, upon reasonable prior Notice to show the Property to any prospective assignee of this Lease or a Landlord's Mortgagee.
- 6.3.3 If the Property or any part thereof requires repair or becomes damaged or destroyed or if the Tenant fails, for any reason, to observe or perform its obligations to operate, repair or maintain the Property as required by this Lease, the Landlord may give the Tenant Notice of such non-observance or non-performance and if (subject to the availability of labour and materials and, if applicable, weather conditions permitting) the Tenant has not commenced and is not diligently proceeding to remedy such non-observance or non-compliance within 30 days of receipt of such Notice, the Landlord may in its sole and absolute discretion, enter the Property with all necessary personnel, equipment

and materials and effect the necessary alterations, replacements or repairs and operate and maintain the Property and shall charge the Tenant the cost thereof, and such amount shall be payable forthwith by the Tenant upon demand by the Landlord as Additional Rent.

- 6.3.4 No entry under this Section 6.3 shall constitute an eviction of the Tenant in whole or in part, and the Ground Rent and Additional Rent shall not abate while changes, repairs, alterations, improvements, additions or installations in and to the Property are being made. Nor shall any such entry affect the obligations and covenants of the Tenant under this Lease, and the Tenant shall have no claim by reason of loss or interruption of business. Nothing in this Section 6.3 shall be deemed or construed to impose upon the Landlord any obligation, responsibility or liability for the care, maintenance or repair of the Property, or any part thereof save as otherwise expressly set out in this Lease.

## **ARTICLE 7 INSURANCE AND INDEMNITY**

### **7.1 Landlord's Insurance**

The Landlord, acting reasonably, shall carry such insurance for the account and benefit of the Landlord as the Landlord from time to time considers useful, expedient or beneficial. The cost of such insurance (including without limitation, the cost of any deductible amounts payable thereunder) shall be paid by the Tenant as Additional Rent forthwith following the Landlord's account for same. Notwithstanding any contribution by the Tenant to the Landlord for insurance premiums as provided in this Lease, the Tenant shall have no right to receive any proceeds of insurance from policies carried by the Landlord. The Landlord shall in no way be accountable to the Tenant regarding the use of any insurance proceeds arising from any claim, and the Landlord shall not be obliged to account for such proceeds, nor to apply such proceeds to the repair or restoration of that which was insured.

### **7.2 Tenant's Insurance**

The Tenant shall keep in force during the Term at its own expense the following:

- 7.2.1 insurance against All Risks of loss or damage to the Improvements, the Tenant's property and property for which Tenant is responsible under this Lease, including damage due to floods or earthquakes for the full replacement cost thereof without deduction for depreciation;
- 7.2.2 comprehensive general liability insurance, including Tenant's All Risk legal liability insurance in respect of the Property, in an amount not less than \$5,000,000, or such greater amount as may be stipulated by the Landlord from time to time, (but not more frequently than once a year during the Term and provided such amount is then standard to be maintained by a prudent tenant of a similar development in Toronto, Ontario), in respect of injury to or death of one or more than one person, and for damage to tangible personal property, regardless of the number of claims arising as a result of any one occurrence;
- 7.2.3 if applicable, insurance for boilers, machinery, rotating apparatus, pressure vessels, electrical apparatus, and production equipment, tools and systems issued on a broad form basis in an amount not less than the full insurable value,

calculated on a replacement cost basis without deduction for depreciation, covering all objects in or on the Property insurable under this form of insurance;

7.2.4 if applicable, motor vehicle insurance having third party liability limits not less than \$5,000,000 covering all vehicles owned or operated by the Tenant from the Property; and

7.2.5 such further or other insurance as the Landlord or any Landlord's Mortgagee may reasonably require from time to time.

All such policies of insurance shall be placed with insurers licensed to do business in Canada and shall exclude the exercise of any claim of the insurer or insurers, whether by subrogation or otherwise, against the Landlord, the Landlord's Mortgagee if any, or those for whom any of them are in law responsible and the Tenant shall deliver certificates of insurance to the Landlord evidencing such coverages in a form acceptable to the Landlord on or before the Commencement Date. Each such policy shall include the Landlord and any Landlord's Mortgagee of whom the Tenant has been given Notice as additional insureds as their interests may appear and shall contain a waiver, in favour of the Landlord and any such Landlord's Mortgagee and those for whom any of them are in law responsible, of any breach or violation of any warranties, representations, declarations or conditions contained in the policies. All such insurance shall be primary insurance and shall not call into contribution any insurance carried by the Landlord, or any Landlord's Mortgagee, save as hereinafter provided. All policies of comprehensive general liability insurance shall contain a severability of interest clause and a cross-liability clause as between the Tenant, the Landlord and any Landlord's Mortgagee included as an additional insured on such policy. All policies shall contain a provision requiring the insurer to endeavour to give that at least 30 days' Notice to the Landlord and any Landlord's Mortgagee included as an additional insured as aforesaid by the insurer prior to cancellation or expiry, and the Tenant shall obtain undertakings from all insurers to that effect. If after three Business Days' Notice of default to the Tenant, the Tenant fails to perform its obligations pursuant to this Section 7.2 the Landlord may effect such insurance on behalf of the Tenant, and any premium paid by the Landlord which is otherwise the responsibility of the Tenant hereunder shall be payable forthwith by the Tenant upon demand by the Landlord as Additional Rent.

### 7.3 **Deductible Amounts**

Any of the policies of insurance that the Tenant is required to maintain pursuant to this Lease may, with the prior written approval of the Landlord, which approval shall not be unreasonably withheld, provide that the amount payable in the event of any loss shall be reduced by a reasonable deductible amount designated by the Tenant and approved by the Landlord, such approval not to be unreasonably withheld. The Tenant shall be a co insurer to the extent of the amount deducted from the insurance moneys paid in the event of any loss, and the said amount shall, for the purpose of Section 7.7, be included as part of the insurance moneys payable and paid.

### 7.4 **Co-Insurance Clauses**

If any of the policies of insurance that the Tenant is required to maintain pursuant to this Lease contain any co insurance clauses, the Tenant shall maintain at all times a sufficient amount of insurance to meet the requirements of such co insurance clause so as to prevent the Landlord or the Tenant from becoming a co insurer under the terms of such policy or policies and to permit full recovery from the insurer in the event of loss.

**7.5 Premium Increases and Cancellation**

The Tenant shall promptly comply with all requirements of the Landlord's and Landlord's Mortgagee's insurance underwriters regarding the use and occupation of the Property, and the Tenant shall not do, omit, or permit to be done or omitted anything which shall cause any insurance premium with respect to the Property or any part thereof to be increased, or which may cause any policy of insurance of the Landlord with respect to the Property to be cancelled. To the extent anything done or omitted to be done by the Tenant causes any insurance premium of the Landlord with respect to the Property to be so increased the Tenant shall pay to the Landlord forthwith upon demand the amount of such increase. If any insurer threatens to cancel, cancels or refuses to renew any insurance policy of the Landlord upon the Property by reason of the use or occupation of the Property or any part thereof by the Tenant, the Tenant shall forthwith remedy or rectify such use or occupation within the time limit required by the insurer upon being requested to do so by Notice by the Landlord, and if the Tenant shall fail to do so within a reasonable period of time after such Notice, the Landlord may at its option, without prejudice to any other rights it may have, terminate this Lease by Notice to the Tenant. Thereupon the Tenant shall pay Ground Rent and Additional Rent owing to the date of such termination and shall immediately deliver up possession of the Lands to the Landlord and, without prejudice to all other rights and remedies available to it for breach of this Lease, the Landlord shall have the right to re-enter the Lands.

**7.6 Compliance with Insurance Requirements**

In its use and occupation of the Property, the Tenant shall comply with all fire protection and loss prevention requirements imposed by any insurer of the Property and, without limiting the generality of the foregoing, shall ensure that all of its operations, equipment modifications, equipment installation, tools, emergency organizations, fire protection and loss prevention response team procedures comply with all the standards and requirements of any insurer of the Property as aforesaid.

**7.7 Payment of Loss Under the Insurance Policy Referred to in Subsections 8.4.1(b), 7.2.1 and 7.2.3**

- 7.7.1 The insurance moneys payable under any or all of the policies of insurance referred to in subsections 8.4.1(b), 7.2.1 and 7.2.3 shall, notwithstanding the terms of the policy or policies, be paid to the order of the Tenant who shall hold same in a segregated account in trust for the Tenant, Landlord and any Landlord's Mortgagee.
- 7.7.2 Subject to Article 9 (Damage or Destruction), the Landlord and the Tenant agree that the Tenant shall use such insurance moneys for the restoration, reconstruction, or replacement of the loss or damage in respect of which such insurance moneys are payable hereunder against certificates of the Tenant's Architect or such other person as the Landlord and the Tenant may agree upon who is in charge of such restoration, reconstruction, or replacement.
- 7.7.3 If requested by the Landlord the parties shall enter into an insurance trust agreement which may include the Landlord's Mortgagee and Tenant's Mortgagee to ensure that proceeds of insurance are used as contemplated in this Lease.

**7.8 Landlord's Right to Repair and Receive the Insurance Proceeds**

Should the Tenant fail to effect the restoration, reconstruction, or replacement of the loss or damage in respect of which the insurance moneys are payable, without unreasonable delay, the Landlord shall be entitled to effect such restoration, reconstruction, or replacement and shall be entitled to be reimbursed out of the proceeds that the Tenant is holding in trust as provided in Section 7.7.1.

**7.9 Workers' Compensation Coverage**

If the Tenant shall have employees on the Property while any construction activities are underway, then:

7.9.1 At all times the Tenant shall at its own expense procure and carry, or cause to be procured and carried and paid for, full workers' compensation coverage in respect of all workmen, employees, servants, and others engaged in or upon any work, non payment of which would create a lien on either or both the Property or this Lease.

7.9.2 The Tenant shall immediately notify the Landlord of any dispute involving third parties which may arise in connection with obtaining and maintaining the workers' compensation coverage required under this Lease if such dispute results in the requisite coverage not being in place, and the Tenant shall take all reasonable steps to ensure the resolution of such dispute forthwith. At all times the Tenant shall indemnify and save harmless the Landlord and the other Landlord Indemnified Parties from and against all damages, costs, claims, suits, judgments, and demands which the Landlord or any other Landlord Indemnified Party may incur or suffer as a result of any default by the Tenant of its obligation under this Section 7.9 to ensure that the said full workers' compensation coverage is maintained. The Tenant shall further ensure that no amount of the said workers' compensation coverage is left unpaid so as to create a lien on either or both the Property or this Lease. If the workers' compensation coverage required by this Section 7.9 is not in place within 60 days of the date of the Notice to the Landlord hereinbefore mentioned, the Landlord shall be entitled to have recourse to the remedies of the Landlord specified in this Lease or at law or equity.

**7.10 Limitation of Landlord's Liability**

The Landlord and the other Landlord Indemnified Parties shall not be liable or responsible in any way for any death or any injury of any nature whatsoever that may be suffered or sustained by the Tenant or the Operator or any employee, contractor, agent or customer of the Tenant or the Operator or any other person who may be upon the Property, or for any loss or damage or injury to any property belonging to the Tenant or the Operator or their respective employees, agents or contractors or to any other person while such property is on the Property. Without limiting the generality of the foregoing, the Landlord and the other Landlord Indemnified Parties shall not be liable for any damage or damages of any nature whatsoever to persons or property on the Property caused by explosion, fire, theft or breakage, by sprinkler, drainage or plumbing systems, by failure for any cause to supply adequate drainage or snow or ice removal, by the interruption of any public utility or service, by steam, gas, water, rain, snow, or other substances leaking, issuing or flowing into any part of the Property, or by anything done or omitted to be done by any other tenant, occupant or person in the Property. In addition, the Landlord and the other Landlord Indemnified Parties shall not be liable for and the Tenant hereby releases the Landlord and the other Landlord Indemnified Parties from, any and all liability for loss or damage caused by any of the



perils against which the Tenant has insured or pursuant to the terms of this Lease is obligated to insure, and the Tenant hereby covenants to indemnify and save harmless the Landlord and the other Landlord Indemnified Parties from and against all manner of actions, causes of action, suits, damages, loss, costs, claims, and demands of any nature whatsoever relating to such insured loss or damage or loss or damage which the Tenant has insured or is obligated to insure any loss or damage for which the Tenant is required to insure pursuant to Section 7.2. The Landlord and the other Landlord Indemnified Parties shall not be liable for any indirect or consequential damage of any type, or for damages for personal discomfort or illness of the Tenant, its officers, directors, employees, contractors, invitees, clients, customers or other persons. The fact that the Landlord has provided any approval in connection with any Work shall not make the Landlord responsible for any defects or deficiencies in connection with any such Work.

**7.11 Indemnity by Tenant**

The Tenant shall indemnify and save harmless the Landlord and the other Landlord Indemnified Parties against and from all loss, costs, claims, or demands in respect of any injury, loss or damage of the type referred to in Section 7.10 and for which the Landlord's and any other Landlord Indemnified Party's liability has been waived by the Tenant, or resulting from a default under Section 7.6, to the extent caused by an act or omission of the Tenant or those for whom the Tenant is at law responsible, and against and from any breach by the Tenant of any provision of this Lease.

**7.12 Benefit of Indemnities**

The Tenant acknowledges that the Landlord holds the benefit of any release or indemnity or other provision in this Lease that specifically or by necessary implication is intended to benefit the Landlord Indemnified Parties (other than the Landlord) in trust for such Landlord Indemnified Parties as intended third party beneficiaries and that the Landlord may enforce same on behalf of the Third Party Beneficiaries notwithstanding they are not parties to the Lease.

**ARTICLE 8  
WORK**

**8.1 Tenant Work - Landlord's Consent**

Prior to the commencement of any Work on the Lands in connection with the Improvements, the Tenant shall apply to the Authority for a Development Permit and any other permits necessary for the Work provided that the Tenant shall have first and at least 30 days prior to its application to the Authority delivered Notice to the Landlord of the Tenants intention to undertake Work together with drawings, elevations (where applicable), specifications (including the materials to be used), locations (where applicable), and exterior decoration and design of the proposed Work for the Landlord's written approval which approval shall not be unreasonably withheld. The Landlord shall advise the Tenant whether or not it approves the Work within 60 days of receipt of the last of the items referred to in the immediately preceding sentence failing which the Landlord shall be deemed to have approved the Work. Any subsequent changes to the Plans and Specifications and ancillary drawings, specifications, location, exterior decoration, design, or to the exterior appearance of the Building or to the appearance of the Lands must first be approved by the Landlord in writing in accordance with the preceding timetable and such approval shall not be unreasonably withheld.

**8.2 Commencement of Work**

Before commencing any Work on the Lands, the Tenant shall have:

- 8.2.1 furnished proof of the insurance required to be maintained under this Lease;
- 8.2.2 obtained the approval of the Landlord pursuant to Section 8.1; and
- 8.2.3 obtained from the contractor the indemnity, insurance and performance bonds required by the Tenant's construction contract with such contractor.

**8.3 Duties of Tenant in Connection with Work**

The Tenant shall perform and comply with the following covenants and requirements in connection with the Work:

- 8.3.1 the Work shall be completed in all respects in accordance with the Approved Plans and Specifications, subject to such changes as may be required by governmental authorities or otherwise as approved in writing by the Landlord, such approval not to be unreasonably withheld or delayed;
- 8.3.2 all necessary building permits shall be obtained and all municipal by-laws and legal requirements pertaining to the conduct of the Work shall be complied with;
- 8.3.3 the Work shall be conducted expeditiously in a good and workmanlike manner and otherwise in accordance with the provisions of this Lease;
- 8.3.4 the Tenant, through the Tenant's Architect, shall properly supervise the Work;
- 8.3.5 any contractor engaged on the Work shall be reputable and have a demonstrated capacity to perform the Work in accordance with the Approved Plans and Specifications and shall be required to observe all provisions of its contract, and to furnish and maintain all security, indemnity, insurance and performance bonds required by the contract;
- 8.3.6 the Landlord and its agents and engineers shall at all times have the right to inspect the Work and to protest to the Tenant or the Tenant's Architect any default or non-compliance with the construction contract, the Approved Plans and Specifications or this Lease, and the Tenant shall forthwith deal with the protest and remedy any default or non-compliance;
- 8.3.7 the Landlord may require the Tenant, at the Tenant's expense, to submit at reasonable intervals certificates of the Tenant's Architect as to the status of the Work, the existence and extent of any faults or defects, the value of the Work then done and to be done under any contract, the amount owing to any contractor and the amounts paid or retained by the Tenant on any contract, and the Tenant shall also, whenever requested by the Landlord, furnish copies of certificates furnished to it by contractors or by the Tenant's Architect in connection with construction;
- 8.3.8 with the intention that the Landlord will have up to date information concerning the Building, the Tenant covenants and agrees to deliver to the Landlord, from time to time as and if available, copies of the following in respect of the Improvements:

- (a) soil tests;
- (b) a Phase II Environmental report, addressed to the Landlord and conducted by an engineer approved by the Landlord, which approval shall not be unreasonably be delayed, conditioned or withheld;
- (c) architects' and development plans and drawings;
- (d) consultants' reports;
- (e) applications to amend by-laws;
- (f) site plan applications and approvals;
- (g) building permit applications;
- (h) building permits issued; and
- (i) all other documents or information pertaining to the Work in the possession or control of the Tenant; and

8.3.9 the Tenant shall promptly pay when due all proper accounts for work done or materials furnished under all contracts which it has entered into relating to the Work, but this shall not prevent the Tenant from retaining any amounts claimed due which the Tenant's Architect has not certified to be due, or which are properly and reasonably retained to secure the performance of any work or the correction of any defect or which, in the opinion of the Tenant's Architect, are reasonably retained in anticipation of damages arising from any contractor's default, or which are required to be retained under the provisions of the *Construction Lien Act* (Ontario).

#### 8.4 **Property and Liability Insurance During Work**

- 8.4.1 The Tenant shall obtain, or shall cause its contractor or contractors to obtain, prior to the start of any Work and shall maintain and keep in force while Work is occurring on the Lands, the following insurance coverages:
- (a) Commercial General Liability Insurance protecting the Tenant, and the Landlord, the Landlord's Mortgagee, and those for whom any of them are responsible at law (without any rights of cross claim or subrogation) against claims for bodily injury, personal injury, death or property damage or other third party or public liability claims arising from any accident or occurrence upon, in or about the Lands and from any cause, including the risks occasioned by the Work, and to an amount of not less than \$5,000,000, for any bodily injury, personal injury, death, property or other claims in respect of any one accident or occurrence; and
  - (b) All Risk Property Insurance protecting both the Tenant and the Landlord, the Landlord's Mortgagee, and those for whom any of them are responsible at law from loss or damage (without any rights of cross claim or subrogation) to the Improvements and all fixtures, equipment, improvements and building materials on the Lands from time to time, both during and after construction (but which

may be by policies obtained from time to time covering the risk during different phases of construction) against fire, earthquake, and all other perils from time to time customarily included in the usual all-risks builders' risk form of policy applicable to similar properties during construction and in such amounts and on such terms and conditions as would be carried by a prudent owner of a similar project during construction to the full insurable value thereof at all times (to be computed upon a replacement cost basis with deduction only for the value of building materials from time to time on the site but not incorporated in the Improvements, but without deduction for the cost of excavation and foundations and in any event in an amount sufficient to prevent either the Landlord or the Tenant from being deemed a co-insurer).

- 8.4.2 The proceeds of insurance which may become payable under any policy of insurance effected pursuant to this Section 8.4 shall, subject to Section 7.7, be used by the Tenant to finance the repair and reconstruction of the Improvements.
- 8.4.3 All the provisions of Article 7 respecting insurance which are of general application apply to the insurance required by this Section 8.4.
- 8.4.4 Any dispute between Landlord and Tenant arising under any provisions of this Section 8.4 which cannot be resolved by good faith negotiations shall be immediately referred to a mutually agreed engineer or other appropriately qualified professional (a "**Dispute Expert**"). The Dispute Expert shall be jointly retained by the parties and shall be mandated to make a final determination as to the matter in dispute, and to endeavour to make such determination within 14 days after being so retained. The decision of the Dispute Expert shall be final and binding on the parties without right of appeal and to the exclusion of the Courts.
- 8.4.5 Either of the parties may, on Notice to the other, withdraw their agreement with respect to the appointment of the above named Dispute Expert, or his/her successor, as the case may be, in which case the parties shall forthwith and without delay enter into discussions with each other, each acting reasonably and in good faith, with a view to naming a replacement Dispute Expert as quickly as possible.

## 8.5 **Construction Lien**

The Tenant shall promptly pay all charges incurred by or on behalf of the Tenant for any work materials or services (including for clarity, Work) which may give rise to a privilege or construction, mechanic's or other lien. The Landlord shall charge to the Tenant all costs and expenses, including legal fees, incurred by the Landlord in discharging the privilege or lien, and such amount shall be payable forthwith by the Tenant upon demand by the Landlord as Additional Rent. The Landlord may be permitted to pay into Court such amounts as are necessary to obtain a discharge of any lien(s).

**ARTICLE 9  
DAMAGE OR DESTRUCTION**

**9.1 Damage or Destruction of Improvements**

The complete or partial destruction or damage, by fire or other casualty, of the Improvements shall not, except as provided in Section 9.3, frustrate or terminate this Lease or entitle the Tenant to surrender possession of the Lands or to have or to demand any abatement or reduction of the Rent or other charges payable under this Lease.

**9.2 Restoration of Improvements**

The Tenant covenants and agrees that, following the damage or destruction of any of the Improvements, it shall repair, reconstruct or replace such damaged or destroyed Improvements provided that the Tenant shall be entitled to use plans, specifications and working drawings which differ from those applicable to the Property prior to the damage or destruction and change the configuration, design and/or size of the Building(s) or any of its component parts to suit the Tenant's needs at the time, subject to the written consent of the Landlord which consent shall not be unreasonably or arbitrarily withheld by the Landlord. All insurance moneys shall be made available to the Tenant pursuant to the terms of this Lease to pay for the cost of such restoration, reconstruction and repair and, should the insurance moneys be insufficient to pay the entire cost, the Tenant agrees to pay the deficiency.

**9.3 Destruction of Improvements in the Last Five Years of the Term**

If within the final five years of the Term, 75% or more of the total area of the Building is damaged or destroyed by any cause whatsoever, and if, in the opinion of the Architect expressed in writing with a copy to be delivered to the Tenant, and the Tenant's Architect (at the last address the Landlord has for the Architect), the Building cannot be repaired or rebuilt within 225 days of such damage or destruction the following shall apply:

- 9.3.1 the parties shall meet to determine the viability from their respective perspectives of entering into a new lease for the continued use of the Property for the Permitted Use;
- 9.3.2 if the parties agree to enter into a new lease of the Lands then the proceeds of insurance shall be used to rebuild or restore the Building;
- 9.3.3 failing agreement on a new lease within 45 days after the delivery of the Architect's opinion to the Tenant and Tenant's:
  - (a) either or both the Landlord or Tenant may at its option elect to terminate this Lease by giving to the other Notice of termination within 90 days after the delivery of the Architect's opinion to the Tenant and Tenant's Architect in which case the Term and the tenancy hereby created shall expire on the 45th day after such Notice is given, without indemnity or penalty payable or any other recourse by one party to or against the other;
  - (b) the Tenant shall within such 45 day period vacate the Property and all Rent shall be apportioned and paid to the date of such damage or destruction;

- (c) all insurance moneys payable under any or all of the policies of insurance referred to in subsections 8.4.1(b), 7.2.1 and 7.2.3 with respect to the Building and any Improvements (excluding for this purpose only, any chattels, equipment, machinery and other personal property owned by the Tenant), shall be paid to the Landlord; and
- (d) thereafter all of the Tenant's other obligations with regard to the return of the Lands to the Landlord as provided in Section 5.2 shall not apply upon such payment by the insurer.

**ARTICLE 10  
ASSIGNMENT, TRANSFERS AND ENCUMBRANCES**

**10.1 Transfers and Encumbrances by Landlord**

The Landlord upon 60 days' notice to the Tenant and the Operator, may sell, assign, transfer, mortgage, charge, encumber or otherwise deal with its interests in the Property or any portion thereof in every case without the consent of the Tenant or the Operator and without restriction, so long as any such dealing by the Landlord is expressly made subject to the rights of the Tenant in the Lease, the rights of the Tenant's Mortgagee, the rights of the Operator in the Property and to any written agreements entered into by the Landlord, Landlord's Mortgagee and/or the Tenant's Mortgagee with the Tenant and the Operator. At the request of the Tenant or a Tenant's Mortgagee or the Operator, the Landlord shall cause Landlord's Mortgagee to enter into an agreement with the Tenant and any Tenant's Mortgagee and the Operator to the foregoing effect and to be expressly bound.

**10.2 Release of Landlord**

So long as Section 10.1 has been complied with in connection with a sale or assignment, to the extent that any purchaser or assignee from the Landlord has become bound by and has covenanted in favour of the Tenant and, if applicable, a Tenant's Mortgagee and the Operator, to perform the covenants and obligations of the Landlord under the Lease with respect to the lands which are the subject of such sale or assignment:

- 10.2.1 subject to Section 10.2.3, the Landlord shall be freed and relieved from all liability upon such covenants and obligations in relation to such lands without further written agreement for the balance of the Term;
- 10.2.2 subject to Section 10.2.3, the Tenant and the Operator shall look to such purchaser or assignee for performance of such obligations under the Lease with respect to the lands and premises that are the subject of the sale or the assignment; and
- 10.2.3 provided, however, nothing in sections 10.2.1 and 10.2.2 shall release the Landlord from any obligation to the Tenant or any Tenant's Mortgagee or the Operator resulting from any prior default by the Landlord under the Lease or any agreement to which the Landlord and the Tenant and any Landlord's Mortgagee or the Operator are parties.

### 10.3 **Landlord's Mortgage and Subordination**

- 10.3.1 The Tenant shall promptly upon the written request of the Landlord or the Operator (if the Landlord has consented to the Operating Lease), enter into an agreement:
- (a) subordinating the Term and the rights of the Tenant hereunder and the rights of the Operator under the Operating Lease to any Landlord's Mortgage;
  - (b) agreeing that the Term hereof and the Term of the Operating Lease shall be subsequent in priority to any Landlord's Mortgage; and attorning to the Landlord's Mortgagee.

### 10.4 **Non Disturbance Agreement in Favour of Tenant and Operator**

No subordination by the Tenant or the Operator shall have the effect of permitting a Landlord's Mortgagee to disturb the occupation and possession by the Tenant or the Operator or its subtenants of the Lands or of affecting the rights of the Tenant pursuant to the terms of this Lease or the rights of the Operator pursuant to the Operating Lease, provided that the Tenant performs all of its covenants, agreements and conditions contained in this Lease and ensures that the Operator is performing all of its covenants, agreements and conditions contained in the Operating Lease and contemporaneously executes a document of attornment as required by the Landlord's Mortgagee and, if required by the Landlord's Mortgagee, obtains a document of attornment from the Operator. Notwithstanding the aforesaid, the Tenant and the Operator need not subordinate to any Landlord's Mortgagee until such Landlord's Mortgagee has entered into a non-disturbance agreement with each of them substantially in the form attached hereto as Schedule "B".

### 10.5 **Attorney**

Upon the request of the Landlord or a Landlord's Mortgagee, the Tenant shall execute promptly such instruments or certificates to evidence the attornment and subordination required by Section 10.3. Where the Tenant has not executed such instruments or certificates within 10 Business Days after the date of a written request by the Landlord, the Tenant hereby irrevocably appoints the Landlord as the Tenant's attorney with full power and authority to execute and deliver in the name of the Tenant such instruments or certificates.

### 10.6 **Transfers by the Tenant or the Operator**

- 10.6.1 Any Transfer concerning the Tenant or the Operator not expressly permitted by this Lease or the Operating Lease Agreement shall be null and void and of no force and effect.
- 10.6.2 The Tenant or the Operator shall not enter into, consent to or permit any Transfer without the written consent of the Landlord first being obtained which consent may be unreasonably or arbitrarily withheld by the Landlord.

### 10.7 **Operating Lease**

Notwithstanding Section 10.6.2 but subject to the provisions of this Section 10.7, the Tenant, as sub landlord, may enter into a Sublease of the whole Property with the Operator, as sub tenant, (the "Operating Lease") provided that:

- 10.7.1 The Operating Lease is in form and content satisfactory to the Landlord acting reasonably and otherwise:
- (a) incorporates and/or addresses the provisions of sections 9.1 (b) and 9.1 (c) of the Joint Venture Agreement;
  - (b) provides that the Operating Lease shall not be encumbered;
  - (c) provides that the term of the Operating Lease, including any renewals or extensions, shall be at least one day shorter than the Term; and
  - (d) provides that any assignment, amendment to or surrender, in whole or in part, of the Operating Lease shall be considered to be a Transfer to which Section 10.6.2 of the Lease shall apply.
- 10.7.2 The Operator and the Tenant shall enter into a binding agreement with the Landlord (the "**Operating Lease Agreement**") in form and substance satisfactory to the Landlord, acting reasonably, that shall provide that:
- (a) the Operator shall perform all of the covenants, obligations and agreements of the Tenant pursuant to the Lease as if the Operator was the Tenant under the Lease;
  - (b) the Operator is bound by all of the terms of the Lease that refer to the Operator as if it were an party to the Lease;
  - (c) notwithstanding anything to the contrary in Article 10 of this Lease, the Operator may sublet part or parts of the Property for uses that are Permitted Uses without the Landlord's consent provided that such subleases:
    - (i) are in accordance with the operational principles that have been approved by the joint venture as provided in section 9.1(c) of the Joint Venture Agreement; and
    - (ii) are otherwise on terms that are consistent with the terms of this Lease; and
  - (d) if the Landlord has consented to the Operating Lease, the Landlord shall provide the Operator's subtenants with a non-disturbance agreement substantially in the form attached as SCHEDULE "B" to this Lease within 15 days of receipt of the Operator's subtenants' written request.
- 10.7.3 The rights granted to the Landlord under the Operating Lease Agreement shall be in addition to any rights it may have pursuant to this Lease.
- 10.7.4 If there is a breach of the Operating Lease Agreement by the Tenant or the Operator which is not cured within 180 days (or such longer period as may be reasonable given the nature of the breach) following Notice of the breach, the Landlord may on Notice to the Tenant and the Operator revoke its consent to the Operating Lease and this provision shall be in addition to any other remedies that may be available to the Landlord for any breach of the Operating Lease Agreement by the Tenant or the Operator.



**10.8 Landlord Non Disturbance Agreement in Favour of the Operator**

If the Landlord has consented to the Operating Lease the Landlord shall provide the Operator with a non-disturbance agreement substantially in the form attached as Schedule "B" within 15 days of receipt of the Operator's written request.

**10.9 Tenant's Certificate**

10.9.1 On each anniversary of the Commencement Date the Tenant will provide to the Landlord a copy of the financial statements of the Tenant and a certificate of a senior officer of the Tenant certifying to the Landlord, without personal liability on the part of the certifying senior officer, that since the date of the last certificate (or in the case of the first certificate, since the Commencement Date):

- (a) no Transfer has occurred for which the Landlord's consent is required and for which consent has not been given; and
- (b) the Property is only being used for the Permitted Use.

10.9.2 The Landlord may rely on the certificate without any further investigation on its part and receipt of the certificate shall not be deemed as any approval or acquiescence on the Landlord's part.

**10.10 Tenant's Mortgage**

10.10.1 Provided the Landlord's consent has been obtained as required by Section 10.6.2 in each instance, the Tenant may, from time to time during the Term, make a Tenant's Mortgage, provided such Tenant's Mortgage is by way of a sublease, mortgage or assignment to an institution commonly known to hold mortgages upon the security of leases on real property, and without limiting the generality of the foregoing, such institution is a bank, a trust company, a pension fund, an insurance company or an employees' profit sharing trust. There shall only be one Tenant Mortgage in existence at any time.

10.10.2 If the Tenant or any Tenant's Mortgagee shall have given to the Landlord a Notice specifying the name and address of such Tenant's Mortgagee, the Landlord shall give to the Tenant's Mortgagee a copy of each Notice of default by the Tenant at the same time as and whenever any such Notice of default shall thereafter be given by the Landlord to the Tenant, addressed to the Tenant's Mortgagee at the address last furnished to the Landlord. Save and except as to default in payment of moneys reserved under this Lease, the Tenant's Mortgagee shall thereupon have a period of 30 days more, after service of such Notice upon it, to remedy the default or cause the same to be remedied. The Tenant's Mortgagee shall, within the period and otherwise as herein provided, have the right to remedy such default or cause the same to be remedied. The Landlord shall accept performance by the Tenant's Mortgagee of any covenant, condition or agreement on the Tenant's part to be performed under this Lease, with the same force and effect as though performed by the Tenant. The Tenant's Mortgagee shall have the right to cure such default, but should it fail to cure such default or choose not to cure such default, then the Tenant's Mortgagee shall

forthwith discharge the Tenant's Mortgage and if it does not do so, it shall irrevocably authorize the Landlord to do so for it as its agent in fact.

- 10.10.3 No Tenant's Mortgagee shall become liable under the provisions of this Lease, unless and until such time as it becomes, and then only for as long as it remains, in possession of the Lands or the owner of the leasehold estate.
- 10.10.4 Alternatively, the Tenant's Mortgagee shall be entitled, but not obligated, to continue as the Tenant for the balance of the Term remaining at the date of the Notice of default, provided the Tenant's Mortgagee shall covenant with the Landlord:
- (a) to be bound by all the covenants and obligations of the Tenant under this Lease as soon as such mortgagee or encumbrancer enters into possession of the Tenant's interest or otherwise takes steps to enforce its security which have the effect of depriving the Tenant of the ability to perform fully those covenants and obligations, and such covenant shall continue to bind such mortgagee or encumbrancer so long as the Tenant's Mortgagee continues in possession or continues to enforce its security with the effect as aforesaid; and
  - (b) to obtain, upon any exercise of any power of sale (which power of sale shall be consider a Transfer for which the Landlord's consent shall be required), a covenant from the assignee in favour of the Landlord to perform all of the Tenant's obligations under this Lease, but as soon as the assignee becomes bound by the Tenant's obligations, the Tenant's Mortgagee shall be relieved from its covenant.

#### 10.11 Status Statement

Either party may request the other to provide, within 10 Business Days of the request, a status statement or certificate addressed to the requesting party (or such third party as the requesting party may request) stating:

- 10.11.1 that the Lease is in full force and effect, except only for any modifications that are set out in the statement or certificate;
- 10.11.2 the Commencement Date and its expiry date;
- 10.11.3 the date to which Ground Rent and Additional Rent has been paid under the Lease;
- 10.11.4 that there is not any uncured default on the part of the Landlord or the Tenant (or if there is a default, the certificate will state the particulars);
- 10.11.5 whether there are any set-offs, defences or counter-claims against enforcement of the obligations to be performed by the Tenant under the Lease; and
- 10.11.6 such other information or statements as may reasonably be required.

**ARTICLE 11  
DEFAULT OF TENANT**

**11.1 Default and Remedies**

If any of the following shall occur:

- 11.1.1 the Tenant fails, for any reason, to make any payment of Rent as and when the same is due to be paid hereunder, and such payment remains outstanding for a period of 60 days after Notice thereof to the Tenant;
- 11.1.2 the Tenant fails, for any reason, to reimburse the Landlord as required pursuant to the DG/DC Agreement for any amounts the Landlord is required to pay to the City of Toronto on account of repayments of Development Grants (as defined in the City Grant Agreement) or development charges and such reimbursement remains outstanding for a period of 60 days after Notice thereof to the Tenant;
- 11.1.3 the Tenant fails, for any reason, to observe or perform any obligation of the Tenant;
  - (a) pursuant to this Lease, other than the payment of any Rent, or
  - (b) pursuant to the DG/DC Agreement, other than reimbursement provided for in Section 11.1.2, and

in either case, such default after Notice thereof to the Tenant:

- (i) continues for 180 days; or
  - (ii) such shorter period as expressly provided herein; or
  - (iii) such longer period as may be required in the circumstances provided that:
    - 1) the Tenant has started and diligently continues to pursue curing the default;
    - 2) the Tenant has as soon as possible following the Notice of default, and in no event later than 180 days from the Notice of the default, provided a plan to the Landlord setting out how the default will be cured and supporting a reasonable estimate of the time required to cure the default;
    - 3) the Landlord, acting reasonably, has approved the Tenant's plan; and
    - 4) the Tenant starts and diligently continues to pursue the cure of the default pursuant to the plan and keeps the Landlord apprised of its progress in that regard.
- 11.1.4 any of the Landlord's insurance policies on the Property are cancelled as a result of any use of or articles on or about the Property;

- 11.1.5 the Tenant makes an assignment for the benefit of creditors or becomes bankrupt or insolvent or takes the benefit of any statute for bankrupt or insolvent debtors or makes any proposal or arrangement with creditors, or the Tenant makes any sale in bulk of any property on the Property or steps are taken for the winding-up or other termination of the Tenant's existence or liquidation of its assets;
- 11.1.6 a trustee, receiver, receiver-manager, or similar person is appointed in respect of the assets or business of the Tenant and not vacated within 60 Business Days;
- 11.1.7 the Tenant abandons the Property;
- 11.1.8 this Lease or any other property of the Tenant is at any time seized or taken in execution which remains unsatisfied for a period of 60 Business Days or more; or
- 11.1.9 termination or re-entry by the Landlord is permitted under any provision of this Lease or at law.

then with regard to Section 11.1.5 the then current and the next three months' Rent shall be forthwith due and payable and, with regard to all defaults, in addition to any other rights or remedies to which the Landlord is entitled hereunder or at law, the Landlord shall have the following rights and remedies, which are cumulative and not alternative, namely:

- 11.1.10 to terminate this Lease by Notice to the Tenant;
- 11.1.11 as agent of the Tenant to relet the Property and take possession of any furniture, fixtures, equipment or other property thereon and, upon giving Notice to the Tenant, to store the same at the expense and risk of the Tenant or sell or otherwise dispose of the same at public or private sale without further notice, and to make alterations to the Property to facilitate their reletting and to apply the net proceeds of the sale of any furniture, fixtures, equipment, or other property or from the reletting of the Property, less all expenses incurred by the Landlord in making the Property ready for reletting and in reletting the Property, on account of the Rent due and to become due under this Lease and the Tenant shall be liable to the Landlord for any deficiency and for all such expenses incurred by the Landlord as aforesaid; nothing done by the Landlord shall be construed as an election to terminate this Lease unless Notice of such termination is given by the Landlord to the Tenant;
- 11.1.12 to remedy any default of the Tenant in performing any repairs, work or other obligations of the Tenant hereunder, and in so doing to enter upon the Property, without any liability to the Tenant therefor and without constituting a re-entry of the Property or termination of this Lease or breach of the Landlord's covenant of quiet enjoyment, and, in such case, the Tenant shall pay to the Landlord forthwith upon demand all reasonable costs of the Landlord in remedying or attempting to remedy any such default; and
- 11.1.13 to obtain damages from the Tenant.

## 11.2 **Interest and Costs**

- 11.2.1 All amounts of Rent shall bear interest from their respective due dates until the dates of payment (whether before or after any related judgement) at the Interest Rate.
- 11.2.2 The Tenant shall pay to the Landlord forthwith upon demand all costs incurred by the Landlord, including, without limitation, legal expenses on a solicitor and his own client basis and reasonable compensation for all time expended by the Landlord's own personnel, arising as a result of any default in the Tenant's obligations under this Lease.

## 11.3 **Remedies to Subsist**

No waiver of any of the Tenant's obligations under this Lease or of any of the Landlord's rights in respect of any default by the Tenant hereunder shall be deemed to have occurred as a result of any condoning, overlooking or delay by the Landlord in respect of any default by the Tenant or by any other act or omission of the Landlord including, without limitation, the acceptance of any Rent less than the full amount thereof or the acceptance of any Rent after the occurrence of any default by the Tenant. The waiver by the Landlord of any default of the Tenant or of any rights of the Landlord, which shall be effected only by an express written waiver executed by the Landlord, shall not be deemed to be a waiver of any term, covenant or condition in respect of which such default or right has been waived and shall not be deemed to be a waiver of any subsequent default of the Tenant or right of the Landlord. All rights and remedies of the Landlord under this Lease and at law shall be cumulative and not alternative, and the exercise by the Landlord of any of its rights pursuant to this Lease or at law shall at all times be without prejudice to any other rights of the Landlord, whether or not they are expressly reserved. The Tenant's obligations under this Lease shall survive the expiry or earlier termination of this Lease and shall remain in full force and effect until fully complied with.

## 11.4 **Relief from Performance**

- 11.4.1 Whenever and to the extent that either the Landlord or Tenant is *bona fide* unable to fulfill or is delayed or restricted in fulfilling any of its obligations under this Lease by an event of Force Majeure, such party shall be relieved from the fulfillment of the part of its obligations affected by Force Majeure during the period of Force Majeure, provided that the party so delayed forthwith notifies the other after becoming aware of the commencement of any event which is the cause of Force Majeure and of the anticipated duration of an event which is the cause of Force Majeure and the steps proposed to be taken to overcome the event which is the cause of Force Majeure.
- 11.4.2 Notwithstanding the occurrence of an event which is the cause of Force Majeure, the party affected shall proceed with the performance of its obligations not thereby affected.
- 11.4.3 The provisions of this Article shall not operate to excuse the Tenant from having to provide for any Insurance or from any obligation to pay Rent or other obligation to pay money or from its obligation to surrender vacant possession of the Property at the expiry of the Term or earlier termination thereof.

- 11.4.4 In order for either party to claim the benefit of this force majeure provision, the party which intends to rely on this provision must advise the other party in writing of this reliance within two days of the commencement of the event of force majeure which such party is relying on, and the steps taken to remedy such delay (if possible), failing which that party may not rely on the provisions of this Section.

## **ARTICLE 12 INTERPRETATION AND MISCELLANEOUS**

### **12.1 Registration of Lease**

The Tenant shall not register the Lease on the title to the Lands. However, the Tenant with the Landlord's preapproval as to form and content may register on the title to the Lands at its own expense a notice of the Lease in the prescribed electronic form. The Landlord does hereby expressly consent to the solicitor for the Tenant electronically signing on behalf of the Landlord a notice of Lease in the prescribed form for purposes of registration within the Teraview Electronic Land Registration System, provided that upon registration of any such notice the Tenant shall forthwith deliver a copy of the registered notice to the Landlord. The Tenant shall be responsible for all costs incurred with regard to the preparation and registration of the notice. The notice shall not contain any financial information. Within 15 Business Days following expiration or earlier termination of the Lease, the Tenant shall remove any such registration of notice from the title to the Lands and provide reasonable evidence thereof to the Landlord, failing which the Landlord may undertake to do so and the Tenant shall be responsible for all reasonable and direct costs so incurred by the Landlord in having any such notice deleted from the title to the Lands.

### **12.2 No Partnership**

Nothing contained in this Lease or in any acts of the parties hereto shall be construed to create any relationship between the parties other than that of landlord and tenant or to create a relationship of partnership or of joint venture between the parties hereto, or to create any right of ownership in the Tenant.

### **12.3 Agency**

The Tenant acknowledges that the Landlord may perform any or all of the Landlord's obligations or exercise any of the Landlord's rights hereunder through or by means of such manager, or other agency or agencies as the Landlord may from time to time determine.

### **12.4 Lease is Entire Agreement**

This Lease sets forth the entire agreement between the Tenant and the Landlord with respect to the Property. Any offer to lease or agreement to lease entered into by the Landlord and Tenant prior to the execution of this Lease shall be deemed to have been merged and extinguished in this Lease. No amendment or addition to this Lease will bind the Landlord or the Tenant unless such amendment or addition is in writing and signed by all parties to this Lease.

### **12.5 Governing Law**

This Lease shall be construed and governed by the laws of the Province of Ontario and the laws of Canada applicable therein, and for this purpose each party attorns to the exclusive jurisdiction of the courts of the Province of Ontario in respect of any dispute under this Lease.

12.6 **Interpretation**

Words importing gender shall include all genders and the neuter and the singular number shall include the plural and *vice versa*. Each obligation of the Tenant in this Lease, although not expressed as a covenant, is considered to be a covenant for all purposes. The article and Section headings and index of this Lease form no part hereof and are inserted for convenience only. If any Section, article, paragraph, sub-paragraph, clause or sub-clause in this Lease is held invalid or unenforceable by any court of competent jurisdiction, this Lease shall be interpreted as if such Section, article, paragraph, sub-paragraph, clause or sub-clause had not been a part of this Lease. References to statutes and regulations include any subsequent amendments or replacements of them.

12.7 **Successors and Assigns**

This Lease shall be binding upon, extend to and enure to the benefit of the Landlord and Tenant and to each of their respective, successors and permitted assignees.

12.8 **Planning Act**

This Lease is entered into subject to the express condition that it is to be effective only if the provisions of section 50 of the *Planning Act* (Ontario) are complied with. The Landlord and Tenant agree, as a separate and distinct agreement, that if the consent of any committee of adjustment or any other Authority is requisite to the validity of this Lease, the Landlord may, at its sole discretion and at the sole cost and expense of the Tenant, either apply for and expedite and pursue diligently any required application to the appropriate Authority for such consent, or at the Landlord's sole discretion, provide such consents as are necessary to permit the Tenant to make such application. Until such consent is obtained (or if such consent is not able to be obtained), the Term shall, notwithstanding anything contained in this Lease to the contrary, be deemed to be a period of 21 years less one day.

12.9 **Preparation of Agreement**

The terms and conditions of this Lease are the result of negotiations between the parties and the parties agree that this Lease shall not be construed in favour of or against any party because of the extent that any party or its professional advisors participated in the preparation of this Lease. Each party acknowledges that: it has received, or had the opportunity to receive, independent legal advice in connection with this Lease before its execution; it has read this Lease, understands it, and agrees to be bound by its terms and conditions; and it has received a copy of this Agreement.

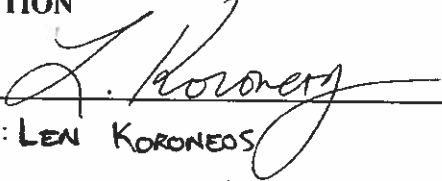
12.10 **Parties to Act Reasonably**

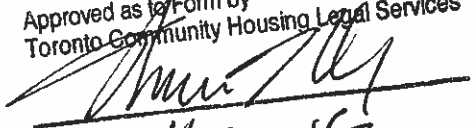
Unless specifically specified otherwise, wherever the Landlord's or Tenant's determination, estimate, approval or consent is required in this Lease, such determination, estimate approval or consent shall not be unreasonably withheld or delayed.

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IN WITNESS WHEREOF the parties hereto have executed this Lease as of the date written above.

**TORONTO COMMUNITY HOUSING CORPORATION**

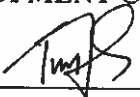
Per:   
Name: LEN KORONEOS  
Title: CEO (INTERIM)

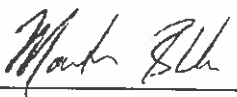
Approved as to Form by  
Toronto Community Housing Legal Services  
  
Name H. WONG

Per: \_\_\_\_\_  
Name:  
Title:

I/We have the authority to bind the corporation

**REGENT PARK ARTS NON-PROFIT DEVELOPMENT CORPORATION**

Per:   
Name: TIM JONES  
Title: PRESIDENT

Per:   
Name: MARTIN BLAKE  
Title: SECRETARY / TREASURER

I/We have the authority to bind the corporation



## SCHEDULE "A"

### LEGAL DESCRIPTION OF THE LANDS

Lands known municipally as 585 Dundas Street East, Toronto, ON, being part of Block 5 Plan 66M-2491 designated as Parts 1 and 2 on the Reference Plan being part of PIN 21080-0458(LT)

In this Schedule A – Legal Description of the Lands “**Reference Plan**” means the draft reference plan prepared by Krcmar Surveyors Ltd. dated “preliminary October 19, 2011” bearing Job No. 10-097, Drawing Name 10-097RP01 and Work Order No. 12475. The parties agree that once the Reference Plan referred to above is deposited on title, either party may request that this Agreement be amended to replace the legal description with one that includes the number of the deposited reference plan.

In the City of Toronto and Province of Ontario, being comprised of those parts of Block 5 on Plan 66M-2491 on the Reference Plan designated as **PARTS 2 and 3** on the Reference Plan and hereinafter referred to as the **RETAINED LANDS**.

**RESERVING/SUBJECT TO** an easement in favour of the owners of those parts of Block 5 on Plan 66M-2491 on the Reference Plan designated as **PARTS 1 and 4** on the Reference Plan, and hereinafter referred to as the **SEVERED LANDS**, their successors and assigns, agents, servants, assignees, contractors, servicemen, employees, and licensees over the **RETAINED LANDS** for access of persons, vehicles, materials and equipment necessary for the maintenance, repair, operation, construction and reconstruction of the building, utilities and services situated within the **SEVERED LANDS**.

**RESERVING/SUBJECT TO** an easement in favour of the owners of the **SEVERED LANDS**, their successors and assigns and their respective agents, servants, assignees, contractors, servicemen and employees over the **RETAINED LANDS** for the purpose of effecting and facilitating the construction, installation, repair, replacement, maintenance, service and inspection of all parts of the building, any utilities and services, installations and appurtenances relating thereto, including any ancillary areas of the building situated or to be situated upon the **SEVERED LANDS** and to allow the crossing, penetrating, boring and travelling onto and through any transfer slab, floor slab, ceiling slab, concrete, concrete block and masonry wall and/or drywall enclosure and other similar installations as comprise part of such building situated or to be situated on the **RETAINED LANDS** for the operation of building, utilities and services on the **SEVERED LANDS**. Such easement being subject to the right of the owner of the **RETAINED LANDS** to alter and relocate, from time to time, all or a portion of the said building, utilities and services as may be constructed on the **RETAINED LANDS**.

**RESERVING/SUBJECT TO** an easement in favour of the owners of the **SEVERED LANDS**, their successors and assigns and their respective agents, servants, assignees, contractors, servicemen, and employees over the **RETAINED LANDS** for the purpose of constructing, installing, maintaining, operating, altering, repairing, replacing and inspecting all manner of electrical, plumbing and various other utilities and services that are necessary to the operation of building situated and to be situated on the **SEVERED LANDS**, including, but not limited to, storm and sanitary sewers, water pipes, insulation systems, electrical, telephone, television and cable duct banks, conduits, cables and wires, cable trays, transformers, gas lines, gas meters and regulating stations, ventilation ducts and shafts, air-conditioning equipment, fire sprinklers, fire protection, garbage disposal and recycling systems, window washing equipment, siamese connections, sump pumps, waterproofing membranes, sensors, utility check meters, together with all appurtenances relating thereto as may be necessary and/or convenient from time to time to provide for such services and utilities to any parts of the building situated and to be situated on the **SEVERED LANDS**, including, but not limited to, the crossing, penetrating, boring and travelling onto

and through any transfer slab, floor slab, ceiling slab, concrete, concrete block and masonry wall and/or drywall enclosure and other similar installations within the **RETAINED LANDS** to facilitate such work. Such easement being subject to the right of the owner(s) of the **RETAINED LANDS** to alter and relocate, from time to time, all or a portion of the said utilities and services as may be constructed on the **RETAINED LANDS**.

**RESERVING/SUBJECT TO** an easement in favour of the owners of the **SEVERED LANDS**, their successors and assigns over the **RETAINED LANDS** as is required for the purpose of maintaining support (without restricting the generality of the foregoing) in respect of, from and by the structural members, slabs, pillars, columns, footings, foundations, side and cross beams, supporting walls and the soil which support the building, installations and all appurtenances thereto situate on the **SEVERED LANDS** as well as the free flow of air through the air exhaust, air intake shafts and stairwells contained therein.

**RESERVING/SUBJECT TO** an easement in favour of the owners of the **SEVERED LANDS**, their successors and assigns and their occupants, agents, servants, assignees, contractors, servicemen, employees, invitees and licensees in and through the exit stairwells and corridors of the building situated within the **RETAINED LANDS** for the purposes of emergency pedestrian egress.

**RESERVING/SUBJECT TO** an easement in favour of the owners of the **SEVERED LANDS**, their successors and assigns, and their occupants, agents, servants, assignees, contractors, servicemen, employees, invitees and licensees over that portion of the **RETAINED LANDS** being the at-grade exterior lands for the purpose of pedestrian ingress and egress to the **SEVERED LANDS**.

**TOGETHER WITH** an easement in favour of the owners of the **RETAINED LANDS**, their successors and assigns, agents, servants, assignees, contractors, servicemen, and employees, over that part of the **SEVERED LANDS** designated as **PART 1** on the Reference Plan for the access of persons, vehicles, material and equipment necessary for the maintenance, repair, operation, construction and reconstruction of the building, utilities and services situated within the **RETAINED LANDS**.

**TOGETHER WITH** an easement in favour of the owners of the **RETAINED LANDS**, their successors and assigns and their respective agents, servants, assignees, contractors, servicemen and employees over that part of the **SEVERED LANDS** designated as **PART 1** on the Reference Plan for the purpose of effecting and facilitating the construction, installation, repair, replacement, maintenance, service and inspection of all parts of the building, any utilities and services, installations and appurtenances relating thereto, including any ancillary areas of the building situated or to be situated upon the **RETAINED LANDS** and to allow the crossing, penetrating, boring and travelling onto and through any transfer slab, floor slab, ceiling slab, concrete, concrete block and masonry wall and/or drywall enclosure and other similar installations as comprise part of such building situated or to be situated on the **SEVERED LANDS** as necessary for the operation of building, utilities and services on the **RETAINED LANDS**. Such easement being subject to the right of the owner of the **SEVERED LANDS** to alter and relocate, from time to time, all or a portion of the said building, utilities and services as may be constructed on the **SEVERED LANDS**.

**TOGETHER WITH** an easement in favour of the owners of the **RETAINED LANDS**, their successors and assigns and their respective agents, servants, assignees, contractors, servicemen, and employees over that part of the **SEVERED LANDS** designated as **PART 1** on the Reference Plan for the purpose of constructing, installing, maintaining, operating, altering, repairing, replacing and inspecting all manner of electrical, plumbing and various other utilities and services that are necessary to the operation of building situated and to be situated on the **RETAINED LANDS**, including, but not limited to, storm and sanitary sewers, water pipes, insulation systems, electrical, telephone, television and cable duct banks, conduits,

cables and wires, cable trays, transformers, gas lines, gas meters and regulating stations, ventilation ducts and shafts, air-conditioning equipment, fire sprinklers, fire protection, garbage disposal and recycling systems, window washing equipment, siamese connections, sump pumps, waterproofing membranes, sensors utility check meters, together with all appurtenances relating thereto as may be necessary and/or convenient from time to time to provide for such services and utilities to any parts of the building situated and to be situated on the **RETAINED LANDS**, including, but not limited to, the crossing, penetrating, boring and travelling onto and through any transfer slab, floor slab, ceiling slab, concrete, concrete block and masonry wall and/or drywall enclosure and other similar installations within the **SEVERED LANDS** to facilitate such work. Such easement being subject to the right of the owner(s) of the **SEVERED LANDS** to alter and relocate, from time to time, all or a portion of the said utilities and services as may be constructed on the **SEVERED LANDS**.

**TOGETHER WITH** an easement in favour of the owners of the **RETAINED LANDS**, their successors and assigns, over the **SEVERED LANDS** as is required for the purpose of maintaining support (without restricting the generality of the foregoing) in respect of, from and by the structural members, slabs, pillars, columns, footings, foundations, side and cross beams, supporting walls and the soil which support the building, installations and all appurtenances thereto situate on the **RETAINED LANDS** as well as the free flow of air through the air exhaust, air intake shafts and stairwells contained therein.

**TOGETHER WITH** an easement in favour of the owners of the **RETAINED LANDS**, their successors and assigns and their occupants, agents, servants, assignees, contractors, servicemen, employees, invitees and licensees in and through the exit stairwells and corridors of the building situated within the **SEVERED LANDS** for the purpose of providing emergency pedestrian egress.

**TOGETHER WITH** an easement in favour of the owners of the **RETAINED LANDS**, their successors and assigns, and their agents, servants, assignees, contractors, servicemen, employees, invitees and licensees over that portion of the **SEVERED LANDS** being the at-grade exterior lands for the purpose of pedestrian and where practical, vehicular, ingress and egress to the **RETAINED LANDS**.

**SCHEDULE "B"**

**FORM OF NON-DISTURBANCE AGREEMENT**

THIS AGREEMENT MADE as of the \_ day of ●, ●

BETWEEN:

●

("Party 1")

OF THE FIRST PART

-and-

●

("Party 2")

OF THE SECOND PART

WHEREAS:

- A. ●; and
- B. The parties hereto wish to set forth the rights and obligations of each of the parties with respect to the Property, in the event of such re-entry and possession by Party 1.

**NOW THEREFORE**, in consideration of the mutual covenants herein and of the sum of TWO DOLLARS (\$2.00), now paid by each party to the other, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Party 1 confirms that the [Ground Lease] is presently in full force and effect. Party 2 certifies that the [Sublease] has been executed and that they are occupancy of the Premises under the [Sublease].
2. In the event that terminates the [Ground Lease] or otherwise obtains possession of the Lands during the term of the [Sublease] or any renewal or extension thereof, Party 2, so long as it is performing its obligations under the [Sublease] including the covenant to pay rent or other monies under the [Sublease] to Party 1, shall be entitled to remain in possession of the Premises together with all rights, privileges and benefits to which Party 2 is entitled pursuant to the Lease and [Sublease] and Party 1 shall permit the Tenant to continue in quiet possession of the Premises in accordance with the provisions of the [Sublease] and for the term thereof and any renewal or extension thereof without interruption or disturbance from Party 1 or any person claiming by, through or under Party 1. If Party 1 obtains possession of the Lands, it shall be obligated to Party 2 pursuant to the [Sublease], as landlord, and Party 2 shall have the same remedies against Party 1 for a breach by Party 1 of any of the landlord's covenants therein contained which may occur after Party 1 obtains possession of the Lands, that Party 2 would have had pursuant to the [Sublease].

3. Nothing herein shall create the relationship of landlord and tenant between Party 1 and Party 2 herein unless and until Party 1 shall enter into possession of the Lands.
4. The Subtenant attorns to Party 1 and agrees to become its tenant (including payment of all rents required under the [Sublease] to Party 1) if and when Party 1 enters into possession of the Lands, and Party 1 shall accept and acknowledge the attornment of Party 2.
5. This Non-Disturbance Agreement shall extend to all renewals, modifications, consolidations, replacements and extensions of the [Ground Lease] and the [Sublease].
6. The Head Landlord agrees that if Party 1 causes the Lands to be sold through judicial process, then Party 1 shall use its best efforts to have the Lands sold subject to all the terms and conditions of this Agreement.
7. Any Notices or communications given under this Agreement shall be in writing and shall be given by courier, personal delivery or registered mail,

(a) if to Party 1, at:

●  
Toronto, ON M5P 2W3

(b) if to the Tenant, at the Premises.

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK**

8. This Agreement shall extend to, and be binding upon and inure to the benefit of, Party 1 and its successors and assigns, and the Tenant and its successors and permitted assigns. This Agreement and the covenants herein contained are intended to run with and bind the Lands.

**IN WITNESS WHEREOF** the parties hereto have executed this Agreement.

●  
Per: \_\_\_\_\_

Name:

Title:

Per: \_\_\_\_\_

Name:

Title:

I/We have the authority to bind the Corporation



Per: \_\_\_\_\_

Name:

Title:

Per: \_\_\_\_\_

Name:

Title:

I/We have the authority to bind the Corporation

**SCHEDULE "C"**

**[Joint Venture Agreement to be added]**

**REGENT PARK ARTS AND CULTURAL FACILITY  
JOINT VENTURE AGREEMENT**

**BETWEEN:**

**REGENT PARK ARTS NON-PROFIT DEVELOPMENT CORPORATION**

**- and -**

**REGENT PARK DEVELOPMENT CORPORATION**

**- and -**

**DANIELS EASTSIDE CORPORATION**

**- and -**

**ARTSCAPE REGENT PARK NON-PROFIT DEVELOPMENT CORPORATION**

**- and -**

**TORONTO COMMUNITY HOUSING CORPORATION**

**- and -**

**TORONTO ARTSCAPE INC.**

**- and -**

**DANIELS CM CORPORATION**

**- and -**

**PARLIAMENT AND GERRARD DEVELOPMENT CORPORATION**

THIS AGREEMENT made the 12 day of August, 2011 with an effective date of July 28, 2010 (the "Effective Date")

**BETWEEN** the following parties:

**REGENT PARK ARTS DEVELOPMENT NON-PROFIT CORPORATION,**  
(hereinafter called "RPAD")

-- and --

**REGENT PARK DEVELOPMENT CORPORATION,**  
(hereinafter called "RPDC")

-- and --

**DANIELS EASTSIDE CORPORATION,**  
(hereinafter called "DEC")

-- and --

**ARTSCAPE REGENT PARK DEVELOPMENT CORPORATION,**  
(hereinafter called "ARPD")

-- and --

**TORONTO COMMUNITY HOUSING CORPORATION,**  
(hereinafter called "TCHC")

-- and --

**TORONTO ARTSCAPE INC.,**  
(hereinafter called "Artscape")

-- and --

**DANIELS CM CORPORATION,**  
(hereinafter called "DCM")

-- and --

**PARLIAMENT AND GERRARD DEVELOPMENT CORPORATION,**  
(hereinafter called "PGDC")



## RECITALS

- (A) The parties to this agreement are responsible for carrying out their respective obligations under this agreement. The JV Members named in Recital I below are a subset of the parties to this agreement.
- (B) TCHC is the legal and beneficial owner of the Regent Park lands in the City of Toronto;
- (C) Parliament Gerrard Development Corporation ("PGDC"), a joint venture between RPDC and DEC, is developing a market housing site within the Regent Park lands known as Block 24 North ("Block 24 North Lands"). PGDC wishes to facilitate the development of a facility to be known as the Regent Park Arts and Cultural Facility ("Facility") on a portion of the Block 24 North Lands ("Lands");
- (D) The City of Toronto and TCHC have successfully qualified for Infrastructure Stimulus Funds in the amount of \$24 Million for the purposes of developing the Facility, which funds will be contributed by TCHC for such development;
- (E) Daniels CM Corporation has experience in the development and construction of residential and commercial properties and is TCHC's development partner for the Regent Park community;
- (F) Artscape has experience in the development and operation of arts and cultural facilities and as a result of its submission to a request for proposals issued by TCHC for a facility operator, Artscape was subsequently selected to be the operator of the proposed Facility;
- (G) The parties wish to facilitate the establishment of a joint venture (the "Joint Venture") for the purpose of constructing, developing and operating the Facility;
- (H) The parties have caused the incorporation of Regent Park Arts Non-Profit Development Corporation ("RPAD"), a corporation without share capital under the *Corporations Act (Ontario)* (the "Act"), which will carry out the instructions of the Joint Venture;
- (I) The Joint Venture will comprise RPDC, DEC and ARPD as members (the "JV Members").
- (J) The Joint Venture will develop and construct the Facility on the Lands;
- (K) PGDC will develop, construct and own an underground parking facility and associated substructure (the "Building Underground Structure");
- (L) The parties have agreed that in respect of the development, construction and management of the Facility, RPAD has entered into a Project Agreement with TCHC dated November 11, 2010 and effective January 1, 2010 (the "Project Agreement");
- (M) The parties have agreed that in respect of the construction of the Facility, RPAD has or will enter into the Construction Management Agreement with DCM dated November 11, 2010 and effective January 1, 2010 (the "Construction Management Agreement");

- (N) The parties have agreed that in respect of the management of the development and construction of the Facility, RPAD has entered into the Project Management Contract with Artscape dated November 11, 2010 and effective as of December 16, 2009 (the "Project Management Contract");
- (O) The parties have agreed that in respect of the ongoing operation of the Facility, RPAD will enter into the Operating Lease with Artscape;
- (P) The JV Members have agreed that RPAD will enter into the Ground Lease with TCHC; and
- (Q) The parties wish to enter into this Agreement for the purpose of setting forth the terms, provisions and conditions governing their respective obligations relating to, and interests in, the Facility, Building Underground Structure and the Lands;

**NOW THEREFORE**, in consideration of the mutual covenants of the parties hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed as follows:

## ARTICLE 1 INTERPRETATION

### 1.1 Definitions

In this Agreement, in addition to terms defined elsewhere in this Agreement, the following terms have the following meanings:

"Act" is defined in Recital H.

"Affiliate" means an affiliate as that term is defined in the *Business Corporations Act* (Ontario).

"Agency Agreement" has the meaning set out in Section 6.4.

"Agreement" means this agreement, including all Schedules and Exhibits, as it may be supplemented or amended by written agreement between the parties.

"Artscape" is defined in Parties.

"ARPD" is defined in Parties.

"Block 24 North Lands" means Part Blocks L and X3, Plan 802E, Toronto, described generally as Block 5 on a draft Plan of Subdivision dated August 19, 2010 by R Avis Surveying Inc., drawing no. 2077-8SD.DWG

"Board" is defined in Section 4.1(b).

"Building Completion Certificate" means a certificate from RPAD to DCM acknowledging that the construction of the Building has been completed.

**“Building Underground Structure”** is defined in Recital K.

**“Business Day”** means any day excluding a Saturday, Sunday or statutory holiday in the Province of Ontario.

**“Claim”** means any claim, demand, action, cause of action, suit, arbitration, investigation, proceeding, complaint, grievance, charge, prosecution, assessment or reassessment, including any appeal or application for review.

**“Completion Loan”** is defined in Section 6.3.

**“Construction Management Agreement”** has the meaning set out in Recital M.

**“DCM”** is defined in Parties.

**“DEC”** is defined in Parties.

**“Defaulting Party”** is as described in Section 8.1.

**“Development Phase”** means the period beginning on the Effective Date and ending on the day that the Building Completion Certificate is issued.

**“Effective Date”** is defined in the Preamble.

**“Eligible Expenses”** is defined in the ISF Contribution Agreement.

**“Facility”** is defined in Recital C.

**“Fundraising Programme”** means the fundraising programme target set for Artscape, described in Schedule C.

**“Governmental Authority”** means any federal, provincial, state, local, municipal, regional, territorial, aboriginal, or other government, governmental or public department, branch, ministry, or court, domestic or foreign, including any district, agency, commission, board, arbitration panel or authority exercising or entitled to exercise any administrative, executive, judicial, ministerial, prerogative, legislative, regulatory or taxing authority or power of any nature as well as any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of them, and any subdivision of any of them.

**“Ground Lease”** is defined in Section 10.

**“Indemnites”** is defined in Section 2.6.

**“Indemnitor”** is defined in Section 2.6.

**“Infrastructure Stimulus Fund”** means that fund established by the Government of Canada and partnered with the Province of Ontario, as jointly announced by Canada and Ontario on June 5, 2009.

**“ISF Amount”** is defined in Section 6.2(a)(i).

**"ISF Contribution Agreement"** means the agreement that sets out the terms upon which the City of Toronto and TCHC has received the grant of funds, in respect of the development and construction of the Facility, under the Infrastructure Stimulus Fund and entered into with the Province of Ontario, dated as of August 9, 2010, and any amendments thereto.

**"ISF Funds"** is defined in Section 6.1.

**"Joint Venture"** is defined in Recital G.

**"Lands"** is defined in Recital C.

**"JV Members"** is defined in Recital I.

**"Member"** has the same meaning given to it under the Act.

**"Non-Defaulting JV Member"** is defined in Section 8.1.

**"Operating Lease"** is defined in Section 9.1.

**"Operation Phase"** means the period beginning on the first day following the day that the Building Completion Certificate is issued and ending on the day that the Operating Agreement is terminated.

**"Project Agreement"** has the meaning set out in Recital L.

**"Project Management Contract"** has the meaning set out in Recital N.

**"Remaining Lands"** means the portion of Block 24 Lands other than the Lands, which is or will be owned by PGDC.

**"RPAD"** is defined in Parties.

**"RPDC"** is defined in Parties.

**"Steering Committee"** is defined in Section 4.1(l).

**"TCHC"** is defined in Parties.

**"Tenant Fit-out"** is defined in Section 6.2.

**1.2 Schedules to Agreement**

The following schedules form part of this Agreement:

Schedule	Title
Schedule A	Principles of Reciprocal Agreement
Schedule B	Dispute Resolution Procedure
Schedule C	Fundraising Programme

**ARTICLE 2  
THE JOINT VENTURE**

**2.1 Formation**

DEC, RPDC and ARPD do hereby form and constitute themselves JV Members of the Joint Venture for the purposes set out in this Agreement. The organizational form of the Joint Venture will be a corporation without share capital incorporated under the laws of the Province of Ontario, which corporation will be RPAD. The affairs of the Joint Venture will be conducted in accordance with the provisions of this Agreement.

**2.2 Purpose and Scope**

The only purpose of the Joint Venture is to arrange for the development, construction and operation of the Facility by causing RPAD to execute and deliver the Project Agreement, Ground Lease, Project Management Contract, Construction Management Agreement and Operating Lease.

**2.3 Ownership of Property**

- (a) The Building Underground Structure will be held by PGDC. RPDC and DEC agree that it will cause PGDC not to enter into any agreement of purchase and sale of any portion of the Building Underground Structure unless the proposed purchaser agrees to provide all easements required by the Joint Venture as contemplated in Section 3.3.
- (b) The Lands will be held solely by TCHC.

**2.4 Disclaimer of Partnership**

Each JV Member expressly disclaims any intention to create a partnership or to constitute the other JV Member as its agent (except as expressly provided in this Agreement). Each JV Member covenants with each other JV Member that it will not, at any time, allege or claim that a relationship of partnership or, (except as expressly provided in this Agreement), agency was or is created. Nothing in this Agreement will constitute the JV Members as partners or, (except as expressly provided in this Agreement), constitute one JV Member the agent of an other JV Member.

## **2.5 Authority of JV Members**

Except as expressly provided in this Agreement, a JV Member will not have any authority to act, assume any obligations or responsibilities for or on behalf of, or bind any other JV Member or RPAD.

## **2.6 Indemnities**

Each party (in this section called the "Indemnitor") hereby irrevocably and unconditionally undertakes and agrees to indemnify and save harmless the other parties and any designated nominee (in this section called the "Indemnitees") from and against any and all Claims made against the Indemnitees, or which the Indemnitees may suffer, incur or sustain, directly or indirectly, as a result of, or which arise from or are connected with:

- (i) any breach by the Indemnitor of any of the provisions of this Agreement;
- (ii) any wilful act, omission or negligence of the Indemnitor or any of its respective agents, directors, officers, servants, contractors or employees in the performance of its obligations under this Agreement; and/or
- (iii) any action taken by the Indemnitor outside the scope of this Agreement.

## **2.7 Representations, Warranties and Covenants**

Each JV Member hereby represents and warrants that it has full power, authority and legal right to enter into and be bound by this Agreement, and covenants and agrees:

- (a) to promptly notify the other JV Members of all matters coming to the attention of such JV Member concerning the Facility;
- (b) to perform and observe all the terms, covenants and conditions of this Agreement required to be performed or observed by it; and
- (c) to punctually pay and discharge its separate and several debts and liabilities as and when required pursuant to this Agreement.

### **ARTICLE 3**

#### **TRANSFER AND CONVEYANCE OF TCHC INTEREST**

### **3.1 TCHC's Interest in Facility**

- (a) The parties acknowledge that TCHC has qualified for a grant of \$24 million (Canadian) from the Infrastructure Stimulus Fund.
- (b) TCHC will release its interest in and title to the Facility to RPAD pursuant to the terms of the Ground Lease.

- (c) RPAD will be responsible for the payment of all land transfer taxes exigible upon the Lands and Facility, if any.

### **3.2 Cost Apportioning of Building Underground Structure Costs**

- (a) The parties acknowledge that approximately 32% of the Building Underground costs will be apportioned to RPAD and the parties shall furthermore arrange for RPAD's portion to be claimed from the Infrastructure Stimulus Fund as a permitted Eligible Expense, all as set out in greater detail in the Cost Apportioning Agreement between PGDC and RPAD dated February 17, 2011.
- (b) Upon reimbursement of RPAD's claimed portion under the ISF, RPAD shall reimburse PGDC and PGDC shall simultaneously provide an amount equivalent to the reimbursed RPAD portion, which funds may be used by RPAD for any other approved project costs.

### **3.3 Easements**

The JV Members covenant and agree with each other, with TCHC in its capacity as the owner of the Facility, Lands and Remaining Lands, and with RPDC and DEC, in their capacities as owners of the Building Underground Structure, and RPAD in its capacity as future owner of the Facility under the Ground Lease, that they will, from time to time, to the extent made possible by their respective interests in the Lands, Remaining Lands, Facility and the Building Underground Structure, transfer or consent to, as appropriate, easements upon, over, under, along and across the Lands, Remaining Lands, Facility and the Building Underground Structure as may be reasonably required in order to facilitate the integrated development and operation of the Building, including;

- (a) easements for all persons and vehicles entitled thereto to enter upon, over and under the Lands, Remaining Lands, Facility and the Building Underground Structure, including ramps, stairways and elevators as required, for the purpose of ingress and egress from the Facility and Building Underground Structure and for pedestrian and vehicular passage to and from, *inter alia*, parking areas, loading docks and walkways;
- (b) for the Facility which will share a platform with the Building Underground Structure, easements of support, as may be necessary; and
- (c) easements for the purposes of constructing, installing, maintaining, repairing and replacing the Facility and Building Underground Structure and the utilities and other services necessary for the full use and enjoyment of the Facility and Building Underground Structure.

### **3.4 Transfers of Easements**

- (a) PGDC will cause reference plans of survey to be prepared indicating the location of any easements affecting the Lands, Remaining Lands, Facility and Building Underground Structure. The location of the easements will be determined by the parties, each acting reasonably. PGDC and RPAD will be

equally responsible for costs incurred relating to the preparation and registration of such easements. Only nominal consideration will be paid in respect of such transfers of easements.

- (b) All such easements will be located in such a manner that they will not materially adversely affect the intended use or occupation of either the burdened lands or the benefited lands.

### 3.5 Reciprocal Agreement

RPAD and PGDC agree to enter into a reciprocal operating agreement, integrating the operations of the Facility and the Condominium, reflecting the principles set out in Schedule A hereto, and such other provisions as may be required to properly achieve the integration of the development.

### 3.6 Planning Act

The provisions of this Article 3 are conditional upon compliance with the provisions of the *Planning Act* (Ontario). If consent to sever from the Committee of Adjustments is not successfully obtained by the benefitting party to any of the easements described in Section 3.3 (a), (b) and (c), such easements shall have a term of twenty-one years less a day.

### 3.7 Further Assurances

Each of the parties agree, from time to time, and at all times, to execute all such further documents and provide all such further assurances as may be reasonably required to fully perform and carry out the provisions of this Article 3.

## ARTICLE 4 RPAD

### 4.1 Organization of RPAD

- (a) RPAD was incorporated a corporation without share capital under the *Ontario Corporations Act (R.S.O. 1990, C.C.38)*, (the "Act") under Ontario corporation Number 1827847, by Letters Patent issued by the Ministry of Government Services dated July 28, 2010.
- (b) Pursuant to the Letters Patent, the incorporating directors of the Board of Directors of RPAD (the "Board") are:
  - (i) Timothy Robert Jones
  - (ii) Maurcen Loweth
  - (iii) John Fox
  - (iv) Martin Stuart Blake
- (c) By board resolution dated September 21, 2010, the RPDC, DEC and ARPD were added as Members of RPAD, whereafter the following was the complete list of Members of RPAD:



- (i) Timothy Robert Jones
- (ii) Maureen Loweth
- (iii) John Fox
- (iv) Martin Stuart Blake
- (v) RPDC
- (vi) DEC
- (vii) ARPD

(d) By-Law No. 1, being a by-law relating generally to the affairs of RPAD was enacted on September 21, 2010. By-Law No. 1 established, among other things, the following:

- (i) Admission of Members
- (ii) Meetings of Members and Directors
- (iii) Appointment of Directors
- (iv) Voting and Quorum
- (v) Election and Duties of Officers
- (vi) Indemnification and Insurance of Directors and Officers
- (vii) Signing of Documents and Cheques
- (viii) Authority for borrowing

(e) During the Development Phase, there shall be no JV Members who are corporations other than those which are a party to this agreement.

(f) By board resolution dated September 21, 2010, the following were appointed as Officers of RPAD

President: Tim Jones  
Secretary and Treasurer: Martin Blake

(g) By board resolution dated March 22, 2011, the following were appointed as additional Officers of RPAD

Authorized Signing Officer: John Fox  
Authorized Signing Officer: Maureen Loweth

(h) During the Development Phase, each JV Member that is a corporation will have the right to be represented on, and have elected to the board of directors, a nominee director, or in the case of ARPD, two nominee directors. The current directors representing the corporate members are:

- (A) RPDC: John Fox
- (B) DEC: Martin Stuart Blake
- (C) ARPD: Timothy Robert Jones and Maureen Loweth

(i) Each JV Member shall further have the right to remove one or more directors appointed by it and have a person elected successor or successors, as the case

may be, by sending a direction in writing to RPAD and the other JV Members who will elect such replacement director or directors, all as subject to the JV Members' rights granted under the Act and By-Law No. 1.

- (j) Upon the resignation or removal of a nominee director described in s. 4.1(i), the JV Member that appointed such director will use reasonable effort to obtain from such director a resignation and release from such director in a form reasonably satisfactory to RPAD.
- (k) Notwithstanding the foregoing, the governance of RPAD shall be subject to the following principles:
  - (i) RPDC and DEC will remain JV Members at least until the end of the first year of the Operation Phase;
  - (ii) The board of directors of RPAD shall expand to include three additional positions, as follows, to be nominated by a Joint Venture nominating committee:
    - (A) One director to be a representative of Regent Park Neighbourhood Initiative, if available, or a member of the Regent Park community, who is a TCHC tenant;
    - (B) One director to be a representative of one of the subtenants of the Facility
    - (C) One director to be a representative of the arts community to be mutually agreed upon by the remaining directors who elect to vote on such decision
  - (l) To assist it in exercising its responsibilities, the Board may seek advice from committees including a community advisory committee ("Steering Committee"), comprised of representatives of Regent Park, the arts community and City of Toronto's culture division, during the Development Phase
  - (m) The Board, before taking advice from a committee, shall take reasonable steps to ensure that such committee's purpose in providing such advice is not in conflict with the objectives of the Board.

#### 4.2 Approvals

- (a) The Joint Venture will operate and conduct business through RPAD. Except as otherwise provided in this Agreement, no action will be taken, sum expended, decision made or obligation incurred by RPAD in respect of the Facility unless such action, expenditure, decision or obligation is expressly permitted hereunder or will have been first Approved by the JV Members, or unless such action, expenditure, decision or obligation has been delegated to a third party under contract.

- (b) Wherever the provisions of this Agreement provide for an Approval by a JV Member, this Agreement will (unless the text thereof expressly states that such Approval may be unreasonably or arbitrarily withheld, or unless the text hereof expressly states that the time periods are to be otherwise, in which latter event this section will apply but the time periods will be adjusted accordingly) be deemed to provide that:
  - (i) such Approval will be in writing;
  - (ii) such Approval will not be arbitrarily or unreasonably withheld or delayed;
  - (iii) the JV Member whose Approval is requested will, as soon as reasonably possible after the receipt of a notice requesting Approval, give notice to the JV Member requesting the Approval either that it is giving its Approval or that it withholds its Approval and in which case, it will set forth, in reasonable detail, its reasons for withholding its Approval; and
  - (iv) the execution of any document by a JV Member constitutes Approval by that JV Member of that document and all of its provisions.
- (c) The Approval or deemed Approval of any decision will constitute and be deemed to constitute the approval or deemed approval of any actions or steps reasonably necessary to implement, perform or carry out such decision, and each JV Member will do such things and execute any and all such instruments and documents reasonably required to implement, perform or carry out such decision, including, the making of additional contributions in accordance with the provisions of Article 5.

#### **4.3 Execution of Documents**

All documents, instruments or agreements having a legally binding effect on the JV Members will be signed by the JV Members.

#### **4.4 Board of Directors of RPAD**

- (a) Except as otherwise expressly provided herein, the Board has the power and authority, and the JV Members hereby direct the Board to give any Approvals and to make any decisions required or permitted to be given or made by the JV Members relating to the Facility, with respect to:
  - (i) the amount, terms and conditions of any loan;
  - (ii) the selection, or if a consultant is selected by the Project Manager as defined in the Project Management Contract or the Construction Manager as defined in the Construction Management Agreement, as the case may be, the Approval, of any consultants for the Facility, including any architects, engineers, solicitors, and other consultants retained in connection with the Facility, and the termination of such contracts;

- (iii) the budgets and construction schedules prepared in accordance with the provisions of the Project Management Contract and Construction Management Agreement;
  - (iv) the leasing program relating to the Facility or any part thereof to be incorporated into the Operating Lease;
  - (v) the financial statements for RPACC as per Section 7 of this Agreement;
  - (vi) the terms and conditions and monitoring performance of the Construction Management Agreement, the Project Management Contract, the Project Agreement and the Operating Lease, the Ground Lease, and the Agency Agreement;
  - (vii) all other matters relating to the development, financing, marketing and leasing of the Facility, to the extent not delegated under contract.
- (b) No fees, salaries, commissions or other compensation will be paid by the JV Members to the directors of the Board in respect of their work on the Board.

## **ARTICLE 5 CONFLICT OF INTEREST**

### **5.1 Disclosure of Conflict**

A director or a Member who is a party to, or who is a director or officer of, or has a material interest in any person who is a party to a material contract or transaction or proposed material contract or transaction with RPAD, will disclose the nature and extent of his or her interest at the time and in the manner provided by the Act. Such a director or Member will not vote on any resolution to approve that contract or transaction. Where all directors are required to make disclosure under this Section, the contract or transaction may be approved only by unanimous approval of the Members.

### **5.2 Agreement with JV Not a Conflict**

The fact that a JV Member has entered into an agreement with the Joint Venture for the provision of materials or services for the Facility which has been approved by the Board, will not constitute a conflict of interest which would limit its rights or actions under this Agreement, unless specifically provided in such agreement or in this Agreement.

### **5.3 No Vote for Defaulting JV Member**

The representatives of a Defaulting JV Member, in respect of meetings of the Board where a default by a JV Member is to be discussed and voted upon, will be entitled to attend but not to vote at any meeting of the Board (although they will be entitled to continue receiving notices of such meetings). In such case, so long as any such Default continues, a quorum for a meeting will be constituted by 1 appointed director of each of the other JV Members.

**ARTICLE 6  
FINANCIAL MATTERS**

**6.1 ISF Financing**

TCHC has entered into the ISFCA and agrees to flow through the funds ("ISF Funds") received under the terms of the ISFCA to RPAD as described in the Project Agreement and Project Management Contract.

**6.2 Funds Required for the Facility; Capital Budget; Artscape Fundraising**

(a) As of the date of this agreement, the capital budget ("**Capital Budget**") for the construction of the Facility is anticipated to be approximately \$27.23 million, including the cost of the fitting of any units within the Facility for subtenant use (the "**Tenant Fit-Out**"). The Capital Budget is expected to be funded as follows:

- (i) \$24 million under the ISF for "Eligible Expenses" as described in the ISFCA (the "ISF Amount")
- (ii) \$3.23 from expected rebates and fundraising for "Ineligible Expenses" as described in the ISFCA, and additional fit-out costs

(b) Funds raised as part of Artscape's Fundraising Programme shall be used to pay for costs described in 6.2(a)(ii) above, any funding shortfall described in section 6.3, and financing costs incurred to pay for any funding shortfall described in section 6.3, or otherwise for the benefit of the Facility.

**6.3 Financing by Third Party Lender and Artscape**

(a) If any of the following circumstances occur which results in a funding shortfall:

- The ISFCA is terminated with consequential termination and/or claw-back of the ISF Funds; or
- The total eligible funding of \$24 million is not claimed prior to the ISFCA deadline; or
- The total amount of ISF Funds advanced is less than \$24 million, or
- Exceedances to the Capital Budget

the shortfall will be financed

- (i) first, from funds directed from Artscape's Fundraising Programme.
- (ii) second, from a third party loan ("**Completion Loan**") obtained and serviced by Artscape from the rental revenue and/or fundraising revenue under the Operating Lease, and guaranteed, if necessary, by RPDC and DEC on a several and not joint and several basis.

#### **6.4 Agency Agreement**

RPAD will enter into an Agency Agreement with Artscape Foundation for the purposes of carrying out Artscape Foundation's charitable objectives, which shall form part of Artscape's Fundraising Programme.

### **ARTICLE 7 OTHER FINANCIAL AND ACCOUNTING MATTERS**

#### **7.1 Preparation of Accounts**

Accounts for RPAD will be prepared as of December 31 in each year or as of any other date Approved by the JV Members.

#### **7.2 Books and Records**

Proper and complete books, records, reports and accounts of RPAD will be kept at the principal office of RPAD and will be open and available for audit, inspection and copying by any JV Member or its authorized representatives at any reasonable time during normal business hours. The books and records will fully and accurately reflect all transactions of the Joint Venture and will be maintained in conformity with generally accepted accounting principles. Each JV Member will bear all expenses incurred by it of any audit, inspection or copying made for its account.

#### **7.3 Accountants**

The accountants of RPAD will be Approved by the JV Members.

#### **7.4 Annual Report**

Within 120 Days after the end of each accounting year of RPAD, the Board will cause the accountants of RPAD to furnish to each JV Member an annual report with respect to the Facility consisting of:

- (a) a balance sheet, a twelve month income and expense statement, and a statement of each JV Member's account;
- (b) a cash flow statement; and
- (c) any additional information that the JV Members may require for the preparation of their individual federal and provincial income tax returns.

Notwithstanding the foregoing, the Board will use its best efforts to complete the foregoing reports within 90 days of the end of each accounting year, and will make drafts of such reports available to the JV Members as soon as reasonably possible.

#### **7.5 Bank Accounts**

The bank of RPAD will be such bank or banks as may be Approved by the JV Members from time to time. All monies from time to time received in respect of RPAD will be paid immediately into the bank account of RPAD in the same drafts, cheques, bills and cash in which they are received. Signing authority will be established by the by-laws of RPAD.

#### **7.6 Annual Non-Profit Status Filing**

The JV Members will ensure that any required filings or returns are made with the Minister of Government Services to maintain RPAD's non-profit corporate status, on an annual basis, generally within 10 days of the Annual General Meeting, or as required by the Ministry from time to time.

#### **7.7 No Other Payment to JV Members**

Except for payment for the reimbursement of Eligible and Ineligible Expenses, and except as may be Approved by the JV Members, no payment will be made to any JV Member for its services or the services of its shareholders, directors, officers or employees in carrying out its duties and responsibilities hereunder.

### **ARTICLE 8 DEFAULT**

#### **8.1 Default**

- (a) If any party fails to carry out its obligations under this Agreement, any other party, provided such party is not also in default, ("Non-Defaulting Party") may, by giving written notice to the first party (the "Defaulting Party"), instruct the Defaulting Party to correct the default within 15 days of receipt of such notice, or, where immediate action is required, in such lesser time as may be specified in the notice.
- (b) If the default cannot be corrected within the time period specified in the notice, the Defaulting Party shall be deemed in compliance with Non-Defaulting Party's instructions if it immediately commences and diligently continues to remedy the breach and mitigate any adverse effects on construction and/or operation of the Facility; or puts forward within 5 days of receipt of notice a reasonable plan and schedule acceptable to Non-Defaulting Party acting reasonably, for remedying the breach and mitigating any adverse effects, such plan to outline the manner in which and latest date by which the breach is proposed to be remedied, and performs its obligations to achieve all elements of the plan and schedule.

## **8.2 Rights Upon Default**

If the Defaulting Party does not cure, or commence and diligently pursue cure of the default specified in the notice referred to in Section 8.1 within the time periods, if any, provided for in Section 8.1, any Non-Defaulting Party will have any and all of the following rights until the default is cured:

- (a) to bring any proceedings in the nature of specific performance, injunction or other equitable remedy, it being acknowledged by each of the parties that damages at law may be an inadequate remedy for the breach giving rise to the default; and/or
- (b) to remedy such default and any other default of the Defaulting Party under this Agreement, and will be entitled upon demand to be reimbursed by the Defaulting Party for any monies expended to remedy such default or other default, including any expenses incurred by the Non-Defaulting Party in connection therewith; and/or
- (c) to bring any action at law that may be necessary or advisable in order to receive damages; and/or
- (d) to do such other acts and things as the Non-Defaulting Party may be authorized or entitled to do under this Agreement.

## **8.3 Rights Cumulative**

The rights of any party under this Article 8 and at law or in equity are separate and are not dependent on one another and each such right is complete in itself and not by reference to any other such right. Any of such rights or any combination of such rights may be exercised by a party from time to time and no such exercise will exhaust such rights or preclude such party from exercising any other rights or any combination of such rights from time to time thereafter or simultaneously.

## **ARTICLE 9 OPERATING LEASE**

### **9.1 RPAD to enter Operating Lease with Artscape**

- (a) Prior to the commencement of the Operation Phase, RPAD will enter into an operating lease for the Facility ("**Operating Lease**") with Artscape for the management and oversight of the Facility, which lease will be for a term of fifty (50) years less two (2) days
- (b) Artscape's responsibilities under the Operating Lease will include;
  - (i) The development and implementation of a stakeholder relations and consultation strategy which will lead to the development of a curatorial and operational principles to guide the ongoing management of the Facility;



- (ii) Curatorial and operational principles will include but not be limited to tenant selection principles, programming principles and community stewardship;
  - (iii) Coordinate tenant fit-out, move in and transition to operation to the extent not completed during the Development Phase
  - (iv) Management and operation of the Facility;
  - (v) Support Toronto Community Housing Corporation's Community Economic Development Policy by incorporating local hiring practices;
  - (vi) Seek the RPAD's advice before re-leasing tenanted space that becomes vacant.
- (c) The Operating Lease shall confer at a minimum the following decision making authority on Artscape, provided same is in compliance with the operational principles developed by Artscape and approved by the Joint Venture:
- (i) the types and mix of commercial, retail and community uses to be permitted within the Facility
  - (ii) the size and location of commercial, retail and community premises;
  - (iii) the rental rates to be charged to tenants;
  - (iv) the terms, conditions, and provisions of the standard form lease to be used in connection with the Facility;
  - (v) programming of events and activities within the Facility;
  - (vi) marketing and communications related to tenants, program, activities and the Facility in general;
  - (vii) upon vacancy of a unit within the Facility, selection of a replacement tenant in accordance with the tenant selection principles and recommendation of such tenant to the board of directors;
  - (viii) any non-standard terms and conditions to be incorporated into leases, such as, but without limitation, the scope, duration and terms of any exclusivity arrangements or options granted in favour of any tenant.

## **9.2 Community Representation on Artscape Board of Directors**

During the Operation Phase, Artscape agrees to appoint two members from the Regent Park community to its Board of Directors, one of whom will be a tenant of TCHC. Artscape will have the opportunity to interview the proposed nominees as part of Artscape's usual board member selection process prior to electing either or both said nominees.

**ARTICLE 10  
GROUND LEASE**

**10.1 Basic Terms of Ground Lease for the Lands**

- (a) RPAD will enter into a lease with TCHC which will permit the Facility on the Lands (the "Ground Lease") for 50 years less a day.
- (b) The base rent for the Ground Lease will be nominal, or such other amount that the parties to the Ground Lease may agree to.
- (c) The permitted use under the Ground Lease shall be a community based arts and cultural centre, including an outdoor performance court, operating on a non-profit basis. For profit activities are permitted provided net revenues are re-invested into the leased premises and non-profit nature of the tenant is intact.
- (d) Subject to the terms of the Ground Lease, the Ground Lease will state that TCHC releases and right, title and interest in the Facility to RPAD.
- (e) Upon termination of the Ground Lease, improvements on land revert to the landlord.
- (f) Subtenants are permitted without prior landlord approval provided they are in accordance with the permitted use and this Joint Venture Agreement.
- (g) No assignment of the Ground Lease is permitted without the landlord's approval, which may be reasonably withheld. Financing of tenant's leasehold interest to be subordinate to the landlord's interest in the property. Upon default the landlord has the right to cure default and assume ownership and possession of the Facility.
- (h) It is understood that RPAD will be fully responsible for operation and maintenance of the Facility, including insurance and taxes, including realty taxes for the Lands.
- (i) It is further understood that the Ground Lease will include a continuous operation clause. In the event that the intended operation of the Facility as an arts and cultural centre ceases, the landlord may terminate the lease, in which case title to Facility will devolve to TCHC. For clarity, temporary interruptions in programming, interruptions in sub-tenant programming including time required for the turn-over of one or more sub-tenants, or interruptions due to municipal service interruptions, fire or other damage to the facility, natural disasters, etc., will not be considered to be a ceasing of intended operations. The continuous operations requirements will be further defined in the Ground Lease.
- (j) During the term of the Ground Lease, the RPAD board and members will be comprised of members of the Regent Park and arts-based communities to fulfill the objective of stewardship of the Facility by the community.

**10.2 Pre-Condition to Ground Lease**

- (a) Subsequent to execution of this Agreement, the relevant parties will execute the Ground Lease subject to the pre-condition, below
- (b) The Ground Lease is subject to compliance with Section 50 of the *Planning Act*, R.S.O. 1990, c.P.13, as amended. The Joint Venturer's acknowledge that the Lands comprises part of the property owned by TCHC and that, as a result, a severance consent under the *Planning Act* is required in order to carry out the transaction contemplated by this Agreement. Entering into the Ground Lease shall be subject to the condition precedent that by March 31, 2012, RPAD has obtained the consent of the Committee of Adjustment of the City of Toronto ("Committee of Adjustment") under the *Planning Act*, R.S.O. 1990, c.P.13 to sever the Lands and carry out the transaction contemplated by this Agreement.

**ARTICLE 11  
DISPUTE RESOLUTION**

**11.1 Dispute Resolution Procedure**

All disputes shall be resolved in accordance with, and the Parties shall comply with, Schedule "B" – Dispute Resolution Procedure.

**ARTICLE 12  
TERMINATION**

**12.1 Dissolution**

The Joint Venture shall only be dissolved upon agreement in writing of all of the JV Members.

**ARTICLE 13  
GENERAL CONTRACT PROVISIONS**

**13.1 Notices**

All notices, requests, demands or other communications by the terms hereof required or permitted to be given by one party to another will be given in writing by personal delivery or by facsimile or electronic transmission to the other parties to the following addresses:

- (a) to DEC or DCM: 20 Queen Street West, Suite 3400  
Toronto, Ontario  
M5H 3R3  
  
Attention: Martin Blake, Vice President  
Fax No. (416) 979-0415

E-mail: mblake@danielscorp.com

- (b) to RPDC or TCHC or PGDC at:  
7th Floor  
931 Yonge Street  
Toronto, Ontario  
M4W 2H2  
  
Attention: Bronwyn Krog, VP and CDO  
Fax No. (416) 981-4130  
E-mail: bronwyn.krog@torontohousing.ca
- (c) to Artscape or ARPD or RPAD at:  
171 East Liberty Street, Suite 224  
Toronto, Ontario  
M6K 3P6  
  
Attention: Tim Jones, President and CEO  
Fax No. 416-535-6260  
E-mail: tim@torontoartscape.on.ca

or at such other address as may be given by any of them to the others in writing from time to time. Any such notices, requests, demands or other communications will be deemed to have been received, if sent by personal delivery, when delivered, or if sent by facsimile or electronic transmission, on the Day of the transmittal if sent during normal business hours, and otherwise on the next following Business Day.

### 13.2 Confidentiality

- (a) The parties shall keep confidential all matters respecting technical, commercial and legal issues relating to or arising out of the performance of the Agreement and shall not, without the prior written consent of each of the other parties, disclose any such matters, except in strict confidence, to its professional advisors and except as may be required under the Municipal Freedom of Information and Protection of Privacy Act.
- (b) The parties will develop joint communications regarding the Facility. The parties shall not publish any statement, paper photograph or document or hold any ceremony with respect to the Agreement or the Facility without the prior approval of each of the other parties.

### 13.3 Further Assurances

Each of the parties will from time to time and at all times do such further acts and deliver all such further assurances, deeds and documents as will be reasonably required in order to fully perform and carry out the terms of this Agreement.

#### **13.4 Entire Agreement**

This Agreement (including the Schedules hereto) constitutes the whole agreement and understanding of the parties as to the subject matter hereof and there are no prior or contemporaneous agreements between the parties with respect thereto except as stated herein.

#### **13.5 Waiver**

Failure by any party at any time to enforce any provision of this Agreement or to require performance by any other party of any of the provisions of this Agreement will not be construed as a waiver of any such provision and will not affect the validity of this Agreement or any part thereof or the right of any party to enforce any provision in accordance with its terms.

#### **13.6 Amendments**

No amendment to this Agreement will be binding unless it is in writing and signed by the duly authorized representative(s) of each of the parties.

#### **13.7 Law**

This Agreement will be governed by and construed in all respects in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

#### **13.8 Time**

Time will be of the essence in this Agreement. In the event of any extension of time by a party for the performance of an obligation by the other party under this Agreement, time will continue to remain of the essence hereof notwithstanding such extension.

#### **13.9 Binding Effect**

This Agreement and all covenants and conditions herein contained will enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors, permitted transferees and permitted assigns.

#### **13.10 Counterparts**

This Agreement may be executed in counterparts, each of which will constitute an original and all of which together will constitute one and the same agreement.

*[remainder of page left blank]*

This Agreement has been duly executed by the parties hereto on the date first written above.

**REGENT PARK ARTS NON-PROFIT  
DEVELOPMENT CORPORATION**

Per: \_\_\_\_\_

Name: ~~Jana B...~~

Title: A.S.O.

I have the authority to bind the corporation

Per: MAUREEN LOWETH

Name: MAUREEN LOWETH

Title: A.S.O.

I have the authority to bind the corporation

**REGENT PARK DEVELOPMENT  
CORPORATION**

Per: LEN KORNIGOS

Name: Len Kornigos

Title: CEO and President

I have the authority to bind the corporation

**DANIELS EASTSIDE CORPORATION**


Per: MITCHELL COHEN

Name: MITCHELL COHEN


Title: TREASURER

I have the authority to bind the corporation

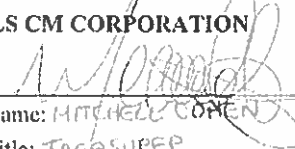
**ARTSCAPE REGENT PARK NON-PROFIT  
DEVELOPMENT CORPORATION**

Per:   
Name: MAUREEN LOWETH  
Title: ASD  
I have the authority to bind the corporation

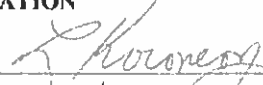
**TORONTO ARTSCAPE INC.**

Per:   
Name: TIM JONES  
Title: PRESIDENT & CEO  
I have the authority to bind the corporation

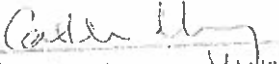
**DANIELS CM CORPORATION**

Per:   
Name: MITCHELL COHEN  
Title: TREASURER  
I have the authority to bind the corporation

**TORONTO COMMUNITY HOUSING  
CORPORATION**

Per:   
Name: Len Kowalewski  
Title: CEO (Interim)  
I have the authority to bind the corporation

Approved as to Form by  
Toronto Community Housing Legal Services

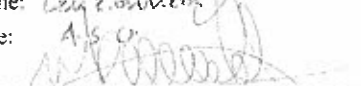
  
Name: Catherine Murray

**PARLIAMENT AND GERRARD  
DEVELOPMENT CORPORATION**

Per: 

Name: Dan Kourmicos

Title: A.S.O.

Per: 

Name: MITCHELL COHEN

Title: VICE PRESIDENT

We have authority to bind the  
corporation



## SCHEDULE "A"

### PRINCIPLES OF RECIPROCAL AGREEMENT

The parties will endeavour to obtain separate assessments and tax billings which recognize a separation of the lands into the Facility, Condominium, Building Underground Structure Component (collectively, the "Components") and appropriate portions thereof. If separate assessments and tax billings cannot be obtained for each Component, realty taxes or similar government charges and assessments relating to more than one Component shall be allocated between the Components and paid by the parties on an equitable basis in relation to their respective interests in the lands and improvements thereon.

- (a) Unless otherwise agreed, the sharing of costs among the parties with respect to insurance, utilities (including temporary power), earthworks, site preparation, excavation, security and other costs relating to the operation and maintenance of the Components, shall be apportioned between each of the Components on an "as-built" GFA basis.
- (b) Each party shall from time to time grant and amend such easements and licences as may be reasonably required in order to facilitate the integrated development and operation of the Component, including the easements referred to in Section 3.3 of this Joint Venture Agreement, licences for the repair and maintenance of each Component and easements for structural support, maintenance of footings, foundations and underpinnings and mechanical, electrical and all other services necessary for the intended use of each Component, subject to the provisions of the agreements and leases among the parties respecting easements. The parties shall not erect barriers (except in emergencies or to make repairs) that would impede the integrated operation of the common areas of all Components.
- (c) Each of the parties shall agree that they will consent to approval for boundary adjustments related to the relevant Component, consistent with the rights and obligations of the parties in the relevant agreements and leases binding on the parties.
- (d) Access to, security for and maintenance of the common areas, common parking areas and support structures shall be established in a reciprocal agreement with an appropriate formula for sharing the costs related thereto.
- (e) Any reciprocal agreement shall contain insurance provisions which shall be consistent with the agreements and leases binding on the parties.
- (f) No party shall do anything which shall cause any other Component to be in breach of Laws and Regulations.
- (g) Reciprocal remedies shall exist to the satisfaction of the parties, acting reasonably, to address the failure by any party to fulfil any of its obligations under any reciprocal agreement.

- (h) Any reciprocal agreement shall be binding on all mortgagees of the Components and upon any assignees, sublessees or successors thereof and/or any of the parties.
- (i) To the extent that there are overlapping costs attributable to work done in respect of the Components, such costs shall be allocated between the Components on an equitable basis, based upon the respective interests of the parties in the applicable lands and the improvements thereon.

**Schedule "B"**

**DISPUTE RESOLUTION PROCEDURE**

1. Any disputes arising between the parties hereto under the provisions of this Agreement may be referred to arbitration, shall be settled by arbitration in accordance with the provisions of this Schedule B.
2. Arbitration proceedings shall be commenced by one party giving notice to the others specifying the matter to be arbitrated and requesting an arbitration thereof. Such arbitration will be carried out by a single arbitrator agreed to by the parties. If the parties are unable to agree upon an arbitrator or the arbitration procedure to be followed within 10 days after delivery of such notice, either of them may make application to the Court pursuant to the Arbitration Act 1991 (Ontario) as amended from time to time (or any statute that may be passed which has the effect of superseding such statute) for appointment of an arbitrator and determination of the arbitration procedure to be followed (provided that for such purpose, the parties acknowledge and agree that it is their intention that the arbitration will be conducted, and the determination of the arbitrator will be made and communicated in writing to the parties, as expeditiously as possible).
3. In the event of the failure, refusal or inability of an arbitrator to act, or continue to act, a new arbitrator shall be appointed in his/her stead, which appointment shall be made in the same manner as hereinbefore provided.
4. The decision of an arbitrator appointed as hereinbefore provided shall be final and binding upon the parties and not subject to appeal. Such arbitrator shall have the authority to assess the costs of the arbitration against the parties provided, however, that each of the parties shall bear its own witness and counsel fees. Such arbitrator shall have access to all books and records relating to the Project and the parties will co-operate with such arbitrator and provide all information reasonably requested by such arbitrator.
5. Except as set forth herein, any arbitration pursuant to this Agreement will be governed by the Arbitration Act 1991 (Ontario).

Schedule "C"

**FUNDRAISING PROGRAMME**



**ARTSCAPE  
FOUNDATION**

**Introduction**

Established in 2005, The Artscape Foundation is the registered charity that serves the charitable work of Toronto Artscape through Agency Agreements.

Artscape and the Artscape Foundation are responsible for raising \$10 million in charitable funds to support the new Regent Park Arts & Cultural Centre (RPACC), presently under construction, of which \$3 million is required for capital goals and \$7 million is required for programmatic goals. The priority is to secure \$3 million in philanthropic pledges to complete the capital component of the Centre by December, 2011. This includes Tenant Improvements and capital costs that are ineligible under the Infrastructure Stimulus Funding program, such as legal fees and other specified project expenses. These funds are being raised as part of Artscape Foundation's *IT STARTS WITH SPACE* Campaign.

Current gifts for RPACC as at July 2011 include:

The Daniels Tenant Transition Fund - \$500,000 program gift (2 year pledge period or 60 days prior to completion)

RBC Foundation - \$100,000 capital gift (2 year pledge period)

Pace Family Foundation - \$25,000 capital gift (received)

Anonymous Donor - \$1,250,000 capital gift (5 year pledge period; pending signature of Official Donor Agreement)

Cabinet Member - \$25,000 capital gift (5 year pledge period)

Cabinet Member - \$25,000 capital gift (5 year pledge period)

Cabinet Member - \$50,000 capital gift (5 year pledge period)

Other Donations: \$1,500 – Board members and Artscape Staff

Ontario Trillium Foundation Community Capital Fund for Regent Park Arts & Cultural Centre - \$500,000

Gifts verbally confirmed and in discussion with Donors as at July 2011 include:

\$25,000 gift – 1 in total, *IT STARTS WITH SPACE*, allocation to RPACC is \$25,000 (5 year pledge period) pending review, approval and signature of the official Donor Agreement by the Donor

\$25,000 gift – 1 in total, *IT STARTS WITH SPACE*, , allocation to RPACC is \$25,000 (5 year pledge period) pending review, approval and signature of the official Donor Agreement by the Donor

\$25,000 gift – 1 in total, *IT STARTS WITH SPACE*, , allocation to RPACC is \$25,000 (5 year pledge period) pending review, approval and signature of the official Donor Agreement by the Donor

\$5,000 gift – 1 in total, *IT STARTS WITH SPACE*, , allocation to RPACC is \$5,000 (5 year pledge period) pending review, approval and signature of the official Donor Agreement by the Donor

Prospect Roster:

The Campaign Cabinet has qualified 50 prospects, each with a potential gift range of \$1mm. An additional 150 prospects have been qualified for canvassing after the top ranked \$1mm have been cultivated. Qualified prospects suggestions are welcomed.

*IT STARTS WITH SPACE* Campaign Cabinet

Artscape has successfully recruited the following individuals to the *IT STARTS WITH SPACE* Campaign to form a Campaign Cabinet, a sub-committee of the Artscape Foundation. Senior Volunteers include:

Robert J. Foster, President & CEO, Capital Canada Ltd., Co-Chair, Campaign Cabinet

Judy Matthews, Co-Chair, Campaign Cabinet

Mitchell Cohen, President, The Daniels Corporation

Rajendra Kothari, Partner, Audit & Assurance Group, PriceWaterhouseCoopers LLP

Ralph E. Lean, QC, Partner, Cassels Brock & Blackwell LLP

Donald Schmitt, Principal, Diamond Schmitt Architects

Leslie Klein, Principal, Quadrangle Architects

Cathy Ciccolini, Owner, Masters Insurance Company

Anthony Ciccolini, Masters Insurance Company

Jim Ginou, Chairman & Chief Executive Officer, Art Printing Company

Mazyar Mortazavi, Principal, TAS DesignBuild and Chair, Artscape Foundation

## **SCHEDULE B**

### **Regent Park Arts & Cultural Centre**

#### **Community Stewardship Plan**

##### **Goals:**

The approach to governance for Regent Park Arts & Cultural Centre (RPACC) aims to:

- Place the legal and financial risk and responsibility of operating RPACC with Artscape
- Allow for tenants and other community stakeholders to have a voice in the policies and management practices for the centre
- Build the foundation for a constructive relationship between board volunteers, Artscape staff and community stakeholders

##### **Governance Structure:**

A governance model has been created to effectively develop and manage RPACC while achieving the community stewardship goals above. Under this structure, the ultimate objective is for three separate entities to play the following roles:

- **The Landowner:** As the owner of the land Toronto Community Housing Corporation (TCHC) to sign a 50-year, nominal sum land lease with Regent Park Arts Development (RPAD).
- **The Developer/Facility Owner:** Regent Park Arts Non-Profit Development Corporation (RPAD) is a not-for-profit joint venture corporation established by Regent Park Development Corporation (RPDC), Daniels Eastside Corporation (DEC), and Artscape Regent Park Non-Profit Development Corporation (ARPD) to develop and own the RPACC facility, then lease it to Artscape. Once the facility is open, RPAD's role will include asset management and monitoring Artscape's performance under the terms of its lease.
- **The Operator/Sub-lessee:** Artscape will operate the centre under the terms of a 50-year facility lease with RPAD. Artscape will in turn sub-lease portions of the facility to its sub-tenants and operate other parts such as the performance/event space and café. Through its lease with RPAD, Artscape will commit to operating RPACC according to a set of covenants related to community stewardship, operations and programming.

##### **Community Stewardship Approach:**

The community stewardship plan set out in this document is a framework for achieving the balance of goals noted above. Artscape has a recognized track record with operating arts-based facilities, and has agreed to accept legal and financial responsibility for operating RPACC. As such, Artscape will be given decision-making authority regarding operation of the RPACC. Notwithstanding this, all parties to the joint venture have made a commitment to building community stewardship into the way the facility is managed.

There will be two approaches to realizing this objective. The first involves engaging community stakeholders on Artscape's board and ad hoc committees established for RPACC. The second relates to the role of RPAD as Ground Landlord/Facility Owner the oversight role it will play in monitoring Artscape's performance under the terms of its lease. The strategies for each of these are outlined below.

#### **A) Engaging RPACC Community Stakeholders in Artscape**

- i. Artscape will to appoint two members of the Regent Park community to its Board of Directors. Through this measure, Artscape will involve RPACC stakeholders in the highest level of decision making within the organization. Artscape will recruit these members through its Nominating Committee.
- ii. Artscape will establish a RPACC Tenant Liaison Committee to provide feedback and input on RPACC operations and policies. One of its tasks will be to co-create a Tenant Charter that articulates a code of conduct for RPACC tenants.
- iii. One of the significant responsibilities Artscape has taken on is the management of the performance/event space within RPACC. To do this effectively, Artscape will establish a Programming Advisory Committee comprised of tenants and other community stakeholders. This committee will be charged with recommending programming policy to Artscape and assisting Artscape staff with the solicitation, review and selection of programming for the performance/event space and outdoor performance court.
- iv. Additional ad hoc committees may be established by Artscape to assist with the management and governance of RPACC.

#### **B) RPAD's Oversight Role**

- i. RPAD has an ongoing asset management role with respect to RPACC. Legally and financially it is responsible for the building and will keep accurate books and records, make corporate filings, undertake annual financial audits, act as a party to agreements and other tasks related to good corporate governance.
- ii. As the developer of RPACC, RPAD will take all steps necessary related to the capital project including: oversight of construction and project management agreements; government relations including all required reporting to Federal/Provincial Infrastructure Stimulus Funding Program; securing financing if required and any other steps required to successfully conclude the capital project.
- iii. As an additional measure of ensuring community stewardship of RPACC, RPAD will monitor the performance of Artscape under the terms of its lease. This review will happen quarterly during the first full year of operations, semi-annually in years two and three and annually thereafter.

The review will determine a) the level of effectiveness of Artscape's management of RPACC in accordance with the operating covenants listed below and b) what measures are recommended by RPAD to improve Artscape's performance.

To assist RPAD in conducting its review, Artscape will send a written report a minimum of 7 days in advance of each scheduled review to RPAD board members. Such reports will include Artscape's analysis of its performance according to the covenants and financial reports. The operating covenants that will apply over the term of the lease between RPAD and Artscape include:

**Community Stewardship:**

- Artscape will elect and maintain two members of Artscape's board that are drawn from the Regent Park community
- Artscape will engage sub-tenants of RPACC in a Tenant Liaison Committee
- Artscape will engage at least three members of the Regent Park Community on RPACC's Program Advisory Committee
- Artscape will engage members of the Regent Park Community on ad hoc committees established to assist with the management and operation of RPACC

**Operating:**

- Artscape will operate RPACC on a cost-recovery basis wherein revenues are equal to expenses
- Artscape will re-invest any surplus of funds in the future advancement of RPACC; however, it will recover any losses incurred in prior years before surpluses are directed to any other RPACC use
- Artscape will produce an annual financial report certified by an accredited third party auditor to verify RPACC's revenues and expenses
- Artscape will adhere to all applicable bylaws and obtain any necessary permits required for the operation of RPACC
- Artscape will work collaboratively to develop, adopt and enforce a Tenant Charter that sets out the code of conduct for occupants of RPACC



## **Programming:**

- Artscape will manage and program RPACC in such a way as to generate a quadruple bottom line that creates:
  - A diverse, dynamic cultural environment
  - A richer, inclusive social fabric
  - A stronger local economy
  - A cleaner, greener environment
  
- The founding vision for RPACC at the beginning of the project is as follows: Regent Park Arts & Cultural Centre is a platform for cultural exchange and collaboration rooted in Regent Park and open to the world. It is a place where people come to be inspired, to learn, to share, to create. The Centre is:
  - A showcase for artistic talent
  - An incubator of creative people and organizations
  - A workshop for new artistic creations
  - The social heart of Regent Park

Any substantive changes to the vision will require the approval of the RPAD board.

- The selection of programming for RPACC will be guided by the following values:
  - Excellence in artistic creation
  - Inclusivity, participation and learning
  - Celebrating and serving our diverse community
  - Collaboration, dialogue and social engagement
  - A healthy, sustainable community

Any substantive changes to the vision will require the approval of the RPAD board.

- Artscape will use its best efforts to ensure affordable access to the performance/events space and outdoor performance court for local arts and community organizations. This affordable access will be achieved through donations raised to offset operating expenses and/or cross-subsidies from other rentals. RPAD and Artscape acknowledge that achieving the vision and programming values described above while providing affordable access will require booking corporate rentals and private events that may not advance these programming objectives.

## **SCHEDULE C**

### **Tenant Selection Principles**

#### **Vision**

- Is the tenant organization's mission, work, programming and/or activities rooted in a strong organizational vision?
- Is the organizational vision appropriate to the site?
- Would the tenant and its programs make a substantial contribution to RPACC and the Regent Park community?
- Is the tenant's work, programming and/or activities rooted in inclusivity and accessibility of service for diverse populations?

#### **Leadership & Organizational Capacity**

- Does the tenant organization demonstrate the leadership, organizational capacity and experience to deliver its proposed vision and program?
- Does the tenant demonstrate the necessary level of management experience to deliver the vision?

#### **Financial Sustainability**

- Does the tenant organization demonstrate the necessary financial stability and sustainability to deliver its program vision?

This is Exhibit "M" referred to in the Affidavit of Ben Macintosh, affirmed by Ben Macintosh, at the City of Toronto, in the Province of Ontario, before me on this 3<sup>rd</sup> day of January, 2024, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

*Christopher J. Henderson*

Christopher J. Henderson  
Commissioner for Taking Affidavits

**LEASE AGREEMENT**

**B E T W E E N**

**2295477 ONTARIO INC.**

**(the Landlord)**

**-and-**

**TORONTO ARTSCAPE INC.**

**(the Tenant)**

**-and-**

**22 JOHN STREET DEVELOPMENTS INC.**

**(the 22 John Owner)**

**-and-**

**CITY OF TORONTO**

**(the City)**

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THIS LEASE is dated the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

BETWEEN

2295477 ONTARIO INC.

(the Landlord)

-and-

TORONTO ARTSCAPE INC.

(the Tenant)

-and-

22 JOHN STREET DEVELOPMENTS INC.

(the 22 John Owner)

-and-

CITY OF TORONTO

(the City)

APPROVED AS TO FORM

For Brian Haley, Interim City Solicitor (SKL)  
File # 2100-805-1322.14

**WHEREAS**

A. The Landlord is the registered owner of the Lands and Building municipally known as 33 King Street, Toronto (former City of York), Ontario, comprised of a mixed used residential and commercial development;

B. 22 John Street Developments Inc., as owner of the adjoining lands municipally known as 22 John Street, Toronto (the "22 John Lands"), has submitted various planning applications regarding the development of such lands;

C. As required by a Section 37 Agreement dated July 15, 2016 between the City, the 22 John Owner and the Landlord, to be registered on title to the Lands and the 22 John Street Lands (the "Section 37 Agreement"), the Landlord is required to enter into this Lease, pursuant to which the 22 John Owner shall carry out and complete construction of the Landlord's Work as set out in this Lease, which construction is expected to be completed contemporaneously with the construction of a new residential rental apartment building by the 22 John Owner on the 22 John Lands (the "Rental Building");

D. The Tenant is a not-for-profit urban development organization serving the needs of the arts and cultural community, including providing arts and cultural centres located in Toronto and wishes to establish a community centre and cultural hub in the Leased Premises;

E. The City is a party to this Lease, with the rights set out in Article 12; and

F. This Lease is authorized by Item EX 10.6 of the Executive Committee, adopted by the City of Toronto Council at its meeting held on December 9 and 10, 2015, and Item EY10.1 of the Etobicoke York Community Council, adopted by City of Toronto Council at its meeting held on December 9 and 10, 2015, and EX43.7 of the Executive Committee, adopted by Council on May 11 and 12, 2010 [DAF Tracking No. 2016-160] (the "Council Authority").

**IN CONSIDERATION** of the rents, covenants and agreements contained in this Lease, the parties **AGREE** as follows:

**ARTICLE 1 - BASIC TERMS**

1.1 Definitions and Interpretation

- (a) The Definitions contained in Schedule A form part of this Lease.
- (b) Each reference in this Lease to any of the Basic Terms in this Article 1 shall be read as having the same dates, quantities and other meanings as specified in this Article 1.



In the event of any inconsistency between such terms and the terms hereinafter set out in this Lease, the Basic Terms shall govern to the extent of the conflict.

1.2 Leased Premises

The Leased Premises are the premises on the ground floor of the Building, as shown on Schedule B to this Lease, and are comprised of (i) an indoor area of approximately 8,236 square feet shown as Part 27 on the Reference Plan, as improved by the Landlord's Work, and (ii) the Outdoor Space, the legal description of the Leased Premises being set out in Schedule D of this Lease.

1.3 Term

The term of this Lease (the "**Term**") shall be Fifty (50) Years less One (1) day having a commencement date that is the date (the "**Commencement Date**") which is (i) the earlier of thirty (30) days after the date the Landlord's Work is Substantially Complete and (ii) January 1, 2020 (the "**Outside Date**"), as such Outside Date may be extended in accordance with this Lease.

1.4 Rent

- (a) The Tenant shall pay to the Landlord annual Basic Rent of One (\$1.00) Dollar, each year of the Term commencing on the Commencement Date and thereafter on each on the anniversary of the Commencement Date.
- (b) The Lease shall be fully net and carefree to the Landlord. The Tenant is responsible for any and all costs and expenses whatsoever in any way relating to the Leased Premises including, without limitation, all Additional Rent as set out in Section 3.3 of this Lease. For clarity, unless a cost or expense is expressly provided for herein to be for the Landlord, such costs or expenses shall be the sole responsibility of the Tenant. Notwithstanding anything else contained herein, the Tenant shall not be responsible for any costs for structural components not related to the Leased Premises.

1.5 Permitted Use

The Leased Premises shall be used solely for the purpose of a community centre and a cultural hub.

1.6 Special Rights

The Tenant shall have an option to lease the Option Space as set out in Section 2.6 below.

**ARTICLE 2 - TERM, LEASED PREMISES AND DISPOSITION**

2.1 Grant

The Landlord leases to the Tenant, and the Tenant leases from the Landlord, the Leased Premises, to have and to hold for the Term upon the terms and conditions and subject to the limitations set out in this Lease.

2.2 Completion of Landlord's Work by 22 John Owner

- (a) The parties acknowledge that the completion of the Landlord's Work is a requirement of the Section 37 Agreement and that the plans and specifications referred to in the Section 37 Agreement are the Plans and Specifications attached to this Lease.
- (b) The 22 John Owner shall carry out the Landlord's Work in accordance with the provisions of Schedule C to this Lease and the Plans and Specifications, on behalf of the Tenant. For greater certainty, the Tenant and the City acknowledge and agree that in the event of default by the 22 John Owner to complete the Landlord's Work, the Tenant and the City shall have rights against the 22 John Owner as detailed in Section 15.7, and the Landlord (except as specifically set out in Section 15.7) shall have no liability or obligation whatsoever in respect of the Landlord's Work and the

Tenant and the City shall not have recourse in law or equity against the Landlord in this regard.

- (c) The Section 37 Agreement contemplates a payment of \$1,250,000.00 to the Tenant from the 22 John Owner as an operating fund in connection with the operation of the Leased Premises. The Tenant acknowledges that payment of such Operating Fund is conditional upon receipt of the "**Tenant Contribution**" of \$1,000,000.00 set out in the Live/Work Lease. In the event that the Tenant Contribution is not paid to the Landlord in accordance with the Live/Work Lease, the 22 John Owner shall be entitled to set off its obligation to pay the operating endowment by an amount equal to any deficiency in the Tenant Contribution, which set off may be applied to fund the Landlord's Work.
- (d) The Parties acknowledge that the Contribution Agreement has been executed to finance the construction of certain residential units in accordance with the Live/Work Lease, but that the completion of the Landlord's Work hereunder is contingent upon receipt of the Contribution Agreement Advances. Accordingly, The 22 John Owner shall commence the Landlord's Work within one hundred and twenty (120) days of the execution of the Contribution Agreement, provided that the 22 John Owner's obligation to commence the Landlord's Work is conditional upon:
  - (i) receipt of a fully executed copy of the Contribution Agreement,
  - (ii) the fulfilment of all conditions precedent set out in the Contribution Agreement to the advance of funds; and
  - (iii) the first advance of funds being made by the City to the Escrow Agent; and
  - (iv) confirmation to the Landlord that all fee waivers contemplated in the Contribution Agreement and the Council Authority have been granted.
- (e) In the event the Contribution Agreement Advances are not made for any reason whatsoever (including, without limitation, default of the Tenant or failure to advance by the City) the Landlord or the 22 John Owner (as the case may be) shall, in addition to any other remedies it may have, be relieved of its obligations to commence, or if commenced, complete the Landlord's Work.

### 2.3 Surrender at Expiration of Term

At the expiration or earlier termination of the Lease, the Tenant shall:

- (a) Peaceably surrender and yield up vacant possession of the Leased Premises to the Landlord, reasonable wear and tear excepted.
- (b) The Tenant shall not execute any agreement with respect to the Leased Premises (including the provision of services) which expires after the end of the Term, without the consent of the Landlord, which may be unreasonably withheld;
- (c) The Tenant shall deliver to the Landlord all keys and security/ alarm codes to the Leased Premises and the combination of all locks, safes and vaults, if any, in the Leased Premises; and
- (d) In addition, sixty (60) days before the end of the Term or upon other termination of this Lease, the Tenant shall deliver to the Landlord copies of the Tenant's rent roll, setting out the names of any sub-tenants, their monthly rental payments, deposits held and interest owing on same (if any), any arrears of which the Tenant is aware, and copies of all written sub-leases or other contracts. To the extent the Tenant has other documentation relevant to the operation of the Leased Premises, it shall deliver same to the Landlord.

## 2.4 Entry

Provided that the Tenant's operations are not unduly interfered with, during regular business hours from time to time and upon reasonable notice to the Tenant:

(a) the Landlord may, during the last twelve (12) months of the Term, show the Leased Premises to prospective tenants and, for that purpose, the Landlord, its agents, and prospective tenants may enter on and inspect all parts of the Leased Premises; and

(b) the Landlord may show the Leased Premises to prospective mortgagees or purchasers of the Building, and for that purpose its and their agents and employees may enter on and inspect all parts of the Leased Premises.

## 2.5 Holding Over

If the Tenant remains in possession of the Leased Premises after the end of the Term with the consent of the Landlord and without the execution and delivery of a new lease, there shall be no tacit renewal of the Lease or extension of the Term, nor shall a tenancy from year to year be created, but, notwithstanding any statutory provisions to the contrary, a monthly tenancy shall be created, at a monthly Basic Rent equal to one hundred and twenty percent (120%) of the annual Basic Rent last payable, and otherwise on the terms and conditions set out in this Lease insofar as they are applicable.

## 2.6 Option to Lease Option Space

Provided that the Tenant is: (a) Artscape Toronto Inc. or the City; (b) in occupation of the whole of the Leased Premises; and (c) not in material default under this Lease, the Tenant shall have a one-time option to lease the Option Space (the "**Option**") during the Term as follows:

- (i) the Option must be exercised by the Tenant by notice in writing to the Landlord on or before the 10<sup>th</sup> anniversary of the Commencement Date (the "**Option Notice**"). The Option is of no further force or effect if not exercised before that date;
- (ii) within thirty (30) days of receiving the Option Notice, the Landlord shall advise the Tenant of the date that Tenant may take possession of the Option Space, which date shall be no more than ninety (90) days following receipt of the Option Notice; and
- (iii) if the Tenant exercises the Option, this Lease shall be deemed amended to include the Option Space, effective the date the Tenant takes possession, as part of the Leased Premises on the same terms and conditions as contained in the Lease, except:
  - (A) The Tenant shall be solely responsible, at its cost, for all Leasehold Improvements to the Option Space and work required to integrate the Option Space into the Leased Premises, such work to be completed in accordance with ARTICLE 9 of this Lease;
  - (B) The Tenant's Proportionate Share shall be increased by increasing the area of the Leased Premises by the area of the Option Space; and
  - (C) the term of the lease for the Option Space shall be coterminus with the remainder of the Term.

### ARTICLE 3 – RENT AND OTHER TENANT CHARGES

#### 3.1 Net Lease

The Tenant shall pay Basic Rent and Additional Rent as provided in this Lease. It is the purpose and intent of the parties that Basic Rent shall be fully net and carefree to the Landlord, so that this Lease shall yield the Basic Rent specified in each year during the Term without notice or demand, and free of any charges, assessments, impositions or deductions of any kind, and without abatement, deduction or set-off, and under no circumstances or conditions whether now existing or hereafter arising, whether beyond the present contemplation of the parties or otherwise, is the Landlord to be expected or required to make any payment of any kind whatsoever in respect of the Leased Premises, and the Tenant shall pay, as Additional Rent, all charges, impositions and expenses of any kind relating to the Leased Premises, except as specifically set out herein. For clarity, unless a cost or expense is expressly provided for herein to be the responsibility of the Landlord, such costs or expenses shall be the sole responsibility of the Tenant. Notwithstanding anything else herein, the Tenant shall not be responsible for any costs for structural components described in Section 9.1 not related to the Leased Premises.

#### 3.2 Basic Rent

The Tenant will pay to the Landlord, without deduction or set off, basic rent as provided in Section 1.4 of this Lease ("**Basic Rent**"), which shall be payable as set out in Section 1.4.

#### 3.3 Additional Rent

- (a) In addition to Basic Rent, the Tenant shall throughout the Term, pay to the Landlord, without any deduction, abatement or set-off whatsoever, the following costs as additional rent (collectively, "**Additional Rent**")
- (i) the Tenant's Proportionate Share of Operating Costs;
  - (ii) any costs that would otherwise be included in Operating Costs, but are determined by separate metering or assessment of the Leased Premises or otherwise incurred by the Landlord for the exclusive benefit of the Leased Premises;
  - (iii) all other sums, amounts, costs, cost escalations and charges specified in this Lease to be payable by the Tenant;
  - (iv) the costs of any Utilities serving the Leased Premises, to the extent paid by the Landlord; and
  - (v) all Taxes attributable to the Leased Premises payable in respect to the Rent or the operations of the Tenant, if any, to the extent paid or payable by the Landlord.

#### 3.4 Payment of Additional Rent

- (a) The Landlord, acting reasonably, may estimate Additional Rent and the Tenant agrees to pay such estimated Additional Rent on the first day of each and every month of the Term. Within a reasonable period of time after the end of each calendar year, the Landlord shall provide the Tenant with a statement, prepared by its accountant, of actual Additional Rent in reasonable detail, together with access to supporting invoices at a location to be determined by the Landlord, acting reasonably, and during business hours. If the Tenant has overpaid Additional Rent, then, provided the Tenant is not in default and no notice of default is then outstanding, the Landlord shall reimburse the Tenant within thirty (30) days of delivery of such statement, without interest or at the Landlord's option, apply such overpayment to future Additional Rent as it falls due. If the Tenant has underpaid Additional Rent, the Tenant shall pay the Landlord the shortfall within thirty (30) days of delivery of such statement, without interest.
- (b) All Additional Rent shall be deemed to be and shall be paid as Rent, whether or not any payment is payable to the Landlord or otherwise, and whether or not as

compensation to the Landlord for expenses to which it has been put. In the event of non-payment or late payment thereof, the Landlord shall have the same remedies as it is entitled to under this Lease and by law for non-payment of Rent.

- (c) The Tenant shall not claim a readjustment in respect of Additional Rent except by notice given to the Landlord within three (3) months after delivery of the accountant's statement and, if requested, access to supporting invoices, stating the particulars of the error in computation of Additional Rent, or the Tenant's share thereof. In the event of a dispute, the finding of the Landlord's accountant as to the Additional Rent shall be conclusive.

### 3.5 Computation of Operating Costs

- (a) The Tenant shall pay the Tenant's Share of Operating Costs. Subject to subparagraph (b), The "**Tenant's Share**" shall be equal to the leaseable area of the Leased Premises, initially comprising approximately **8,236 square feet**, divided by the leaseable total area of the Building, being **433,650 square feet** (the "**Tenant's Proportionate Share**").
- (b) When and if any costs of the Landlord which are included in Operating Costs is used disproportionately by the Tenant in relation to the balance of the Building, the Landlord shall be entitled, but not obligated, to allocate such Operating Costs to the Tenant on the basis of such factors as the Landlord reasonably determines to be relevant, such as, by way of example, the relative uses of such service and the benefits derived by them. In such event, after consultation with the Tenant and with evidence of such disproportionate use (with no right of approval), the Landlord shall be entitled to adjust the Tenant's Share of Operating Costs with respect to such services, including, where reasonable to do so, allocating the entirety of a cost incurred to the Tenant or to other tenants of the Building.
- (c) For illustrative purposes only, the costs intended to be charged as Operating Costs as of the date of this Lease are set out in Schedule F to this Lease. The parties acknowledge that Operating Costs actually charged to the Tenant may change over time and the Landlord is entitled to charge as Operating Costs such other costs as may be consistent with building management practices in the City of Toronto.

### 3.6 Interest on Arrears

All arrears of Rent shall bear interest from their respective due dates until the actual dates of payment at the Default Rate.

### 3.7 Payment Method

At the Landlord's request, the Tenant shall make all payments under this Lease by way of automatic withdrawals or electronic funds transfer from the Tenant's bank account, and shall execute and deliver, either concurrently with this Lease and thereafter from time to time within three (3) Business Days following request therefor, such documentation as may be required by the Landlord and its bank in order to effect such payments. Alternatively, the Landlord may require the Tenant to provide post-dated cheques in respect of the Rent. *This Section 3.7 shall not apply, if the Tenant is the City of Toronto.*

### 3.8 Partial Periods

If the Term commences on any day other than the first day of the month, or ends on any day other than the last day of the month, Rent for the fractions of a month at the commencement and at the end of the Term shall be calculated on a *pro rata* basis and shall be payable on the first day of the partial month.

## ARTICLE 4- TAXES

### 4.1 Taxes Payable by Tenant

The Tenant shall pay, and indemnify and hold harmless the Landlord from and against payment of, and any interest or penalty in respect of, the following on or before the due date therefor:

- (a) subject to Sections 4.2 and 4.3 below, any Taxes directly to the taxing authority. The Tenant shall exhibit to the Landlord within ten (10) days of the payment of any imposition payable by the Tenant, copies of official receipts of the appropriate taxing authority or other proof satisfactory to the Landlord.
- (b) every tax, licence fee, rate, duty and assessment of every kind with respect to any business carried on by the Tenant on the Lands or by any subtenant, licensee, concessionaire or franchisee or anyone else, or in respect of the use or occupancy of the Lands by the Tenant, its subtenants, licensees, concessionaires or franchisees, or anyone else (other than such taxes as income, profits or similar taxes assessed upon the income of the Landlord).
- (c) all Taxes or other impositions in respect of the Tenant's fixtures, Leasehold Improvements (including improvements arising as a result of the Landlord's Work), equipment or facilities on or about the Lands, and any Taxes or impositions occurring as a result of any reason peculiar to the Tenant.

### 4.2 Determination of Share

If the Leased Premises are not separately assessed, the Tenant shall pay the Landlord the Tenant's Proportionate Share of Taxes assessed in respect of the Property. For the purposes of determining the share of Taxes payable by the Tenant pursuant to this Lease, Taxes shall include such additional amounts as would have formed part of Taxes had the Property been fully assessed during the whole of the relevant fiscal period as fully completed and fully occupied by tenants, with no special exemptions or reductions, and without taking into account any actual or potential reduction of Taxes or change of assessment category or class of premises within the Property which are vacant or underutilized.

### 4.3 Tax Exemption

It is acknowledged that Toronto City Council has authorized a by-law providing authority to:

- (a) enter into a "Municipal Capital Facility Agreement" with the Tenant for the portion of the community/cultural hub at 33 King Street that will be used as an eligible municipal capital facility for community centre use and for parking ancillary to such use (the "**Eligible Hub Property**") all in accordance with Ontario Regulation 598/06 on such terms and conditions satisfactory to the General Manager, Economic Development & Culture and in a form approved by the City Solicitor;
- (b) exempt the Eligible Hub Property from development charges, planning application and building permit fees, and property taxation for municipal and school purposes, and for which the property tax exemption is to be effective from the latter of: (i) the date the Municipal Capital Facility Agreement is signed, (ii) the date the by-law is enacted; and (iii) the commencement date of the Lease;
- (c) such agreement shall provide that so long as the by-law exemption and the Municipal Capital Facility Agreement both remain in full force and effect, the Landlord shall pass the full benefit of the exemption for Eligible Hub Property on to the Tenant who, during the entire period of any such exemption, shall not be required to pay Taxes to the extent of such exemption; and
- (d) if required to give effect to the exemption contemplated in this section, the Landlord shall enter into a Municipal Capital Facility Agreement with respect to operation of the community/cultural hub to be operated by the Tenant, on terms and conditions satisfactory to the Landlord and the City, each acting reasonably, and at the cost of the Tenant, for the purposes of securing the exemptions contemplated in this Section.

#### 4.4 Harmonized Sales Tax

- (a) The Landlord warrants that it has complied with the self-supply rule contained in section 191(3) of the *Excise Tax Act* (Canada) as builder, and shall indemnify the Tenant from any liability for H.S.T. arising from the self-supply.
- (b) Subject to Section 4.4 (a), The Tenant shall pay an amount equal to any and all taxes, rates, duties, levies, fees, charges and assessments whatsoever, whether or not in existence at the commencement of the Term, assessed, charged, imposed, levied or rated by any taxing authority, whether federal, provincial, municipal or otherwise, on or against Landlord or Tenant, with respect to the Rent payable by Tenant to Landlord under this Lease or the rental space under this Lease or the provision or supply of any goods, services or utilities whatsoever by Landlord to Tenant under this Lease, whether any such tax, rate, duty, levy, fee, charge or assessment is called or characterized as a sales, use, consumption, value-added, business transfer or Harmonized Sales Tax or otherwise (collectively, "H.S.T."). If the applicable legislation requires that any H.S.T. is to be collected by Landlord, the amount of the H.S.T. so payable by the Tenant shall be calculated by Landlord in accordance with the applicable legislation and shall be paid by Tenant to Landlord at the same time as the Basic Rent is payable, or at such other time or times as the applicable legislation may from time to time require. Despite any other provision of this Lease, the amount or amounts from time to time payable by Tenant under this Section shall be deemed not to be consideration for the supply of space under this Lease, but shall be considered to be Rent for purposes of Landlord's rights and remedies for non-payment and recovery of any such amounts.

### **ARTICLE 5 - UTILITIES**

#### 5.1 Provision of Utilities

The Landlord shall provide Utilities that are available generally for the Building to the Leased Premises in accordance with the Plans and Specifications. The Landlord shall maintain in good order and repair all facilities and equipment providing the Utilities (including fire suppression systems) to the Leased Premises with all costs for same forming part of Operating Costs, provided that if any such maintenance repair is due to the act or omission of the Tenant or those for whom it is responsible at law, such costs shall be the sole responsibility of the Tenant.

#### 5.2 Metering

The Landlord shall install a separate meter for electricity. The Landlord may install separate meters for the following utilities as part of the Landlord's Work: (a) water; and (b) natural gas.

#### 5.3 Payment of Utilities

- (a) The cost of any utilities not separately metered, and with respect to which the Tenant is not paying the supplier directly, shall be charged to the Tenant as an Operating Cost.
- (b) The cost of any utilities separately metered, and with respect to which the Tenant is not paying the supplier directly, shall be charged entirely to the Tenant.
- (c) The Tenant shall pay promptly when due all charges, costs, accounts and any other sums payable by reason of the supply of the utilities and services to the Leased Premises. Where required by the Landlord, the Tenant shall contract with and pay the supplier directly.

#### 5.4 No Overloading

The Tenant will not install any equipment which would exceed or overload the capacity of any Utility serving in the Leased Premises, including, without limitation, electrical wiring and service in the Leased Premises, and agrees that if any equipment installed by the Tenant shall require additional utility facilities, such facilities shall be installed, if available, and subject to the Landlord's prior written approval thereof (which approval may not be unreasonably

withheld), at the Tenant's sole cost and expense in accordance with plans and specifications to be approved in advance by the Landlord, in writing.

#### 5.5 No Liability

In no event shall the Landlord be liable for any injury to the Tenant, its employees, agents or invitees, or to the Leased Premises, or to any property of the Tenant or anyone else, for any loss of profits or business interruption, indirect or consequential damages, or for any other costs, losses or damages of whatsoever kind arising from any interruption or failure in the supply of any utility or service to the Leased Premises, other than a disruption of service caused by the gross negligence of the Landlord or by those for whom it is responsible at law.

#### 5.6 HVAC

The Tenant shall, throughout the Term, operate and regulate the HVAC Equipment serving the Leased Premises in such a manner as to maintain reasonable conditions of temperature and humidity within the Leased Premises in accordance with operating instructions provided by the Landlord. The Landlord shall maintain in good order and repair all HVAC Equipment serving the Leased Premises with all costs for same forming part of the Operating Costs, provided that if any such maintenance or repair is due to the act or omission of the Tenant, or those for whom it is responsible at law, such costs shall be the sole responsibility of the Tenant. Notwithstanding the forgoing the costs of capital replacement of HVAC Equipment shall be subject to the provisions of Section 9.1.

#### 5.7 Garbage and Waste Collection

The Tenant covenants and agrees that all waste and garbage in the Leased Premises shall be taken to the "**Hub Garbage Holding Room**" within the Leased Premises as shown on Schedule B at the Tenant's sole cost and expense. The Landlord shall, as part of Operating Costs, cause such garbage and waste to be taken in a timely manner to the "**Garbage Room**" located in the Building (or such other area as the Landlord may determine). Such waste and garbage shall be disposed of with other garbage and waste from the Building, and the costs thereof shall form part of the Operating Costs.

### **ARTICLE 6 - USE OF THE LEASED PREMISES**

#### 6.1 Use of the Leased Premises

- (a) The Tenant shall use the Leased Premises solely for the purpose set out in Section 1.5 and for no other purpose. The Tenant shall continuously, actively and diligently carry on such use in the whole of the Leased Premises throughout the entire Term, subject to Force Majeure. Notwithstanding the foregoing, the Tenant may close the Leased Premises periodically for periods not exceeding three (3) months each and no more than once in any 24 month period, or such longer period as may be consented to by the Landlord, for renovations to the Leased Premises, provided that such renovations are carried out within a commercially reasonable timeframe. It is acknowledged that in the event the Leased Premises is divided into smaller units, the vacancy of such smaller units in the normal course of the Tenant's business shall not be a breach of this covenant provided that the aggregate of such vacant units does not to exceed 20% of the area of the Leased Premises at any one time. During the Disposition Period described in Article 12, ARTICLE 12 will prevail in the event of any conflict with this section.
- (b) The Tenant shall not commit, cause or permit any nuisance or waste on the Leased Premises or the Common Areas or permit the emission of any offensive substance, odour or noise from the Leased Premises and shall take all necessary actions to prevent same from occurring at its sole cost and expense. This paragraph (b) shall not be interpreted in such a manner so as to prevent the Tenant or its tenants from carrying on activities in the Leased Premises for the purposes described in Section 1.5 herein, so long as the activities do not constitute a nuisance and are in compliance with all applicable laws.
- (c) In addition to Section 5.4 above, the Tenant shall not permit or allow any overloading of the floors of the Premises, and shall not bring into the Leased



Premises any articles or fixtures that, by reason of their weight, use or size, might damage or endanger the Leased Premises.

- (d) The Tenant shall not at any time cause or permit any sign, picture, advertisement, notice, lettering, flag, decoration or direction to be painted, displayed, inscribed, placed, affixed or maintained within the Leased Premises which is visible outside the Leased Premises, or in or on any windows or the exterior of the Leased Premises without the Landlord's prior written consent acting reasonably.
- (e) The Tenant shall conduct its business in a manner consistent with the best interests of the Building and Area Redevelopment as a whole. Without limiting the foregoing, the Tenant shall not use or permit the Premises, or any part thereof, to be used for any of the following businesses, purposes or activities:
  - (i) the dispensing of any kind of narcotic, such as, by way of example, a methadone clinic, or the dispensing of alcohol unless permitted in accordance with applicable law;
  - (ii) an auction, flea market, arcade, bingo hall, casino or other similar gaming establishment, pawn shop, bulk or liquidation sales;
  - (iii) any unlawful purpose or activity;
  - (iv) the featuring of full or partial nudity or a body rub parlour;
  - (v) an addiction clinic or centre of housing for addicts or recovering addicts; or
  - (vi) any other businesses, purposes, or activities that would reasonably be seen as lowering the character and reducing the value of the Building or Area Redevelopment.

## 6.2 Quiet and Peaceful Enjoyment

- (a) Upon payment by the Tenant of the Rent and the observance and performance of all of the agreements, covenants, terms and conditions on Tenant's part to be observed and performed, the Tenant shall quietly enjoy the Premises for the Term without hindrance or interruption by Landlord or any other person or persons lawfully or equitably claiming by, through or under Landlord, subject to the terms of this Lease, the title to the Lands and Section 6.2(b) below.
- (b) The Tenant acknowledges that the 22 John Lands are intended to be redeveloped by the 22 John Owner, as a residential apartment building including the construction of an overhead passage way between such apartment building and the 3<sup>rd</sup> floor of the Parkade, an outdoor public space and a parking lot to be owned and operated by the Toronto Parking Authority (the "Area Re-Development"), which the Landlord has consented to and that, among other things, the repair, replacement and maintenance of the overhead passage way between the Rental Building and the Building, Parkade, and other portions of the Building may result in noise, dust, and vibration that affect the quiet enjoyment of the Tenant, and its sub-tenants. The Tenant shall include a clause in its subleases that the subtenants acknowledge the temporary impacts described above and shall not bring any proceeding of any nature or kind whatsoever with respect to such impacts.

## 6.3 Observance of Laws and Agreements

The Tenant will, at its expense:

- (a) comply with all provisions or changes of law and other requirements of all governmental bodies which pertain to or affect the Leased Premises or require or govern the making of any repairs, alterations or other changes of or to the Leased Premises or the Tenant's use of it;
- (b) comply with the obligations of the Landlord in relation to the Leased Premises as set out in the Permitted Encumbrances; and

- (c) comply with every requirement of the Landlord's insurance underwriters in respect of the Tenant's operation of its business, and shall not commit any act or omission that causes an increase in the fire risk or the cost of insurance, or prevents the placing of insurance on the Buildings.

#### 6.4 Required Provisions for Sub-leases

The Tenant shall ensure that any sub-lease agreements entered into with respect to the Leased Premises permit the Landlord to carry out its obligations under this Agreement, and, without limiting the foregoing, shall include the following warning clause in all such agreements:

- (a) "Sub-tenants are advised that maintenance, repair and replacement of the concrete structures above the Leased Premises will be required from time to time. Such maintenance, repairs and replacements may, during the term, cause noise and vibration which may be disturbing to occupants or users. Further, there may be occasions when access to the premises is required for support, maintenance and repair of the structures above. The Head Landlord will carry on such work in a commercially reasonable manner so as to minimize the disruption to the Tenant. Except in the event of an emergency, any such access will be planned with full consultation with Toronto Artscape Inc., or its successor or permitted assign;"
- (b) "The sub-lease may be terminated in the event of damage or destruction to the Leased Premises or Building where the Head Landlord has the obligation or right to terminate the Head Lease, or requires vacant possession for the purposes of reconstruction.";
- (c) "The sub-tenant acknowledges that the Outdoor Space is a non-exclusive portion of the premises leased by the Head Landlord to Toronto Artscape Inc. and access to the Outdoor Space shall be available to the public.";
- (d) "The sub-tenant acknowledges that the Head Landlord may periodically require access to the Leased Premises for the purpose of making emergency repairs, and during normal business hours on reasonable prior written notice, for the purpose of inspecting and making repairs, alterations or improvements to the Leased Premises, or for the purpose of having access to the under floor ducts, to the access panels to mechanical shafts and fire suppression systems (which the sub-tenant agrees not to obstruct), or to conduct maintenance, repair and replacement of the concrete structures above the Leased Premises.";
- (e) A release of the Landlord substantially as follows: "Notwithstanding the foregoing or anything else herein contained, in no event, whether or not the result of the wilful act or the negligence of the Head Landlord, its agents, officers, employees or others for whom it is legally responsible and irrespective of any insurance that may or may not be carried or required to be carried, shall the Head Landlord be liable for:
  - (i) damage to property of the sub-tenant or others located on the Leased Premises;
  - (ii) any injury or damage to persons or property resulting from fire, explosion, steam, water, rain, snow or gas which may leak into or issue or flow from any part of the Building or from the water, steam, or drainage pipes or plumbing works of the Building or from any other place or quarter;
  - (iii) any damage caused by or attributable to the condition or arrangement of any electrical or other wiring (except as warranted as part of the Landlord's Work);
  - (iv) any indirect or consequential damages suffered by the sub-tenant; or

- (v) any inconvenience or damage arising out of the exercise of the Head Landlord's rights to enter the Leased Premises";
- (f) "In the event of a default under the Head Lease, any sub-tenant shall, on notice from the Head Landlord and without limitation to any other rights the Head Landlord may have, attorn to and pay all rents to the Head Landlord". For greater certainty, these rents shall be applied to reduce rent arrears owed by the Tenant.

#### 6.5 Environmental Matters

- (a) The Landlord covenants and agrees that it shall be fully responsible for any and all liabilities arising from a breach of Environmental Laws relating to the Leased Premises, other than those caused by the Tenant, or any person or party that they are responsible for, and shall indemnify and save the Tenant harmless against, any and such liabilities, claims, damages, interest, penalties, fines, monetary sanctions, losses, costs and expenses whatsoever.
- (b) Without limiting any other obligation of the Tenant in this Lease, the Tenant covenants and agrees that it shall, at its sole cost and expense, observe and otherwise comply with, and cause its sub-tenants, invitees and all other occupants of the Leased Premises to observe and comply with all Environmental Laws. Without limiting the generality of the foregoing, the Tenant covenants and agrees that:
  - (i) it shall not cause or permit any Hazardous Substance to be brought into, stored, kept or used in or about the Premises or any part thereof, other than any Hazardous Substance that is used in the ordinary course of the permitted use being carried on at the Premises and which is stored, kept and used in strict compliance with all Environmental Laws pertaining thereto;
  - (ii) on the expiration or earlier termination of this Lease, it shall cause each and every Hazardous Substance brought into, stored, kept or used in the Premises by the Tenant to be removed from the Premises in compliance with all Environmental Laws pertaining thereto; and
  - (iii) it shall be fully responsible for any and all liabilities arising from a breach of this Section or Environmental Laws, relating to the Leased Premises that are caused by the Tenant, its sub-tenants or any person or party that they are responsible for, and shall indemnify and save the Landlord harmless against, any and all such liabilities, claims, damages, interest, penalties, fines, monetary sanctions, losses, costs and expenses whatsoever.

### **ARTICLE 7 – THE COMMON AREAS AND THE BUILDING**

#### 7.1 Operation of the Common Areas and Building

The Landlord shall manage, operate, maintain, repair, landscape and keep in tidy and orderly condition the driveways, walks, parking areas including shoveling or sweeping of ice, and snow therefrom, and other Common Areas and make such repairs thereto or replacements thereof as would a prudent owner of a similar project, and shall provide suitable and adequate means of access to and egress from the Leased Premises at all times. All costs incurred with respect to same shall be included in Operating Costs.

#### 7.2 Right to Use Common Areas

Subject to Section 7.3 below, the Landlord hereby grants to Tenant and Tenant's customers, invitees and employees for the entire Term, the licence to use, in common with Landlord, Landlord's tenants, customers, invitees and employees and with the other lessees and occupants of the Building, and their respective customers, invitees and employees, the Common Areas for their intended purposes, subject to any rules or regulations set out by the Landlord from time to time.

### 7.3 Landlord's Rights with respect to Common Areas

All Common Areas shall, at all times, be subject to the exclusive control and management of the Landlord or as the Landlord may direct from time to time and, without limitation, the Landlord may from time to time: (i) close parts of the Common Areas to such extent as the Landlord considers reasonably necessary to prevent the accrual of any rights therein to any persons at any time; or (ii) grant, modify and terminate easements and other agreements pertaining to the use and operation of the Common Areas, and temporarily obstruct or close off or shut down parts of the Common Areas for inspection, maintenance, repair, construction or safety reasons, and interfere, to the extent necessary and reasonable, with the use of and access over the Common Areas. In exercising its rights under this Section 7.3, the Landlord shall use reasonable commercial efforts to minimize any disruption of the operation of the Tenant's operations and, provided it complies with the foregoing, the Landlord shall have no liability for diminution or alteration of the Common Areas, and no claim for compensation shall be made by the Tenant by reason of inconvenience, nuisance or discomfort arising from the exercise of such rights.

### 7.4 Changes to the Building

Notwithstanding anything contained in this Lease, the Landlord shall have the right, at any time, to make alterations to the Building, including the Common Areas within the Building, provided the Landlord shall use reasonable commercial efforts to minimize any disruption of the operation of the Tenant's operations and, provided it complies with the foregoing, the Landlord shall have no liability for diminution or alteration of the Common Areas, and no claim for compensation shall be made by the Tenant by reason of inconvenience, nuisance or discomfort arising from the exercise of such rights.

### 7.5 Outdoor Area

The Tenant acknowledges that the Outdoor Area is a non-exclusive portion of the Leased Premises and access to the Outdoor Area shall be available to the public and the Tenant shall not erect any barrier or indication of the extent of the Outdoor Area that is visible to the public. The Landlord shall maintain, or cause to be maintained, the Outdoor Area, the costs of which shall be included in Operating Costs, such that the Tenant will pay its Tenant's Proportionate Share of the Cost of maintaining the Outdoor Area.

## **ARTICLE 8-INSURANCE**

### 8.1 Tenant to Provide Insurance

At all times during the Term, the Tenant, at its own expense, shall take out and keep in full force and effect insurance for businesses of the type being carried on by the Tenant, including:

- (a) "Tenant's Legal Liability (Broad Form)" coverage, in an amount not less than the full replacement cost thereof from time to time, insuring all property for which the Tenant is legally liable, or which is installed by or on behalf of the Tenant, within the Leased Premises including, without limitation, partitions, Leasehold Improvements, and trade fixtures
- (b) "Equipment Breakdown" insurance on equipment owned and operated by the Tenant, against accidents defined therein equal to the full replacement costs of such equipment, which policy shall include a joint-loss endorsement;
- (c) "Commercial General Liability" insurance against claims for personal injury, death or property damage or loss arising out of all operations of the Tenant, including owners' and contractors' protective, products, completed operations, bodily injury for the property of persons or property, personal injury including employer's liability, broad form blanket contractual liability, occurrence property damage with limits of not less than \$5,000,000.00 per occurrence; and
- (d) any such other forms of insurance as the Landlord, in such amounts and on such terms as the Landlord or its Lenders, acting reasonably, may require from time to time.

### 8.2 Insurance Terms and Conditions

- (a) Naming of Landlord - All such insurance shall be with insurers and shall be upon such terms and conditions as the Landlord reasonably approves. The insurance described in Section 8.1(c) (commercial general liability) shall name as an additional insured the Landlord and anyone else with an interest in the Premises from time to time designated in writing by the Landlord.
- (b) Cross-Liability and Waiver of Subrogation - All policies of liability insurance required to be taken out by the Tenant shall provide for cross-liability or severability of interests and a waiver of any subrogation rights that the Tenant's insurers may have against the Landlord and against those for whom it is in law responsible.
- (c) Insurance Companies - All policies of insurance required to be taken out by the Tenant shall be with an insurance company licensed to transact business in the Province of Ontario and shall be satisfactory to the Landlord, acting reasonably, which insurance company shall be rated no less than A- as rated by AM Best Company.
- (d) Primary Coverage - All policies of insurance required to be taken out by the Tenant shall be primary and shall not call into contribution any insurance available to the Landlord.
- (e) Undertaking - All of the foregoing policies shall contain an undertaking by the insurer, that such policy shall not be cancelled or terminated except after not less than thirty (30) days' prior written notice to the Landlord.
- (f) Limits of Insurance - All policies required to be taken out by the Tenant shall be adjusted not less than once every five (5) years in an amount for which a prudent Landlord would require to insure.

### 8.3 Payment of Premiums

The Tenant shall duly and punctually pay all premiums under the aforesaid policies as they become due and payable. In the event of default of payment by the Tenant, the Landlord may pay same and the amount so paid shall be forthwith payable by the Tenant to the Landlord together with an administration fee of fifteen percent (15%) of such premiums. If the occupancy of the Leased Premises, the conduct of business in the Leased Premises, or any acts or omissions of the Tenant in the Property or any part thereof causes or results in any increase in premiums for the insurance carried from time to time by the Landlord with respect to the Property, the Tenant shall pay any such increase in premiums as Additional Rent forthwith after invoices for such additional premiums are rendered by the Landlord.

### 8.4 Evidence of Insurance

Prior to the Commencement Date, and then upon request, the Tenant shall deliver to the Landlord evidence of the insurance required hereby in the form of Certificates of Insurance, in form and detail satisfactory to the Landlord, acting reasonably, signed by an authorized representative of the insurer. The Tenant will make available the complete original copies of all applicable policies for examination if required by the Landlord. Certificates of Insurance evidencing renewal or replacement of policies shall be delivered to the Landlord 15 days prior to the expiration of the current policies, without demand having to be made by the Landlord.

### 8.5 Landlord's Insurance

At all times during the Term, the Landlord shall take out and keep in full force and effect the following insurance:

- (a) "All Risks" property insurance on such terms and conditions as would be carried by a prudent owner of a similar building, having regard to the size, age and location of the Building, it being agreed that the Landlord shall obtain sufficient insurance to comply with its obligations pursuant to Section 10.2 of this Lease;

- (b) Equipment breakdown insurance on equipment owned and operated by the Landlord and/or its representative, against accidents defined therein equal to the full replacement costs, which policy shall include a joint-loss endorsement;
- (c) comprehensive general liability insurance against claims for personal injury, death or property damage or loss arising out of all operations of the Landlord, including owners' and contractors' protective, products, completed operations, intentional bodily injury for the property of persons or property, personal injury including employer's liability, broad blanket contractual liability, occurrence property damage with limits of not less than \$10,000,000.00 per occurrence;
- (d) The Landlord may maintain such other insurance in respect of the Building and its operation and management as the Landlord determines, acting reasonably; and
- (e) The Tenant shall be an additional insured under the Landlord's general liability policies.

#### 8.6 Proceeds of Insurance

Notwithstanding anything contained in this Lease, but subject to applicable law, the Landlord agrees to apply all proceeds of insurance for repair and reconstruction of the Property, to the extent required to complete the Landlord's Obligations pursuant to Section 10.2 of this Lease.

#### 8.7 Mutual Indemnity

Each party will indemnify the other and save it harmless from any and all losses or claims, actions, demands, liabilities and expenses in connection with loss of life, personal injury and/or damage to or loss of property: (a) occasioned or caused wholly or in part by any act or omission of such indemnifying party or anyone for whom it is in law responsible; or (b) arising from any breach by such indemnifying party of any provision of this Lease.

#### 8.8 Mutual Release

- (a) Each of the Landlord and the Tenant releases the other and waives all claims against the other and those for whom the other is in law responsible with respect to occurrences insured against or required to be insured against by the releasing party, whether any such claims arise as a result of the negligence or otherwise of the other or those for whom it is in law responsible, subject to the following:
  - (i) such release and waiver shall be effective only to the extent of proceeds of insurance received by the releasing party or proceeds which would have been received if the releasing party had obtained all insurance required to be obtained by it under this Lease (whichever is greater) and, for this purpose, deductible amounts shall be deemed to be proceeds of insurance received (subject to the right of the Landlord to include such deductible amounts in Operating Costs); and
  - (ii) to the extent that both parties have insurance or are required to have insurance for any occurrence, the Tenant's insurance shall be primary.
- (b) Notwithstanding the foregoing or anything else herein contained, in no event, whether or not the result of the wilful act or the negligence of the Landlord, its agents, officers, employees or others for whom it is legally responsible, and irrespective of any insurance that may or may not be carried or required to be carried, shall the Landlord be liable for:
  - (i) damage to property of the Tenant or others located on the Premises;
  - (ii) any injury or damage to persons or property resulting from fire, explosion, steam, water, rain, snow or gas which may leak into or issue or flow from any part of the Building or from the water, steam or drainage pipes or plumbing works of the Building or from any other place or quarter;

- (iii) any damage caused by or attributable to the condition or arrangement of any electrical or other wiring (except as warranted as part of the Landlord's Work);
- (iv) any damage caused by anything done or omitted to be done by any other tenant of the Property; or
- (v) any indirect or consequential damages suffered by the Tenant.

## **ARTICLE 9-MAINTENANCE, REPAIRS AND ALTERATIONS**

### 9.1 Landlord's Obligations – Building and Common Areas

- (a) The Landlord shall at all times keep, or cause to be kept in good order and condition reasonable wear and tear excepted:
  - (i) the foundation, bearing walls, structural columns, and beams and other structural components of the Leased Premises and the portions of the Building supporting the Leased Premises including the waterproof membrane on the roof and, if applicable, immediately above the Leased Premises;
  - (ii) all exterior walls of the Leased Premises;
  - (iii) the plumbing, drains and utility services leading up to the Leased Premises; and
  - (iv) the Common Areas (including removing snow and debris).
- (b) The Landlord shall carry out these obligations in a commercially reasonable manner and so as to minimize any undue interference with the use and enjoyment by the Tenant of the Leased Premises.
- (c) With respect to the repairs contemplated in Section 9.1(a)(i),(ii), or (iii), to the extent such repairs or replacements are determined by the Landlord's accountants, acting reasonably, to be capital in nature, or relate to the replacement of HVAC Equipment, such costs shall be paid for by the Landlord and the Landlord shall be entitled to charge to the Tenant depreciation of such capital costs in an amount determined by the Landlord's accountants, acting reasonably, plus during each year at the rate which is two percent (2%) above the prime rate charged by the Landlord's chartered bank at the end of each year on the undepreciated capital cost of such items. For clarity, where such costs are determined not to be capital in nature, they may be included in Operating Costs by the Landlord.
- (d) To the extent the need for any repairs or replacements, which are otherwise the Landlord's responsibility, are caused by the actions of the Tenant, such repairs or replacements shall be at the Tenant's sole cost and expense, and the Tenant shall pay such cost to the Landlord together with an administration fee of fifteen percent (15%) of the total cost.
- (e) Notwithstanding anything contained in this Section 9.1 (other than Section 9.1(d)), any repair or replacement subject to the warranty provisions of Schedule C (Landlord's Work) shall be carried out in accordance with that provision.

### 9.2 Maintenance of Leased Premises

The Landlord shall maintain the Leased Premises in a good state of repair, consistent with the standard of maintenance and repair of a prudent owner, the cost of which services shall be included in Operating Costs and charged to the Tenant in accordance with Sections 3.3 and 3.5 of this Lease. The Landlord's obligations in this regard include, but are not limited to the following:

- (a) keep the Leased Premises and every part thereof in a clean and tidy condition inside;

- (b) make all repairs to the Leased Premises when needed, reasonable wear and tear excepted,
- (c) provide maintenance services with respect to any elevating device within the Leased Premises;
- (d) provide security services for the Building, including periodic inspections of the Leased Premises;
- (e) remove waste from the Garbage Holding and Garbage Rooms area described in Section 4.7 of this Lease, and arrange for its removal from the Building in a timely manner;
- (f) perform regular pest control activities.

### 9.3 Tenant's Obligations

- (a) Subject to the Landlord's obligations in Section 9.2 above, the Tenant shall, maintain and keep the Leased Premises in good order and condition.
- (b) All repairs to the Building necessitated by the Tenant's negligence or wilful misconduct or the negligence or wilful misconduct of the Tenant's agents, servants, contractors, invitees, employees or others for whom the Tenant is in law responsible shall be completed by the Landlord at the sole expense of the Tenants, which cost shall be included in Operating Costs, but charged exclusively to the Tenant.

### 9.4 Tenant's Work and Alterations

- (a) Throughout the Term of this Lease, the Tenant may request that the Landlord modify, repair or replace the Leasehold Improvements, provided it shall submit its plans, drawings and specifications to the Landlord in order to obtain its approval, which approval shall not be unreasonably refused or withheld, unless a change to or modification of the structural form, mechanical systems or waterproofing of the Building is requested, in which case, the Landlord may refuse to grant consent at its discretion. Where the Tenant's proposed work is substantial in nature (such as, by way of example, a modification of the structural form, mechanical systems or waterproofing of the Building), to be determined by the Landlord in its sole discretion, such reviews shall be at the cost of the Tenant and the Landlord shall charge only its reasonable costs for such reviews. Where the Tenant's proposed work is not substantial in nature, the Landlord shall complete the review at its own cost.
- (b) All such work shall be carried out by the Landlord at the expense of the Tenant and shall be treated as an Operating Cost which will be charged entirely to the Tenant in accordance with Section 3.5 of this Lease (but as a reimbursement to the Landlord, not as Rent), and an Administration Fee of fifteen (15%) percent shall be added to the cost of such work, which Administration Fee shall be paid to the Landlord by the Tenant. Should the Tenant carry out work in the Leased Premises, without obtaining the approval of the Landlord, the Landlord shall be entitled to remove or remedy any such work at the Tenant's sole cost and expense plus an Administration Fee of fifteen (15%) percent.
- (c) The Tenant, at its sole cost and expense, shall obtain or cause to be obtained all consents, authorizations, approvals, permits, licences (temporary and permanent) and certificates of occupancy of whatsoever nature or kind which may be required to permit the completion of the work requested by the Tenant and provide copies of same to the Landlord forthwith thereafter.
- (d) All repairs, alterations, replacements or improvements shall be performed in a good and workmanlike manner, and shall comply with all applicable laws, by-laws, regulations and orders enacted or made by any federal, provincial or municipal authority having jurisdiction and all requirements of the Landlord's fire insurance underwriters. The Tenant shall indemnify the Landlord and save it harmless from any costs, expenses, damages or increased insurance premiums which may result from the performance of any work.



- (e) The Tenant shall forthwith on demand indemnify and save the Landlord harmless from any liability, claim, damages or expenses due to or arising from any claim for a construction, builders or other lien made against the Leased Premises or made against the Building in relation to any work done by, for or on behalf of the Tenant. The Tenant shall cause all registrations of any such claims or Certificates of Action related thereto to be discharged or vacated by payment into Court within fifteen (15) days of notice from the Landlord requiring it to do so, failing which the Landlord, in addition to any other rights or remedies it may have hereunder, may, but shall not be obligated to, cause such claims or Certificates of Action to be discharged or vacated by payment into court, and in such event the Tenant shall pay the Landlord's reasonable costs and expenses thereof, together with an administration fee of fifteen percent (15%) of such costs and expenses.

#### 9.5 Removal of Fixtures

- (a) All Leasehold Improvements shall immediately upon their placement become the Landlord's property, without compensation to the Tenant. Except as otherwise agreed by the Landlord in writing, no Leasehold Improvements shall be removed from the Leased Premises by the Tenant. The Tenant may, during the Term, in the usual course of its business, and with the prior written consent of the Landlord, not to be unreasonably withheld, install or remove such trade fixtures as may be installed and removed without damage to the Leasehold Improvements, provided that the Tenant is not in default under this Lease.
- (b) If the Tenant desires to remove, replace or install a trade fixture, it shall advise the Landlord who shall, at the expense of the Tenant to be included in Operating Costs and charged to the Tenant in accordance with Sections 3.3 and 3.5, remove or install such trade fixtures and repair any damage caused to the Leased Premises by such removal or installation of trade fixtures. Alternatively, provided it first obtains the consent of the Landlord, the Tenant may remove or install such trade fixtures and repair any damage caused to the Leased Premises by such removal or installation of trade fixtures.
- (c) All trade fixtures left in the Leased Premises after the end of the Term, shall, at the option of the Landlord, become the property of the Landlord and may be removed from the Leased Premises and sold or disposed of by the Landlord in such manner as it deems advisable.
- (d) For greater certainty, the Tenant's trade fixtures shall not include any HVAC Equipment or light fixtures, unless the light fixtures were installed by the Tenant. Any HVAC Equipment located on the Leased Premises shall at all times remain the property of the Landlord.

#### 9.6 Repair Where Tenant at Fault

If the Building or any part thereof, including the Leased Premises, the boilers, engines, controls, pipes and other apparatus used for the purpose of heating or air-conditioning the Building, the water and drainage pipes, the electric lighting, any other equipment or the roof or outside walls of the Building are put in a state of disrepair or are damaged or destroyed through the negligence, carelessness or misuse of the Tenant, its servants, agents, employees or anyone permitted by it to be in the Property, the expense of the necessary repairs, replacements or alterations shall be borne by the Tenant and paid to the Landlord forthwith on demand, together with an administration fee of fifteen percent (15%) of such costs and expenses.

#### 9.7 Inspection and Repair on Notice

- (a) The Landlord, its servants, agents and contractors shall be entitled to enter upon the Leased Premises, at any time, without notice, for the purpose of making emergency repairs, and during normal business hours on reasonable prior written notice, for the purpose of inspecting and making repairs, alterations or improvements to the Leased Premises and carrying out its obligations under this Lease, or for the purpose of having access to the under floor ducts, to the access panels to mechanical shafts and fire suppression systems (which the Tenant agrees not to obstruct), or to conduct

maintenance, repair and replacement of the concrete structures above the Leased Premises.

- (b) The parties acknowledge that the Landlord will periodically require extended continuing access to portions of the Leased Premises to maintain, repair and replace the concrete structures above the Leased Premises. Such extended access shall be for a length of time identified by the Landlord having regard to the nature of the work to be performed. In such event, the Landlord shall co-ordinate such access with the Tenant in order to minimize disruption to the Tenant.
- (c) Except as set out above, the Tenant shall not be entitled to compensation for any inconvenience, nuisance or discomfort occasioned by the Landlord in carrying out its obligations under this Section.
- (d) The Landlord, its servants, agents and contractors may, at any time, and from time to time, on reasonable prior written notice, enter upon the Leased Premises to remove any article or remedy any condition which, in the opinion of the Landlord, would likely lead to the cancellation of any policy of insurance or increase in premiums.
- (e) The Landlord will take reasonable precautions and attempt to schedule such work so as not to unreasonably interfere with the operation of the Tenant's business and to minimize interference with the Tenant's use and enjoyment of the Leased Premises.

#### **ARTICLE 10- DAMAGE AND DESTRUCTION**

##### 10.1 Damage and Destruction

- (a) If during the Term, the Leased Premises shall be destroyed or damaged, to such extent that the Leased Premises may not be used as contemplated in this Lease, as determined by an independent qualified architect given within sixty (60) days after the date of the damage or destruction, then, subject to Section 10.4, the Landlord shall reconstruct the Leased Premises in accordance with Section 10.2.
- (b) If the Building is damaged or destroyed such that 50% or more of the area of the Building may not be used for its intended purpose, or if 50% or more of the Parkade is destroyed or damaged, to be determined by an independent qualified architect given within sixty (60) days after the date of the damage or destruction, then the Landlord may, within ninety (90) days of such occurrence, notify the Tenant in writing of its intent to re-develop the Property. For greater certainty, any re-development of the Property shall be subject to the usual planning approval process, including but not limited to, compliance with all applicable laws, legislation, policies, by-laws, regulations whether federal, provincial or municipal, with respect to replacement rental housing. In such case, the following shall occur:
  - (i) the Tenant and all subtenants shall vacate the Leased Premises within sixty (60) days of receiving the Landlord's Notice, and surrender the Leased Premises to the Landlord;
  - (ii) the Landlord shall reconstruct the Leased Premises in its new development in accordance with Section 10.2;
  - (iii) Rent shall abate during the course of re-development as contemplated in Section 10.3.
- (c) In the event that damage or destruction contemplated in Sections 10.1 (a) occurs within the last five (5) years of the Term and the independent qualified architect contemplated in that confirms that the repair of such damage and destruction will take more than one hundred and eighty (180) days to complete such that the Leased Premises may be used as contemplated in this Lease, either party shall have the right to terminate this Lease on written notice to the other party given within thirty (30) days of receipt of the certificate of the architect contemplated therein.
- (d) In the event that damage or destruction contemplated in Sections 10.1(b) occurs within the last five (5) years of the Term, the Landlord shall have the right to

terminate this Lease on written notice to the Tenant given within thirty (30) days of receipt of the certificate of the architect contemplated therein.

## 10.2 Reconstruction of the Leased Premises

- (a) In the event that the Landlord is required to reconstruct the Leased Premises in accordance with Section 10.1, the following shall apply:
- (i) the Landlord shall rebuild the Leased Premises in a timely manner, on a comparable and equivalent basis within the improvement on the Lands as rebuilt (the "Alternate Premises"), but only to the extent of the Landlord's Work;
  - (ii) this Lease shall be amended to substitute the Alternate Premises for the Leased Premises and the lease of such Alternate Premises shall continue for the unexpired Term of this Lease;
  - (iii) the provisions of this Lease shall apply in all respects to the Alternate Premises, except that the Plans and Specifications shall be amended to reflect the Alternate Premises;
  - (iv) the Landlord's obligation to repair and rebuild shall not include the obligation to repair and rebuild any chattel, fixture, leasehold improvement, installation, addition or partition in respect of which the Tenant is required to maintain insurance hereunder, or any other property of the Tenant;
  - (v) upon the Tenant being notified that the Landlord's Work has been substantially completed, the Tenant shall complete all work (other than the Landlord's Work) that is necessary to fully repair and restore the Leased Premises in a timely fashion such that the Leased Premises may be used for the purposes set out in this Lease.
- (b) For clarity, in the course of any reconstruction or repair of the Leased Premises, the Landlord may use plans and specifications and drawings other than those used in the original construction of the Building and Leased Premises, but the Leased Premises shall be of substantially the same size, and quality as existed prior to the date of destruction or damage.
- (c) Notwithstanding anything contained in Section 10.2, and for greater certainty, the parties acknowledge the following:
- (i) Landlord's obligation to rebuild pursuant to this Lease shall be limited to the rebuilding of the Leased Premises and the Parkade;
  - (ii) The Tenant and the City hereby waive any right or remedy they may have pursuant to this Lease to compel the Landlord, as a matter of contract, to reconstruct the residential apartment building currently located on the Lands (such waiver not extending to any rights the City may have in its capacity as a municipality and planning approval authority pursuant to its by-laws or other applicable law of general application); and
  - (iii) for the purposes of Section 8.5(a), the Landlord must obtain insurance sufficient to replace the Leased Premises, the Parkade and the leased premises described in the Live/Work Lease.

## 10.3 Abatement

In the event of damage or destruction to the Leased Premises or the Building, such that the Leased Premises may not be occupied or the Landlord exercises its rights pursuant to Section 10.1(b), the Rent and any amounts payable by the Tenant under this Lease shall abate, until that date which is thirty (30) days after the date such damage or destruction is repaired or, if earlier, the date the Tenant re-occupies the Leased Premises.

## 10.4 Expropriation

Both the Landlord and Tenant agree to co-operate with the other regarding an expropriation of the Leased Premises or any part thereof, so that each may receive the maximum award to which they are respectively entitled at law.

## **ARTICLE 11 - ASSIGNMENT AND SUBLETTING**

### 11.1 Assignment and Subletting

- (a) The Tenant shall not sublet or assign this Lease without the prior written consent of the Landlord and the City, which consent may be unreasonably withheld. Any such consent to any assignment or sublet shall not relieve the Tenant of its obligation to pay Basic Rent and Additional Rent and to perform all of the covenants, terms and conditions contained in this Lease.
- (b) Notwithstanding the foregoing, the Tenant shall have the right to enter into subleases whose proposed uses are consistent with the use of the Leased Premises contemplated in this Lease. The Tenant shall inform the Landlord and the City of any such subleases and provide the Landlord and the City with a copy of the same and any other information as requested.
- (c) In the event the Tenant is not a not-for-profit corporation, a change in the effective direct or indirect control of the Tenant shall be deemed to be an assignment of this Lease and triggers the provisions of this Article. The Tenant shall make available to the Landlord or to its lawful representatives such books and records for inspection at all reasonable times in order to ascertain whether there has, in effect, been a change in control.
- (d) The Tenant shall not advertise the availability of the whole or any part of the Leased Premises for assignment or sublet, other than in the normal course of the Tenant's business, and shall not permit any broker or other person to do so unless the text and format of such advertisement is approved in writing by the Landlord, such approval not to be unreasonably withheld. No such advertisement shall contain any reference to the rental rate of the Leased Premises.

### 11.2 Sale or Mortgage by the Landlord

Notwithstanding any other provision in this Lease, if there is a sale, lease or other disposition by the Landlord of Lands, Building, the Leased Premises or any part thereof, or the assignment by the Landlord of this Lease or any interest of the Landlord hereunder, then to the extent that the purchaser or assignee assumes the covenants and obligations of the Landlord under this Lease, the Landlord will, without further agreement, be released from all future liability (but not past) with respect thereto.

### 11.3 Tenant Acknowledgement

Within twenty (20) days after receipt of a written request from the Landlord, the Tenant shall, at no cost to the Landlord, sign an acknowledgement in writing to the Landlord and/or as the Landlord may direct confirming the status of the following matters under the Lease: (a) the date of the Lease; (b) the Commencement Date; (c) the Basic Rent payable; (d) the dates of any amendments to the Lease; and (e) the existence of any outstanding defaults on the part of Landlord under the Lease for which the Tenant is aware; and (f) any other information and particulars of the Lease as the Landlord may reasonably request. Within twenty (20) days after receipt of a written request from the Tenant, the Landlord shall provide the Tenant and/or as the Tenant may reasonably direct with a similar acknowledgement in writing.

### 11.4 Subordination and Non-Disturbance

- (a) At the written request of the Landlord, the Tenant shall subordinate this Lease to any and all mortgages, trust deeds and charges (any of which are herein referred to as "**Mortgage**" or "**Mortgages**") on or in any way affecting the Leased Premises or the Building or any part thereof, now or in the future, including all renewals, extensions, modifications and replacements of any Mortgage from time to time. The Landlord may grant a Mortgage at any time without the consent of the Tenant.

- (b) The Tenant shall, at any time, on notice from the Landlord or holder of a Mortgage, attorn to and become a tenant of the holder of any such Mortgage on the same terms and conditions as set forth in this Lease, and shall execute promptly, on request by the Landlord, any acknowledgements, agreements, instruments of postponement or attornment, or other such instruments or agreements as requested from time to time, to postpone or subordinate this Lease and all of the Tenant's rights hereunder to any such Mortgage, or otherwise give full effect to any of the provisions of this Section.
- (c) The Tenant agrees to attorn to and become the tenant of any party whose title to the Leased Premises or the Building is superior to that of the Landlord or to any assignee of the Landlord's interest under this Lease, on the same terms and conditions as are set forth in this Lease, and shall execute, promptly on request, any agreements or instruments of attornment to give effect to such attornment as shall be reasonably requested by the Landlord at any time and from time to time.
- (d) The Tenant shall execute such agreements as may be reasonably required by the holder of a Mortgage to give effect to the provisions set out above.
- (e) Notwithstanding the foregoing, the Tenant shall not be required to postpone this Lease or its rights hereunder to the holder of any Mortgage unless the holder of such Mortgage has delivered to the Tenant and to the City a Subordination and Non-Disturbance Agreement, which agreement shall be substantially in the form attached hereto as Schedule G, as long as the Tenant is not in default. In order to ensure Tenant's right to the full enjoyment of the Leased Premises and the City's rights as a party to the Lease throughout the Term, the Landlord will obtain from all mortgage lenders, whether or not Permitted Encumbrances, or other creditors having rights on all or part of the Leased Premises (and any successor, lender or creditor), but in each case, only where such mortgage lender or creditor has security having priority to this Lease, such an agreement on or before the first advance pursuant to the Contribution Agreement.

## ARTICLE 12 - RIGHTS OF THE CITY

### 12.1 Notice to City

- (a) The Landlord shall give written notice of any Event of Default by the Tenant to the City within two (2) Business Days of delivery of such notice to the Tenant and failure to provide such notice to the City shall void any such notice to the Tenant. The notice to the City will state the nature of the Event of Default and the time period for curing the same. If notice to the Tenant is voided under this section, a further notice with respect to such Event of Default may be issued at any time.
- (b) If the time for curing an Event of Default for which notice has been given to the City has passed without the default being remedied, the Landlord shall give a further written notice to the City (a "**Final Default Notice**").

### 12.2 City's Rights

- (a) From and after the date of the Final Default Notice, the City shall have one (1) year (the "**Disposition Period**") to notify the Landlord at any time during the Disposition Period that it wishes to either (i) assume the Lease, (ii) assign the Lease to another non-profit community and/or cultural organization, or (iii) terminate the Lease.
- (b) Throughout the Disposition Period, the City shall not be required to operate the Leased Premises but shall perform, or cause to be performed, all of the obligations of the Tenant pursuant to the Lease, including the payment of Basic Rent and Additional Rent. In the event the City fails to do so, the Landlord shall be entitled to exercise its remedies pursuant to this Lease, including, without limitation, the termination of this Lease.
- (c) The City shall not be obliged to compensate the Landlord for
  - (i) any arrears of Basic Rent or Additional Rent; or

- (ii) any damages arising from any breach of the Lease

accruing prior to the commencement of the Disposition Period, provided that the City shall make good any other continuing default during the Disposition Period, unless such default is not capable of being rectified by the City, acting in good faith, and using reasonable commercial efforts.

- (d) Nothing in this Agreement shall be construed as a release of the Tenant and the Landlord shall retain any and all rights of recovery against the Tenant as it may have as a matter of law.
- (e) During the Disposition Period, the City shall have the following rights (the "**City Rights**") to:
  - (i) on behalf of the Tenant, assign the Lease to a new tenant, provided that the new tenant shall be a not-for-profit corporation, shall execute an assumption agreement satisfactory to the Landlord, acting reasonably, and provided that, unless the Landlord consents, which consent may be unreasonably withheld, shall not be the then defaulting tenant or an affiliate thereof;
  - (ii) assume the Lease as the Tenant for the balance of the Term; or
  - (iii) terminate the Disposition Period or the Lease (without affecting the Landlord's rights against the Tenant) by providing the Landlord with at least sixty (60) days' notice of its intent to do so.
- (f) The City may provide notice of its election under Section 12.2(e) above to the Landlord at any time during the Disposition Period. In the event the City does not provide notice of its election during the Disposition Period, the City shall be deemed to have assumed the Lease.
- (g) If the City assumes the Lease pursuant to Sections 12.2 (e)(ii) or 12.2(f) above, the City shall be bound to observe all of the terms and covenants of the Lease as though it were the original tenant under the Lease, provided that:
  - (i) it shall have the right at any time to assign this Lease on behalf of the Tenant without the consent of the Landlord on the terms and conditions set out in Sections 12.2(e)(i) above; and
  - (ii) in the event of such an assignment, the City shall be entitled to rely on the provisions of this Article 12 for the balance of the term of the Lease.
- (h) For greater certainty:
  - (i) the provisions of Section 12.1 do not apply during the Disposition Period or where City has assumed the Lease pursuant to Sections 12.2 (e)(ii) or 12.2(f) above; and
  - (ii) the City's rights as set out in this Section 12.2 continue throughout the Term, from time to time, provided that in the event the City terminates the Lease, it shall execute such documents as may be reasonably required to delete any registered notice of this Lease from title to 33 King and any leasehold security in favour of the City relating to the Lease.

### 12.3 Right of Access

The Tenant shall permit the City (and its employees, contractors and authorized agents) at all reasonable times after 24 hours' notice to enter the Leased Premises for the purpose of determining whether there is compliance with the provisions of this Lease.

### 12.4 Intentionally Deleted

12.5 City Assignment

Except for the City's rights under this Article 12 to assign this Lease on behalf of the Tenant, the City shall not be entitled to assign its interest under this Lease to any other party, without the consent of the Landlord, which may be unreasonably withheld.

12.6 No Transfer by the Tenant without the City's Approval

The Tenant agrees that it shall not assign or sublet its interest in this Lease, the Leased Premises or the Leasehold Improvements (or any part thereof) without the prior written approval of the City, which may be unreasonably withheld.

**ARTICLE 13 – LEASEHOLD MORTGAGE**

Intentionally Deleted.

**ARTICLE 14 REPRESENTATIONS AND WARRANTIES**

14.1 Landlord's Representations and Warranties

The Landlord represents and warrants to and in favour of the Tenant that as of the date of this Lease and as of the Commencement Date:

- (a) Title to the Leased Premises is fee simple title free from all liens, encumbrances and interests, save as set out in Schedule D, those registered on title to the Lands on the date of this Lease, arising in connection with the matters contemplated by this Lease, or registered by or with the consent of the Tenant;
- (b) the Landlord is a corporation duly existing under the laws of its jurisdiction of incorporation and has the necessary authority, power and capacity to enter into this Lease and the documents and transactions contemplated herein on the terms and conditions herein contained and to carry out this Lease and the documents and transactions contemplated herein on the terms and conditions herein contained; and
- (c) this Lease and the documents and transactions contemplated in it have been duly and validly authorized by all requisite proceedings on the part of the Landlord and constitute legal, valid, binding and enforceable obligations of the Landlord.

14.2 Tenant's Representations and Warranties

The Tenant represents and warrants to and in favour of the Landlord that as of the date of this Lease and as of the Commencement Date:

- (a) the Tenant is a corporation duly existing under the laws of its jurisdiction of incorporation and has the necessary authority, power and capacity to enter into this Lease and the documents and transactions contemplated herein on the terms and conditions herein contained and to carry out this Lease and the documents and transactions contemplated herein on the terms and conditions herein contained; and
- (b) this Lease and the documents and transactions contemplated in it have been duly and validly authorized by all requisite proceedings on the part of the Tenant and constitute legal, valid, binding and enforceable obligations of the Tenant.

14.3 City's Representations and Warranties

The City represents and warrants to and in favour of the Landlord and the Tenant that as of the date of the this Lease and as of the Commencement Date:

- (a) the City is a corporation duly existing under the laws of its jurisdiction of incorporation and has the necessary authority, power and capacity to enter into this Lease and the documents and transactions contemplated herein on the terms and conditions herein contained and to carry out this Lease and the documents and transactions contemplated herein on the terms and conditions herein contained; and

- (b) this Lease and the documents and transactions contemplated in it have been duly and validly authorized by all requisite proceedings on the part of the City and constitute legal, valid, binding and enforceable obligations of the City.

## **ARTICLE 15- DEFAULT**

### 15.1 Right to Re-enter

An Event of Default occurs whenever (or "Events of Default"):

- (a) the Tenant defaults in the payment of the Rent and the default continues for five (5) Business Days after the date such payment is due;
- (b) the Tenant has breached any covenant of this Lease, other than a breach specified in another paragraph of this Section 15.1, and the breach is not remedied within fifteen (15) Business Days or such longer period of time as may be required provided the Landlord is satisfied acting reasonably that the Tenant has commenced to cure and is thereafter continuously and diligently curing such Event of Default, after written notice to the Tenant unless the Tenant commenced curing such default within such fifteen (15) Business Day period; or
- (c) the Contribution Agreement Advances are not made as directed, in accordance with the terms of the Contribution Agreement; or
- (d) the Tenant is in material default pursuant to the terms of the Contribution Agreement (For clarity, and without limitation, any default which may result in a delay in the advance of the Contribution Agreement Advances, is material
- (e) this Lease is amended without the prior written approval of the City;
- (f) any of the following events occurs:
  - (i) the Tenant takes the benefit of any statute for bankrupt or insolvent debtors or makes any proposal, assignment or arrangement with its creditors;
  - (ii) a receiver or a receiver and manager is appointed for all or part of the property of the Tenant (and is not dismissed within 30 days after notice by the Landlord to the Tenant);
  - (iii) steps are taken or proceedings are instituted for the dissolution, winding up or other termination of the Tenant's existence or the liquidation of its assets;
  - (iv) the Tenant abandons or attempts to abandon the Leased Premises, or the Leased Premises become vacant or substantially unoccupied, or the Tenant ceases to conduct business from the Leased Premises;
  - (v) any insurance policy covering any part of the Leased Premises is cancelled or materially adversely changed (including a substantial premium increase) as a result of any action or omission by the Tenant or any person for whom it is legally responsible;
  - (vi) the Tenant effects or attempts to effect a transfer, assignment or sublet that is not permitted by this Lease; or
  - (vii) a writ of execution issues against the Tenant (and is not discharged within 30 days after notice by the Landlord to the Tenant), or this Lease or any of the Tenant's assets on the Leased Premises are taken or seized under a writ of execution, an assignment, pledge, charge, debenture, or other security instrument.

### 15.2 Landlord's Rights on Default

If an Event of Default has occurred, the Landlord may:



- (a) perform or cause to be performed any obligation which the Tenant should have performed without constituting a re-entry of the Leased Premises or termination of this Lease or breaching the Landlord's covenant hereunder and without being deemed to be an interference with the rights of the Tenant pursuant hereto, including making payments to a third party on behalf of the Tenant, and the Tenant will pay to the Landlord on demand, the Landlord's expenses incurred under this paragraph plus an amount equal to 15% of those expenses for the Landlord's overhead and administrative costs. The Landlord will have no liability to the Tenant for loss or damages resulting from its action or entry upon the Leased Premises;
- (b) enter the Premises and distrain upon the goods and chattels of the Tenant, and the Landlord may seize and sell the goods and chattels, and any sale by the Landlord may be effected by public auction or private contract and be either in bulk or by individual items, or partly by one means and partly by the other;
- (c) subject to the City's rights pursuant to Article 12 of this Lease, re-enter and re-possess the Leased Premises and administer them, including but not limited to the collection of all rents, and on such a re-entry, this Lease and all of the Tenant's rights hereunder will terminate without liability on the part of the Landlord for loss or damage, and without prejudice to the Landlord's rights to recover arrears of Basic Rent or Additional Rent or damages for any previous breach by the Tenant of any covenant or condition of this Lease; and
- (d) take possession of the Leased Premises as agent of the Tenant and effect such alterations and repairs as it may deem necessary or advisable for the purpose of such reletting, and it may relet the Leased Premises or any part thereof for such term or terms (which may be for a term extending beyond the Term) and at such rental and on such other terms and conditions as the Landlord may deem advisable. Upon such reletting, all rentals received by the Landlord from such reletting shall be applied as follows: first, to the payment of the Landlord's costs and expenses of such reletting and the costs of such alterations and repairs; second, to the payment of any indebtedness other than Rent due from the Tenant to the Landlord; third, to the payment of arrears of Rent; fourth, to the payment of Rent as it falls due; and the residue, if any, shall be held by the Landlord without interest until the end of the Term and applied from time to time in payment of Rent as the same may become due and payable, and any residue remaining at the end of the Term shall be held for the Tenant.
- (e) In all events (including termination), the Landlord shall be entitled to recover damages from the Tenant including, but not limited to,
  - (i) damages or loss of Basic Rent and Additional Rent suffered by reason of this Lease having been prematurely terminated
  - (ii) the cost of recovering the Leased Premises; and
  - (iii) solicitor's fees on a substantial indemnity basis.

### 15.3 Landlord's Costs

Whenever the Landlord takes any proceedings, does any work, or otherwise incurs any expense or takes any action with respect to any default by the Tenant, the Landlord shall be entitled to reimbursement by the Tenant forthwith on demand for any costs, charges or expenses which the Landlord incurs (including legal costs on a substantial indemnity basis) and which would not have been necessary but for the default of the Tenant, plus an amount equal to fifteen (15%) of such expenses to the Landlord's overhead and administrative costs..

### 15.4 Distress

Notwithstanding any provision of this Lease or any provision of any applicable legislation, none of the goods and chattels of the Tenant on the Leased Premises at any time during the Term shall be exempt from levy by distress for Rent in arrears, and the Tenant waives any such exemption. If the Landlord makes any claim against the goods and chattels of the Tenant by way of distress, this provision may be pleaded as an estoppel against the Tenant in any action brought to test the right of the Landlord to levy such distress.

#### 15.5 Rejection of Tenant's Repudiation

If an Event of Default occurs the Landlord may, instead of terminating this Lease, insist on the performance of the covenants and conditions of this Lease and in that case may take legal proceedings against the Tenant for performance of the covenants and conditions of this Lease; all without prejudice, however, to the Landlord's right to terminate this Lease at any time should the Event of Default continue unremedied.

#### 15.6 Remedies Generally

The remedies under this Lease are cumulative. No remedy is exclusive or dependent upon any other remedy. Any one or more remedies may be exercised generally or in combination. The specifying or use of a remedy under this Lease does not limit rights to use other remedies available at law generally.

#### 15.7 Default in the Landlord's Work

- (a) The 22 John Owner shall be in default of its obligations with respect to the Landlord's Work if the 22 John Owner (or its designate) fails to keep, observe or perform any of its obligations regarding Landlord's Work to be kept, observed or performed under this Lease including under Schedule C of this Lease, within thirty (30) days after the 22 John Owner's receipt of notice of non-performance of such Landlord's Work from the Tenant or the City (which notice shall also be sent to the Landlord); provided, however, that if such breach cannot be cured within thirty (30) days, then within such additional time, if any, as is reasonably necessary to complete such cure, so long as the 22 John Owner has commenced such cure within the initial thirty (30) day period and diligently pursues such cure to completion.
- (b) In the event the 22 John Owner fails to cure the alleged default within such cure period and is not in good faith contesting such default in court, then, the Tenant and the City shall (to the extent permitted by law) provide notice of default to the 22 John Owner (the "**Work Default Notice**"), which Work Default Notice shall also be sent to the Landlord.
- (c) In the event a Work Default Notice is issued, subject to the exercise of the Landlord Work Option, the Tenant shall be entitled to possession of the Leased Premises to complete the Landlord's Work.
- (d) The Landlord shall have the option (the "**Landlord Work Option**") of completing the Landlord's Work by providing the Tenant and the City written notice of its intent to do so within thirty (30) days of receipt of the Work Default Notice, in which case the following shall apply:
  - (i) The City shall exercise its right to draw on the Letter of Credit posted by the 22 John Owner pursuant to the Section 37 Agreement and shall reimburse the Landlord for its costs incurred to complete the Landlord's Work on draw basis based on actual costs incurred, subject to delivery to the City of a report of a qualified quantity surveyor (or other evidence satisfactory to the City, acting reasonably) confirming the costs incurred by the Landlord;
  - (ii) the Landlord shall complete the Landlord's Work in a commercially reasonable time frame (subject to Force Majeure and Tenant Delay);
  - (iii) the City shall not be obligated in any way to make payments to the Landlord in excess of the Letter of Credit; and
  - (iv) in the event the total amount paid by the City to the Landlord in accordance with Section 15.7(d)(i) is less than the remaining principal amount of the Letter of Credit (as the same may have been reduced from time to time in accordance with the Section 37 Agreement), the Letter of Credit shall be returned to the 22 John Owner for cancellation.
- (e) In the event that the Landlord's Work is not completed by the 22 John Owner such that the Commencement Date has not occurred on or before the Outside Date, the following shall apply:

- (i) If the Landlord does not exercise the Landlord Work Option, then:
  - (A) the City shall exercise its right to draw on the Letter of Credit to complete or cause to be completed the Landlord's Work; and
  - (B) the Outside Date shall be extended by three (3) years and six (6) months from the date of the Work Default Notice is issued to the 22 John Owner.
- (ii) If the Landlord exercises the Landlord Work Option, then
  - (A) the Outside Date shall be extended to the later of (a) the then effective Outside Date, or (b) the date which is eighteen (18) months after the day the Landlord so notifies the Tenant and the City;
  - (B) if the Landlord subsequently defaults on its obligations to complete the Landlord's Work in accordance with Section 15.7(c), the provisions of Section 15.7 applying to the Landlord *mutatis mutandis*, then
    - (1) the City shall exercise its right to draw on the Letter of Credit to complete or cause to be completed, the Landlord's Work; and
    - (2) the Outside Date shall be extended by three (3) years and six (6) months from the date that a Work Default Notice is issued to the Landlord.
- (iii) If the Landlord's Work is not completed by the City in accordance with subsections 15.7(e)(i)(A) or 15.7(e)(ii)(B)(1) on or before the Outside Date, as extended, this Lease shall automatically terminate on the Outside Date, as so extended.
- (f) The Tenant and the City shall have full recourse in law or equity against the 22 John Owner for damages incurred or specific performance to compel the 22 John Owner to complete the Landlord's Work or the Leasehold Improvements, and the Landlord shall have no liability or obligation whatsoever in respect of the Landlord's Work and the Tenant and the City shall not have recourse in law or equity against the Landlord in this regard. Notwithstanding the forgoing, if the Landlord exercises the Landlord Work Option, the Landlord shall be fully responsible to the Tenant and the City for the portion of the Landlord's Work completed by the Landlord and for the warranty period contemplated in Schedule C to this Lease. In the event the Landlord is in default, the Tenant and the City shall have full recourse in law or equity against the Landlord for damages incurred in this regard.

## **ARTICLE 16- MISCELLANEOUS**

### 16.1 Intent and Interpretation

- (a) Gender and Number - Words importing the singular include the plural and vice versa. Words importing gender include all genders.
- (b) Captions and Headings - The captions and headings contained herein are for reference only and in no way affect this Lease or its interpretation.
- (c) Obligations as Covenants and Severability- Each obligation or agreement of the Landlord or the Tenant expressed in this Lease, even if not expressed as a covenant, is considered to be a covenant for all purposes. If any provision of this Lease is or becomes unenforceable, it shall be considered separate and severable from the Lease and the remaining provisions shall remain in force and be binding upon the parties as though such provision had not been included. Each covenant, obligation and agreement in this Lease shall be separately valid and enforceable to the fullest extent permitted by law.

- (d) Entire Agreement and Amendment or Modification - This Lease and the Schedules, and riders, if any, set forth all covenants, promises, agreements, conditions or understandings, either oral or written, between the Landlord and the Tenant, in their capacity as landlord and tenant.
- (e) Further Assurances - Each of the parties shall from time to time hereafter and upon any reasonable request of the other party make or cause to be made all such further acts, deeds, assurances and things as may be required or necessary to more effectually implement and carry out the true intent and meaning of this Lease.
- (f) Amendments to this Lease - No supplement or amendment of this Lease shall be binding unless executed in writing by the parties hereto or their respective solicitors on their behalf.
- (g) Governing Law - This Lease will be construed and enforced in accordance with and governed by the law of the Province of Ontario.
- (h) Time of the Essence - Time is of the essence of this Lease and of every part of it.
- (i) Currency - All references to currency in this Lease are references to Canadian dollars.
- (j) Counterparts - This Lease may be executed by the parties in separate counterparts, each of which so executed shall be deemed to be an original. Such counterparts together shall constitute one and the same instrument and, notwithstanding the date of execution, shall be deemed to bear the effective date set forth above.
- (k) Schedules – The following Schedules form part of the Lease:
  - Schedule A - Definitions
  - Schedule B - Leased Premises
  - Schedule C - Landlord's Work
  - Schedule D - Legal Description and Permitted Encumbrances
  - Schedule E - Plans and Specifications
  - Schedule F - Initial Operating Cost Categories
  - Schedule G - Form of Non-Disturbance Agreement

## 16.2 Waiver

Except as otherwise expressly provided herein, no waiver of any provision of this Lease shall be valid unless it is in writing signed by the party sought to be bound thereby or by its Solicitors on its behalf. No waiver of any of the provisions of this Lease shall be deemed, or shall constitute a waiver of any other provision (whether or not similar) nor shall any waiver constitute a continuing waiver unless otherwise expressed or provided.

## 16.3 Force Majeure

Notwithstanding anything in this Lease, if either party is bona fide delayed or hindered in or prevented from the performance of any term, covenant or act required hereunder by reason of strikes; inability to procure materials or services; power failure; riots; insurrection; sabotage; rebellion; war; act of God; or other reason whether of a like nature or not which is not the fault or within the reasonable control of the party affected ("**Force Majeure**"), then the delayed party shall immediately notify the other party of the delay and the reason therefor and the estimated time of the delay and thereafter the performance of that term, covenant or act is excused for the period of the delay and the time for performing that term, covenant or act will be extended accordingly. For greater certainty, lack of funds by either party does not constitute Force Majeure. In addition, the provisions of this Paragraph do

not operate to excuse the Tenant from the prompt payment of Rent or the Landlord from the prompt payment of any monies hereunder.

#### 16.4 Notices

Any notice, demand, request or other instrument required or permitted to be given under this Lease shall be in writing and may be given by personal delivery, electronic mail, or by facsimile, addressed or sent as set out below to such other address or facsimile number as a party may from time to time give the other party notice of:

Landlord:

100 Wellington Street West  
Suite 1204  
Toronto, Ontario  
M5K 1H6

Attention: President

Fax: (416) 867-9119

Tenant:

171 East Liberty Street, Suite 224,  
Toronto, Ontario M6K 3P6

Attention: President/CEO

Fax: (416) 535-6260

Email: [tjones@artcape.ca](mailto:tjones@artcape.ca)

22 John Owner:

22 John Street Developments Inc.  
170 The Donway West  
Suite 307  
Toronto, Ontario  
M3C 2G3

Attention: Jack Winberg

E-mail: [jack@rockportgroup.net](mailto:jack@rockportgroup.net)

City of Toronto:

Real Estate Services  
Metro Hall  
55 John Street, 2<sup>nd</sup> Floor  
Toronto, Ontario M5V 3C6

Attention: Director of Real Estate Services

Fax: (416) 392-1880

Any notice, if personally delivered or sent by electronic mail, shall be deemed to have been validly and effectively given and received on the date and at the time of such delivery if it is delivered before 5:00 p.m. Toronto time on a Business Day, and otherwise shall be deemed to have been validly and effectively given and received on the next following Business Day. Any Notice, if sent by facsimile with confirmation of transmission at or before 5:00 p.m. Toronto time on a Business Day, shall be deemed to have been validly and effectively given and received on the day and at the time it was transmitted, and otherwise shall be deemed to have been validly and effectively given and received on the Business Day following the day it was transmitted.

Any notice, approval, waiver, agreement, instrument, document or communication permitted, required or contemplated in this Lease may be given or delivered and accepted or received by the Tenant's Solicitors on behalf of the Tenant and by the Landlord's Solicitors on behalf of the Landlord.

16.5 Compliance with the *Planning Act*

This Lease and the transaction contemplated herein are subject to and conditional upon compliance with the subdivision control provisions of the *Planning Act* of Ontario. The Landlord shall use commercially reasonable efforts to obtain any necessary consent at its expense.

16.6 Consent and Approval

- (a) The Landlord and each person acting for or on behalf of the Landlord, making a determination, designation, calculation, estimate, conversion or allocation under this Lease, will, except where otherwise contemplated in this Lease, act reasonably and in good faith and each accountant, architect, engineer or surveyor, or other professional person employed or retained by the Landlord will act in accordance with the applicable principles and standards of that person's profession.
- (a) The Tenant and each person acting for or on behalf of the Tenant will, except where otherwise contemplated in this Lease, act reasonably and in good faith in carrying out the Tenant's lease obligations and where any approval or consent from it is required.
- (b) If the Tenant is required to provide its approval with respect to any matter contemplated in this Lease, it shall do so within five (5) Business Days of the Landlord's written request for the same, failing which it shall be deemed to have granted its approval.

16.7 Light and Air

The Tenant covenants and agrees that no diminution of light, air or view by any structure that may now or hereafter be erected, or the noise, dust, vibration or other ordinary incidents to the modification or demolition of existing or new construction of improvements, in either case on the Lands, or the Building, or lands or buildings adjacent thereto or in the proximity thereof, whether or not by the Landlord, shall entitle the Tenant to any reduction of Rent or any other sums due under this Lease, result in any liability of the Landlord to the Tenant, or in any other way affect this Lease or the Tenant's obligations hereunder.

16.8 Successors and Assigns

This Lease shall be binding upon, extend to and enure to the benefit of the Landlord and the Tenant, and to each of their respective administrators, successors and permitted assigns.

16.9 Registration of Lease

Neither the Tenant nor anyone on the Tenant's behalf or claiming under the Tenant shall register this Lease or any Transfer against the Lands. The Tenant shall register a short form notice of this Lease provided that: (a) a copy of the Lease is not attached but the notice shall include the information in Attachment 4 of EX10.6, adopted by City Council on December 9 and 10, 2015; (b) no financial terms are disclosed other than the terms as set out in Attachment 4 of EX10.6; (c) the City is noted as a party to the Lease; and (d) the Landlord gives its prior written approval to the notice (such approval not to be unreasonably withheld). Upon the expiry or termination of the Term, the Tenant shall immediately discharge or otherwise vacate any such notice or caveat.

16.10 Obligations Survive

To the extent appropriate (as dictated by the context), the obligations of the parties shall survive any termination of this Lease.

16.11 Confidentiality and Return of Information

- (a) The Tenant, for itself, its directors, officers, employees, engineers, surveyors, consultants and any other advisers, representatives and agents, agrees that they shall not, except as required by law, disclose to anyone or use for any purpose other than the leasing and financing of the Leased Premises, where expressly permitted in the Lease, any information, save information which is or becomes generally available to the public or becomes so available through no fault of the Tenant; was known to the Tenant on a non-confidential basis and is not subject to another obligation of secrecy and non-use, concerning the Landlord or the Leased Premises, whether such information was disclosed by the Landlord or obtained by the Tenant or its representatives through their own investigations and inquiries. If the Tenant is the City, the provisions herein are subject to *Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, chap. M.58*, as same may be amended or replaced from time to time.
- (b) If this Lease is terminated for any reason whatsoever, the Tenant shall deliver forthwith to the Landlord all documents, records and reports and all other information or data relating to the Leased Premises, including all copies thereof, which the Tenant obtained from the Landlord or otherwise obtained in the course of their own investigations, and shall, save such information which is or becomes generally available to the public or becomes so available through no fault of the Tenant; was known to the Tenant on a non-confidential basis and is not subject to another obligation of secrecy and non-use, keep and cause its representatives to keep in strict confidence all such information and all discussions between the Landlord and the Tenant with respect to the Leased Premises and the transaction contemplated by this Lease. If the Tenant is the City, the provisions herein are subject to *Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, chap. M.58*, as same may be amended or replaced from time to time.

#### 16.12 City as Municipal Corporation

The City is a party to this Lease for the purpose of protecting its rights under the Lease. Nothing in this Lease derogates from, interferes with, or fetters the exercise by the City of all of its rights and obligations as a municipality (whether discretionary or mandatory), or imposes any obligations on the City in its role as a municipality, and the City shall not be prevented from or prejudiced in carrying out its statutory rights and responsibilities, including its planning rights and responsibilities. Nothing in this Lease derogates from, interferes with, or fetters the exercise by the City's officers, employees, agents, representatives or elected and appointed officials of all of their rights, or imposes any obligations on the City's officers, employees, agents, representatives or elected and appointed officials, other than as expressly set out in this Lease.

#### 16.13 Independent Legal Advice

The Tenant acknowledges that the Landlord has advised the Tenant to obtain advice from independent legal counsel prior to signing this Lease. The Tenant further acknowledges that any information provided by the Landlord is not to be construed as legal, tax or any other expert advice and the Tenant is cautioned not to rely on any such information without seeking legal, tax or other expert advice.

The Landlord and the Tenant understand, acknowledge and agree that this Lease has been freely negotiated by both parties and that, in any dispute or contest over the meaning, interpretation, validity or enforceability of this Lease or any of its terms or conditions, there shall be no inference, presumption or conclusion drawn whatsoever against either party by virtue or that party having drafted this Lease or any portion thereof.

**SIGNATURE PAGE FOLLOWS**

IN WITNESS WHEREOF the Landlord, the Tenant and the City have signed this Lease as of the date first above written.

**2295477 ONTARIO INC.**

Per:

Name: Jason Rootenberg  
Title: Secretary

Per:

Name: Ron Marek  
Title: CFO

*I/We have the authority to bind the Corporation*

**TORONTO ARTSCAPE INC.**

Per:

Name: LoriAnn Girvan  
Title: C.O.O.

Per:

Name: Timothy Robert Jones  
Title: C.E.O.

*I/We have the authority to bind the Corporation*

**22 JOHN STREET DEVELOPMENTS INC.**

Per:

Name: Jack Winberg  
Title: President

Per:

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

*I/We have the authority to bind the Corporation*

Authorized by Item No. EX10.6 of the Executive Committee, adopted by City of Toronto Council on December 9 and 10, 2015, EY10.1 of the Etobicoke York Community Council, adopted City of Toronto Council on December 9 and 10, 2015, and EX43.7 of the Executive Committee, adopted by City Council at its meeting on May 11 and 12, 2010 [DAF Tracking No. 2016-\_\_\_\_\_]  
.....  
City Clerk

**CITY OF TORONTO**

Per:

Name: Ulli S. Watkiss  
Title: City Clerk

Per:

Name: Roberto Rossini  
Title: Deputy City Manager & Chief Financial Officer

*I/We have the authority to bind the Corporation*



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2295477 ONTARIO INC.

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

*I/We have the authority to bind the Corporation*

TORONTO ARTSCAPE INC.

Per: \_\_\_\_\_  
Name: LoriAnn Girvan  
Title: C.O.O.

Per: \_\_\_\_\_  
Name: Timothy Robert Jones  
Title: C.E.O.

*I/We have the authority to bind the Corporation*

22 JOHN STREET DEVELOPMENTS INC.

Per: \_\_\_\_\_  
Name: Jack Winberg  
Title: President

Per: \_\_\_\_\_  
Name:  
Title:

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.....  
City Clerk

CITY OF TORONTO

Per: \_\_\_\_\_  
Name: Ulli S. Watkiss  
Title: City Clerk

Per: \_\_\_\_\_  
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Title: Deputy City Manager & Chief Financial Officer

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Title: C.O.O.

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Per: \_\_\_\_\_  
Name:  
Title:

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**CITY OF TORONTO**

Per: \_\_\_\_\_  
Name: Ulli S. Watkiss  
Title: City Clerk

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Title: Deputy City Manager & Chief  
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City Clerk

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Per: \_\_\_\_\_  
Name: Timothy Robert Jones  
Title: C.E.O.

*I/We have the authority to bind the Corporation*

**22 JOHN STREET DEVELOPMENTS INC.**

Per: \_\_\_\_\_  
Name: Jack Winberg  
Title: President

Per: \_\_\_\_\_  
Name:  
Title:

*I/We have the authority to bind the Corporation*

*JK*

Authorized by Item No. EX10.6 of the Executive Committee, adopted by City of Toronto Council on December 9 and 10, 2015, EY10.1 of the Etobicoke York Community Council, adopted City of Toronto Council on December 9 and 10, 2015, and EX43.7 of the Executive Committee, adopted by City Council at its meeting on May 11 and 12, 2010 [DAF Tracking No. 2016- 160 ]  
  
.....  
*Frances M. Pritchard*  
Frances Mary Pritchard  
for Ulli S. Watkiss  
City Clerk

**CITY OF TORONTO**

Per: \_\_\_\_\_  
Name: ~~Ulli S. Watkiss~~  
Title: ~~City Clerk~~  
S. Murji for *S. Murji*

Per: \_\_\_\_\_  
Name: Roberto Rossini  
Title: Deputy City Manager & Chief Financial Officer

*I/We have the authority to bind the Corporation*

SCHEDULE A  
DEFINITIONS

In this Lease the following definitions are applicable:

1. **22 John Lands** means the lands municipally known as 22 John Street, Toronto (former City of York), Ontario, shown as Parts 2, 8, 10, 11, 12, 13, 14, 19, 20, 22, and 24 on the Reference Plan.
2. **Additional Rent** has the meaning assigned to it in Section 3.3.
3. **Area Re-Development** has the meaning assigned to it in Section 6.2(b).
4. **Authority** means any governmental authority, body, agency, department, whether federal, provincial or municipal and any board of fire underwriters having or claiming jurisdiction over the Leased Premises.
5. **Basic Rent** means the payments to be made pursuant to Paragraph 3.2 of the Lease.
6. **Building** means the existing building located on the Lands, and municipally known as 33 King Street, Toronto, Ontario.
7. **Building Requirements** mean the following, in relation to the Leased Premises:
  - a. all utilities and services and access available to the units in normal working order;
  - b. only minor corrective work required to the interior of the Leased Premises;
  - c. the Landlord shall have delivered to the Tenant the following:
    1. all project keys, in a number-coded key box;
    2. mylar reproducible "**as built**" plans and the specifications, including all units and electrical and mechanical systems;
    3. product information issued by the manufacturer, where available, with respect to each of the various products used and in particular those upon which any type of maintenance and care might be required in the future;
    4. instructions to the Tenant's staff by written or oral communication as to appropriate operation of all mechanical and electrical equipment;
    5. a clearance certificate from the Workplace Safety and Insurance Board for the Landlord and all contractors whose contracts are with the Landlord;
    6. fire plan of the Building in locations required by the Authority;
    7. all warranties and guarantees, enforceable by the Tenant, as provided by manufacturers and installers of all equipment, fixtures, and appliances; and
    8. valid proof that the contractor has published a copy of the certificate of substantial performance, in accordance with the *Construction Lien Act*;
  - d. there shall be no outstanding work orders, requirements or deficiency notices or objections of the relevant Authority which would in any way impede the occupancy of any of the units or suggest the need for more than minor corrective work save for work which cannot be performed because of the season;
  - e. all systems and equipment shall have been started up and tested except for final balancing;
  - f. all life safety systems shall have been verified by the Landlord and the Tenant as complying with the requirements of the Plans and Specifications;

- g. the fire authorities shall have inspected and confirmed that life safety systems are acceptable;
  - h. the mechanical and electrical consultants have been made available to the Tenant's maintenance staff to provide information and hands-on instructions regarding the equipment installed in units and the common areas; and
8. **Business Day** means a day other than a Saturday or Sunday on which chartered banks in the City are open for the transaction of business with the public.
  9. **Commencement Date** has the meaning assigned to it in Section 1.3 of this Lease.
  10. **Common Areas** means those parts of the Property provided by Landlord for the common use of all tenants and, where applicable, the general public, including the sidewalks, Parkade, landscaping, pool area, stairwells, loading areas, or lighting facilities used or maintained in connection with the Building.
  11. **Consultant** means a qualified architect, quantity surveyor or construction cost consultant retained by the Tenant.
  12. **Contribution Agreement** means an agreement between the Tenant and the City of Toronto, of even date herewith, which provides for, among other things, the payment to the Tenant of funds and other financial benefits intended to be contributed to capital cost of the Landlord's Work, and the advances made thereunder being referred to as the "**Contribution Agreement Advances**".
  13. **Default Rate** means the prime rate set by the Royal Bank of Canada for its customers of the highest credit standing for unsecured Canadian Dollar loans, plus five (5%) percent.
  14. **Environmental Laws** means any law, by-law, order, ordinance, ruling, regulation, certificate, approval, consent or directive of any applicable federal, provincial or municipal government, governmental department, agency or regulatory authority or any court of competent jurisdiction: (i) relating to pollution or the protection of human health or the environment (including laws and regulations established for workplace health and safety); (ii) dealing with filings, registrations, emissions, discharges, spills, releases or threatened releases of Hazardous Substances or materials containing Hazardous Substances; (iii) regulating the import, storage, distribution, labelling, sale, use, handling, transport or disposal of a Hazardous Substance; or (iv) the law of private nuisance resulting from the presence of a Hazardous Substance.
  15. **Escrow Agent** has the meaning assigned to it in the Contribution Agreement;
  16. **Event of Default** has the meaning assigned to it in Section 15.1.
  17. **Force Majeure** has the meaning assigned to it in Section 16.3.
  18. **Hazardous Substance** means any substance capable of posing a risk or damage to health, safety, property or the environment including, without limitation, any contaminant, pollutant now or hereafter declared, defined or deemed to be regulated or controlled under any Environmental Law.
  19. **HVAC Equipment** means equipment, machinery, installations and facilities used for or in connection with the supply of heating, ventilating or cooling or any combination thereof to the Leased Premises, from time to time existing.
  20. **Landlord's Architect** means Graziani & Corazza Architects Inc. or such other qualified architect retained by the Landlord and acceptable to the Tenant and the City, each acting reasonably.
  21. **Landlord's Work** means the work contemplated in Schedule C to this Lease and as detailed in the Plans and Specifications.
  22. **Lands** means the lands on which the Building has been built, legally described as set out in Schedule D to this Lease.
  23. **Lease** means this agreement and all the terms, covenants, schedules and conditions set out herein.

24. **Leased Premises** means the premises described in Section 1.2 of this Lease.
25. **Leasehold Improvements** means all fixtures, improvements, installations, alterations and additions from time to time made, erected or installed by or on behalf of the Tenant or any former occupant of the Leased Premises, including doors, hardware, partitions (including moveable partitions) and wall-to-wall carpeting, but excluding trade fixtures and furniture and equipment not in the nature of fixtures.
26. **Leasehold Mortgage** means the first mortgage or similar security executed by the Tenant of the Tenant's leasehold interest in the Project as may be extended, modified, renewed or replaced from time to time.
27. **Leasehold Mortgagee** means the holder of a Leasehold Mortgage.
28. **Letter of Credit** means the Letter of Credit posted by the 22 John Owner in accordance with the Section 37 Agreement.
29. **Live/Work Lease** means a lease among the Landlord, Tenant and the City, of even date herewith, with respect to certain premises within the Building intended to be used primarily for residential accommodation.
30. **Operating Costs** means, for any period, the total of all costs and expenses attributable to the maintenance, repair, replacement, administration, management and operation of the Building (including the Common Areas) during such period including, without limiting the generality of the foregoing:
  - a. all charges for Utilities charged as an Operating Cost in accordance with Article 5 of this Lease, all charges for utilities and similar services to the Common Areas including, without limiting the generality of the foregoing, water, gas, heat, electrical power or energy, steam or hot water used upon or in respect of the Common Areas and associated costs;
  - b. all costs incurred by the Landlord in connection with the maintenance, repair, replacement (other than capital repairs and replacements unless chargeable in accordance with Section 9.1) and operation of the Building and the Common Areas, and of complying with all applicable laws, directions, rules and regulations of the governmental authorities having jurisdiction and in connection therewith including, without limiting the generality of the foregoing, the cost of providing garbage removal and maintenance services, the cost of heating and cooling and ventilating the Common Areas and the cost of maintaining, repairing and replacing all HVAC Equipment and any HVAC equipment servicing the Common Areas, the cost of window cleaning, and any and all other costs incurred by the Landlord in connection with the maintenance, repair and operation of the Common Areas, including the costs of any machinery, supplies, tools and materials used in connection with such services;
  - c. the cost of providing security, landscaping, pest control, fire equipment, fire suppression systems, window cleaning, waste collection, disposal and recycling, painting/plastering, and snow and debris removal services, and the costs of machinery, supplies, tools, equipment and materials used in connection with such services or any rentals thereof, and the amount of salaries, wages and fringe benefits paid to employees directly engaged in the maintenance or operation of the Property, and amounts paid to independent contractors for any services in connection with such maintenance or operation;
  - d. the cost of on-site direct supervision and management and indirect expenses, to the extent applicable to the maintenance and operation of the Property including office supplies, telephone, legal and consulting fees, bad debts, and all expenses of every nature incurred in connection with the management, maintenance and operation of the Common Areas;

- e. the cost of insuring the Property in accordance with the terms of this Lease;
- f. all costs and expenses (including legal and other professional fees, interest and penalties on deferred payment) incurred in good faith by the Landlord in contesting, resisting or appealing any Taxes, provided that so long as the Leased Premises are exempt from realty taxes, this subparagraph shall not apply to any contest of realty taxes; and
- g. an administrative fee not greater than fifteen percent (15%) of the aggregate of all Operating Costs save the wages paid pursuant to subparagraph d;

provided that Operating Costs shall exclude:

- (i) any capital costs related to structural components not related to the Leased Premises;
  - (ii) all such costs determined by separate metering or assessment, or otherwise incurred for the exclusive benefit of the premises leased by the Tenant or any other tenant of the Property and billed to and paid for directly by the Tenant or such other tenant, including charges to tenants for above-normal utilization of utilities;
  - (iii) the cost to the Landlord of debt service in connection with any mortgage registered on title to the Lands (excluding any Leasehold Mortgages);
  - (iv) taxes on the income of the Landlord;
  - (v) costs incurred to enforce Building construction warranties and to complete the construction of the Building; and
  - (vi) the cost of improvements to particular premises intended for leasing and real estate, or other commissions relating to leasing premises within the Property;
31. **Option Space** means premises adjacent to the Leased Premises having an area of approximately 5,089 square feet and shown as Part 32 on the Reference Plan, within which the Tenant anticipates constructing five (5) artist work studios and a double height galleria, shown outlined in bold on Schedule B to this Lease.
32. **Outdoor Space** means Part 7 on the Reference Plan.
33. **Outside Date** has the meaning assigned to it in Section 1.3.
34. **Parkade** means the above ground parking structure located on the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> floor of the Building.
35. **Permitted Encumbrances** means the encumbrances listed on Schedule "D" to this Lease.
36. **Plans and Specifications** means the Plans and Specifications for the Leased Premises generally set out in Plans dated August 17, 2015 by Graziani & Corazza Architects Inc., and generally described in Schedule E to this Lease, together with such changes as are mutually agreed by the parties in accordance with Schedule C to this Lease. Where there is a conflict between the Plans and Specifications and Schedule E, Schedule E shall prevail.
37. **Property** means the Lands and the Building.
38. **Reference Plan** means the reference plan registered as Plan 66R-28757 in the Land Titles Division of Toronto Land Registry Office (No. 66).
39. **Rent** means any and all Basic Rent, Additional Rent, and all other amounts payable by the Tenant under the Lease whether or not expressly stated.
40. **Section 37 Agreement** has the meaning given to it in Recital C.

41. **Substantially Complete** means that the Landlord has achieved Substantial Performance of the Landlord's Work (as that term is defined in the *Construction Lien Act* (Ontario)), as certified by the Landlord's Architect and the Building Requirements have been met, provided that the Landlord may exclude exterior work, such as landscaping from the value of the Landlord's Work for the purposes of determining Substantial Performance, where the Landlord is not able to complete such work due to its seasonal nature.
42. **Taxes** means all real property taxes, rates, duties and assessments (including local improvement taxes), imposts, charges or levies, whether general or special, that are levied, rated, charged or assessed against the Leased Premises or any part thereof or Rent therefrom from time to time by any lawful taxing authority, whether federal, provincial, municipal, school or otherwise, and any taxes or other amounts which are imposed in lieu of, or in addition to, any such real property or whether of the foregoing character or not and whether in existence at the Commencement Date or not, and any such real property or commercial concentration taxes levied or assessed against the Landlord on account of its interest in or ownership of the Leased Premises or any part thereof, calculated on the basis of the Building being assessed as a fully leased and operational building, and the costs and expenses incurred for consulting, appraisal, legal and other services to the extent they are incurred in an attempt to minimize or reduce any of the real property or commercial concentration taxes referred to above, in all cases, excluding: (i) any penalty incurred as a result of a failure of the Landlord to pay Taxes in a timely manner; (ii) all development, local improvement and like charges associated with the initial construction and installation of municipal services to the Building; and (iii) all Landlord Taxes from time to time. None of the foregoing costs shall be borne by the Tenant.
43. **Tenant Delay** means:
  - (a) a delay by Tenant beyond five (5) days after Landlord request for Tenant information or approvals (in which case the Tenant Delay shall be deemed to have commenced when the request was issued);
  - (b) a delay resulting from undue interference with completion of Landlord's Work by Landlord in connection with activities of Tenant within the Premises prior the Outside Date; or
  - (c) a delay resulting from an change to the Plans and Specifications which Tenant approved.
44. **Tenant's Share** has the meaning assigned to it in Section 3.5(a).
45. **Tenant's Proportionate Share** has the meaning assigned to it in Section 3.5(a).
46. **Term** has the meaning assigned to it in Section 1.3 of this Lease.
47. **Utilities** means all gas, electricity, water, sewer, steam, fuel, power, telephone, telecommunications, alternative heating and cooling utilities and other utilities used in or for or allocated by the Landlord to the Leased Premises, as the case may be.

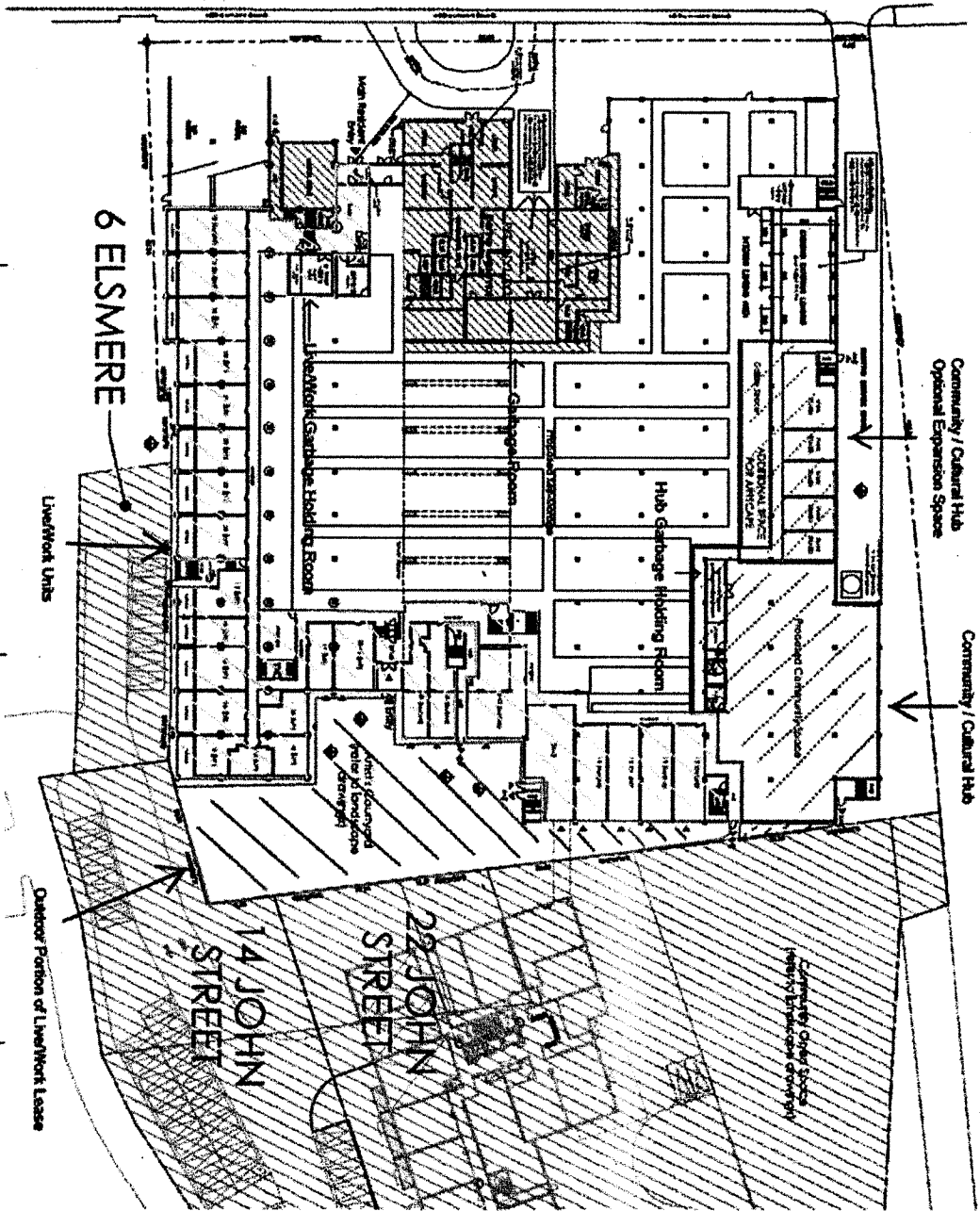


SCHEDULE B  
LEASEHOLD PREMISES

Ground Floor Plan by Graziani & Corazza, February 29, 2016



KING STREET



6 ELSMERE

Live/Work Units

Outdoor Portion of Live/Work Units

14 JOHN STREET

22 JOHN STREET

Community/Cultural Hub  
Optional Expansion Space

Community/Cultural Hub

Hub Garage Holding Room

Leavitt's Garage Holding Room

Community/Cultural Hub  
Optional Expansion Space

**8**  
GRAZIANI & CORAZZA  
ARCHITECTS  
31-32 17th Street  
New York, NY 10011  
Tel: 212 693 1234  
Fax: 212 693 1234  
www.grazianiandcorazza.com

**GROUND FLOOR PLAN**  
Scale: 1/8" = 1'-0"  
AS01  
Date: 02/29/16

**LEGEND**

- 1. Existing
- 2. New
- 3. Proposed

**NOTES**

1. See Schedule A for general notes.
2. See Schedule B for leasehold premises.
3. See Schedule C for construction details.
4. See Schedule D for site plan.
5. See Schedule E for mechanical plan.
6. See Schedule F for electrical plan.
7. See Schedule G for plumbing plan.
8. See Schedule H for fire alarm plan.
9. See Schedule I for security plan.
10. See Schedule J for accessibility plan.

SCHEDULE C  
LANDLORD'S WORK

**ARTICLE 1 - 22 JOHN OWNER'S RESPONSIBILITIES**

1.1 Landlord's Work

- (a) The 22 John Owner shall construct improvements to the Leased Premises in accordance with the Plans and Specifications and all applicable municipal, building code and other requirements, laws and regulations in a good and workmanlike manner (the "Landlord's Work").
- (b) Subject to the receipt by the 22 John Owner or its designate of the Contribution Agreement Advances, the 22 John Owner shall be responsible for all work and materials required for the proper completion of the Landlord's Work, including
  - (i) federal or provincial sales, excise or other taxes;
  - (ii) all permit fees;
  - (iii) utility or service connection costs, fees and charges or similar expenses; and
  - (iv) the requirements of any site plan agreement entered into with the City of Toronto.
- (c) It is acknowledged that the Landlord's Work will be completed in conjunction with the construction of the Rental Building by the 22 John Owner and although there is no fixed date for completion of the Landlord's Work, the Landlord's Work shall be completed on or before the Outside Date, subject only to Force Majeure and Tenant Delay. The 22 John Owner shall keep the Landlord, the Tenant and the City fully informed of its construction schedule during the course of construction by providing progress reports at least quarterly, and shall notify the Tenant and the City in writing of the date it expects the Landlord's Work to be Substantially Complete (the '**Contemplated Substantial Completion Date**'), which notice shall be delivered at least sixty five (65) days prior to the Contemplated Substantial Completion Date.
- (d) If any construction lien is registered or asserted in writing against the place of the Landlord's Work, or any trust fund claim or other claim under the *Construction Lien Act* (Ontario), or any other claim in connection with the Landlord's Work, is made by or to anyone (other than claims that arise out of the wrongful, or alleged wrongful, act or omission of the Tenant), the 22 John Owner shall cause any lien or claim to be forthwith discharged or vacated from the title to the place of the work. Any costs, expenses or legal fees (as between a solicitor and his or her own client) incurred by the Tenant in connection with any such lien or claim shall be paid to it by the 22 John Owner forthwith after demand by the Tenant. This clause does not apply to a claim by the Tenant arising as a result of the failure of the 22 John Owner to pay a subcontractor when the Tenant was in arrears of payment under this Lease, including failing to enforce the Contribution Agreement Advances, or failing to pay the Tenant's Contribution.

1.2 Construction Changes

- (a) Except as set out below, the Plans and Specifications shall not be changed by the 22 John Owner without the prior consent of the Tenant (not to be unreasonably withheld), but the Tenant shall have the right to require reasonable changes therein with the consent of the 22 John Owner (not to be unreasonably withheld) provided that: (a) the change is feasible having regard to the stage of construction; (b) the Tenant pays for any additional costs arising from such changes as determined, if necessary, by the 22 John Owner's architect, acting reasonably and; (c) any delay resulting from such changes shall not result in any change to the Commencement Date (which shall be the date it would have been but for the delay resulting from such change). The 22 John Owner agrees to advise the Tenant of its *bona fide* estimate of the length of the delay that will result from any such change.
- (b) Following consultation with the Tenant, and provided the proposed changes to not materially diminish the scope and quality of the Landlord's Work from that set out in

the Plans and Specifications the 22 John Owner may make changes to the Plans and Specifications where such changes are required by reason of (i) the provisions of codes, agreements or requirements of or administered by the City, or any utility or any other Authority regardless of whether any of such changes would be apparent on an inspection, and whether or not within the knowledge of the Tenant or (ii) the implementation of a value engineering exercise carried out by the 22 John Owner, and any such changes shall be made in the Plans and Specifications and the 22 John Owner shall complete the Landlord's Work in accordance with the amended Plans and Specifications.

- (c) Should the 22 John Owner seek approval of the Tenant to any change, it shall notify the Tenant of such change in writing and the Tenant shall provide its response within five (5) Business Days, failing which the Tenant shall be deemed to have given the approval requested by the 22 John Owner.
- (d) In addition to the Landlord's Work contemplated in the Plans and Specifications, the 22 John Owner and the Tenant shall agree on the scope of finishing work to be completed within the Leased Premises (the "**Finishing Work**") and the 22 John Owner shall pay the cost of such finishing work to a maximum amount of \$100 per square foot, being a maximum of \$823,600 (the "**Allowance**"). The costs of any Finishing Work in excess of the Allowance, shall be for the account of the Tenant and paid forthwith upon demand.

### 1.3 Inspections and Completion

- (a) The 22 John Owner shall arrange to meet with the Tenant and the City for a deficiency review of the Leased Premises at least ten (10) Business Days prior to the Contemplated Substantial Completion Date in order to compile a list of readily visible defects and deficiencies (the "**Punch List**"). The Punch List shall be provided to the Landlord's Architect for consideration in its determination that the Landlord's Work is Substantially Complete. In the event of a dispute as to whether a deficiency or defect noted by the Tenant or its Consultant is or is not a deficiency or defect, the determination of the Landlord's Architect shall be final. The Landlord's Work shall be Substantially Complete when the Landlord's Architect has certified Substantial Performance of the Work in accordance with the *Construction Lien Act* (Ontario) and the Builder Requirements have been delivered.
- (b) Any Landlord's Work not completed prior to the Commencement Date, including any items on the Punch List, shall be completed as soon as possible.
- (c) The 22 John Owner shall be responsible for inspecting the work of its subcontractors from time to time and ensuring that they or the 22 John Owner's own forces correct all defects or deficiencies shown on the lists resulting from such reviews prior to the further review procedure set out below.
- (d) Upon total performance of all exterior work and landscaping, and at least one month prior to the expiration of any warranty period, the parties shall meet and compile a list of readily visible defects or deficiencies, which items shall be fully repaired in accordance with the obligations of the 22 John Owner under the Plans and Specifications. Failure to so meet shall not prejudice the rights of the Tenant or the 22 John Owner.
- (e) In addition to the reviews referred to above, the 22 John Owner shall be responsible, in terms of both cost and undertaking, for all electrical, plumbing, Fire Marshal and other inspections required by any code or authority and paying for all permits and inspection fees required by any authority. The 22 John Owner shall be responsible for making appropriate arrangements with the Tenant for all reviews as required by the Plans and Specifications or by law to the extent such reviews or inspections occur after the Commencement Date.

### 1.4 Warranty of Landlord's Work

- (a) Without limiting any other obligation of the 22 John Owner in this Lease, the 22 John Owner warrants that, for a period of two (2) years from the Commencement Date, all items of Landlord's Work will be free of defect and deficiency in workmanship and materials. All costs of rectification and repair in such warranty

period shall be borne by the 22 John Owner and not charged by the Landlord as Additional Rent.

- (b) The 22 John Owner assigns, or agrees to cause to be assigned, to the Tenant all warranties for work, services or materials performed or supplied by any subcontractor, material supplier or other person in or about the Building. The 22 John Owner shall ensure that all subcontractors or other engagements are made subject to this assignment. The Tenant assumes no liability for payment of any such person or any other liability by virtue of this assignment. Until expiry of the relevant warranty and other rights of the Tenant against the 22 John Owner, the Tenant shall hold the warranties on behalf of both the Tenant and the 22 John Owner, and the Tenant shall not directly exercise any rights under any such warranty, guarantee or other obligation prior to default by the 22 John Owner.

#### 1.5 Workplace Safety and Insurance Act

The 22 John Owner will ensure that it is in full compliance with requirements of the *Workplace Safety and Insurance Act*, 1997, and will use its best efforts to ensure that any subcontractor is not in arrears of any contributions or amounts payable under the *Workplace Safety and Insurance Act*, 1997. The 22 John Owner will indemnify and save harmless the Tenant and the Consultant from and in respect of all claims made under the *Workplace Safety and Insurance Act*, 1997 by the Workplace Safety and Insurance Board, or otherwise in respect of arrears of assessments or other amounts payable by the 22 John Owner any of its subcontractors.

#### 1.6 Extension of Outside Date

- (a) The Outside Date shall be extended by one day for each day of delay in the 22 John Owner's construction of the Landlord's Work as a result of Tenant Delay or Force Majeure.
- (b) In order for the 22 John Owner to claim any extension or additional time due to a "Tenant Delay", the 22 John Owner must give the Landlord, the Tenant and the City written notice (the "Tenant Delay Notice") of:
  - (i) the specific act or failure which constitutes a "Tenant Delay" within fifteen (15) days after the occurrence of same, and
  - (ii) the 22 John Owner's good faith estimate of the number of days of delay in Landlord's construction which will result from the Tenant Delay.
- (c) The 22 John Owner may issue Tenant Delay Notices from time to time, and in the event its good faith estimate is incorrect, or there is continuing Tenant Delay, may amend a Tenant Delay Notice by increasing its estimate of the number of days of delay in the 22 John Owner's construction which will result from the Tenant Delay.

SCHEDULE D  
LEGAL DESCRIPTION AND PERMITTED ENCUMBRANCES

LEGAL DESCRIPTION

Part of PIN 10323-0002 (LT)

PART OF LOTS 15, 16 AND 17, PLAN 38 YORK AND PART OF LOT 6, CONCESSION 5, WYS YORK, DESIGNATED AS PARTS 7, AND 27 ON PLAN 66R-28757; CITY OF TORONTO.

PERMITTED ENCUMBRANCES

1. Notice of Lease registered as Instrument No. AT1966161 on December 3, 2008, between Coinmatic Canada Inc., as tenant and 458676 Ontario Inc., as landlord;
2. Charge registered as Instrument No. AT4232351 on May 31, 2016 between 2295477 Ontario Inc., and chargor, and Computershare Trust Company of Canada, as chargee, for the sum of \$35,742,610.00;
3. Notice of Assignment of Rents – General registered as Instrument No. AT4232352 on May 31, 2016, between 2295477 Ontario Inc. and Computershare Trust Company of Canada;
4. Charge registered as Instrument No. AT4253925 registered on June 21, 2016 between 2295477 Ontario Inc., as charger, and CMLS Financial Ltd., as chargee, for the sum of \$8,500,000.00; and
5. Notice of Assignment of Rents – General registered on June 21, 2016 as Instrument No. AT4253926, between 2295477 Ontario Inc. and CMLS Financial Ltd.

SCHEDULE E  
PLANS AND SPECIFICATIONS

**Construction Finish Specifications for Artscape Community Cultural Hub:**

- Concrete floor
- Drywall
- Suspended insulated ceiling
- Basic HVAC
- Basic electrical distribution per code requirements
- Basic public washrooms
- Standard commercial grade energy efficient lighting

\* In addition to the forgoing \$100/SF budgeted for the finishing of the interior space

\* Floor layout to be consistent with that shown on Schedule B.

**The parties agree that the HVAC must be properly sized, to adequately heat and cool the Leased Premises**

SCHEDULE F  
OPERATING COST CHARGES AS OF DATE OF LEASE

**OPERATING EXPENSES**

**SALARIES AND BENEFITS**

Salaries  
Training  
Benefits  
Apartment Benefit

**TOTAL SALARIES AND BENEFITS**

**UTILITIES**

Hydro  
Water / Sewer  
Gas/Oil

**TOTAL UTILITIES**

**SECURITY**

Security

**TOTAL SECURITY**

**REPAIRS & MAINTENANCE**

Intercom  
Elevator  
Garbage Removal  
Pest Control  
Snow Removal & Landscaping  
Garage Cleaning  
Fire Equipment & Plans  
Painting & Plastering  
Pool & Recreation Area  
Cleaning  
General Repairs  
Cleaning Supplies  
HVAC Contracts  
Mechanical & Plumbing Repairs  
Appliance Repairs  
Electrical Repairs  
Mechanical and Plumbing Supplies  
Electrical Supplies

**TOTAL REPAIRS AND MAINTENANCE**

**GENERAL & ADMINISTRATION**

Delivery  
Office Supplies  
Miscellaneous

Telephone

**TOTAL GENERAL AND ADMINISTRATION**

**PROFESSIONAL FEES**

Legal

Consulting

**TOTAL PROFESSIONAL FEES**

**INSURANCE**

Insurance

**TOTAL INSURANCE**

**REALTY TAXES**

Realty Taxes

Note: Assumed to be NIL, provided exemption is obtained



SCHEDULE G  
NON-DISTURBANCE AGREEMENT

**SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT**

**THIS AGREEMENT** made as of the  day of , 20, among  Insert as applicable, i.e. for CMBS – Computershare Trust Company of Canada (the “Mortgagee”) and  (the “Tenant”).

**WHEREAS:**

- A. The Mortgagee holds, as security for a loan made by it to  (the “Mortgagor”), a mortgage and other security (collectively the “Mortgage”) on the real property with the buildings and improvements erected thereon and known as , in the Province of  and more particularly described in Schedule “A” (the “Mortgaged Premises”) which Mortgage is dated  and was registered in the Land Titles Office for  (No. ) as Instrument No.  on the  day of , 20;
- B. The Mortgagor is the owner of the Mortgaged Premises;
- C. The Tenant is a tenant of the Mortgagor in respect of certain premises referred to as the Weston Community/Cultural Hub located on part of the Mortgaged Premises (the “Leased Premises”), for a term of Fifty (50) years, less one day (the “Term”), pursuant to the terms and conditions of a lease dated  (the “Lease”)
- D. The City is a party to the Lease with certain rights to secure the Term of the Lease, including the right to assign the Lease, assume the Lease, or terminate the Lease, on the terms and conditions set out in the Lease, and is a party to this Agreement for the sole purpose of protecting its rights under the Lease;
- E. The Tenant and the Mortgagee desire to confirm their understanding with respect to the Lease and the Mortgage;

**NOW THEREFORE, in consideration of the premises, mutual covenants and agreements herein contained, the Tenant and the Mortgagee hereby covenant and agree as follows:**

- 1. Subordination. Except as otherwise expressly provided in this Agreement, the Lease and the Tenant's interest in the Leased Premises are now and will at all times continue to be in each and every respect subject and subordinate to the Mortgage, and to any and all increases, renewals, amendments, modifications, supplements, extensions, consolidations and replacements of the Mortgage, including without limitation, amendments which increase the amount of the indebtedness secured by the Mortgage. Any and all such increases, renewals, amendments, modifications, supplements, extensions, consolidations and replacements of the Mortgage shall be subject to and entitled to the benefits of the terms of this Agreement. Notwithstanding the foregoing, nothing contained in this Agreement shall be deemed to affect the obligations of the landlord under the Lease.
- 2. Non-Disturbance. So long as the Lease is in full force and effect and Tenant is not in default (beyond any period given the Tenant to cure such default) in the payment of rent or any other amount owing under the Lease or in the performance of any of the terms, covenants or conditions of the Lease on the Tenant's part to be performed, and does not prepay rent or any other amount owing under the Lease except as currently required under the Lease, the Tenant's possession and occupancy of the Leased Premises and the Tenant's rights and privileges under the Lease, or any extensions or renewals thereof which may be effected in accordance with any option therefore in the Lease, shall not be disturbed, diminished or interfered with by the Mortgagee, and the Mortgagee will not join the Tenant or the City as a party defendant in any action or proceeding for the purpose of terminating the Tenant's or The City's interest and estate under the Lease because of any default under the Mortgage.
- 3. The Mortgagee acknowledges that the City is a party to the Lease, and the Mortgagee has reviewed and is familiar with Article 12 of the Lease, which sets out the City's rights to assign the Lease, assume the Lease or terminate the Lease, in accordance with its rights set out in Article 12 of the Lease. The City is a party of this Agreement for the sole purpose of protecting its rights under the Lease. Notwithstanding anything contained herein, the City may exercise its rights to assign the Lease, assume the Lease or terminate the Lease, in accordance with its rights set out in the Lease, without any interference or disturbance whatsoever from the Mortgagee.
- 4. Attornment. In the event that the Mortgagee or a third party (including, without limitation, a receiver) acquires the interest of the Mortgagor in or takes possession of the Mortgaged Premises or succeeds to the interest of the Mortgagor under the Lease as a result of a default under the Mortgage, the Tenant shall be bound to the Mortgagee or the third party under all of the terms, covenants and

conditions of the Lease for the balance of the term thereof remaining and any extensions or renewals thereof which may be effected in accordance with any option therefore in the Lease, with the same force and effect as if the Mortgagee or the third party were the landlord under the Lease, and the Tenant hereby attorns to the Mortgagee or the third party as its landlord under the Lease. Such attornment shall be effective without the execution of any further instruments on the part of any of the parties hereto immediately upon the Mortgagee or the third party taking possession of the Mortgaged Premises or acquiring the interest of the Mortgagor in the Mortgaged Premises or succeeding to the interest of the Mortgagor under the Lease. The Tenant shall be under no obligation to pay rent or any other amount owing under the Lease to the Mortgagee or the third party until the Tenant receives written notice from the Mortgagee or the third party that it has acquired the interest of the Mortgagor in or taken possession of the Mortgaged Premises or succeeded to the interest of the Mortgagor under the Lease. Upon receipt of such written notice, Tenant shall make all payments of rent and of any other amount owing under the Lease directly to the Mortgagee or the third party. Notwithstanding that the Tenant has attorned to the Mortgagee or the third party as its landlord under the Lease, the Mortgagee or the third party shall not be:

- (a) liable for any act or omission of, or any breach of any representation or warranty by, any prior landlord (including the Mortgagor);
- (b) subject to any set-offs or defences that the Tenant might have against any prior landlord (including the Mortgagor);
- (c) bound by any rent which the Tenant might have paid for more than the current month to any prior landlord (including the Mortgagor) or any other amount owing under the Lease which the Tenant might have paid in advance of its due date except as currently required under the Lease to any prior landlord (including the Mortgagor);
- (d) bound by any amendment, modification or assignment of the Lease made without its' written consent, provided that the Tenant shall not require the consent of the Lender where a sublet or assignment is permitted without the consent of the Landlord, in accordance with the Lease;
- (e) responsible for the return of any security deposit delivered to any prior landlord under the Lease (including the Mortgagor) and not subsequently received by the Mortgagee; or
- (f) responsible to make repairs in or to the Mortgaged Premises, or apply any insurance proceeds or cash condemnation awards to make such repairs, in the case of damage or destruction of the Mortgaged Premises, or any part thereof, including, without limitation, due to fire or other casualty or by reason of condemnation, provided that any right of the Tenant under the Lease to terminate the Lease in such circumstances shall be preserved.

5. Tenant Representations. The Tenant certifies, represents and warrants that:

- (a) the term of the Lease shall commence in accordance with the terms of the Lease;
- (b) the Tenant shall accept possession of the Leased Premises and any improvements required by the terms of the Lease in accordance with the terms of the Lease;
- (c) no rent or any other amount owing under the Lease has been paid in advance of its due date except as currently required by the Lease;
- (d) to the best knowledge of the Tenant the Mortgagor is not in default under the Lease; and
- (e) the Tenant, as of the date of this Agreement, has no charge, lien or claim of set-off under the Lease or otherwise against the rents or any other amount owing thereunder.

6. Notices under the Lease and Mortgagee Right to Cure. Tenant shall give Mortgagee, concurrently with giving any notice to landlord under the Lease, a copy of any such notice in the manner set forth below. In addition, the Tenant agrees that, until the Mortgage is released by Mortgagee, it will not exercise any remedies under the Lease for landlord defaults without having first given to Mortgagee:

- (a) written notice of the details of the alleged landlord default; and
- (b) the opportunity to cure such default within the longer of:
  - (i) 30 days after the cure period provided under the Lease to landlord,
  - (ii) 30 days from Mortgagee's receipt of Tenant's notice to Mortgagee of a landlord default, or

- (iii) if cure of such default requires possession of the Mortgaged Premises, 30 days after Mortgagee has obtained possession of the Mortgaged Premises provided that Mortgagee diligently commences an action or proceeding to obtain possession.
7. Tenant acknowledges that Mortgagee is not obligated to cure any landlord default, but if Mortgagee so elects to do so, Tenant agrees to accept cure by Mortgagee as that of landlord under the Lease and will not exercise any right or remedy under the Lease for a landlord default. Performance rendered by Mortgagee on landlord's behalf is without prejudice to Mortgagee's rights against landlord under the Mortgage or any other documents executed by landlord in favour of Mortgagee in connection with the Mortgage. Mortgagee shall have and is granted by Tenant the right to enter upon the Leased Premises for the purpose of causing any cure for which this Agreement provides.
8. Tenant's Covenants. The Tenant covenants and agrees with the Mortgagee that the Tenant will not:
- (a) prepay rent or any other amount owing under the Lease, except as currently required under the Lease;
  - (b) surrender the Lease, except as provided for under the Lease;
  - (c) amend, modify, or assign the Lease or sublease the Leased Premises without the Mortgagee's written consent, provided that (i) the Lease may be assigned by the City in accordance with its rights set out in Article 12 of the Lease and (ii) the Tenant shall not require the consent of the Lender where a sublet or assignment is permitted without the consent of the Landlord, in accordance with the Lease;
  - (d) consent to the termination of the Lease by landlord, other than a termination by landlord pursuant to the express provisions of the Lease; or
  - (e) exercise any right, power, or privilege which it may have to terminate the Lease including, without limitation, by reason of any act or omission of the Mortgagor or by reason of the bankruptcy or insolvency of the Mortgagor, until the Tenant shall have given written notice to the Mortgagee pursuant to section 5 hereof.
9. Notice of Mortgage. To the extent that the Lease shall entitle the Tenant to notice of any mortgage, this Agreement shall constitute such notice to the Tenant with respect to the Mortgage and to any and all other mortgages which may hereafter be affected by this Agreement.
10. Notices. All notices under this Agreement will be effective only if made in writing and personally delivered to the office of the other party or delivered by courier or sent by facsimile transmission or email to the applicable address set out in Schedule "A" attached hereto, or to such other address as may be specified by notice by either party to the other. Any party may change its address for the foregoing purposes by giving the other party notice of such change of address as provided aforesaid. Any notices personally delivered shall be deemed to have been given upon the day of delivery. Any other notices shall be deemed to be received on the business day next following the day it is delivered or sent. A "business day" means any day of the week except a Saturday, a Sunday or a statutory holiday in the province in which the Mortgaged Premises is located.
11. Governing Law & Interpretation. This Agreement shall be governed by the laws of the province in which the Mortgaged Premises is located and the laws of Canada applicable therein, without regard to the choice of law rules of such province. References herein to Mortgagor, Mortgagee and Tenant shall mean and include their respective successors and assigns. The headings of paragraphs in this Agreement are provided for convenience only and shall not affect the interpretation of the paragraphs.
12. Waiver. No waiver of any of the provisions hereof shall be effective unless such waiver is in writing and signed by the party so waiving and any such waiver shall not be construed as a waiver in respect of any other failure, breach or default not expressly identified by such written waiver. No failure or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall be construed as a waiver thereof.
13. Further Assurances. Each party will from time to time, upon any reasonable request of the other, make, execute and deliver, or cause to be made, executed and delivered, all such further acts, deeds, assurances and things as may be required or necessary to more effectually implement and carry out the true intent and meaning of this Agreement.
14. Miscellaneous. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto or their respective successors in interest. This Agreement shall enure to the benefit of and be binding upon the parties hereto, their successors and assigns. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision

of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

15. Entire Agreement. This Agreement constitutes the entire understanding and agreement between the parties regarding the subject matter hereof, including the subordination of the Lease, and supersedes all prior oral and written understanding or agreement, with respect to the subject matter hereof.
16. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together constitute a fully executed agreement even though all signatures do not appear on the same document. A signed copy of this Agreement delivered by facsimile or e-mail shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

**SIGNATURE PAGE FOLLOWS**

IN WITNESS HEREOF the parties hereto have executed this Agreement.

**Mortgagee**

**Tenant**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

*I/We have the authority to bind the Corporation*

*I/We have the authority to bind the Corporation*

**City of Toronto**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

*I/We have the authority to bind the Corporation*

**SCHEDULE "A"**

**LEGAL DESCRIPTION OF MORTGAGED PREMISES**

Municipal Address:  , Ontario  
Legal Description:

PIN:  
Registry Office: Land Titles Division of  (No. ) at

**ADDRESS FOR NOTICE**

**MORTGAGOR ACKNOWLEDGEMENT**

In consideration of the loan made to it by the Mortgagee and other valuable consideration, the undersigned Mortgagor under the Mortgage and landlord under the Lease hereby acknowledges and agrees to the terms of this Subordination, Non-Disturbance and Attornment Agreement.

Date: \_\_\_\_\_

Mortgagor/landlord

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

*I/We have authority to bind the Corporation*

This is Exhibit "N" referred to in the Affidavit of Ben Macintosh, affirmed by Ben Macintosh, at the City of Toronto, in the Province of Ontario, before me on this 3<sup>rd</sup> day of January, 2024, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

*Christopher J. Henderson*

Christopher J. Henderson  
Commissioner for Taking Affidavits

LRO # 80 Notice

Received as AT2852867 on 2011 10 27 at 15:48

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 1 of 2

### Properties

**PIN** 21412 - 0296 LT

**Description** FIRSTLY: LT 1 PL 338 TORONTO DESIGNATED AS PTS 1 & 9 PL 66R25294; THE EAST & WEST SIDES OF WIDMER ST FROM RICHMOND ST WEST TO KING ST WEST AND THE NORTH AND SOUTH SIDES OF ADELAIDE ST WEST ARE CONFIRMED UNDER BOUNDARIES ACT PLAN 63BA1547 REGISTERED INSTRUMENT CT359919; SECONDLY: PART OF LANE ON PLAN 338 CLOSED BY CITY OF TORONTO BY-LAW 630-2010 REGISTERED AS AT2426815 DESIGNATED AS PARTS 3, 4 & 5, PLAN 66R-25294; THE NORTH AND SOUTH SIDES OF ADELAIDE ST WEST ARE CONFIRMED UNDER BOUNDARIES ACT PLAN 63BA1547 REGISTERED INSTRUMENT CT359919; THIRDLY: LT 15 PL 338 TORONTO DESIGNATED AS PTS 6, 7 & 8 PL 66R25294; CITY OF TORONTO; THE NORTH & SOUTH SIDES OF ADELAIDE ST WEST ARE CONFIRMED UNDER BOUNDARIES ACT PLAN 63BA1547 REGISTERED INSTRUMENT CT359919; FOURTHLY: LT 2-11 PL 338 TORONTO; PT LT 12 PL 338 TORONTO DESIGNATED AS PT 2 PL 66R25294 CITY OF TORONTO; THE EAST & WEST SIDES OF WIDMER ST FROM RICHMOND ST WEST TO KING ST WEST ARE CONFIRMED UNDER BOUNDARIES ACT PLAN 63BA1547 REGISTERED INSTRUMENT CT359919 CITY OF TORONTO

**Address** TORONTO

### Consideration

**Consideration** \$ 0.00

### Applicant(s)

The notice is based on or affects a valid and existing estate, right, interest or equity in land

**Name** CITY OF TORONTO

**Address for Service** Legal Services  
55 John Street  
Metro Hall  
26th Floor  
Toronto, Ontario  
M5V 3C6

This document is not authorized under Power of Attorney by this party.

This document is being authorized by a municipal corporation RAY KALLIO, SOLICITOR FOR THE CITY OF TORONTO.

### Party To(s)

**Capacity**

**Share**

**Name** DANIELS HR CORPORATION

**Address for Service** 20 Queen Street West  
Suite 3400  
Toronto, Ontario  
M5H 3R3

This document is being authorized by a municipal corporation RAY KALLIO, SOLICITOR FOR THE CITY OF TORONTO.

This document is not authorized under Power of Attorney by this party.

### Statements

This notice is pursuant to Section 71 of the Land Titles Act.

This notice is for an indeterminate period

Schedule: See Schedules

### Signed By

Gail B. Luck

55 John St., 26th Floor  
Toronto  
M5V 3C6

acting for  
Applicant(s)

Signed

2011 10 27

Tel 4163928047

Fax 4163975624

I have the authority to sign and register the document on behalf of the Applicant(s).

The applicant(s) hereby applies to the Land Registrar.

**Submitted By**

CITY OF TORONTO

55 John St., 26th Floor  
Toronto  
M5V 3C6

2011 10 27

Tel 4163928047

Fax 4163975624

**Fees/Taxes/Payment**

Statutory Registration Fee \$60.00

Total Paid \$60.00

**File Number**

Party To Client File Number : 199443

**SECTION 37 AMENDING AGREEMENT**

**THIS AGREEMENT** made this 21<sup>st</sup> day of July, 2011.

**BETWEEN:**

**DANIELS HR CORPORATION**

("Owner")

- AND -

**CITY OF TORONTO**

("City")

(the Owner and the City are collectively the "**Parties**")

**WHEREAS** the Owner is the registered owner of lands and premises in the City of Toronto, in the Province of Ontario, known municipally in 2011 as 21-31 Widmer Street and 299 Adelaide Street, and more particularly described in Schedule "A" attached hereto ("**Site**");

**AND WHEREAS** on June 8, 2010, the City and the Owner entered into an agreement pursuant to Section 37 of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, ("**Section 37 Agreement**") which is registered as Instrument AT2499866 against title to the Site;

**AND WHEREAS** City Council, at its meeting of July 12 and 13, 2011, authorized the City Solicitor to amend the Section 37 Agreement in order to require the Owner to construct the Community Performance Space at a minimum value of \$1,000,000, for ownership and use by Toronto Artscape Inc. rather than the City as previously stipulated, to delete the funding for a Heritage Conservation District study and affordable housing projects, and to reduce the amount allocated towards streetscape improvements to John, Adelaide and Widmer Streets (collectively, the "**Section 37 Amendments**");

**AND WHEREAS** City Council, at its meeting of July 12 and 13, 2011, passed a by-law to amend Zoning By-law No. 617-2010 ("**2011 Amending By-law**") in order to reflect the Section 37 Amendments;

**AND WHEREAS** the Owner and the City have entered into this agreement ("**Amending Agreement**") in order to implement the Section 37 Amendments;

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that in consideration of the sum of Two Dollars (\$2.00) of lawful money of Canada, now paid by each party to the other, the receipt and sufficiency of which is hereby acknowledged, and for other valuable consideration, the Parties agree to and with each other as follows:

**AMENDMENTS**

1. Subsection 1.1(m) is deleted in its entirety and subsections 1.1(n) to (cc) are renumbered accordingly.
2. Subsection 1.1(z) ("**Soft Costs**") is amended by replacing the reference to "subsection 5.1(a)" with "section 5.1" and by replacing all occurrences of the term "Community/Performance Space" with "Community Performance Space".
3. Subsection 2.1(d) is deleted in its entirety and subsections 2.1(e) and (f) are renumbered accordingly. Schedule D of the Section 37 Agreement is deleted in its entirety and replaced by the following:



**“[Schedule D intentionally deleted]”**

4. Section 3.1 of the Section 37 Agreement is deleted in its entirety and replaced by the following:

“3.1 The Owner agrees to pay to the City the sum of \$100,000 which shall be allocated to streetscape improvements to Widmer Street, John Street and Adelaide Street West in Ward 20. The Parties acknowledge and agree that the Owner paid this sum in full to the City on July 8, 2010.”

5. Section 5 of the Section 37 Agreement is deleted in its entirety and replaced by the following:

**“5. COMMUNITY PERFORMANCE SPACE**

5.1 On or before **1 January 2014**, the Owner shall convey to Toronto Artscape Inc. (“**Artscape**”), for nominal consideration and free and clear of all encumbrances, a stratified fee simple ground floor parcel in the Development, having a gross floor area of not less than 420 square metres, for use as a community performance space in the Development (“**Community Performance Space**”).

5.2 The Owner shall not convey the Community Performance Space to Artscape unless Artscape shall have first entered into an option agreement with the City, satisfactory to the City Solicitor in her sole and absolute discretion (“**Artscape Option Agreement**”), providing, inter alia:

- a) that the Artscape Option Agreement shall be registered on title to the Community Performance Space immediately after the transfer of the Community Performance Space from the Owner to Artscape;
- b) in the event Artscape ceases its use of the Community Performance Space as set out in the Artscape Option Agreement, the City shall have the right to purchase the Community Performance Space for \$2.00; and
- c) any other terms that the City Solicitor deems necessary to secure the City's interest in the Community Performance Space and the enforcement of the Artscape Option Agreement.

5.3 In the event that Artscape refuses to execute the Artscape Option Agreement or any reciprocal agreement within thirty (30) days of being provided with a copy of same, the Owner shall convey the Community Performance Space to the City.

5.4 In the event that the City acquires the Community Performance Space under the circumstances set out in subsection 5.2(b) or section 5.3, the use of the Community Performance Space shall be limited to arts and cultural uses similar to the intended community performance use.

5.5 In the event that,

- a) the registration of a condominium declaration and description in respect of the Development has not occurred at the time of the conveyance of the Community Performance Space; and
- b) Artscape has entered into the Artscape Option Agreement with the City;

the Owner may, in its discretion, convey the Community Performance Space to the City rather than directly to Artscape, and in such a case the City shall forthwith convey the Community Performance Space to Artscape.

5.6 The City's Chief Corporate Officer shall ascertain by independent valuation the 2010 "as built" construction costs of the Community Performance Space to a Base Building Standard (“**2010 Construction Costs**”), with the independent valuation

to be at the sole expense of the Owner. The land costs of the Community/Performance Space shall be set at \$60.00 per square foot of floor area premised on one times density coverage ("**2010 Land Costs**"). The value of the Community Performance Space shall be deemed to be the total of the 2010 Construction Costs, the 2010 Land Costs and the Soft Costs ("**Community Performance Space Valuation**"), regardless of the date of the conveyance of the Community Performance Space to Artscape. The Parties agree that the Soft Costs shall equal 9% of the 2010 Construction Costs.

- 5.7 The Community Performance Space shall, prior to its conveyance to Artscape, be completed to a Base Building Standard by the Owner. Artscape, or the City in the event it acquires the Community Performance Space under the circumstances set out in subsection 5.2(b) or section 5.3, shall be responsible for the cost of completing and furnishing the Community Performance Space beyond the Base Building Standard, as well as its operating costs. The terms and financial implications of any and all arrangements, including, but not limited to, reciprocal agreements and easements for shared facilities and services required between Artscape, as owner of the Community Performance Space (or the City as owner under the circumstances set out in subsection 5.2(b), section 5.3 or section 5.5), and the Owner, as owner of the remainder of the development, shall be to the satisfaction of the City's Chief Corporate Officer in his or her sole and absolute discretion.
- 5.8 At the time that the Community Performance Space is conveyed to Artscape, the Owner shall, at its sole cost and expense, provide the City and Artscape with its solicitor's title opinion, in form and content satisfactory to the City Solicitor, confirming that Artscape has acquired good and marketable title to the Community Performance Space in fee simple, free from all charges, liens, registered restrictions and other encumbrances of any kind, except for this Agreement, the Artscape Option Agreement and any other necessary agreements relating to services and maintenance of the Development.
- 5.9 At the time of the conveyance of the Community Performance Space from the Owner to Artscape, the Owner shall pay to the City, by means of a certified cheque, the amount, if any, by which the Community Performance Space Valuation is less than \$1,000,000 ("**Excess Funds**"). The City shall direct the Excess Funds to Artscape to be established as an operating reserve for the maintenance and operation of the Community Performance Space. The Parties agree that should the Community Performance Space Valuation be greater than \$1,000,000, the Owner shall not require the City or Artscape to pay the difference to the Owner."
6. Section 26.1 of the Section 37 Agreement is deleted in its entirety and replaced by the following:
- "26.1 The Parties agree that the Existing Agreement is rescinded and that this Agreement, as amended, is the only Section 37 Agreement between the Parties."

#### **CASH CONTRIBUTIONS AND LANE PAYMENT**

7. Within fifteen (15) days of the date upon which all of the provisions of the 2011 Amending By-law come into full force and effect, with all applicable appeal periods having lapsed, the following events shall occur simultaneously on a date that is mutually agreeable to the Parties:
- a) The Owner shall provide the City with a certified cheque in the amount of \$1,953,000, as the balance of the purchase price required under the Lane Agreement, as defined in the Section 37 Agreement prior to its amendment by this Amending Agreement ("**Lane Agreement**");
  - b) The City shall return to the Owner the letter of credit in the amount of \$1,953,000 that the Owner filed with the City under the terms of the Lane Agreement; and

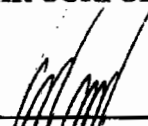
- c) The City shall refund in full to the Owner the \$100,000 that the Owner paid to the City on July 8, 2010 and that was to be allocated towards the costs of Heritage Conservation District study for King Spadina.

**REGISTRATION OF AMENDING AGREEMENT**

- 8. The Owner consents to the registration of the Amending Agreement against the title to the Site in priority to all other financial encumbrances and the Owner agrees to do such things and to obtain such discharges, releases or postponements as are required to permit the Amending Agreement to be so registered in priority to all other financial encumbrances against the Site.
- 9. Prior to the registration of the Amending Agreement against the title to the Site, the Owner shall, at its sole expense, obtain and deliver to the City a Title Opinion for the Amending Agreement from the Owner's solicitors, addressed to the City.


**IN WITNESS WHEREOF** this Agreement has been duly executed by proper and duly authorised signing officer(s) on behalf of each of the Parties as of the date first written above.

**DANIELS HR CORPORATION**

Per:   
 Name: ULLI S. WATKISS  
 Title: A.S.U.




Per: \_\_\_\_\_  
 Name:  
 Title:  
 I/We have authority to bind the Corporation

**CITY OF TORONTO**

Per:   
 Name: Marilyn M. Toft  
 Title: for Ulli S. Watkiss  
City Clerk

Per:   
 Name: G. CARBONE  
 Title: TREASURER

**APPROVED AS TO FORM**  
  
 For ANNA KINASTOWSKI  
 City Solicitor

  
 Authorized by Item TE8.3, adopted by Council at its meeting of July 12 and 13, 2011.  
  
 Marilyn M. Toft  
 City Clerk  


SCHEDULE "A"

Legal Description of the Site

**FIRSTLY:**

LT 1 PL 338 TORONTO DESIGNATED AS PTS 1 & 9 PL 66R25294; THE EAST & WEST SIDES OF WIDMER ST FROM RICHMOND ST WEST TO KING ST WEST AND THE NORTH AND SOUTH SIDES OF ADELAIDE ST WEST ARE CONFIRMED UNDER BOUNDARIES ACT PLAN 63BA1547 REGISTERED INSTRUMENT CT359919;

**SECONDLY:**

PART OF LANE ON PLAN 338 CLOSED BY CITY OF TORONTO BY-LAW 630-2010 REGISTERED AS AT2426815 DESIGNATED AS PARTS 3, 4, & 5. PLAN 66R-25294; THE NORTH AND SOUTH SIDES OF ADELAIDE ST WEST ARE CONFIRMED UNDER BOUNDARIES ACT PLAN 63BA1547 REGISTERED INSTRUMENT CT359919;

**THIRDLY:**

LT 15 PL 338 TORONTO DESIGNATED AS PTS 6, 7 & 8 PL 66R25294; CITY OF TORONTO: THE NORTH & SOUTH SIDES OF ADELAIDE ST WEST ARE CONFIRMED UNDER BOUNDARIES ACT PLAN 63BA1547 REGISTERED INSTRUMENT CT359919;

**FOURTHLY:**

LT 2-11 PL 338 TORONTO: PT LT 12 PL338 TORONTO DESIGNATED AS PT 2 PL 66R25294 CITY OF TORONTO: THE EAST & WEST SIDES OF WIDMER ST FROM RICHMOND ST WEST TO KING ST WEST ARE CONFIRMED UNDER BOUNDARIES ACT PLAN 63BA1547 REGISTERED INSTRUMENT CT359919 CITY OF TORONTO

Being the whole of PIN 21412-0296 (LT)



This is Exhibit "O" referred to in the Affidavit of Ben Macintosh, affirmed by Ben Macintosh, at the City of Toronto, in the Province of Ontario, before me on this 3<sup>rd</sup> day of January, 2024, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.  
Christopher J. Henderson  
Commissioner for Taking Affidavits

*Christopher J. Henderson*

**Marco Cuoco**  
Acting, Executive Director

**Corporate Real Estate Management Division**

**Metro Hall**  
55 John Street  
2<sup>nd</sup> Floor  
Toronto, Ontario M5V 3C6

Tel: 416-392-9158  
[Marco.Cuoco@toronto.ca](mailto:Marco.Cuoco@toronto.ca)  
[www.toronto.ca](http://www.toronto.ca)

November 9, 2023

**TO:** Toronto Artscape Inc.  
130 Queens Quay East Suite #423  
(4th Floor East Tower)  
Toronto, ON M5A 0P6 by registered mail

**AND TO:** Iler Campbell LLP  
30 St. Patrick St. 11<sup>th</sup> floor  
Toronto ON M5T 3A3  
by facimile to 416-598-3484

**RE: OPTION NOTICE**  
**City of Toronto Option to Purchase (the "Option")**  
**from Toronto Artscape Inc. ("Artscape") dated February 17, 2015**  
**registered as Instrument No. AT3817937 on February 25, 2015**  
**301 Adelaide Street West known as "The Sandbox" (the "Property")**

Dear Sirs/Mesdames:

Artscape is in incurable default of its obligations of the Option, as more particularly set out as follows:

- (i) section 1(b)(i) to continuously operate the Property as a Community Performance Space; and
- (ii) section 1(b)(xi) in that it is insolvent.

The City stipulates that Artscape, through its solicitor, Craig A. Mills, verbally confirmed on Thursday October 26th, 2023, that the foregoing Events of Default, as defined under the Option to Purchase, have occurred and that the City of Toronto is in a position to exercise its rights under the Option to acquire the Property for \$2.00, subject to standard adjustments, as defined thereunder.

Section 6 of the Option provides that the Closing for the transaction shall occur forty-five (45) days after Artscape's receipt of the Option Notice. Under the circumstances, the City requires that the Closing timeframe be abridged in order that the transaction close as soon as practically possible. To this end, we would ask that you provide the City's solicitor with carriage of this matter, Michele Desimone [[Michele.Desimone@toronto.ca](mailto:Michele.Desimone@toronto.ca); (416) 392-8162] with the name of the solicitor that will be acting on Artscape's behalf.

This will further confirm that City representatives from Corporate Real Estate Management will be in contact with Artscape to facilitate any entry to the Property for due diligence purposes in accordance with Section 10 of the Option.

Sincerely,

Marco Cuoco,  
Acting, Executive Director  
Corporate Real Estate Management Division  
City of Toronto





This is Exhibit "P" referred to in the Affidavit of Ben Macintosh, affirmed by Ben Macintosh, at the City of Toronto, in the Province of Ontario, before me on this 3<sup>rd</sup> day of January, 2024, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

*Christopher J. Henderson*

Christopher J. Henderson  
Commissioner for Taking Affidavits

**LEGAL SERVICES**

**Wendy Walberg, LL.B., LL.M., C.S.\***

City Solicitor  
26th Floor, Metro Hall, Stn. 1260  
55 John Street  
Toronto, ON M5V 3C6  
Tel 416 - 392 - 8047

*\* Certified by the Law Society as a Specialist in Municipal Law*

Reply to: **Christopher J. Henderson, M.P.A., LL.B.**  
Deputy Director,  
Land Development & Real Property Litigation  
Tel: 416 – 397 – 7106  
Email: [Christopher.Henderson@toronto.ca](mailto:Christopher.Henderson@toronto.ca)

Reply To: **Michele A. Wright, B.A., LL.B.**  
Deputy Director,  
Commercial & Technology Litigation  
Tel: 416 – 397 - 5342  
Email: [Michele.A.Wright@toronto.ca](mailto:Michele.A.Wright@toronto.ca)

File No. L9000-4500=652=2023=209200944

VIA EMAIL:

November 16, 2023

Messrs. Timothy C. Hogan, Chris Hamber and Thomas Masterson  
Harrison Pensa LLP  
1101 - 130 Dufferin Avenue  
London, ON N6A 5R2

Your client: Toronto Dominion Bank

Ms. Rosemary Fisher  
Simpson Wigle LLP  
103 - 1006 Skyview Drive  
Burlington, ON L7P 0V1

Your client: First Ontario Credit Union

Mr. Dominique Michaud  
Robins Appleby LLP  
2600 – 120 Adelaide St. W.  
Toronto, ON M5H 1T1

Your client: Community Forward Fund

Mr. William Roberts  
Lawson Lundell LLP  
1600 – 925 West Georgia Street  
Vancouver, BC V6C 3L2

Your client: Vancity Community Investment

Ms. Rachel Moses  
Minden Gross LLP  
2200 - 145 King Street West  
Toronto, ON M5H 4G2

Your client: Proposed Receiver

Dear Counsel:

Re: **Toronto Dominion Bank v. Toronto Artscape Inc.**  
**Court File No: TBD**

Attached for your information is a copy of the City’s Option Notice, dated November 9, 2023,

requiring the conveyance of the property referred to as Artscape Sandbox, municipally known as 301 Adelaide Street West, from Toronto Artscape Inc., to the City of Toronto.

Please contact me or one of my colleagues involved in this matter with any questions or concerns about this matter.

Sincerely,

A handwritten signature in dark ink, consisting of several overlapping, sweeping strokes that form the name Christopher J. Henderson.

Christopher J. Henderson  
Deputy Director,  
Land Development and Real Property Litigation  
/cjh/cs

c: Craig Mills, Lawyer for Artscape





**Properties**

TORONTO, DESIGNATED AS PARTS 5, 6 AND 13 ON PLAN 66R26931 AS IN AT3412619; SUBJECT TO AN EASEMENT OVER PART 14 ON PLAN 66R26931 IN FAVOUR OF PART OF LOTS 1 TO 12 INCLUSIVE, PART OF LOT 15 AND PART OF LANE (CLOSED BY BY-LAW 630-2010, INSTRUMENT NO. AT2426815), PLAN 338 TORONTO, DESIGNATED AS PARTS 5, 6 AND 13 ON PLAN 66R26931 AS IN AT3412619; SUBJECT TO AN EASEMENT OVER PART 14 ON PLAN 66R26931 IN FAVOUR OF PART OF LOTS 1 TO 12 INCLUSIVE, PART OF LOT 15 AND PART OF LANE (CLOSED BY BY-LAW 630-2010, INSTRUMENT NO. AT2426815), PLAN 338 TORONTO, DESIGNATED AS PARTS 5, 6 AND 13 ON PLAN 66R26931 AS IN AT3412619; SUBJECT TO AN EASEMENT OVER PART 14, REFERENCE PLAN 66R26931 IN FAVOUR OF PART OF LOTS 1 TO 12 PLAN 338, PART OF LOT 15 PLAN 338 AND PART OF LANE ON PLAN 338 CLOSED BY CITY OF TORONTO BY-LAW 630-2010 REGISTERED AS AT2426815, DESIGNATED AS PARTS 3, 4, 7, 8, 9, 10, 11, 16 & 18 ON PLAN 66R26931 AS IN AT3412628; SUBJECT TO AN EASEMENT OVER PART 14, REFERENCE PLAN 66R26931 IN FAVOUR OF PART OF LOTS 1 TO 12 PLAN 338, PART OF LOT 15 PLAN 338 AND PART OF LANE ON PLAN 338 CLOSED BY CITY OF TORONTO BY-LAW 630-2010 REGISTERED AS AT2426815, DESIGNATED AS PARTS 3, 4, 7, 8, 9, 10, 11, 16 & 18 ON PLAN 66R26931 AS IN AT3412628; SUBJECT TO AN EASEMENT OVER PART 14, REFERENCE PLAN 66R26931 IN FAVOUR OF PART OF LOTS 1 TO 12 PLAN 338, PART OF LOT 15 PLAN 338 AND PART OF LANE ON PLAN 338 CLOSED BY CITY OF TORONTO BY-LAW 630-2010 REGISTERED AS AT2426815, DESIGNATED AS PARTS 3, 4, 7, 8, 9, 10, 11, 16 & 18 ON PLAN 66R26931 AS IN AT3412628; SUBJECT TO AN EASEMENT OVER PART 14, REFERENCE PLAN 66R26931 IN FAVOUR OF PART OF LOTS 1 TO 12 PLAN 338, PART OF LOT 15 PLAN 338 AND PART OF LANE ON PLAN 338 CLOSED BY CITY OF TORONTO BY-LAW 630-2010 REGISTERED AS AT2426815, DESIGNATED AS PARTS 3, 4, 7, 8, 9, 10, 11, 16 & 18 ON PLAN 66R26931 AS IN AT3412628; TOGETHER WITH AN EASEMENT OVER PART OF LOTS 1 TO 12 PLAN 338, PART OF LOT 15 PLAN 338 AND PART OF LANE ON PLAN 338 CLOSED BY CITY OF TORONTO BY-LAW 630-2010 REGISTERED AS AT2426815, DESIGNATED AS PARTS 3, 4, 7, 8, 9, 10, 11, 16 & 18 ON PLAN 66R26931 AS IN AT3412628; TOGETHER WITH AN EASEMENT OVER PART OF LOTS 1 TO 12 PLAN 338, PART OF LOT 15 PLAN 338 AND PART OF LANE ON PLAN 338 CLOSED BY CITY OF TORONTO BY-LAW 630-2010 REGISTERED AS AT2426815, DESIGNATED AS PARTS 3, 4, 7, 8, 9, 10, 11, 16 & 18 ON PLAN 66R26931 AS IN AT3412628; TOGETHER WITH AN EASEMENT OVER PART OF LOTS 1 TO 12 PLAN 338, PART OF LOT 15 PLAN 338 AND PART OF LANE ON PLAN 338 CLOSED BY CITY OF TORONTO BY-LAW 630-2010 REGISTERED AS AT2426815, DESIGNATED AS PARTS 3, 4, 7, 8, 9, 10, 11, 16 & 18 ON PLAN 66R26931 AS IN AT3412628; TOGETHER WITH AN EASEMENT OVER PART OF LOTS 1 TO 12 PLAN 338, PART OF LOT 15 PLAN 338 AND PART OF LANE ON PLAN 338 CLOSED BY CITY OF TORONTO BY-LAW 630-2010 REGISTERED AS AT2426815, DESIGNATED AS PARTS 3, 4, 7, 8, 9, 10, 11, 16 & 18 ON PLAN 66R26931 AS IN AT3412628; TOGETHER WITH AN EASEMENT OVER PART OF LOTS 1 TO 12 PLAN 338, PART OF LOT 15 PLAN 338 AND PART OF LANE ON PLAN 338 CLOSED BY CITY OF TORONTO BY-LAW 630-2010 REGISTERED AS AT2426815, DESIGNATED AS PARTS 3, 4, 7, 8, 9, 10, 11, 16 & 18 ON PLAN 66R26931 AS IN AT3412628; TOGETHER WITH AN EASEMENT OVER PART OF LOTS 2 TO 12 PLAN 338, PART OF LOT 15 PLAN 338 AND PART OF LANE ON PLAN 338 CLOSED BY CITY OF TORONTO BY-LAW 630-2010 REGISTERED AS AT2426815, DESIGNATED AS PART 11 ON PLAN 66R26931 AS IN AT3412628; TOGETHER WITH AN EASEMENT OVER PART OF LOTS 2 TO 12 PLAN 338, PART OF LOT 15 PLAN 338 AND PART OF LANE ON PLAN 338 CLOSED BY CITY OF TORONTO BY-LAW 630-2010 REGISTERED AS AT2426815, DESIGNATED AS PART 11 ON PLAN 66R26931 AS IN AT3412628; TOGETHER WITH AN EASEMENT OVER PART OF LOTS 2 TO 12 PLAN 338, PART OF LOT 15 PLAN 338 AND PART OF LANE ON PLAN 338 CLOSED BY CITY OF TORONTO BY-LAW 630-2010 REGISTERED AS AT2426815, DESIGNATED AS PART 11 ON PLAN 66R26931 AS IN AT3412628; CITY OF TORONTO

Address TORONTO

**Consideration**

Consideration \$2.00

**Transferor(s)**

The transferor(s) hereby transfers the land to the transferee(s).

Name TORONTO ARTSCAPE INC.

Address for Service

A person or persons with authority to bind the corporation has/have consented to the registration of this document.

This document is not authorized under Power of Attorney by this party.

<b>Transferee(s)</b>	<b>Capacity</b>	<b>Share</b>
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<i>Name</i>	CITY OF TORONTO
<i>Address for Service</i>	City of Toronto Toronto City Hall 100 Queen Street West Toronto, ON M5H 2N2 Attention: City Clerk

<b>Statements</b>
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In accordance with registration AT3817938 registered on 2015/02/25, Patrick Tobin, General Manager, City of Toronto, Economic Development and Culture has consented to the registration of this document. See Schedules

STATEMENT OF THE TRANSFEROR (S): The transferor(s) verifies that to the best of the transferor's knowledge and belief, this transfer does not contravene the Planning Act.

STATEMENT OF THE SOLICITOR FOR THE TRANSFEROR (S): I have explained the effect of the Planning Act to the transferor(s) and I have made inquiries of the transferor(s) to determine that this transfer does not contravene that Act and based on the information supplied by the transferor(s), to the best of my knowledge and belief, this transfer does not contravene that Act. I am an Ontario solicitor in good standing.

STATEMENT OF THE SOLICITOR FOR THE TRANSFEREE (S): I have investigated the title to this land and to abutting land where relevant and I am satisfied that the title records reveal no contravention as set out in the Planning Act, and to the best of my knowledge and belief this transfer does not contravene the Planning Act. I act independently of the solicitor for the transferor(s) and I am an Ontario solicitor in good standing.

<b>Signed By</b>
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Kyle Conrad Bertsch	255 Queens Ave., Suite 2010 London N6A 5R8	acting for Transferor(s)	Signed	2023 12 22
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Tel 519-931-3500

Fax 519-858-8511

I am the solicitor for the transferor(s) and I am not one and the same as the solicitor for the transferee(s).

I have the authority to sign and register the document on behalf of the Transferor(s).

Jennifer Davidson	55 John St., 26th Floor Toronto M5V 3C6	acting for Transferee(s)	Signed	2023 12 22
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Tel 416-392-8047

Fax 416-397-5624

I am the solicitor for the transferee(s) and I am not one and the same as the solicitor for the transferor(s).

I have the authority to sign and register the document on behalf of the Transferee(s).

<b>Submitted By</b>
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CITY OF TORONTO	55 John St., 26th Floor Toronto M5V 3C6			2023 12 22
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Tel 416-392-8047

Fax 416-397-5624

<b>Fees/Taxes/Payment</b>
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Statutory Registration Fee	\$69.95
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Provincial Land Transfer Tax	\$61,475.00
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Municipal Land Transfer Tax	\$0.00
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Total Paid	\$61,544.95
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<b>File Number</b>
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Transferee Client File Number : 5000-652-1311-23



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**PROVINCIAL AND MUNICIPAL LAND TRANSFER TAX STATEMENTS**

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BY: TORONTO ARTSCAPE INC.

TO: CITY OF TORONTO

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1. JENNIFER DAVIDSON

I am

- (a) A person in trust for whom the land conveyed in the above-described conveyance is being conveyed;
- (b) A trustee named in the above-described conveyance to whom the land is being conveyed;
- (c) A transferee named in the above-described conveyance;
- (d) The authorized agent or solicitor acting in this transaction for CITY OF TORONTO described in paragraph(s) (C) above.
- (e) The President, Vice-President, Manager, Secretary, Director, or Treasurer authorized to act for \_\_\_\_\_ described in paragraph(s) ( ) above.
- (f) A transferee described in paragraph ( ) and am making these statements on my own behalf and on behalf of \_\_\_\_\_ who is my spouse described in paragraph ( ) and as such, I have personal knowledge of the facts

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**PROVINCIAL AND MUNICIPAL LAND TRANSFER TAX STATEMENTS**

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herein deposited to.

2. I have read and considered the definition of "single family residence" set out in subsection 1(1) of the Act. The land being conveyed herein:  
does not contain a single family residence or contains more than two single family residences.

3. **The total consideration for this transaction is allocated as follows:**

(a) Monies paid or to be paid in cash	\$0.00
(b) Mortgages (i) assumed (show principal and interest to be credited against purchase price)	\$0.00
(ii) Given Back to Vendor	\$0.00
(c) Property transferred in exchange (detail below)	\$0.00
(d) Fair market value of the land(s)	\$3,250,000.00
(e) Liens, legacies, annuities and maintenance charges to which transfer is subject	\$0.00
(f) Other valuable consideration subject to land transfer tax (detail below)	\$0.00
(g) Value of land, building, fixtures and goodwill subject to land transfer tax (total of (a) to (f))	\$3,250,000.00
(h) VALUE OF ALL CHATTELS -items of tangible personal property	\$0.00
(i) Other considerations for transaction not included in (g) or (h) above	\$0.00
(j) Total consideration	\$3,250,000.00

6. Other remarks and explanations, if necessary.

1. b) Consideration (d) - Fair Market Value of land for the following reason:

2. e) Other: City of Toronto exercising its option to purchase for nominal consideration in AT3817937 registered on February 25, 2015

3. The information prescribed for purposes of section 5.0.1 of the Land Transfer Tax Act is not required to be provided for this conveyance.

4. The transferee(s) has read and considered the definitions of "designated land", "foreign corporation", "foreign entity", "foreign national", "Greater Golden Horseshoe Region", "specified region", "spouse" and "taxable trustee" as set out in subsection 1(1) of the Land Transfer Tax Act and O. Reg 182/17. The transferee(s) declare that this conveyance is not subject to additional tax as set out in subsection 2(2.1) of the Act because:

5. (c) The transferee(s) is not a "foreign entity" or a "taxable trustee".

6. The transferee(s) declare that they will keep at their place of residence in Ontario (or at their principal place of business in Ontario) such documents, records and accounts in such form and containing such information as will enable an accurate determination of the taxes payable under the Land Transfer Tax Act for a period of at least seven years.

7. The transferee(s) agree that they or the designated custodian will provide such documents, records and accounts in such form and containing such information as will enable an accurate determination of the taxes payable under the Land Transfer Tax Act, to the Ministry of Finance upon request.

8. SOLICITOR STATEMENT (To be completed when the declarant is an individual licensed to practice law in the province of Ontario): I have fulfilled my obligations as the solicitor of City of Toronto for the conveyance, in relation to the Law Society of Upper Canada's Rules of Professional Conduct and its By-Laws, as well as the Land Transfer Tax Act, and have reviewed with the transferee(s) their obligations under the Land Transfer Tax Act that are material to the conveyance described in this document.

7. Statements pertaining only to Municipal Land Transfer Tax:

This is a conveyance to the City of Toronto.

Explanation: See Statement 10019

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**PROPERTY Information Record**

A. Nature of Instrument: Transfer  
LRO 80 Registration No. AT6486204 Date: 2023/12/22

B. Property(s): PIN 21412 - 0328 Address TORONTO Assessment -  
Roll No

C. Address for Service: City of Toronto  
Toronto City Hall  
100 Queen Street West  
Toronto, ON M5H 2N2  
Attention: City Clerk

D. (i) Last Conveyance(s): PIN 21412 - 0328 Registration No. AT3817934  
(ii) Legal Description for Property Conveyed: Same as in last conveyance? Yes  No  Not known

E. Tax Statements Prepared By: Jennifer Davidson  
55 John St., 26th Floor  
Toronto M5V 3C6

**CONSENT**

**WHEREAS** pursuant to a S.37 Amending Agreement ("Sec 37") between Daniels HR Corporation ("Daniels") and the City of Toronto (the "City") dated March 31, 2015, Daniels conveyed to Toronto Artscape Inc. ("TAI") a stratified fee simple ground floor parcel having an area of no less than 420 square meters (the "Property").

**AND WHEREAS**, as a stipulation to the Sec 37, TAI was required to grant to the City an option to purchase the Property. An Option to Purchase Agreement (the "Option") was entered into between TAI and the City on February 17, 2015, with various terms and conditions set forth in the agreement granting the City the sole and irrevocable option to purchase the Property.

**AND WHEREAS**, 301 Adelaide Street West, referred to as Artscape Sandbox ("Sandbox"), is included as part of the Property, described as Part of Lots 2 to 7 inclusive and Part of Lane (closed by By-Law 630-20100, Instrument No. AT2426815, Plan 338 Toronto, designated as Part 14 on Plan 66R26931; the East and West Sides of Widmer St from Richmond Street West to King St West and the North and South sides of Adelaide St West are confirmed under Boundaries Act Plan 63BA1547 registered instrument CT359919, and being all of PIN 21412-0328 (LT).

**AND WHEREAS**, Sandbox, is subject to the Sec 37 that, among other terms, includes the right for the City to exercise an option for the City to purchase the property, for nominal consideration, in the event of default by TAI which includes receivership or a cessation of operations.

**AND WHEREAS**, TAI effectively became insolvent and announced on August 28, 2023, that it would be shutting down operations and enter receivership. The City issued notice to exercise its option to purchase on November 9, 2023 to acquire the property, as approved by Council for the City of Toronto on October 11, 2023 pursuant to Item MM11.32.

**AND WHEREAS**, Section 3 (c) of the Option, TAI did covenant and agree to register restrictions on title to the Sandbox property pursuant to the provisions of Section 118 of the *Land Titles Act*, R.S.O. c.L.5, as amended, prohibiting any transfer or charge of the said Property. On February 25, 2015 an Application To Annex Restrictive Covenants S. 118 prohibiting any transfer or charge of all or any part of the lands without the consent of the Council of the City of Toronto upon the approval of the General Manager of Economic Development and Culture of the City of Toronto for a period of fifty (50) years following the registration of the document was registered on title to the Property as Instrument No. AT3817938 (the "Section 118 Restriction").

**AND WHEREAS**, it has been determined by the City's Economic Development and Culture Division and Toronto Artscape Inc, that the Section 118 Restriction is appropriate as the City of Toronto has exercised its option to purchase the Property.


**NOW THEREFORE, the parties hereby consent on this date to the registration of the following:**

- (a) Transfer/Deed of Land of the Property from Toronto Artscape Inc. to the City of Toronto; and**
- (b) Release of the Section 118 Restriction, registered on February 25, 2015 as Instrument No. AT3817938, on the lands described in Schedule "A" attached hereto.**

The recipient of this Consent may rely on a facsimile or scanned PDF copy as if such copy were an originally executed copy of same.

Dated at the City of Toronto this 19 day of December, 2023.

**CITY OF TORONTO**

DocuSigned by:  
  
 C2BEAEB7EB5E4E6  
 Patrick Tobin, General Manager,  
 City of Toronto,  
 Economic Development and Culture Division

Dated at the City of Toronto this 19 day of December, 2023.

**TORONTO ARTSCAPE INC.**

DocuSigned by:  
  
 4EBB8E46DD84431  
 Grace Lee Reynolds, Chief Operating Officer

DocuSigned by:  
  
 4CF0C35EE56344E  
 Kelly Rintoul, Chief Executive Officer

**SCHEDULE "A"**

**Legal Description**

**PIN 21412-0328 (LT)**

Part of Lots 2 to 7 inclusive and Part of Lane (closed by By-Law 630-20100, Instrument No. AT2426815, Plan 338 Toronto, designated as Part 14 on Plan 66R26931; the East and West Sides of Widmer St from Richmond Street West to King St West and the North and South sides of Adelaide St West are confirmed under Boundaries Act Plan 63BA1547 registered instrument CT359919; CITY OF TORONTO

This is Exhibit "R" referred to in the Affidavit of Ben Macintosh, affirmed by Ben Macintosh, at the City of Toronto, in the Province of Ontario, before me on this 3<sup>rd</sup> day of January, 2024, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

*Christopher J. Henderson*

Christopher J. Henderson  
*Commissioner for Taking Affidavits*

INVESTIGATION

# Artscape tried to launch a 'game changer' for artists. Now it's on the brink of collapse

After three decades of providing affordable living and studio space for artists in Toronto, Artscape set out to develop a new co-working and creative project called Launchpad. That's when it all began to unravel

JOSH O'KANE

GREG MERCER & DAVID MILSTEAD

THE GLOBE AND MAIL

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The Artscape Daniels Launchpad building at 130 Queens Quay East, in September, 2023.

FRED LUM/THE GLOBE AND MAIL

For more than three decades, the non-profit Toronto Artscape Inc. was one of the few providers of affordable housing and studio space for artists in Toronto, then and now a brutally inhospitable city for financially struggling creatives. In October, 2015, after years of research and planning, the organization announced that it intended to build a much different kind of facility.

It was a left turn that would bring Artscape and its mission to the brink of demise.

Together with The Daniels Corp., a prominent developer that had recently partnered with Artscape on smaller projects, the non-profit announced a plan for something it called Artscape Daniels Launchpad, a new venue that would anchor a complex on Toronto's waterfront. Artscape was getting into the co-working and incubator game, banking on the same optimism that many tech startups and venture firms had embraced in the 2010s. Financially, logistically and strategically, Launchpad was the most ambitious project Artscape had ever undertaken.

With Launchpad, artists would pay monthly membership fees to access shared spaces and high-cost tools they might need in order to become self-sufficient entrepreneurs, including recording studios and woodworking shops. It was to be a major departure from the non-profit's many former projects, which had offered living and working space for artists in old, and later brand-new, buildings across Toronto.

The long-gestating project would eventually nab nearly \$10-million in federal and provincial funding, and was supported unanimously by Artscape's board, made up of Toronto developers, financial executives, city councillors, artists and artist-support workers.

"It will be a game changer for artists and designers," Artscape's then-chief executive, Tim Jones, said at the time. "A jolt of urban acupuncture that will help bring Toronto's waterfront to life."

Launchpad didn't do any of that. In late August, 2023, suffocating under an unmanageable pile of debt – including \$70,000-a-month payments to Toronto-Dominion Bank tied directly to the new facility – the organization revealed that it expected to be placed in receivership. It had fallen victim to its own ambition.

A Globe and Mail analysis, which included an examination of a decade of Artscape's finances, found that Launchpad was the primary reason for the non-profit's financial collapse. After Launchpad's announcement, the cost of the project rose to \$31-million, while the non-profit's debt ballooned, more than doubling from \$17.6-million at the end of 2017 to \$37.5-million at the end of 2019.

Although Artscape refinanced its Launchpad debt with a fixed-rate loan in late 2021 before interest rates rose, it struggled to repay that debt. Launchpad's post-lockdown memberships topped out at 500 – just 100 more members than it had in its opening month in 2018. Artscape began restructuring earlier this year, and tried to sell off Launchpad, but couldn't do so in time.

In early November, the organization announced that its facility management contracts and leases for buildings it didn't own would be transferred to other non-profits, as it prepared its owned facilities, including Launchpad, for the receivership process.

In a statement to The Globe after being presented with its findings, current Artscape CEO Grace Lee Reynolds acknowledged that Launchpad's cost and debt were "the primary contributor to the financial challenge."

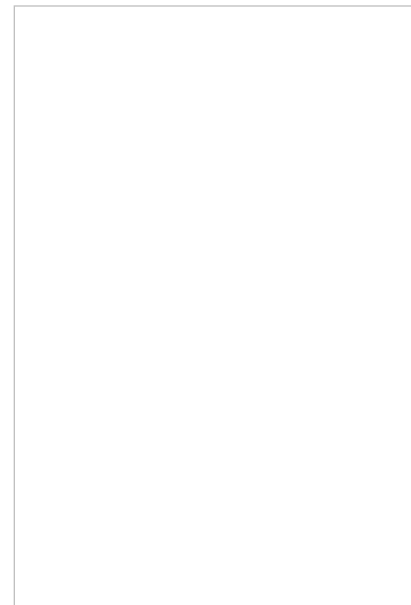
Jones, who left Artscape in early 2021, said in an e-mail that the large quantities of debt the organization had amassed under his watch were not responsible for the organization's collapse. Launchpad, he argued, could have been sold at a profit if the pandemic hadn't hampered demand for commercial real estate. "It is simply not possible to disentangle Artscape's ability to service debt or exercise its worst-case back-up plan from the impact that the pandemic had on its ability to do so," he wrote.

But interviews with more than two dozen current and former Artscape staff members, directors, affiliates and artist tenants suggest that the risks presented by Launchpad were overshadowed by exuberance, and that the new facility's revenue model became a source of worry for insiders months before the pandemic began.

The organization's August announcement has left members of Toronto's arts community, one of Canada's largest, wondering if they will be left in the cold. Artscape's projects were some of the highest-profile efforts to keep artists in Toronto, where creatives are often priced out of the very neighbourhoods whose reputations they once helped establish.

Artscape played a key role in turning once-sleepy areas, such as the city's West Queen West and Distillery District neighbourhoods, into global destinations, by giving hundreds of artists affordable places in older, leased buildings, so they could build communities.

As rising real-estate prices threatened that model, Artscape began working with



Grace Lee Reynolds, current Artscape Inc. CEO, acknowledged that Launchpad's cost and debt were 'the primary contributor to the financial challenge.'

HANDOUT

developers to secure space for artists in new buildings, helping creativity thrive in a rapidly redeveloping Toronto.

Among the Artscape tenants now facing an uncertain future is Angela Molina, a sound engineer who has rented a live-work space in Artscape Triangle Lofts, near Queen Street West, since 2015. She discovered in mid-August that water was flooding into her apartment from a floor above. When she moved out temporarily, to Artscape's Gibraltar Point facility on the Toronto Islands, she began hearing whispers about receivership.



Artscape Youngplace, a former public school, located at 180 Shaw St. in Toronto.

CHRISTIE VUONG/THE GLOBE AND MAIL

A few days later, when she returned to the unit, she discovered her point of contact at Artscape no longer had a job with the non-profit. Her unit was a construction zone, with HVAC turned off. As Autumn crept in, she said, Artscape's troubles made her wonder whether she would have heating for the winter.

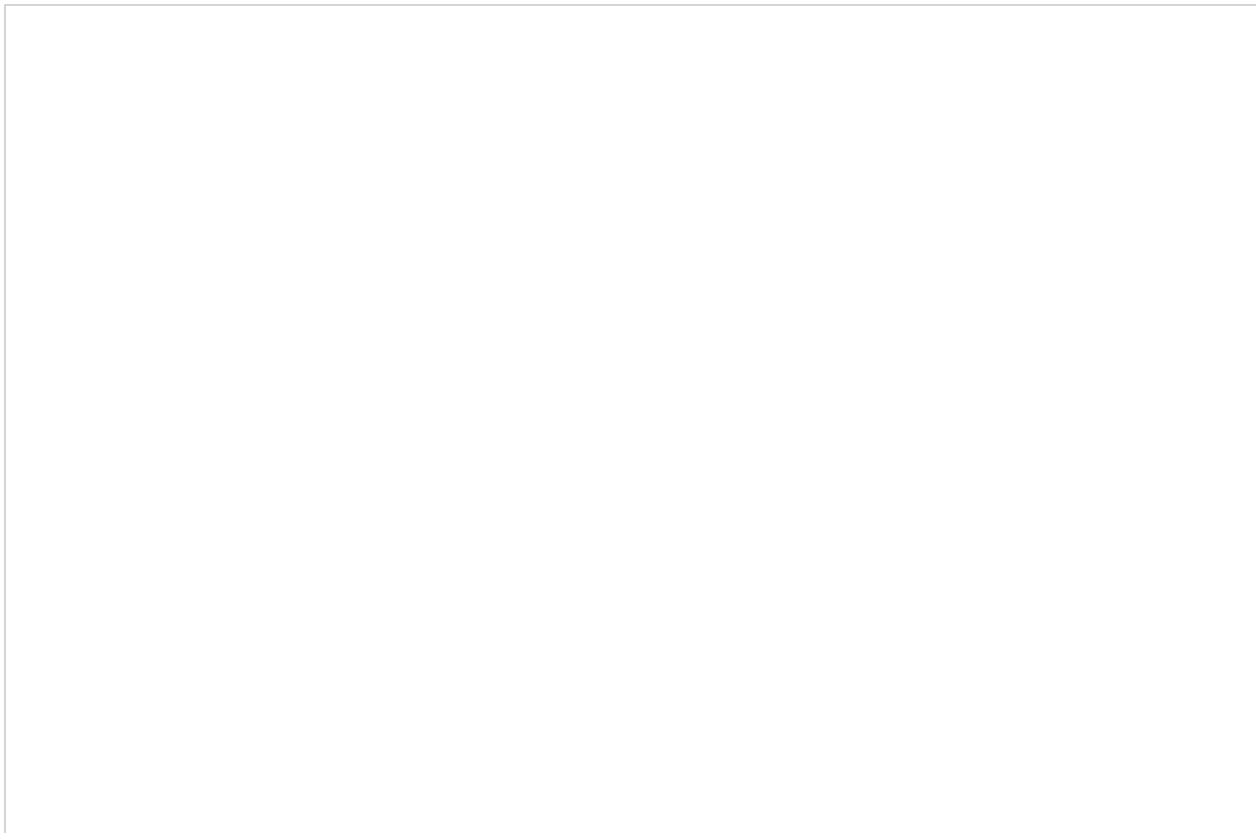
Artscape's publicly disclosed finances suggest Launchpad was a significant risk from the get-go.

Kate Bahen, the managing director of Charity Intelligence, a group that performs financial analyses of Canadian charities – which are very similar in structure to non-profits – said Artscape's financial decisions were unsustainable. “They pursued a very aggressive expansion, and didn't have the money to pay for it – it's as simple as that,” she said, after reviewing Artscape's finances at The Globe's request. “I never saw a way for how they were going to service this debt.”

Artscape began in the 1980s as part of the Toronto Arts Council, which was then run by Rita Davies. She co-founded the non-profit with support from the photographer and film artist Ric Amis, and from Dale Martin, who at the time was a Toronto city councillor. In 1991, with operations funding from the city, Artscape leased space for one of its first facilities, in a Toronto Economic Development Corporation-owned

building on Atlantic Avenue, in the city's Liberty Village neighbourhood. This allowed Artscape to sublease 48 studios to artists at below-market rates, across 30,000 square feet.

This strategy was a lifeline for many artists, some of whom, like Amis, lived or worked illegally in warehouses. "Moving into Artscape as a young artist meant that I was paying rent geared to income, which really made it possible to focus on my career," said Catherine Heard, an interdisciplinary visual artist and University of Windsor professor who spent more than two decades living and working in Artscape's 900 Queen St. West location, which the non-profit opened in 1995 through a mix of donations and traditional financing. Her one-bedroom live-work apartment's move-in rent in the late nineties, geared to her income, was about \$200, when the market rate was about \$700. "It was absolutely critical to me as a young artist," she said.



Tim Jones, former President and CEO of Artscape. Under Jones, Artscape took a broader view of what was called 'creative placemaking' – the notion that artists add value to communities, both cultural and monetary.  
GALIT RODAN/THE GLOBE AND MAIL

Artscape spent the nineties securing studio and live-work spaces largely in older buildings around Toronto. It eventually signed a two-decade lease on Gibraltar Point, the site of a former school on the Toronto Islands, which it rented to artists as studio space, and for residencies. Thousands of artists have passed through since 1999, many for short-term residencies. It's not uncommon to see Artscape thanked in book acknowledgements by authors who have stayed there.

In the late nineties, to oversee its next era, Artscape tapped Jones, who had been general manager of the city's Buddies in Bad Times Theatre and had helped build out

two venues for that organization, including its current home just off Yonge Street.

Under Jones, Artscape took a broader view of what was called “creative placemaking” – the notion that artists add value to communities, both cultural and monetary. The change in tack was due in part to a renewed surge of interest in Toronto real estate and changes to affordable-housing funding. In this economic environment, some of Artscape’s buildings were being put up for sale or redevelopment.

One of Artscape’s first successes in this period was becoming an anchor tenant in the east-end Distillery District in 2003. The non-profit leased space cheaply from a private developer across two heritage buildings and converted it into dozens of subleased artist studios, as well as performing-arts spaces that would become home to Tapestry Opera and Nightwood Theatre.

The gamble worked: the new tenants helped bring visitors to the Distillery, boosting the neighbourhood’s reputation and dining scene, and helping establish it as a premier destination in Toronto. “Many of the projects that Artscape came up with were in response to opportunities that presented themselves, or that we cultivated,” said Celia Smith, Artscape’s president from 2008 to 2016, who now runs the Luminato arts and culture festival.

During Jones’s time as CEO, Artscape became a significant cultural leader in the city. The non-profit converted some boarded-up century-old streetcar barns into Artscape Wychwood Barns in 2008, building on its Distillery District experience. The project included a mix of public space and rental live-work studios. Artscape converted a school just off of Queen Street West into an artists’ hub. And it was starting to be seen as a promising partner for developers, who under provincial legislation could gain extra density for their projects in exchange for community benefits, such as arts facilities.

Artscape converted a former TTC streetcar repairs barn into Artscape Wychwood Barns in 2008, building on its Distillery District experience.  
PHILIP CHEUNG/THE GLOBE AND MAIL

A sign advertising the sublet of a studio at Artscape Wychwood Barns is posted in a window, in Toronto on July 23, 2015.  
MATTHEW SHERWOOD/THE GLOBE AND MAIL



CHRISTIE VUONG/THE GLOBE AND MAIL

Artscape cultivated close relationships with some of Ontario's most prominent developers, including Tridel, Great Gulf, MOD Developments, Sorbara Group, DiamondCorp and others. These deals – known as Section 37 agreements, because they are authorized under that part of Ontario's Planning Act – were mutually beneficial: they gave the developers access to density bonuses, and they generated millions in donations that flowed back to the non-profit.

One of Artscape's closest relationships was with The Daniels Corp., with which it partnered on projects that helped expand its footprint and services, including an event space in Toronto's Entertainment District called Sandbox. Artscape ran Sandbox like a social enterprise: the fees it charged to corporate clients helped subsidize the costs of artist and community events there. Daniels also gave Artscape more than \$6-million between 2017 and 2019, through the company and its affiliated family foundation.

To energize cities with cultural initiatives, governments around the world have supported artists in myriad ways. Toronto was no different. It gave an annual grant to Artscape, in recent years worth \$415,000, to support the non-profit's operations around the city, making Artscape among the biggest recipients of this type of funding. Artscape has received \$5.69-million in these grants since 2008, in addition to \$1.84-million in density-bonus grants through the Planning Act over the past seven years.

Some observers felt this amounted to a municipal stamp of approval. For developers who wanted more density, partnering with Artscape “was a good branding idea,”

said Oliver Pauk, who runs a competing artist-space organization called Akin, which leases studios in buildings that are slated for redevelopment but have years left before they are scheduled to be vacated.

Over time, some of Artscape's facilities became sources of frustration – and others no longer exist.

Leasing costs soared at Artscape's flagship Liberty Village building, and it was eventually sold, its tenants left in the lurch. More recently, the non-profit was unable to extend its 20-year lease in the Distillery District, cutting off 14 per cent of Artscape's annual revenue and leaving tenants, including Tapestry Opera, scrambling for new spaces.

And within a few years after Wychwood Barns opened, its tenants began raising concerns about noise, unexpected tax bills and lead-paint dust, leading to questions about Artscape's ability to fulfill its landlord responsibilities there during its ambitious expansion. "I received many complaints about the rents they were charging, and that the support they were giving was frankly minimal," said former city councillor Joe Mihevc, a past Artscape director whose riding included the Wychwood facility.

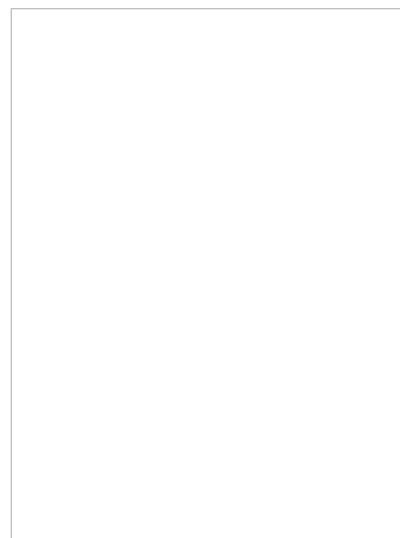
Artscape's closeness with the development sector, which led to the creation of Launchpad, fundamentally transformed the non-profit. It became more widely recognized as a developer for arts facilities than as a support non-profit for artists. "It was no longer an arts organization," said Davies, the former Toronto Arts Council executive director who co-founded Artscape. She is now chair of the Ontario Arts Council. (She spoke with The Globe only in her capacity as Artscape co-founder.)

From Artscape's perspective, Launchpad was a natural extension of the non-profit's long-time mission.

Fresh grads from art and design programs need business skills if they want to strike out on their own, and they rarely have money to build their own studios right away – especially if they need expensive equipment for projects that require recording, editing or manufacturing. By the early 2010s, Artscape staff began realizing that, by providing these tools, the organization could cement itself as a long-term provider of services to artists, avoiding the past plague of temporary leases. So, to launch artists' careers, Artscape created Launchpad.

The vision of making space for artists had by this time attracted corporate luminaries deeply familiar with the worlds of financing, real estate and fundraising to Artscape's board – luminaries who, with Launchpad, signed off on a project with a vastly different business model than Artscape was accustomed to.

Directors from this era included chair Robert Foster, founder of the investment



Interest in Launchpad was strong at the start – about 400 members joined in a month when the facility opened in November 2018. But growth had slowed by the end of 2019.

FRED LUM/THE GLOBE AND MAIL

banking firm Canada Capital Ltd., who has also chaired other arts boards, including TO Live and the Canadian Arts Summit; his successor as chair, Susan Pigott, a former vice-president of community engagement for the Centre for Addiction and Mental Health and vice-president of fundraising for the United Way of Greater Toronto; secretary Paul Morassutti, a CBRE Ltd. executive vice-president; Richard Simm, a managing director with KPMG Corporate Finance; and Judith McKay, chief client officer at McCarthy Tétrault LLP.

Artscape's treasurer prior to 2019 was Colin Mowatt, a senior partner with PwC Canada's tax division. When he reached his term limit, he became treasurer of the Artscape Foundation, an affiliated organization tasked with fundraising for the non-profit. He declined to comment for this story. Artscape's current board treasurer, Geoff Rush, KPMG Canada's national financial services leader, deferred to Artscape executives for comment.

Artscape itself provided a response on behalf of the majority of directors from this time whom The Globe contacted for this story. The non-profit cited the board's unanimous approval of Launchpad and significant due diligence that had led to that approval, including feasibility studies, market reviews and a risk analysis by the board's finance and audit committee. (Artscape declined to provide The Globe with any of the research that led to Launchpad being approved.) The statement also cited "the need to support the creative community in the entrepreneurial space."

"Taking all available information into account, the organization pressed ahead with full stakeholder support for Launchpad," it added.

Initial funding for Launchpad was formally announced in April, 2017: \$21.4-million would go toward building and programming costs for a 30,000-square-foot facility nestled in a new waterfront complex built by Daniels. But there were a few devils in the details. Artscape had actually raised only \$14-million for the facility's development and launch costs, \$3.5-million of which came from the federal Heritage Department, and \$3-million of which was from the Ontario Ministry of Research, Innovation and Science. Another \$4.5-million came from "community bonds," or loans from supporters, which would need to be repaid.

At the time of the announcement, Artscape said the capital costs would be \$27.3-million, making Launchpad easily the most ambitious project in its three-decade existence. Despite having a dedicated fundraising arm, the organization had raised only roughly half of what it needed in order to finish building.

Launchpad's development costs would eventually grow to \$31-million. Lee Reynolds, the current Artscape CEO, said that this "could be viewed as moderate, but manageable risk with strong program execution," but she noted that she and other current managers were not present for these decisions. "The pandemic and economic changes have altered conditions necessary for Artscape's success," she said.

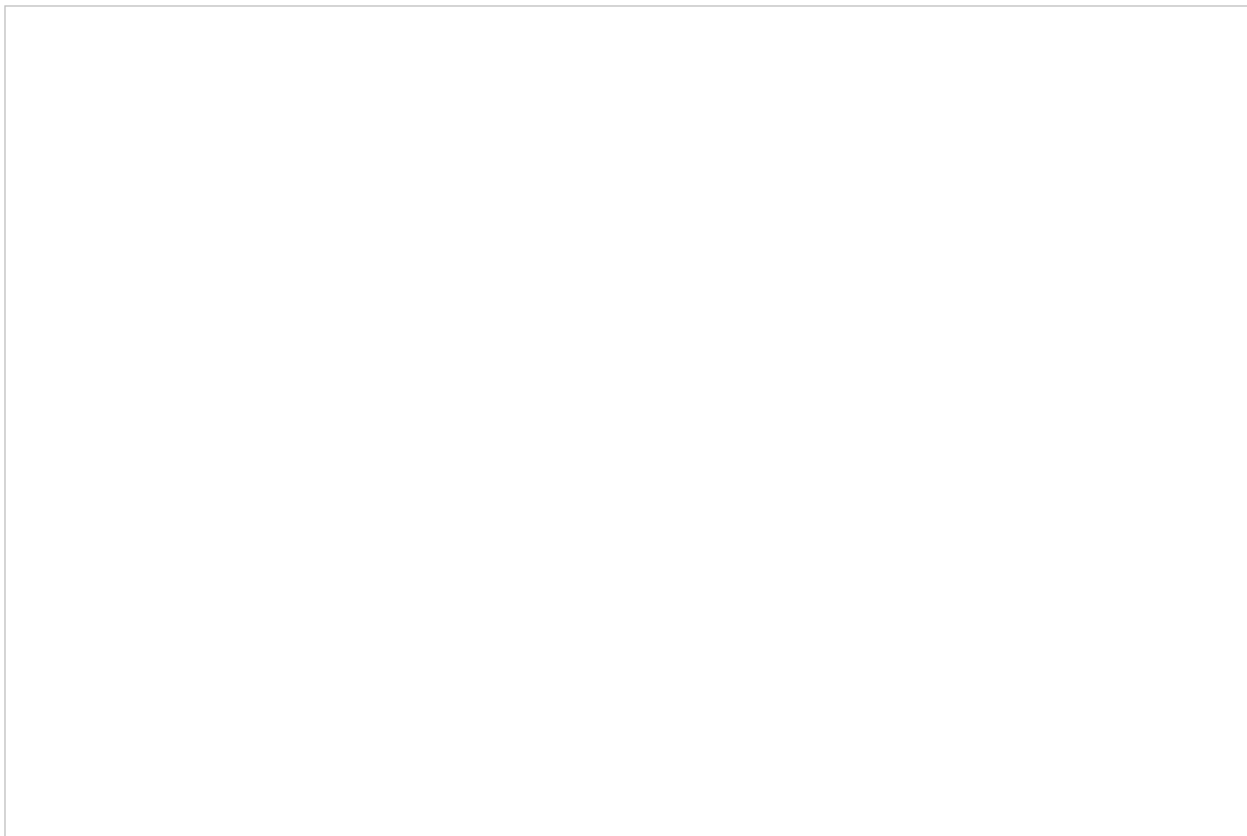
Overall, the organization had by then become very comfortable with debt: borrowings of \$9.4-million at the end of 2010 increased gradually to \$17.6-million in 2017.

But Artscape had little financial wiggle room. Starting in 2016, it continually had



negative operating cash flow, meaning its normal, day-to-day business used up more money than it generated.

Interest in Launchpad was strong at the start. About 400 members joined in a month when the facility opened in November, 2018. But growth had slowed by the end of 2019: 14 months after Launchpad's debut, it reported having 1,030 members – an undisclosed number of whom were supported by bursaries raised by Artscape's foundation. As Artscape tried to draw attention to Launchpad, hosting events with the likes of Margaret Atwood and briefly partnering with HXOUSE, the Weeknd's creative accelerator, its staff and directors began having tough conversations about the risk they had undertaken.



A Globe and Mail analysis, which included an examination of a decade of Artscape's finances, found that Launchpad was the primary reason for the non-profit's financial collapse.

CHRISTIE VUONG/THE GLOBE AND MAIL

In two years, Artscape's borrowings – leases, lines of credit, loans and debt – more than doubled, from \$17.6-million at the end of 2017 to \$30.2-million by the end of 2018, and \$37.5-million by the end of 2019.

Of that debt, \$15.6-million was tied to Launchpad. In 2020, a year in which Artscape had to pay interest on the debt in place at the end of 2019, the non-profit reported annual interest expenses of \$1.56-million, a 173-per-cent increase from 2017 levels.

But revenue across the organization didn't keep up. From 2017 to 2019 – the last full year before the pandemic – revenue increased 32 per cent, to just over \$14-million. That is a much slower rate of growth than the rate at which Artscape was accumulating debt and associated interest costs. (Artscape noted in a statement that

it opened two other projects in 2019 beyond Launchpad, including an event and below-market rental facility in Toronto's Weston neighbourhood, and a residential building on the city's waterfront.)

Jones said there is little to be learned by comparing the rate of revenue growth to the increase in debt, describing it in his statement as "not a meaningful statistic." He continued: "What matters is whether sufficient resources are generated to service the debt, something that Artscape continued to do in these years. This is the story that the financial statements tell."

Bahen, the charity-analysis expert who reviewed Artscape's financial statements at The Globe's request, disagreed with this analysis. "This was obviously a situation where vision and ambition had no grounding in reality," she said. "When you have this much leverage, you've got no margin for error. As Warren Buffett would say: They risked what they had, to double down."

Four people with knowledge of Artscape's operations around this time said that its board and staff were increasingly worried, in the pre-pandemic months after Launchpad opened, about whether membership growth would catch up to the debt the non-profit had undertaken. The Globe is not naming the sources because they were not authorized to discuss the matter publicly.

"This references a period that precedes our tenure at Artscape," Lee Reynolds said on behalf of the non-profit's leadership when asked about these discussions. "However, we can say that in our experience stabilizing any new operation has risk and we believe the team made informed business decisions for that time and context."

City of Toronto officials saw Artscape's financial distress and, even though they were growing more concerned as the pandemic began, continued supporting the organization. "While we weren't invested in Launchpad itself, we were more invested in how they were going to manage the debt load created through the acquisition of Launchpad," said Patrick Tobin, Toronto's general manager for economic development and culture.

Launchpad was made up of 12 separate condominium units, and the commercial real-estate market was on fire. It seemed at the time that in a worst-case scenario Artscape could always sell some if it needed to scale back its ambition. And Launchpad was still new enough that directors felt they had time to refine the business model.

This kind of optimism fuelled big bets at many organizations at the end of the 2010s – a decade of cheap money and few macroeconomic disasters, masking the massive risk that had historically been tied to massive debt. Then the pandemic struck, and the consequences of these kinds of management decisions began to trickle down to everyday people the world over, including the artists Artscape was founded to help.

"Non-profits supporting community service are not set up to withstand sustained economic disruptions – like the pandemic," Lee Reynolds said. "Artscape did not have reserves to sustain operations at a loss and the arts sector was hit hard."

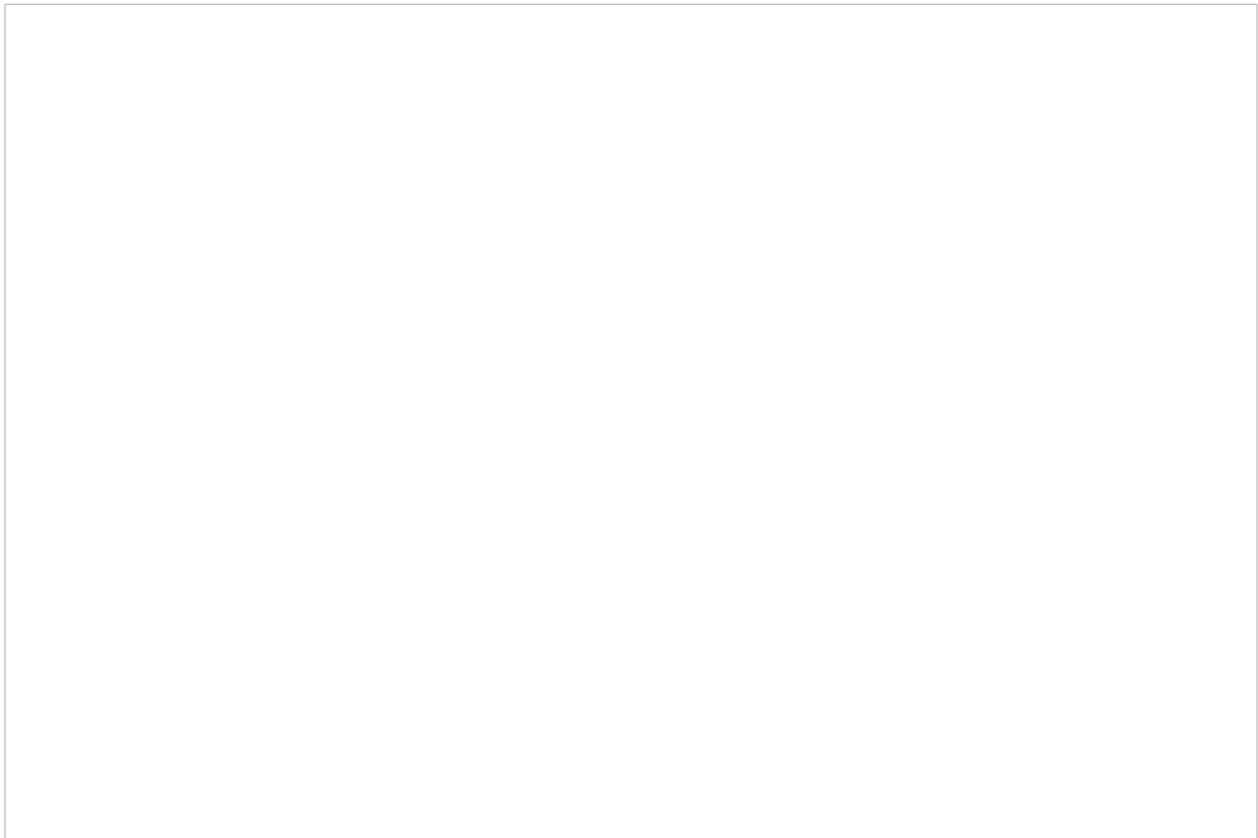
When the pandemic began, event-space rentals immediately collapsed, depriving

Artscape of about a quarter of its expected annual revenue. Jones announced he was leaving the organization just months into the pandemic, and Lee Reynolds, a former MaRS Discovery District executive, soon took over. She was thrust into managing what, in hindsight, appears to have been a significant decline in the organization's financial health. Board chair Susan Pigott stepped down during the pandemic as well. Asked to comment for this story, Pigott deferred to Artscape.

The non-profit's 2021 financial statements show that its earned income – a revenue figure that excludes government grants, such as COVID-19 assistance – was \$6.1-million, up 6.7 per cent from the year before. Government grants, meanwhile, were Artscape's single biggest revenue source in 2020 and 2021. Its debt, while down from 2019 levels, was \$33.2-million, nearly double the 2017 amount.

In November, 2021, Artscape consolidated much of the debt tied to Launchpad, including what had grown to \$6-million in community bonds, and two debt instruments totalling nearly \$8.4-million from Vancity Community Investment Bank, into a \$14.4-million mortgage with a lower, fixed rate from Toronto-Dominion Bank.

The TD mortgage required monthly interest-and-principal payments of \$70,384.



Artwork is displayed at Artscape Youngplace in Aug. 2023. When the pandemic began, event-space rentals immediately collapsed, depriving Artscape of about a quarter of its expected annual revenue.

GALIT RODAN/THE GLOBE AND MAIL

It is difficult to know how much this impacted Artscape's cash flow through 2022, because the company didn't complete financial statements for that year. But the non-profit told The Globe in a statement that it had an operating deficit in 2022, and that

its long-term debt was consistent that year with 2021. Its actions in 2023 show that it was under serious financial pressure.

This past summer, Artscape began to restructure to reckon with its debt payments. Executives took pay cuts, staff were laid off and those that remained tried to cut costs further. The organization considered selling off its real estate assets to free up funds and build up capital reserves.

It listed the Launchpad space in the Daniels building for sale at a price of \$22.5-million – about \$8.5-million less than it said it had spent on the waterfront facility. The lower asking price was a result of the continuing commercial real-estate slump.

In July, Artscape asked the City of Toronto to guarantee a \$1.5-million extension to another TD loan so it could keep paying bills as it tried to complete the sale.

In a letter to city council's executive committee, Toronto city controller Andrew Flynn, and Tobin, the city's general manager for economic development and culture, recommended the city guarantee the credit extension. Artscape was struggling to repay its debt, they wrote, and risked running out of money by mid-August. They said the way forward for Artscape was to return to what it had been before Launchpad spun its finances out of control, with a "core mandate of providing affordable live, work and presentation space for artists."

Councillors agreed to guarantee the loan extension. But it wasn't enough for TD. On Aug. 28, Artscape announced that it expected to enter receivership, which would put its assets under the control of a court, or a privately appointed officer, to ensure its creditors were paid back.

Artscape's portfolio by then tallied 14 projects, 265 affordable rental and ownership spaces, and 125 spaces for commercial tenants. More than a year and a half after most restrictive pandemic lockdowns had ended, Launchpad had 500 members – just a hundred more members than it had a month after opening.

The federal and provincial governments have begun circling Artscape and waiting for a Launchpad sale, to determine whether they can or should recoup the nearly \$10-million they sunk into Launchpad together.

The federal Heritage Department had topped up its Launchpad commitment to a total of \$6.5-million, through the Canada Cultural Spaces Fund. The commitment contained an "assets disposal clause" obliging the non-profit to maintain Launchpad for a decade for its original purpose, Heritage spokesperson Caroline Czajkowski said in an e-mail. Ontario spokesperson Sumita Kanga said the province is "monitoring the situation and exploring all options, including assessing the potential for recovery of funds."

Artscape is in the midst of dividing itself up. In early November, the non-profit said Launchpad and the handful of other facilities it owns, including Triangle Lofts, off Queen Street West, would be included in the receivership process. But chief operating officer Kelly Rintoul said in a letter to tenants that Artscape's many operations and management contracts would be transferred to other non-profits to ensure continuity for tenants and their surrounding communities.

Artscape's associated housing non-profit, Artscape Non-Profit Homes Inc., is slated to take over operations of all of the rental sites it didn't already run, including the Parkdale Arts and Cultural Centre. A new non-profit called ArtHubs Toronto Inc., meanwhile, will take over operations at several facilities, including Artscape Gibraltar Point, on the Toronto Islands; Daniels Spectrum, in Regent Park; and Wychwood Barns.

In her statement, Lee Reynolds offered more detail on what Artscape's soon-to-be-former assets and programs might look like once the process is complete: "With the potential operating partnerships, a renewed vision for the residential properties and community hubs can be realized, debt-free, with refocused operations and a stronger foundation in place."

For all the effort Artscape's remaining staff have put into continuity, the people who served the organization, and the people it served, still have little closure. Former rank-and-file employees are trying to figure out their severance terms after doing everything they could to keep Artscape alive in the aftermath of its former executives' and directors' expensive decisions.

Meanwhile, artists in affordable rental apartments, whose homes are now about to go to a receiver, are writing to city councillors to express concern that whoever takes over won't keep their rents affordable. At least one tenant in Triangle Lofts isn't even sure it's healthy to live there anymore.

Molina, the sound engineer, said on Wednesday that her heat had only just been fixed that day, after weeks of piling blankets atop her young son so he could sleep. She still doesn't know when her walls will be rebuilt, nearly three months after the flood. Artscape's financial and management paralysis has left her torn.

"If it wasn't for them, I wouldn't be able to maintain my independence the way I do," she said. "It's hard – to be disrespected by something I trusted with my life, and my family's health and safety."

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# Housing & Homelessness

WoodGreen is Toronto's largest non-municipal affordable housing provider. We offer seniors, newcomers, youth, individuals with disabilities, psychiatric survivors and people with a long history of homelessness the opportunity to thrive in safe, affordable housing. WoodGreen owns and manages 28 housing sites in the city, where residents have access to the full basket of our supportive services.



## Programs

In person

### 570 Coxwell Avenue

This location has 11 bachelor units for single occupants.

In person

### 1070 Queen Street East

Also known as Jack Layton Seniors Housing, this site offers 175 independent living units



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[i](#) In person

[i](#) Seniors 59+

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In person

### 1076 Bathurst Street

This site offers seven bachelor and 11 one-bedroom units for individuals who have experienced homelessness and are recovering from mental health challenges.

[i](#) In person

[i](#) Individuals who have experienced homelessness and are recovering from mental health challenges

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In person

### 1117 Gerrard Street East

This site offers mixed units for seniors.

[i](#) In person

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In person

### 540 Cedarvale Avenue

540 Cedarvale Ave. offers 59 units to seniors experiencing poverty and homelessness or who are precariously housed.

In person

### 1119 Gerrard Street East

Also known as Heather Terraces, this location offers 29 mixed units for seniors.

[i](#) In person





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In person

## 123 Coxwell Avenue

This site offers 2 two-bedroom units and 11 one-bedroom units for individuals who have experienced homelessness and are recovering from mental health challenges.

[i](#) In person

[i](#) Individuals who have experienced homelessness and are recovering from mental health challenges

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In person

## 137 Sears Street

This location has 17 units and offers independent living for single occupants.

[i](#) In person

[i](#) Single occupants

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In person

## 17 Renwick Crescent

A mixed-unit site for single occupants, seniors and families. It offers 80 units, including apartments and townhouses.

[i](#) In person


In person

## 49 Mutual Street

This site offers seven bachelor and 13 one-bedroom units for individuals who have experienced homelessness and are recovering from mental health challenges.



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 homelessness and are recovering from mental health challenges


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In person

## 444 Logan Avenue

Also known as the Ray McCleary Towers, this is a mixed-unit site for seniors, offering 167 independent units.

 In person


 Seniors 59+


[Learn More](#)

In person

## 53 & 63 Pape Avenue

Cluster care sites for frail seniors in need of full-time support. Each building has 10 units and shared living space.

 In person

 Seniors 55+ in need of support with Activities of Daily Living


[Learn More](#)

In person

## 55 Pape Avenue

This location offers 63 mixed units for families, seniors and single occupants.

 In person


 Families, seniors, singles

[Learn More](#)

In person

## 58 Lewis Street

This site offers 15 bachelor units for individuals who have experienced homelessness and are recovering from mental health challenges.

 In person





[Learn More](#)

In person

## 841 Queen Street East

This location offers 36 mixed units for single occupants.



-  In person
-  Single occupants 18+ with history of homelessness

[Learn More](#)

In person

## Wellesley Central Residences

Operated in partnership with Fife House, this site has 112 mixed units and offers supportive housing for Fife House clients living with HIV/AIDS and frail seniors receiving WoodGreen assisted living services. It also hosts an 11-unit transitional housing program for individuals living with HIV/AIDS and working toward permanent housing.



-  In person
-  Seniors 59+ and people living with HIV/AIDS

[Learn More](#)

Online    In person

## ID Replacement Clinic



Offered in partnership with Neighbourhood Link, this program helps people obtain basic identification to access health care, sources of income such as pensions, and other services.

-  By phone and appointment only
-  Individuals who have lost their ID

In person

## Community Food Bank

WoodGreen's food bank program distributes non-perishable food items and pet food on a weekly basis.

-  In person
-  Open to all



[Learn More](#)



In person    Online

## Housing Support Services

This program provides housing support services and long-term case management to former residents of Tent City.



-  By phone, email, in person, by appointment, in the community
-  Exclusively former residents of Tent City, existing clients only

[Learn More](#)

In person    Online

## Housing Access Centre

We accept and process applications for our WoodGreen Housing Buildings. We also manage and update our housing waitlist for those interested in WoodGreen Housing.



-  In-person, by phone, email and appointments
-  Individuals 16+ and families

[Learn More](#)

In person    Online

## First Step to Home

A transitional housing program for men 55+ with a history of homelessness and mental health or addictions issues. We provide safe housing and wrap-around supports to help clients build new skills and recreate a sense of community.

-  In person, virtual, on the phone
-  Men 55+ who have experienced mental health or substance use



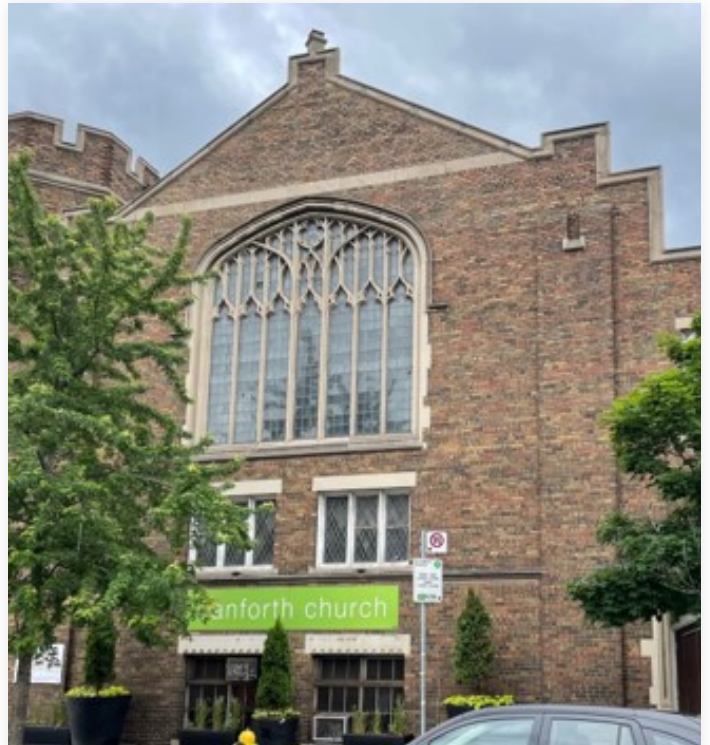
[Learn More](#)

## Upcoming Projects



**540 Cedarvale Ave.**

[Learn more](#) →



**60 Bowden St.**

[Learn more](#) →



**WoodGreen's unique housing model**



**The Success of WoodGreen’s Housing Model is that it provides wrap around supports**

- Deliver a seamless client experience – supports/empowers clients & helps break generational cycle of poverty
- Support aging-in-place, mental health and developmental services, meals on wheels and senior crisis support
- Build inclusive communities through settlement and supportive services



## Contact information

Housing & Homelessness Services

(416) 645-6000 ext. 2500

## Location

650 Queen Street East  
Toronto, ON  
M4M 1G5



[Helpful Links](#)

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[Other](#)

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[Equity Statement](#)



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Housing & Homelessness

Newcomers

Seniors

Youth

### Social Links



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Charitable Registration Number: 891038507 RR0001

## About Us

Every year, WoodGreen provides more than 37,000 Toronto residents with the tools and support they need to thrive. As one of the largest social service agencies in Toronto, we remove barriers and empower the clients we serve. We also work closely with our clients and community and thought leaders to reshape social service delivery to better serve our community.

Our Services include:

- Resources to find safe, affordable, and supportive housing
- Physical and mental health services delivered by an interdisciplinary team
- Seniors' services promoting health, active living and independence
- Assistance for neurodiverse adults and children and their caregivers
- Financial counselling and workshops to build financial skills
- Employment services and training opportunities to support job seekers
- High-quality child care and enriching after-school programs
- A wrap-around education and employment program for single mothers
- Settlement services for recent immigrants and refugees
- Youth social and mental health services designed by young people

We proudly welcome and serve people of all religions, races, cultures, gender identities, and sexual orientations.

As a United Way Anchor Agency, WoodGreen is part of a strong network of local agencies striving to develop innovative solutions to critical social needs.





## Mission

A Toronto where everyone has the opportunity to thrive.

## Vision

WoodGreen Community Services enhances self-sufficiency, promotes well-being, and reduces poverty through innovative solutions to critical social needs.

## WoodGreen at a glance



**1,414**

social housing units located at 28 properties



**1,363**

people employed with our support



**\$10.44M**

in tax benefits received by 2,942 clients through WoodGreen's Income Tax Clinic



**3,800**

newcomers welcomed from 124 countries



**18,298**

volunteer hours contributed by 740 volunteers



**723**

children served in our child care centres



55,438

Meals on Wheels deliveries made to seniors and adults living with disabilities



854

staff

42,290

calls for support answered by the Toronto Seniors Helpline

## Get to Know WoodGreen



### Learn How We're Making a Difference

Our team is tackling some of the most-urgent needs in Toronto.



### Meet Our People

Learn about our leadership team and board of directors.



## Discover Our History

Our rich history spans more than 86 years.

[Learn more](#) →



## Join Our Team

Be part of our diverse, values-driven organization and use your skills to make meaningful change in your community.

[Visit our careers page](#) →



## Volunteer With Us

We have fun and rewarding volunteer opportunities for individuals, students, and corporate groups.

[Get involved](#) →



## Read Our Impact Report

Find out how we're creating positive change in Toronto.

[Read our latest Impact Report](#) →





strategic plan and financial statements, and our current and previous impact reports.

[Read more](#) →

WoodGreen.

[Visit our blog](#) →



## Support Our Work

Through your generous donations, you can drive real and lasting change on the most important issues facing our city.

[Donate today](#) →

## Some of Our Key Policies

### Land Acknowledgement



Land Acknowledgement - WoodGreen Community Services acknowledges the land we are on is the traditional territory of many nations



## Privacy Policy



We're committed to keeping the personal information of clients, volunteers, donors, and community members safe and confidential.

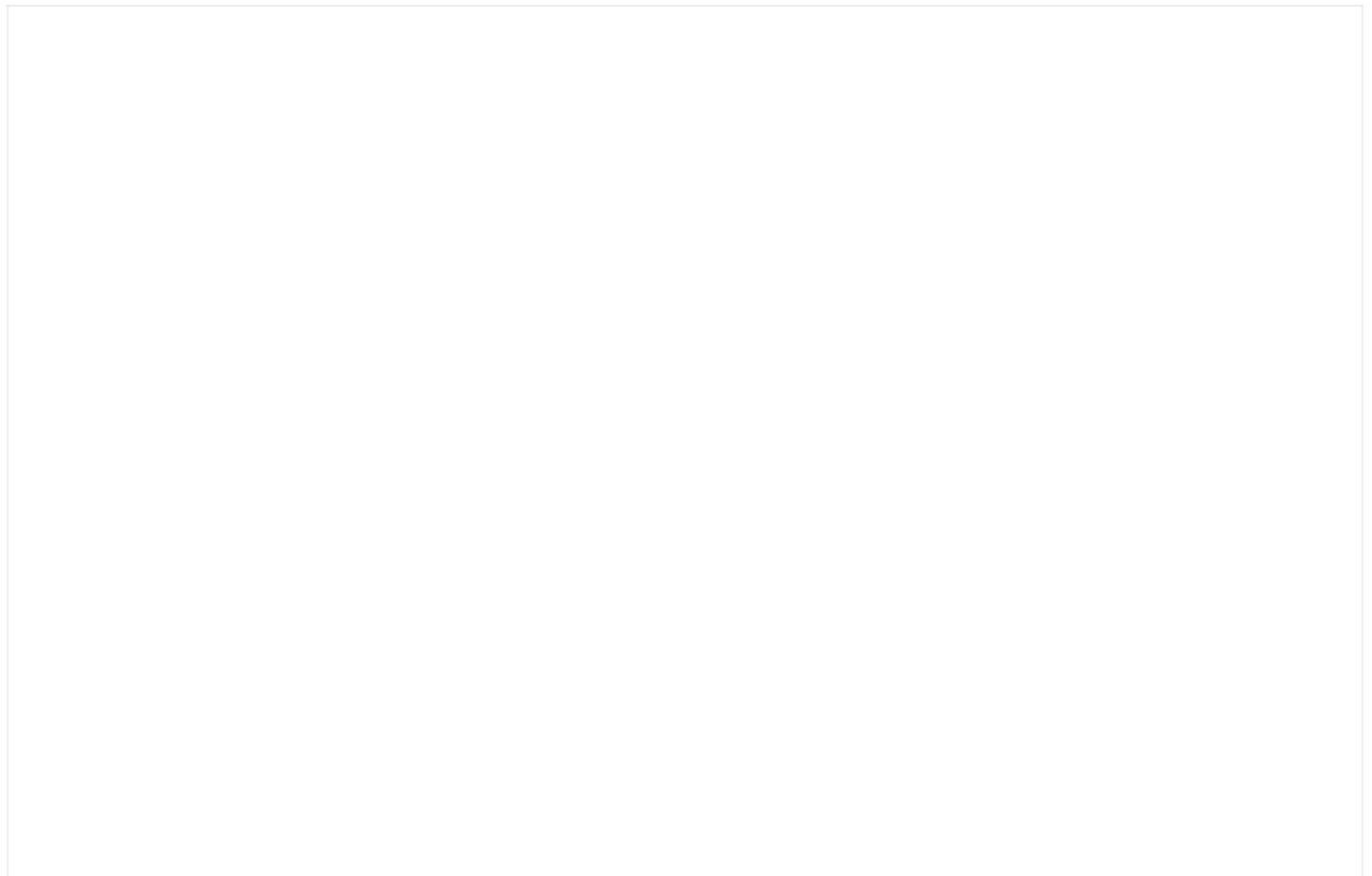
## AODA Statement



WoodGreen Community Services recognizes the importance of accessibility and acknowledges the requirements of the Accessibility for Ontarians with Disabilities Act (AODA).

## Locations

WoodGreen creates opportunities across the city from more than 44 locations. Take a look at the interactive map below.





Filter Results by:

- VIEW ALL
-  CHILD CARE SERVICES
-  COMMUNITY CARE & WELLNESS FOR SENIORS
-  DEVELOPMENTAL SERVICES
-  EMPLOYMENT SERVICES
-  FINANCIAL EMPOWERMENT
-  HOUSING
-  MENTAL HEALTH SERVICES
-  NEIGHBOURHOOD PROGRAMS
-  NEWCOMER SERVICES
-  YOUTH PROGRAMS



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#### Other

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[AODA Statement](#)

#### Social Links



# Our History

## Early years

WoodGreen Community Services was founded in 1937 by Reverend Ray McCleary. When he assumed his post at WoodGreen United Church in Toronto's Riverdale neighbourhood, 60 per cent of residents were on city relief and had no access to organized recreational activities. With the help of volunteers, Rev. McCleary organized games and crafts for local children, along with child care services. WoodGreen was incorporated that year with a mission to "serve the whole community from the cradle to the sunset hour of life."



# 1930s



## 1937

WoodGreen inaugurated during the Great Depression of the nineteen thirties. WoodGreen's founder, a Toronto Reverend named Ray McCleary, recognized the immense need his community had for social support.

He moved into a big house at 37 Boulton Avenue in Riverdale, and opened his newly painted red front door to his neighbours.

On April 12 1937, Ray McCleary incorporated WoodGreen, and began expanding the types of social services WoodGreen provided.

## 1939

The Harris family donated property for WoodGreen's new



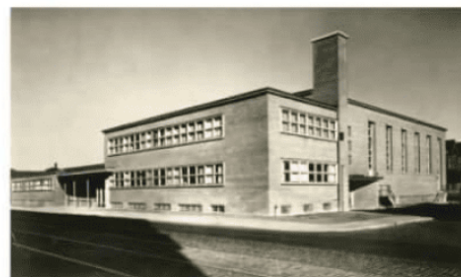


# 1940s



**1945**  
Name changed to WoodGreen Community Centre.

**1947**  
WoodGreen opened our flagship building at 835 Queen Street East.



**1948**  
WoodGreen offered programs for adults, youth and a child care at this brand new facility, and attendance in the



---

OPENING DAY SOUVENIR PROGRAM



# 1950s

**1951**

Launched The Children's Theatre, a program for kids with special needs.



**1953**

WoodGreen operated Summer Camp at Camp Donnacona for many years

**1956**

WoodGreen became a founding member of United Way in Toronto.





**1958**  
First free legal clinic  
opened at WoodGreen.

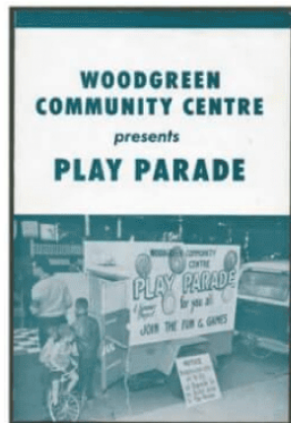
## War years

During WWII, WoodGreen supported local families to help meet basic needs. On May 8, 1948, the WoodGreen Community Centre opened at 835 Queen Street East, funded primarily by local residents. Programming was designed to serve the whole family and included day camps, sports, music, speakers, social clubs, a health clinic and assistance for the unemployed. The centre later offered programs for children with disabilities.

# 1960s

**1961**

WoodGreen operated a year-round recreation centre at Flemming Acres.



**1962**

The Play Parade blocked off residential streets for local families to enjoy activities during summer nights.

**1965**

WoodGreen launched a new Youth Training program.





**1967**

Ray McCleary Towers  
for seniors opened.



# 1970s

**1971**

In direct response to the neighbourhood's changing demographics, WoodGreen began offering programming specifically for Chinese seniors.

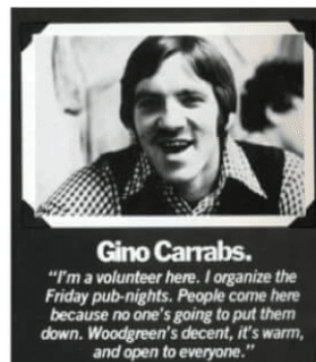


**1972**

WoodGreen began delivering Meals on Wheels program to isolated, frail seniors and adults.

**1976**

The Living Skills program for at-risk youth launched.





## 1978

Our Adult Protective Services program launched within the mental health and developmental services division of WoodGreen.

# 1980s

**1982**

WoodGreen's first employment centre opened.

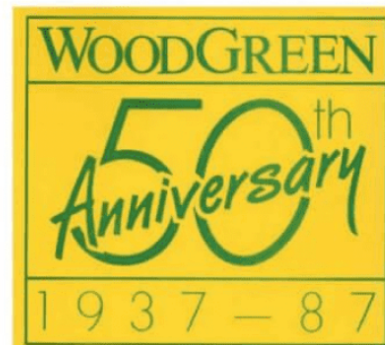


**1985**

To meet the needs of the increasing number of newcomers settling in Toronto, WoodGreen launched a new Immigrant Skills program.

**1987**

WoodGreen celebrated its 50th anniversary.





**1988**

WoodGreen successfully fundraised for, and built, 36 units of affordable housing for low income singles on top of 835 Queen Street East.

## Post-war years

In the late 1950's and 1960's, Riverdale residents faced several new challenges, including high unemployment rates, juvenile crime, a lack of safe housing and an aging population. Fewer than 50 per cent of houses were considered structurally sound and only 12 per cent of residents were high school graduates. WoodGreen developed new programming to tackle these issues, including opening Toronto's first legal clinic (1958), now East Toronto Community Legal Services; expanding day care services to allow a growing number of single mothers to work outside the home; opening WoodGreen's first apartment building for seniors (1967); and developing employment opportunities for youth, including a job placement program — a forerunner to the now provincially run Youth Employment Services (YES).

# 1990s

## 1990

Woodfield Day Care opened. Throughout the 1990s WoodGreen significantly expanded the number of child care spots offered.



## 1992

Recipient of the City of Toronto New Directions Awards for Outstanding Service to Seniors.

## 1996

Between 1990 and 1996 WoodGreen opened 5 affordable housing locations:

- 570 Coxwell Ave.
- 1070 Queen St. E.





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## Expanding WoodGreen

In the 1970's, WoodGreen focused on the needs of a growing population of seniors and expanded services for individuals with developmental disabilities. Formal programming for local Chinese-speaking residents began in 1971. Over the following decades, immigrant services expanded as the population of Toronto's East End diversified. During the 1980's and 1990's, WoodGreen developed additional housing units and child care centres, opened its first employment services site, and began to work with the community to establish neighbourhood and recreational programs.

# 2000S



**2000**

Bruce/WoodGreen Early Learning Centre, a pilot site for full day kindergarten opened.

**2004**

WoodGreen opened Homeward Bound.



**2007**

Rites of Passage, a new program for young people of Afrikan descent is established.



## 2009

WoodGreen launches  
The WoodGreen Foundation to  
build sustainable philanthropic  
support for our innovative,  
solution-focused programming.





# 2010S



## 2010

28 previously homeless senior men moved into First Step to Home, a transitional housing program operated at WoodGreen's newly renovated 650 Queen Street East location.

## 2012

WoodGreen and Community Care East York complete a voluntary integration to broaden expertise and enhance programming for seniors, adults with disabilities and their caregivers.



## 2017

Developed and launched Free 2 Be, a new wrap around model of support for youth transitioning out of care



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## WoodGreen today

Today, WoodGreen's reach extends far beyond Toronto's East End. Now one of the largest social service agencies in the city, we serve 37,000 people each year, working to improve health, independence and well-being for seniors; support newcomers as they settle in Canada; facilitate access to housing and employment resources for single mothers; provide high-quality child care and enriching after-school programs; build confidence and job readiness for youth; find housing for people experiencing homelessness and deliver a wide range of mental health services. WoodGreen has grown to employ 750 staff members and relies on the invaluable efforts of 1,000 volunteers.

A founding United Way of Toronto member agency, we are part of a strong network of local service agencies working to develop innovative solutions to critical social needs. WoodGreen programs are often referred to as examples of best practice, replicated across the Greater Toronto Area. We work closely with clients and policymakers to reshape social service delivery and create new opportunities to thrive.



### Helpful Links

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### Services

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### Social Links



*Christopher J. Henderson*

Christopher J. Henderson  
Commissioner for Taking Affidavits

**City Council**

**Notice of Motion**

MM13.18	ACTION			Ward: All
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**Appointment of City of Toronto Designate to ArtHubs Toronto Inc. Board of Directors - by Mayor Olivia Chow, seconded by Councillor Shelley Carroll**

- \* Notice of this Motion has not been given. A two-thirds vote is required to waive notice.*
- \* This Motion is subject to referral to the Executive Committee. A two-thirds vote is required to waive referral.*
- \* This Motion has been deemed urgent by the Chair.*

**Recommendations**

Mayor Olivia Chow, seconded by Councillor Shelley Carroll, recommends that:

1. City Council appoint the General Manager, Economic Development and Culture, as the City of Toronto’s designate on the Board of Directors for ArtHubs Toronto Inc., at pleasure of Council, for a term of office ending on December 31, 2025, or until a successor is appointed.

**Summary**

This motion recommends that City Council appoint the General Manager, Economic Development and Culture, as the City of Toronto’s designate on the board of directors for ArtHubs Toronto Inc (“ArtHubs”) for an interim period of two years. ArtHubs is a newly formed not-for-profit organization that will assume responsibility for the operation of the community cultural hubs previously managed by Toronto Artscape Inc (“Artscape”), including Daniels Spectrum (Ward 13), Gibraltar Point (Ward 10), Wychwood Barns (Ward 12), and Youngplace (Ward 10).

In late August 2023, following a period of sustained financial challenges, Artscape announced that it had become insolvent and would soon enter into receivership. The City subsequently worked with Artscape to stabilize its operations by negotiating with Artscape’s primary lender to secure a delay in filing receivership proceedings, and by providing a one-time emergency grant of \$125,000 to retain core property management services for Artscape sites, which was matched with other philanthropic support. This allowed time for the City to work with Artscape, its tenants, and other community partners to develop a comprehensive transition plan for each of Artscape’s 14 properties.

As of December 6, Artscape is not yet in receivership. It is anticipated that a court date for receivership proceedings will be set in the coming weeks. City Council previously authorized staff via MM11.32 to participate in the receivership proceedings and take necessary actions to protect the City’s property interests. Council also requested staff to report back at the end of 2023 on any delegated authorities exercised in response to the receivership. As receivership

proceedings have not yet commenced, staff now anticipate reporting back to City Council on this matter in early 2024.

City efforts have been focused on ensuring the continuity of tenancies for artists, their families and arts organizations housed at Artscape sites. Artscape has recently shared details of the operational transition plan with its tenants. The transition plan ensures that non-profit rental housing will be protected, and that the community hubs will continue to operate as spaces for accessible community arts programming. Key aspects of the transition plan include:

- **Housing:** Artscape Non-Profit Homes Inc. will assume operations of all Artscape-operated rental housing sites. Artscape Non-Profit Homes Inc. is a non-profit housing operator that was established to manage the housing units at Artscape Wychwood Barns and Artscape West Queen West. Artscape Non-Profit Homes Inc. will engage WoodGreen Community Services to provide management services at each of the sites on their behalf.
- **Community Hubs:** ArtHubs Toronto Inc. has been established as a successor non-profit organization to assume operations of the community cultural hubs previously managed by Artscape, including Daniels Spectrum, Gibraltar Point, Wychwood Barns, and Youngplace. ArtHubs will retain many of Artscape's staff to help ensure continuity and stability for tenants and site operations. Through the efforts of the City and a Transition Working Group, arrangements are now in place for financing to ensure necessary working capital for the new not-for-profit's first year of operations, focused on continuity of hub services and tenancy arrangements. In order to secure a matching amount of philanthropic funds, the City will be providing start-up funding of \$250,000 to ArtHubs from existing resources within the 2023 operational budget of the Economic Development and Culture Division, and will review options for operating grant support in 2024, including repurposing of grant funds previously provided to Artscape.

In its first year of operations, ArtHubs will be governed by a three-person board of directors, including representatives from the City of Toronto and ArtHubs' primary financial partner, and a community representative with extensive experience in cultural space management. The board will be responsible for strategic planning, oversight of business reset and stabilization, financial controls, stakeholder relations, and risk management. It is anticipated that the Board will meet bi-monthly, with additional meetings to be called as required. The City will also collaborate with ArtHubs to establish a tenant and community advisory committee to complement the work of the Board of Directors, and ensure that tenants have a strong and active role in shaping the future of the community hubs.

This motion recommends that the General Manager, Economic Development and Culture, be appointed as the City's designate for an interim period of the first two years of operations or until a successor is appointed, to ensure close and active involvement in ArtHubs' start-up phase. It is anticipated that the composition of the board will be expanded beyond three members towards the end of 2025, at which point Council would be asked to review the City's representation.

This motion is urgent in order to ensure that a City of Toronto designate can participate in the initial meetings of the ArtHubs Toronto Board of Directors.

## **Background Information (City Council)**

Member Motion MM13.18

## Item - 2023.MM13.18

### Tracking Status

- City Council adopted this item on December 13, 2023 without amendments.

City Council consideration on December 13, 2023

### **MM13.18 - Appointment of City of Toronto Designate to ArtHubs Toronto Inc. Board of Directors - by Mayor Olivia Chow, seconded by Councillor Shelley Carroll**

**Decision Type:** ACTION

**Status:** Adopted

**Wards:** All

**Caution:** Preliminary decisions and motions are shown below. Any decisions or motions should not be considered final until the meeting is complete, and the City Clerk has confirmed the decisions for this meeting.

#### **City Council Decision**

City Council on December 13, 14 and 15, 2023, adopted the following:

1. City Council appoint the General Manager, Economic Development and Culture, as the City of Toronto's designate on the Board of Directors for ArtHubs Toronto Inc., at pleasure of Council, for a term of office ending on December 31, 2025, or until a successor is appointed.

#### **Background Information (City Council)**

Member Motion MM13.18

<https://www.toronto.ca/legdocs/mmis/2023/mm/bgrd/backgroundfile-241476.pdf>

#### **Motions (City Council)**

##### ***Motion to Waive Notice (Carried)***

Speaker Nunziata advised Council that the provisions of Chapter 27, Council Procedures, need to be waived to permit introduction of Motion MM13.18. A two-thirds vote of Council Members present is required to waive notice.


##### ***Motion to Waive Referral (Carried)***

Speaker Nunziata advised Council that the provisions of Chapter 27, Council Procedures, require that Motion MM13.18 be referred to the Executive Committee. A two-thirds vote of the Council Members present is required to waive referral.

##### ***Motion to Adopt Item (Carried)***

Source: Toronto City Clerk at [www.toronto.ca/council](http://www.toronto.ca/council)

Select Language

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BETWEEN:

**THE TORONTO-DOMINION BANK**

-and-

**TORONTO ARTSCAPE INC.**

*Applicant*

*Respondent*

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**  
Proceeding commenced at Toronto

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**AFFIDAVIT OF  
BEN MACINTOSH  
(Affirmed January 3, 2024)**

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**CITY SOLICITOR’S OFFICE**  
City of Toronto, Legal Services  
Station 1260, Metro Hall  
55 John St., 26<sup>th</sup> Floor  
Toronto, ON M5V 3C6

**Michele A. Wright (LSO #40724W)**  
**Christopher J. Henderson (LSO #54291B)**  
Email: [Michele.A.Wright@toronto.ca](mailto:Michele.A.Wright@toronto.ca) &  
[Christopher.Henderson@toronto.ca](mailto:Christopher.Henderson@toronto.ca)  
Tel: (416) 397-5342 & 416-397-7106

Lawyers for the City of Toronto

BETWEEN:

**THE TORONTO-DOMINION BANK**

-and-

**TORONTO ARTSCAPE INC.**

*Applicant*

*Respondent*

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**  
Proceeding commenced at Toronto

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**MOTION RECORD  
OF THE CITY OF TORONTO**

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**CITY SOLICITOR’S OFFICE**  
City of Toronto, Legal Services  
Station 1260, Metro Hall  
55 John St., 26<sup>th</sup> Floor  
Toronto, ON M5V 3C6

**Michele A. Wright (LSO #40724W)**  
**Christopher J. Henderson (LSO #54291B)**  
Email: [Michele.A.Wright@toronto.ca](mailto:Michele.A.Wright@toronto.ca) &  
[Christopher.Henderson@toronto.ca](mailto:Christopher.Henderson@toronto.ca)  
Tel: (416) 397-5342 & 416-397-7106

Lawyers for the City of Toronto