

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

B E T W E E N:

**THE TORONTO-DOMINION BANK**

Applicant

- and -

**TORONTO ARTSCAPE INC.**

Respondent

**SUPPLEMENTARY MOTION RECORD OF THE RESPONDENT  
(returnable January 11, 2024)**

January 10, 2024

**MILLER THOMSON LLP**

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Lawyers for the Respondent, Toronto  
Artscape Inc.

TO: THE SERVICE LIST

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

B E T W E E N:

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and

TORONTO ARTSCAPE INC.

Respondent

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(as at January 10, 2024)

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AND TO:

**CANADA REVENUE AGENCY**

c/o Department of Justice

Ontario Regional Office

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Toronto, ON M5H 1T1

Email: AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca

AND TO: **HER MAJESTY THE QUEEN IN RIGHT  
OF ONTARIO AS REPRESENTED BY  
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Counsel for Toronto Standard Condominium Corporation No. 2674

AND TO: **THE INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE TECHNICIANS, ARTISTS AND ALLIED CRAFTS OF THE UNITED STATES, ITS TERRITORIES AND CANADA, LOCAL #58, TORONTO**

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<b>TAB</b>	<b>DOCUMENT</b>
1.	Supplementary Affidavit of Grace Lee Reynolds sworn January 10, 2024
<b>Exhibits to the Affidavit Of Grace Lee Reynolds sworn January 10, 2024</b>	
Exhibit A	Copy of signed AAHI Agreement

TAB 1



Court File No. CV-23-00711609-00CL

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**SUPPLEMENTARY AFFIDAVIT OF GRACE LEE REYNOLDS  
(sworn January 10, 2024)**

I, GRACE LEE REYNOLDS, of the City of Toronto, in the Province of Ontario, **MAKE**

**OATH AND SAY AS FOLLOWS:**

1. I am the Chief Executive Officer of Toronto Artscape Inc. (“**Artscape**” or “**TAI**”). I have been closely involved in the matters described herein and as such, I have personal knowledge of the matters deposed to herein. Where the information herein is sworn on information and belief, I have stated the source of that information and verily believe the same to be true.
2. I make this affidavit to supplement my affidavit sworn December 27, 2023 (“**First Affidavit**”), sworn in support of Artscape’s motion. The purpose of this supplementary affidavit is to provide an update to the Court in respect to developments since my First

Affidavit was sworn. For ease of reference, I have adopted the defined terms as set out in my First Affidavit.

3. At the time that I swore my First Affidavit, I noted that the terms of the AAHI Agreement had not yet been finalized.<sup>1</sup>
4. The AAHI Agreement has now been executed by the parties and, as such, I attach a copy of the signed AAHI Agreement as **Exhibit A**.
5. I make this affidavit in support of Artscape’s motion for an order approving the Transactions and vesting the Transferred Assets into AAHI and ArtHubs and for no other or improper purpose.

SWORN before me at the City of Toronto, in the Province of Ontario, this 10<sup>th</sup> day of January, 2024, in accordance with O. Reg. 431/20 Administering Oath or Declaration Remotely

DocuSigned by:  
*Craig A. Mills*  
D5EDEA03830445E

Commissioner for Taking Affidavits  
**Craig A. Mills**

DocuSigned by:  
*Grace Lee Reynolds*  
DACB301928FE45A

**GRACE LEE REYNOLDS**

<sup>1</sup> Please see Paragraph 80 of my First Affidavit.

This is Exhibit "A" referred to in the Affidavit of GRACE LEE REYNOLDS sworn by GRACE LEE REYNOLDS of the City of Toronto, before me at the City of Toronto, in the Province of Ontario, on January 10, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

Craig A. Mills

D5E8E4A03830445F

---

*Commissioner for Taking Affidavits (or as may be)*

CRAIG A. MILLS

## ASSET TRANSFER AGREEMENT

**THIS AGREEMENT** made as of January 3, 2024,

**B E T W E E N:**

**TORONTO ARTSCAPE INC.**, a non-share capital corporation incorporated pursuant to the laws of the Province of Ontario ("**TAI**")

- and -

**ANPHI AFFORDABLE HOMES INC.**, a non-share capital corporation incorporated pursuant to the laws of the Province of Ontario ("**ANPHIAH**")

### RECITALS:

- A. The Parties are each non-share capital corporations established for the purpose of providing affordable live/work housing for artists.
- B. TAI wishes to transfer and assign to ANPHIAH certain real estate assets and other assets, and in consideration thereof, ANPHIAH wishes to accept and assume certain of TAI's known and disclosed liabilities in connection with those assets, as more particularly set forth in this Agreement.
- C. The not-for-profit assets have been, or will be, excluded from the receivership proceedings to be commenced by The Toronto-Dominion Bank against TAI.

**NOW THEREFORE**, in consideration of the premises and covenants contained in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Parties agree as follows:

### ARTICLE 1 INTERPRETATION

#### 1.1 Definitions

In this Agreement, in addition to the terms defined above:

"**ABL Project**" means the Leased Real Property listed in paragraph 1 of Schedule 2 to the Agreement and includes the TAI Building thereon;

"**Accounts Payable**" means all amounts relating to the business of TAI owing to any Person in connection with the purchase of goods or services in the ordinary course of business;

"**Accounts Receivable**" means all accounts receivable and insurance claims recorded as receivable in the books and records of TAI in the Ordinary Course of Operations; plus any amount due from third Persons to TAI, including any rebates receivable, in connection with the Operations and the Transferred Assets;

**“Agreement”** means this asset transfer agreement, including the recitals and Schedules hereto, as the same may be amended or replaced from time to time;

**“Applicable Law”** means all current constitutions, treaties, laws, statutes, codes, ordinances, official plans, orders, decrees, rules, regulations, policies, notices, directions and by-laws, whether domestic, foreign or international of any Governmental Authority, and the common law, binding on or affecting any Person, property or matter referred to in the context in which such word is used;

**“Approval and Vesting Order”** means the approval and vesting order issued by the Court approving this Agreement and the transactions contemplated by this Agreement and conveying to ANPHIAH the Transferred Assets free and clear of all Encumbrances other than the Permitted Encumbrances, and which order shall be in a form substantively similar to the draft order attached as Schedule 1 hereto;

**“ASNPO”** means accounting standards for non-for-profit organizations from time to time approved by the Accounting Standards Board (Canada), or any successor entity, consistently applied;

**“Assumed Liabilities”** means the outstanding balance owing under the Tenant Leases, including deposits and interest, as provided in Schedule 3 of this Agreement;

**“AWC Project”** means the Leased Real Property listed in paragraph 2 of Schedule 2 to the Agreement and includes the TAI Building thereon;

**“Business Day”** means any day other than a day which is a Saturday, Sunday or a statutory or civic holiday observed in the Province of Ontario;

**“Claims”** means any and all claims, demands, complaints, grievances, actions, applications, suits, causes of action, orders, charges, indictments, prosecutions or other similar processes, assessments or reassessments, judgments, debts, liabilities, expenses, costs, damages or losses, contingent or otherwise, whether liquidated or unliquidated, matured or unmatured, disputed or undisputed, contractual, legal or equitable, including loss of value, and all costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing, related to the Leased Real Properties or Toronto Artscape Inc., and **“Claim”** means any one of them;

**“Closing”** means the completion of the assignment and transfer of the Transferred Assets, and assumption of liabilities pursuant to this Agreement;

**“Closing Date”** means the date that is the later of: (i) the first Business Day following the date that is ten days following the date on which the Approval and Vesting Order is issued by the Court; and (ii) the first Business Day following the date on which any appeals or motions to set aside or vary the Approval and Vesting Order have been finally determined, or, if the Parties agree, such other date as agreed in writing by the Parties;

**“Closing Documents”** means the documents referred to in Sections 9.4 and 9.6;

**“Commercial Portion”** has the meaning set out in paragraph 5.6.4;

**“Consents”** means the consents, authorizations, permits and orders listed in Schedule 7;

**“Contracts”** means those contracts identified in Schedule 5;

**“Court”** means the Ontario Superior Court of Justice;

**“Encumbrances”** means any hypothec, mortgage, charge, pledge, prior claim, security interest, assignment, lien (statutory or otherwise), *Bank Act* (Canada) security, servitude, deed of trust, deed to secure debt, easement, right of way, conditional sale, option, resolutive condition, title retention agreement, title defect, deemed trust, restrictive covenant, encroachment, adverse claim, arrangement or condition of any nature which, in substance, secures payment or performance of an obligation, or other encumbrance of any kind or character whatsoever;

**“Effective Time”** means 12:01 a.m. on the Closing Date;

**“Equipment Leases”** means all equipment leases, conditional sales contracts, capital leases, title retention agreements and other similar agreements between TAI and third Persons relating to equipment used by TAI and related to the Operations, including those set out in Schedule 5;

**“Excluded Assets”** means the following assets, undertakings and properties other than the Transferred Assets:

- (a) any of TAI’s cash or cash equivalents;
- (b) any of TAI’s accounts receivable, other than the Accounts Receivable;
- (c) original tax records and books and records pertaining thereto, minute books, corporate seals, taxpayer and other identification numbers and other documents relating to the organization, maintenance and existence of TAI or the Transferred Assets; and
- (d) the benefit of any refundable Taxes payable or paid by TAI in respect of the Transferred Assets and applicable to the period prior to the Closing Date net of any amounts withheld by any taxing authority, and any claim or right of TAI to any refund, rebate, or credit of Taxes for the period prior to the Closing Date;

**“Excluded Liabilities”** has the meaning given in section 2.4 herein;

**“Governmental Authority”** means any federal, provincial, territorial, municipal, local or other government, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government;

**“Head Leases”** means the lease agreements of the Leased Real Properties, under which agreements TAI is the tenant, and which are listed in Schedule 2 to this Agreement;

**“HST”** means all amounts of tax imposed by Part IX of the *Excise Tax Act* (Canada);

**“Interim Period”** means the period from January 1, 2024 to and including the Closing Date;

**“Leased Real Properties”** means, collectively, all of the leasehold estates in the lands and premises described in Schedule 2 hereto, and **“Leased Real Property”** shall mean any one of them;

**“Mortgages”** means the mortgages set forth in Schedule 3 hereto, together with any related: (a) real property security registered against title to the Leased Real Property; and (b) security interests in the Transferred Assets registered under the *Personal Property Security Act* (Ontario).

**“Notices”** has the meaning ascribed to such term in Section 10.1;

**“Operations”** means all operations of TAI and of any property manager retained by TAI to provide property management services with respect to the Transferred Assets;

**“Ordinary Course of Operations”** means, with respect to any action taken by TAI or by any property manager retained by TAI to provide property management services, that such action is consistent with the past practice and custom of the Operations and is taken in the ordinary course of the normal day-to-day operation of the Operations;

**“PACC Project”** means the Leased Real Property listed in paragraph 3 of Schedule 2 to the Agreement and includes the TAI Building thereon;

**“Parties”** means TAI and ANPHIAH collectively, and “Party” means either of them, as applicable;

**“Permitted Encumbrances”** means in respect of the Transferred Assets:

- (a) undetermined or inchoate liens, charges and privileges incidental to current operations that have not, at the Closing Date, been filed or registered pursuant to Applicable Law, and that relate to obligations not due or delinquent;
- (b) statutory liens, charges, adverse claims, security interests or encumbrances of any nature whatsoever claimed or held by any Governmental Authority that have not at the time been filed or registered against the Leased Real Properties and of which TAI does not have notice, claimed or held by His Majesty the King in Right of Canada, His Majesty the King in Right of the Province of Ontario, or by any other Governmental Authority;
- (c) the Tenant Leases and the rights of the Tenants thereunder;
- (d) the Assumed Liabilities;
- (e) the Mortgages;
- (f) those specific Encumbrances registered against title to the Leased Real Properties;
- (g) zoning laws and other land use laws;
- (h) security given in the Ordinary Course of Operations to any public utility or Governmental Authority in connection with the operation of the Operations, other than security for borrowed money, as listed in Schedule 3; and
- (i) including those listed in Schedule 3;

**“Person”** means an individual, a corporation, a company, a limited liability company, an unlimited liability company, a partnership, a limited partnership, a trust, an unincorporated organization, a joint venture, a joint stock company and any Governmental Authority;

**“Personal Information”** means the information regulated by Privacy Laws and collected, used, disclosed or retained by TAI;

**“Prepaid Expenses”** means prepaid expenses related to the Operations including amounts prepaid as Taxes, rents and telephone charges;

**“Privacy Laws”** means all Applicable Law governing the collection, use, disclosure and retention of information relating to an identifiable individual and includes personal information or personal health information as defined under the *Personal Information Protection and Electronic Documents Act* (Canada) and/or applicable provincial privacy legislation;

**“Purchase Price”** has the meaning ascribed to such term in Section 3.1, and for greater certainty, the purchase price shall include the assumption of any Permitted Encumbrances as listed in Schedule 3, and ANPHIAH shall be required to pay any applicable taxes on the Purchase Price;

**“TAI Buildings”** means all of the buildings and other improvements located on and under the Leased Real Properties including, but not limited to, all parking facilities and all other structures, fixtures, erections and fixed improvements, underground servicing, parking areas and other improvements located on, in or under the Leased Real Property, but excluding all personal property owned by the tenants, if any; and **“TAI Building”** shall mean any one of them;

**“Taxes”** means all taxes, duties, rates, levies, assessments, reassessments, withholdings, deductions, fees, premiums, imposts, dues and other charges, together with all penalties, interest, fines, additions to tax or other amounts imposed by a Governmental Authority, with respect thereto, payable to any Governmental Authority, including those referred to as, or with respect to, income, sales, use, transfer, goods and services, capital, capital gains, value added, real property, personal property, excise, customs, registration, payroll, employment, education, business, school, property, and local improvement;

**“Tenant Leases”** means, collectively, those leases, subleases, agreements to lease or sublease, offers to lease or sublease, renewals of leases or subleases, storage agreements, parking agreements and other agreements, rights or licences, in each case either in writing or oral, allowing any Person to use, possess or occupy any portion of the Leased Real Properties or any space within a TAI Building set out in Schedule 4, together with all security for, and guarantees and indemnities of, the Tenants’, subtenants’, licensees’, or occupants’ obligations thereunder; and **“Tenant Lease”** means any one of the Leases;

**“Tenant Records”** has the meaning ascribed to such term in Section 5.1;

**“Tenants”** means collectively the tenants under the Tenant Leases and their permitted successors and assigns; and **“Tenant”** means any one of them;



**“Transaction Documents”** means all agreements (other than this Agreement), certificates, Consents, Notices, documents and instruments to be executed and delivered by any Party and provided for or contemplated herein and therein;

**“Transfer”** has the meaning ascribed to such term in Section 2.1; and

**“Transferred Assets”** means all of the following properties, assets and rights of TAI as they relate to the Leased Real Properties and the Operations as specifically set out in the Schedules attached hereto:

- (a) **Accounts Receivable** – the Accounts Receivable;
- (b) **Books and Records**– all business books and records relating to the Operations, including, without limitation, all financial, operating, legal, personnel, payroll, donor lists, client lists, beneficiary lists, and Tenant Records and all promotional literature, correspondence and files;
- (c) **Contracts** – the Contracts listed in Schedule 5;
- (d) **Equipment Leases** – the Equipment Leases listed in Schedule 5;
- (e) **General** – all other rights, properties and assets related to the Operations of any kind whatsoever, and wherever located;
- (f) **Goodwill** – the goodwill of the Operations, including the right to the use of existing telephone numbers, facsimile numbers and websites used by TAI;
- (g) **Head Leases** – the Head Leases;
- (h) **Insurance Proceeds** – the proceeds of any insurance claim arising or paid during the Interim Period as set out in Section **Error! Reference source not found.**;
- (i) **Leased Real Properties**– the Leased Real Properties and the TAI Buildings;
- (j) **Prepaid Expenses** – the Prepaid Expenses;
- (k) **Rents** – collected under the Tenant Leases for the month of January 2024;
- (l) **Reserve** - the funds held by Vancity Community Investment Bank as a replacement reserve for the ABL Project pursuant to the Canadian Mortgage and Housing Corporation conditions attached to the mortgage insurance for the Bayside VCIB mortgage, and pursuant to para. 8.1(l) of the Contribution Agreement with the City of Toronto dated January 8, 2016;
- (m) **Tangible Assets** – all furniture, chattels, vehicles, office equipment, and other tangible assets owned by TAI and used in the Operations;
- (n) **Tenant Leases** – the Tenant Leases; and
- (o) **Tenant Records** – the Tenant Records.

## 1.2 Interpretation

In this Agreement:

- 1.2.1 Unless specified otherwise, reference to a statute includes any regulations under such statute and refers to that statute and such regulations as they may be amended or to any successor legislation.
- 1.2.2 The division into articles, sections, paragraphs and schedules and the insertion of headings are for convenience of reference only and will not affect the construction or interpretation of this Agreement. The words “hereto”, “herein”, “hereof”, “hereunder” and similar expressions refer to this Agreement and not to any particular portion of it. References to an Article, Section, Paragraph or Schedule refer to the applicable article, section, paragraph or schedule of this Agreement, unless otherwise indicated.
- 1.2.3 Words in the singular include the plural and *vice versa*, words in one gender include all genders, and the words “including”, “include” and “includes” mean “including (or include or includes) without limitation”.
- 1.2.4 This Agreement is the joint product of the Parties, has been subject to mutual consultation, negotiation and agreement with independent counsel and any ambiguity will not be construed for or against any Party.

## 1.3 Schedules

The following are the Schedules to this Agreement:

Schedule 1	-	Form of Vesting Order
Schedule 2	-	Leased Real Properties
Schedule 3	-	Permitted Encumbrances and Assumed Liabilities
Schedule 4	-	Tenant Leases
Schedule 5	-	Contracts and Equipment Leases
Schedule 6	-	Insurance Policies
Schedule 7	-	Consents
Schedule 8	-	Excluded Assets
Schedule 9	-	Agency Agreement

## 1.4 Accounting Terms

All accounting and financial terms not specifically defined in this Agreement, and all accounting determinations and calculations not otherwise defined in this Agreement, are to be interpreted and/or made in accordance with ASNPO or the financial reporting requirements of the *Housing Services Act* (Ontario).

## 1.5 Knowledge

- 1.5.1 Any reference herein to the “knowledge”, the “best of the knowledge” (in each case, in reference to TAI) or the “best of TAI’s knowledge” means the knowledge, having made due and careful inquiry, of Grace Lee Reynolds and Kelly Rintoul; provided that, for greater certainty, Grace Lee Reynolds and Kelly Rintoul shall not have any personal liability in respect of any such statements contained herein and such statements are provided by him or her on a non-recourse basis.

## **ARTICLE 2 TRANSFER OF ASSETS**

### **2.1 Transfers**

Effective as of the Closing Date, TAI shall absolutely and irrevocably transfer and assign to ANPHIAH, and ANPHIAH shall accept, all of its right, title, and interest in the Transferred Assets, free and clear of any Encumbrances except Permitted Encumbrances upon and subject to the terms and conditions of this Agreement (the “**Transfer**”). The transfer of the leases in respect of the AWC Project is subject to compliance with the terms and conditions set out in the Assignment of Lease and Consent Agreement to be entered into among TAI, ANPHIAH, MPCT DIF DAM Residence at Weston Inc., and the City of Toronto and delivered in accordance with Schedule 7.

### **2.2 Assumption of Liabilities**

2.2.1 In consideration of the Transfer of the Transferred Assets, effective as of the Closing Date, TAI will assign to ANPHIAH, and ANPHIAH will, subject to sub-sections 2.2.2 and 2.2.3, assume and be responsible for all commitments and liabilities of TAI relating to:

- (a) the Operations, if any, set out in Schedule 3,
- (b) the Transferred Assets, and
- (c) the Permitted Encumbrances.

2.2.2 Any amounts or obligations incurred, due, arising or becoming due from and after the Closing Date in respect of:

- (a) the Operations,
- (b) the Transferred Assets, or
- (c) the Permitted Encumbrances,

will be for the accounts of ANPHIAH, including those obligations arising from and after the Closing Date.

2.2.3 Any amounts or obligations incurred, due, arising or becoming due prior to the Closing Date in respect of:

- (a) the Operations,
- (b) the Transferred Assets, or
- (c) save as otherwise provided in this Agreement, the Permitted Encumbrances, including monies owing thereon prior to the Closing Date,

will be for the accounts of TAI, and, for greater certainty, other than as may be contemplated by section 5.5 of this Agreement, shall not be assumed by ANPHIAH under this Agreement.

### 2.3 Excluded Assets

Notwithstanding anything else in this Agreement, the Transferred Assets shall not include the Excluded Assets.

### 2.4 Excluded Liabilities

With the sole exception of the Permitted Encumbrances or as otherwise set out in this Agreement, ANPHIAH is not assuming, and shall not be deemed to have assumed, any liabilities, obligations or commitments of TAI, whether known or unknown, fixed or contingent or otherwise, including any debts, obligations, sureties, positive or negative covenants or other liabilities directly or indirectly arising out of or resulting from the conduct or operation of the operations of TAI, whether pursuant to this Agreement or as a result of the Transaction (collectively, the “**Excluded Liabilities**”). For greater certainty, the Excluded Liabilities shall include, but not be limited to, the following:

- (a) except as otherwise agreed in this Agreement, all Taxes payable by TAI prior to the Closing Date;
- (b) except as otherwise agreed in this Agreement, all Taxes relating to any matters or assets other than the Transferred Assets;
- (c) any liability, obligation or commitment associated with the Accounts Payable or any employees of TAI;
- (d) except as otherwise agreed in this Agreement, any liability, obligation or commitment resulting from an Encumbrance that is not a Permitted Encumbrance;
- (e) any liability, obligation or commitment associated with any of the Excluded Assets; and
- (f) except as otherwise agreed in this Agreement, any liability, obligation or commitment in respect to Claims arising from or in relation to any facts, circumstances, events or occurrences existing or arising prior to the Closing Date.

## ARTICLE 3 PURCHASE PRICE

### 3.1 Purchase Price

The purchase price payable for the Transferred Assets is \$1.00 and the assumption of any Permitted Encumbrances as listed in Schedule 3 (the “Purchase Price”).

### 3.2 Payment of Purchase Price

The Purchase Price shall be paid and satisfied by ANPHIAH to TAI on the Closing Date in accordance with the terms of this Agreement.

## ARTICLE 4 REPRESENTATIONS AND WARRANTIES

### 4.1 Representations and Warranties of TAI

TAI represents and warrants to ANPHIAH, as of the date of this Agreement and on Closing, as follows, and acknowledges that ANPHIAH are relying upon the accuracy of each such representations and warranties, all of which are material to ANPHIAH:

- 4.1.1 **Organization and Good Standing** – TAI is a non-share capital corporation incorporated and organized under the laws of the Province of Ontario and is a valid and subsisting corporation under such laws.
- 4.1.2 **Due Authorization, etc.** – TAI has the corporate power and authority to enter into this Agreement and the Transaction Documents and to perform its obligations hereunder and thereunder; the execution and delivery of this Agreement and the Transaction Documents and the consummation of the transactions contemplated by this Agreement and the Transaction Documents have been duly authorized by all necessary corporate action on the part of TAI and its members and directors.
- 4.1.3 **No Violation** – To the best of TAI's knowledge and provided that the Consents specified in this Agreement are obtained prior to Closing, other than the Non-Assignable Contracts, the execution and delivery by TAI of this Agreement and the Transaction Documents and the consummation of the transactions contemplated hereunder and thereunder will not result in the breach of any of the provisions of (other than a breach that would not have a material adverse effect on the Operations), or constitute a default under or conflict with or cause the acceleration of any of the obligations under:
- (i) any Contract;
  - (ii) any provisions of the constating documents of TAI, or resolutions of its directors or members;
  - (iii) any Permitted Encumbrance;
  - (iv) any Tenant Lease;
  - (v) any Applicable Law; or
  - (vi) any judgment, decree or award of any Governmental Authority or arbitrator so as to prevent or otherwise affect the transfer of the Transferred Assets to ANPHIAH.
- 4.1.4 **Enforceability of Obligations** – This Agreement and the Transaction Documents constitute valid and legally binding obligations of TAI enforceable against it in accordance with their terms, provided that enforcement may be limited by bankruptcy, insolvency, liquidation, reorganization, and other similar laws affecting enforceability of creditors' rights generally, and that equitable remedies such as specific performance and injunction are in the discretion of the court from which they are sought.

4.1.5 **Residency of Vendor** – TAI is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada).

4.1.6 **HST Registrant** – TAI is a registrant for the purposes of the HST imposed under Part IX of the *Excise Tax Act* (Canada).

#### 4.2 **Representations and Warranties of ANPHIAH**

ANPHIAH severally represents and warrants to TAI as of the date of this Agreement and on Closing as follows, and acknowledge that TAI is relying upon the accuracy of each such representations and warranties all of which are material to TAI:

4.2.1 **Organization and Good Standing** – ANPHIAH is a non-share capital corporation, incorporated and organized under the laws of the Province of Ontario and is a valid and subsisting corporation under such laws.

4.2.2 **Due Authorization, etc.** – ANPHIAH has the corporate power and authority to enter into this Agreement and the Transaction Documents and to perform its obligations hereunder and thereunder; the execution and delivery of this Agreement and the Transaction Documents and the consummation of the transactions contemplated by this Agreement and the Transaction Documents have been duly authorized by all necessary corporate action on the part of ANPHIAH and its members and directors.

4.2.3 **Absence of Conflicting Agreements** – The execution and delivery by ANPHIAH of this Agreement and the Transaction Documents and the consummation of the transactions contemplated hereunder and thereunder will not result in the breach of any of the provisions of, or constitute a default under or conflict with:

- (a) any agreement to which ANPHIAH is a party;
- (b) any provisions of the constating documents of ANPHIAH, or resolutions of its directors or members;
- (c) any Applicable Law; or
- (d) any judgment, decree or award of any Governmental Authority or arbitrator.

4.2.4 **HST Registration** - ANPHIAH is duly registered and will continue to be duly registered on the Closing Date, for HST under subdivision d of Division V of Part IX of the *Excise Tax Act* (Canada) and its registration number is 771 046 752 RT0001.

4.2.5 **No Agency or Trust** - The Transferred Assets are being purchased by ANPHIAH as principal for its own account and are not being purchased by ANPHIAH as an agent, trustee or otherwise on behalf of or for another person.

4.2.6 **Enforceability of Obligations** – This Agreement and the Transaction Documents constitute valid and legally binding obligations of ANPHIAH enforceable against it in accordance with their terms, provided that enforcement may be limited by bankruptcy, insolvency, liquidation, reorganization, and other similar laws affecting enforceability of creditors' rights generally, and that equitable remedies such as specific performance and injunction are in the discretion of the court from which they are sought.

## **ARTICLE 5 COVENANTS**

### **5.1 Transfer of Tenant Records**

5.1.1 As at the Closing on the Closing Date, possession of all TAI records containing Personal Information relating to the Tenants ("**Tenant Records**") shall be transferred to ANPHIAH in a reasonably secure manner so as to protect the privacy of subject individuals in accordance with Privacy Laws and the commercial data of the commercial tenants.

5.1.2 Upon receipt of the Tenant Records, ANPHIAH shall,

- (a) utilize best efforts security arrangements to protect the Tenant Records from such foreseeable risks as unauthorized access, use, disclosure, copying, modification and destruction;
- (b) limit access to the Tenant Records to only those individuals and organizations that need access for the purposes for which the Personal Information contained in those records was collected; and
- (c) require its agents and advisors to protect and ensure the security of any Tenant Records.

Notwithstanding the foregoing, ANPHIAH may obtain consent to any new purposes for the collection, use or disclosure of the Personal Information contained in the Tenant Records, provided that such consent is obtained pursuant to Privacy Laws.

5.1.3 Until such time that the Tenant Records have been fully transferred to ANPHIAH, ANPHIAH covenants and agrees to permit TAI and its lawful representatives, during regular business hours and upon reasonable notice, to have full and complete access to any Tenant Records received by ANPHIAH, including the right to make copies and/or to take the original records, as is reasonably necessary, to respond to any complaint, investigation or Claim. In the event TAI is required to remove original Tenant Records, TAI undertakes to maintain the integrity of the records and to return them once no longer needed. In connection with the foregoing, TAI shall take reasonable steps to safeguard the Tenant Records and shall store, maintain and manage all such Tenant Records in its custody in good faith and in accordance with industry standards and Applicable Law.

5.1.4 Until such time that the Tenant Records have been fully transferred to ANPHIAH, ANPHIAH covenants and agrees to permit TAI and its lawful representatives, during regular business hours and upon reasonable notice, to have full and complete access to any books and records received by ANPHIAH, including the right to make copies and/or to take the original records, as is reasonably necessary, to respond to any complaint, investigation or Claims that relates to TAI fulfilling its legal obligations arising from the Operations.

### **5.2 Notices to Tenants**

The Parties have agreed on a form of notice to affected individuals in connection with the transfer of Tenant Records, as well as to commercial tenants under the Tenant Leases,

which explains that the transactions contemplated by this Agreement will occur, where future rents should be paid and, where applicable, that Personal Information will be disclosed by TAI to ANPHIAH (each, a “**Notice to Tenant**”).

### 5.3 **Estoppel Certificates**

On or before the Closing Date TAI shall use reasonable commercial efforts to obtain and deliver to ANPHIAH, estoppel certificates in a form satisfactory to counsel for ANPHIAH, acting reasonably, executed by each commercial tenant in the Parkdale Arts & Culture Centre project.

### 5.4 **Delays in Conveyancing**

The Parties acknowledge that this Agreement is subject to TAI being granted an Approval and Vesting Order by the Court. As there will be an Interim Period between January 1, 2024 and the Closing Date, then until such time that the foregoing assignments and conveyances are delivered:

- (a) ANPHIAH shall be entitled during the Interim Period, to act as agent or asset manager for TAI, to assume management of the Operations as they relate to the applicable Transferred Assets in the Ordinary Course of Operations, consistent with past practices, and TAI shall cooperate in that regard with ANPHIAH in connection with aspects of the Operations that is handling after the Effective Time;
- (b) TAI shall deal with such applicable Transferred Assets as ANPHIAH shall in writing direct;
- (c) TAI shall direct its tenants in the TAI Buildings to pay their rent to ANPHIAH during the Interim Period;
- (d) TAI will maintain in full force and effect the insurance policies referred to in Schedule 6 to the extent that they relate to the Transferred Assets, until such time as ANPHIAH’s legal and beneficial ownership in the applicable asset has fully vested, at which time the proceeds of any insurance claim arising or paid during the Interim Period shall be assigned to ANPHIAH; and
- (e) TAI will not encumber the Transferred Assets, voluntarily amend, modify, renew, extend, terminate or accept a surrender of any existing Permitted Encumbrance, waive any rights or release any third Person from liability under any Permitted Encumbrance, nor consent to the assignment or transfer of any Permitted Encumbrance, without, in each case, the prior written approval of ANPHI, which approval may be unreasonably withheld;
- (f) ANPHIAH shall hold all monies collected as rent from the tenants of the TAI Buildings, and pay from such monies the operating expenses and mortgage payments of the Leased Real Properties as they fall due; and
- (g) ANPHIAH shall be entitled to retain as its own funds any surplus generated during the Interim Period while acting as Agent,

and on the date that the Approval and Vesting Order is delivered,

- (a) ANPHIAH shall be entitled to retain as its own funds any surplus generated during the Interim Period while acting as agent for TAI;



- (b) TAI shall also deliver a certificate executed by an authorized signing officer of TAI, confirming that the representations and warranties made by TAI in this Agreement and in any Transaction Document remain accurate, true and complete in all material respects as of such date, as though the representation and warranty had been made on such date.

TAI may, at its option, terminate the agency of ANPHIAH on six months' notice, if such Approval and Vesting Order is not obtained. If such termination occurs, ANPHI shall not be obliged to account for or return to TAI any surplus generated during the Interim Period while acting as agent for TAI.

In accordance with the above provisions, TAI and ANPHIAH shall enter into an Agency Agreement in the form attached hereto at Schedule 9 for the Interim Period.

## 5.5 Risk

The Transferred Assets shall be and remain at the risk of TAI until Closing and at the risk of ANPHIAH from and after Closing. If, prior to Closing, any Leased Real Property or any TAI Building thereon is substantially damaged or destroyed by fire or other casualty, then, at its option, ANPHIAH may decline to complete the Transaction with respect to Transferred Assets, Contracts, and Assumed Liabilities relating to such Leased Real Property or TAI Building. This option will be exercised within 15 days after notification to TAI by ANPHIAH of the occurrence of damage or destruction (or prior to the Closing Date if such occurrence takes place within 15 days of the Closing Date) in which event the Parties will negotiate appropriate amendments to this Agreement, failing which this Agreement will be terminated automatically without any obligation to either Party. If ANPHIAH does not exercise this option, it will complete the Transaction and will be entitled to an assignment of the proceeds of insurance referable to such damage or destruction. Where any damage or destruction is not substantial, ANPHIAH will complete the Transaction and will be entitled to an assignment of the proceeds of insurance referable to such damage or destruction provided that such damage or destruction is insured.

## 5.6 Tax Matters

- 5.6.1 TAI and ANPHIAH acknowledge and agree that the PACC Project is a combined supply of real property within the meaning of section 136(2) of the *Excise Tax Act* (Canada).
- 5.6.2 TAI represents, warrants and certifies to ANPHIAH that the transfers described in this Agreement, in respect of the residential premises of the PACC Project, the entire AWC Project and the entire ABL Project (the "**Residential Projects**"), constitute an exempt supply pursuant to section 2 of Part I of Schedule V of the *Excise Tax Act* (Canada) and TAI shall provide to ANPHIAH on closing a written certificate or statement in form satisfactory to ANPHIAH's solicitor setting forth all the material facts upon which such exemption is based.
- 5.6.3 TAI and ANPHIAH also acknowledge and agree that a portion of the PACC Project is commercial property and is a taxable supply within the meaning of the *Excise Tax Act* (Canada) (the "**Commercial Portion**").
- 5.6.4 ANPHIAH represents, warrants and agrees that:
  - a. it is purchasing the Commercial Portion as principal for its own account and not as an agent, trustee or otherwise on behalf of or for another person;

- b. it is registered under Subdivision d of Division V of Part IX of the *Excise Tax Act* (Canada) for the collection and remittance of HST; and such registration is in good standing and has not been revoked;
- c. it shall be liable, shall self-assess and remit to the appropriate governmental authority all HST which is payable under the *Excise Tax Act* (Canada) in connection with the transfer of the Commercial Portion made pursuant to this Agreement, all in accordance with the *Excise Tax Act* (Canada);
- d. it acknowledges that TAI is relying upon the accuracy of the above representations and warranties in not collecting HST on closing and allowing ANPHIAH to self-assess and remit HST to the Receiver General in accordance with the *Excise Tax Act* (Canada), and that such representations and warranties shall not merge on the closing of this transaction;
- e. it shall indemnify and save harmless TAI from and against any and all HST penalties, costs, and/or interest which may become payable by and assessed against TAI as a result of any inaccuracy, misstatement or misrepresentation made in connection with any matter raised in this paragraph or contained in any declaration contained in this Agreement;
- f. it shall tender on closing a declaration and indemnity reflecting the above provisions in form satisfactory to TAI's solicitor; and
- g. it shall, on or before the date which is 10 days prior to closing, provide TAI with a notarial copy of a written verification of its registration issued by Canada Revenue Agency under the *Excise Tax Act* (Canada), in form satisfactory to TAI's solicitor.

## **ARTICLE 6 SURVIVAL OF REPRESENTATIONS AND WARRANTIES AND INDEMNITIES**

### **6.1 Survival**

All representations and warranties and indemnities of TAI and ANPHIAH contained herein or in the Transaction Documents will survive for a period of two (2) years after the Closing Date.

## **ARTICLE 7 CONDITIONS PRECEDENT**

### **7.1 ANPHIAH Conditions**

The obligation of ANPHIAH to complete the transactions contemplated by this Agreement will be subject to the satisfaction of, at or before the Closing Date, each of the following conditions precedent:

- 7.1.1 **Performance of Obligations** – TAI will have performed or complied with all of its obligations, covenants and agreements under this Agreement, unless such covenant expressly is related to the period after the Closing Date.
- 7.1.2 **Corporate Approvals** – All necessary corporate action will have been taken by the members and directors of TAI to approve the execution and delivery of this Agreement

and the Transaction Documents, and performance by TAI of its obligations hereunder or thereunder.

- 7.1.3 **Delivery of Documents** – Each of the Transaction Documents, this Agreement and any other agreements or documents required to be delivered pursuant to this Agreement, including the Closing Documents listed in section 9.6, shall have been duly executed and delivered by TAI to ANPHIAH.
- 7.1.4 **Consents** – All Consents required in connection with the completion of the transactions contemplated by this Agreement will have been obtained or given.
- 7.1.5 **Order** - The Court shall have issued the Approval and Vesting Order, which will not have been stayed, varied or vacated, and which is final and binding and not subject to appeal.
- 7.1.6 **No Actions Taken Restricting Transfer** – No action or proceeding will be pending or threatened by any Person to restrict, prohibit or invalidate the transactions contemplated under this Agreement and the Transaction Documents, or which might affect the right of ANPHIAH to own or control any of the Transferred Assets or conduct the Operations from and after Closing.
- 7.1.7 **Management Contracts** – TAI will have terminated its property management contracts with Artscape Non-Profit Homes Inc. (“**ANPHI**”) on terms satisfactory to TAI and ANPHI, effective December 31, 2023, for the Leased Real Properties, ANPHI’s housing project located at 900 Queen Street West, Toronto and the ANPHI-leased property at Artscape Wychwood Barns.
- 7.1.8 **Surrender of Lease** – TAI will have surrendered its lease for 900 Queen Street West, Toronto to the landlord, ANPHI.

## 7.2 **Waiver and Termination by ANPHIAH**

The conditions contained in Section 7.1 are inserted for the exclusive benefit of ANPHIAH and may be waived in whole or in part by ANPHIAH at any time in its sole and absolute discretion, save for Section 7.1.4. TAI acknowledges that the waiver by ANPHIAH of any condition or any part of any condition will constitute a waiver only of such condition or such part of such condition, as the case may be, and will not constitute a waiver of any covenant, agreement, representation or warranty made by TAI that corresponds or is related to such condition or such part of such condition, as the case may be.

## 7.3 **TAI’s Conditions**

The obligation of TAI to complete the transactions contemplated by this Agreement will be subject to the satisfaction of, at or before the Closing Date, each of the following conditions precedent:

- 7.3.1 **Performance of Obligations** – ANPHIAH will have complied with all of its obligations and agreements under this Agreement, unless such covenant expressly related to the period after the Closing Date.
- 7.3.2 **Corporate Approvals** – All necessary corporate action will have been taken by ANPHIAH to approve the execution and delivery of this Agreement and the Transaction Documents and performance by ANPHIAH hereunder or thereunder.

- 7.3.3 **Delivery of Documents** – Each of the Transaction Documents, this Agreement and any other agreements or documents required to be delivered pursuant to this Agreement, including the Closing Documents listed in section 9.4, shall have been duly executed and delivered by ANPHIAH to TAI.
- 7.3.4 **Consents** – All Consents required in connection with the completion of the transactions contemplated by this Agreement will have been obtained or given.
- 7.3.5 **Order** - The Court shall have issued the Approval and Vesting Order, which will not have been stayed, varied or vacated.
- 7.3.6 **No Actions Taken Restricting Transfer** – No action or proceeding will be pending or threatened by any Person to restrict, prohibit or invalidate the transactions contemplated under this Agreement and the Transaction Documents.

#### 7.4 **Waiver and Termination by TAI**

The conditions contained in Section 7.3 hereof are inserted for the exclusive benefit of TAI and may be waived in whole or in part by TAI at any time in its sole and absolute discretion, save for Section 7.3.4. ANPHIAH acknowledges that the waiver by TAI of any condition or any part of any condition will constitute a waiver only of such condition or such part of such condition, as the case may be, and will not constitute a waiver of any covenant, agreement, representation or warranty made by ANPHIAH herein that corresponds or is related to such condition or such part of such condition, as the case may be.

### **ARTICLE 8 AS IS, WHERE IS**

#### 8.1 **Condition of the Transferred Assets**

ANPHIAH acknowledges that TAI is selling and the ANPHIAH is purchasing the Transferred Assets on an “as is, where is” and “without recourse” basis as the Transferred Assets shall exist on the Closing Date, including, without limitation, whatever defects, conditions, impediments, hazardous materials or deficiencies exist on the Closing Date, whether patent or latent. ANPHIAH further acknowledges and agrees that it has entered into this Agreement on the basis that TAI has neither guaranteed nor will it guarantee the use or quality of the Transferred Assets, that ANPHIAH has conducted such inspections of the condition to the Transferred Assets as it deems appropriate and has satisfied itself with regard to these matters. No representation, warranty or condition is expressed or can be implied as to title, encumbrance, description, fitness for purpose, environmental compliance, merchantability, condition or quality, or in respect of any other matter or thing whatsoever concerning the Transferred Assets, or the right of TAI to sell, assign, convey or transfer same, save and except as expressly provided in this Agreement. Without limiting the generality of the foregoing, any and all conditions, warranties or representations expressed or implied pursuant to the *Sale of Goods Act*, R.S.O. 1990, c. S.1, do not apply hereto and/or have been waived by ANPHIAH. The description of the Transferred Assets contained in this Agreement is for the purpose of identification only and no representation, warranty or condition has or will be given by TAI concerning the accuracy of such description.

### **ARTICLE 9 CLOSING ARRANGEMENTS**

#### 9.1 **Time and Place of Closing**

The Closing will take place on the Closing Date pursuant to section 9.2. If any Party hereto requests originally executed copies of the Closing Documents (or any of them), all Parties shall deliver to one another such originally executed documents within 10 business days' of such request.

## 9.2 Closing Arrangements

At the Closing Date, upon fulfilment of all the conditions under this Agreement which have not been waived in writing the Parties shall deliver the Transaction Documents as described in Sections 9.4 and 9.6 and take such other actions as may be necessary or desirable to complete the Closing.

## 9.3 Registration and Other Costs

9.3.1 Except as otherwise specified in this Agreement, all costs and expenses (including the fees and disbursements of accountants, legal counsel and other professional advisers) incurred in connection with this Agreement and the completion of this Agreement and the Transfers contemplated therein. are to be paid by the Party incurring those costs and expenses. Furthermore, ANPHIAH shall be solely responsible for and pay land transfer and conveyancing taxes (whether federal, provincial, municipal or otherwise) payable on the transfer of the Leased Real Properties, if any, and all registration and recordation fees payable in respect of registration and/or recordation of any documents on Closing and all federal and provincial sales and other taxes payable by ANPHIAH upon or in connection with the conveyance or transfer of the Leased Real Property, if any, including provincial retail sales tax, HST and goods and services tax.

9.3.2 The provisions of this Section 9.3 shall survive and not merge on Closing.

## 9.4 Delivery of Closing Documents by TAI

9.5 TAI will deliver to ANPHIAH on or before the Closing Date, the following, fully executed where applicable, and in each case, in form and substance satisfactory to ANPHIAH, acting reasonably:

- (a) a copy of the issued Approval and Vesting Order;
- (b) an omnibus agreement pertaining to the conveyance of the Transferred Assets containing, *inter alia*, an assignment and assumption of the Contracts, an assignment and assumption regarding the Transferred Assets, save for the Assignment Agreements contemplated by subsection (c) below, an undertaking of TAI to deliver to and endorse in favour of ANPHIAH any cheques held by TAI as of Closing in respect of rent or other amounts payable by Tenants pursuant to the Tenant Leases;
- (c) Assignments of the Head Leases, with the consents of the landlords therein;
- (d) copies or other evidence of all required Consents other than those Consents that ANPHIAH have agreed to obtain;
- (e) a certificate of status in respect of TAI;

- (f) copies of the Notices to Tenants delivered to the Tenants under the Tenant Leases;
- (g) certified copies of the resolutions or meeting minutes of the directors of TAI authorizing the execution of this Agreement and the Transaction Documents and the performance by TAI of its obligations therein;
- (h) all keys, pass-cards and codes to the TAI Buildings and Leased Real Property, to the extent in TAI's or its property manager's possession or control;
- (i) original copies of the Tenant Leases and Tenant Records, in each case to the extent in TAI's or its property manager's possession or control;
- (j) proof that HST remittances for the period prior to Closing on the Commercial Component have been paid; and
- (k) such further documents and assurances as may be reasonably required by ANPHIAH's solicitors in order to complete the transfer and assignment of the Transferred Assets, and the Operations as contemplated herein.

## 9.6 Delivery of Closing Documents by ANPHIAH

9.6.1 ANPHIAH will deliver to TAI on or before the Closing Date, the following, fully executed where applicable, and in each case, in form and substance satisfactory to TAI, acting reasonably:

- (a) payment and satisfaction in full of the Purchase Price according to section 3.2 hereof;
- (b) an omnibus agreement pertaining to the conveyance of the Transferred Assets containing, *inter alia*, an assignment and assumption of the Contracts, an assignment and assumption regarding the Transferred Assets, save for the Assignment Agreements contemplated by subsection (c) below, an undertaking of TAI to deliver to and endorse in favour of ANPHIAH any cheques held by TAI as of Closing in respect of rent or other amounts payable by Tenants pursuant to the Tenant Leases;
- (c) Assignments of the Head Leases, with the consents of the landlords therein;
- (d) a certificate of status in respect of ANPHIAH;
- (e) copies or other evidence of all required Consents obtained by ANPHIAH;
- (f) certified copies of the resolutions or meeting minutes of the directors of ANPHIAH authorizing the transactions contemplated in this Agreement and the Transaction Documents; and
- (g) such further documents and assurances as may be reasonably required by TAI's solicitors in order to complete the transfer and assignment of the Transferred Assets, and the Operations as contemplated herein.

## 9.7 Completion of Agreement

If the Approval and Vesting Order is not granted, the Parties may nonetheless proceed with Closing, subject to ANPHIAH's sole discretion to reject proceeding with Closing. ANPHIAH shall if it opts to close without the Approval and Vesting Order, give notice to TAI to fix the closing date, and the Closing shall take place in accordance with this Agreement mutatis mutandis. If the Approval and Vesting Order is granted, the Closing Date shall be as otherwise provided in this Agreement.

## ARTICLE 10 NOTICES

### 10.1 Any Notice

10.1.1 Any notice, direction or other communication required or contemplated by any provision of this Agreement (a "**Notice**") will be in writing and given by personal delivery, by registered mail, by overnight courier or by email and addressed:

in the case of a Notice to TAI, at:

Toronto Artscape Inc.  
c/o 40 King Street West, Suite 5800  
Toronto, Ontario M5H 3S1

Attention: Susan Manwaring

Phone: 416 595 8583

Email: smanwaring@millerthomson.com

in the case of a Notice to ANPHIAH, at:

ANPHI Affordable Homes Inc.  
c/o Suite 1600, 1 First Canadian Place  
100 King Street West  
Toronto, Ontario M5X 1G5

Attention: Warren Cass, Chair

Phone: 416 862 5706

Email: warren.cass@gowlingwlg.com

10.1.2 Any Notice:

- (a) delivered before 4:30 p.m. local time on a Business Day will be deemed to have been received on the date of delivery and any Notice delivered after 4:30 p.m. local time on a Business Day or delivered on a day other than a Business Day, will be deemed to have been received on the next Business Day;
- (b) mailed will be deemed to have been received seventy-two (72) hours after the date it is postmarked, provided that if the day on which the Notice is deemed to have

been received is not a Business Day, then the Notice will be deemed to have been received on the next Business Day; or

- (c) sent by email before 4:30 p.m. local time on a Business Day will be deemed to have been received when sent, provided that any email received after 4:30 p.m. local time on a Business Day or received on a day other than a Business Day will be deemed to have been received on the next Business Day.

10.1.3 If the Party sending the Notice knows or might reasonably be expected to know that, at the time of sending or within 72 hours thereafter, normal mail service has been disrupted, then the Notice may only be sent (or re-sent) by delivery, overnight courier or facsimile.

10.1.4 Either Party may change its address for service, its email address or the name of the individual to the attention of whom a Notice is to be sent, by written notice given to the other Party in accordance with this Article 10.

## **ARTICLE 11 GENERAL**

### **11.1 Entire Agreement**

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether written or oral. There are no conditions, covenants, agreements, representations, warranties or other provisions, express or implied, collateral, statutory or otherwise, relating to the subject matter hereof except as herein provided.

### **11.2 Amendment and Waiver**

This Agreement may only be amended by written agreement signed by each Party hereto. Any waiver of any provision of this Agreement will be effective only if it is in writing and signed by the Party to be bound thereby, and only in the specific instance and for the specific purpose for which it has been given. No failure on the part of either Party to exercise, and no delay in exercising, any right under this Agreement will operate as a waiver of such right. No single or partial exercise of any such right will preclude any further or other exercise of such right.

### **11.3 Severability**

If any provision of this Agreement is determined to be invalid, illegal or unenforceable by an arbitrator or any court of competent jurisdiction, that provision will be severed from this Agreement, and the remaining provisions will remain in full force and effect.

### **11.4 Time**

Time is of the essence of this Agreement.

### **11.5 Expenses**

Except as otherwise set out in this Agreement, all costs and expenses (including, without limitation, the fees and disbursements of legal counsel) incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the Party incurring such costs and expenses.



#### **11.6 Assignment and Benefit of the Agreement**

Neither this Agreement nor any of the rights or obligations under this Agreement is assignable by any Party without the prior written consent of the other Parties. Subject to that condition, this Agreement will enure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

#### **11.7 Further Assurances**

Each Party agrees that upon the reasonable written request of the other Parties, at any time, it will perform all acts and execute all documents as may be necessary or desirable to effect the purpose of this Agreement or to better evidence the transactions contemplated by this Agreement, whether before or after the Closing.

#### **11.8 Public Notices**

Any press release, public statement or announcement or other public disclosure, or statement to the Tenants resident in the TAI Buildings with respect to this Agreement or the transactions contemplated hereby is subject to the joint approval of the Parties (which approval will not be unreasonably withheld or delayed).

#### **11.9 Governing Law and Attornment**

This Agreement was drafted against the background of the law of the Province of Ontario and the federal laws of Canada applicable therein and shall be governed in accordance with such laws.

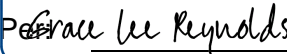
#### **11.10 Counterparts and Electronic Execution**


This Agreement may be executed in any number of counterparts each of which will be deemed to be an original, and all of which taken together will be deemed to constitute one and the same instrument. This Agreement may be executed and delivered by electronic means and each of the Parties may rely on such electronic execution as though it were an original hand-written signature.

[Signature page follows]

**IN WITNESS WHEREOF** the Parties have executed this Agreement as of the date first written above.

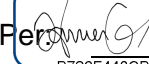
**TORONTO ARTSCAPE INC.**

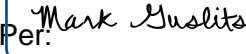
DocuSigned by:  
Per:   
936BF31F42954A4...  
Name: Grace Lee Reynolds  
Title: Chief Executive Officer

DocuSigned by:  
Per:   
8656EA487EDD451...  
Name: Kelly Rintoul  
Title: Chief Operating Officer

We have the authority to bind the corporation.

**ANPHI AFFORDABLE HOMES INC.**

DocuSigned by:  
Per:   
B726F440CB92441...  
Name: Warren Cass  
Title: Chair

DocuSigned by:  
Per:   
21D064DAFB5A422...  
Name: Mark Guslits  
Title: Secretary

We have the authority to bind the corporation.

**Schedule 1**  
**Form of Vesting Order**

## **Schedule 2**

### **Leased Real Properties & Permitted Encumbrances**

#### **Leased Real Properties**

1. **Artscape Bayside Lofts (ABL)**

Lease dated June 14, 2019 (Notice registered as AT5164685) from City of Toronto which lease was partially surrendered (Part 4 on Reference Plan 66R-28259) and amended by agreement dated November 22, 2022, and further amended by the Second Amending Agreement dated September 25, 2023

The revised legal description for the Demised Premises is

Part of PIN 21384-0207 (LT)

Part of Block 3, Plan 66M-2514, being Parts 2 and 3 on 66R-28259, subject to an easement in gross as in At4529866; subject to an easement as in AT4636476; together with an easement as in AT5279405; subject to an easement as in AT5279406 and together with an easement as in AT5279407; City of Toronto

PIN 21384-0298 (LT)

Part of Block 3 Plan 66M-2514, Part 25 Plan 66R-30712; subject to an easement as in AT4350573; subject to an easement as in AT4620679; subject to an easement as in AT4661377; together with an easement over parts 3, 4, 5, 8, 9, 11, 14, 16, 18, 19, 20, 23 and 24, 66R-30712 as in AT5279405; subject to an easement in favour of Parts 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 17, 18, 19, 20, 22, 23, 30 and 31, 66R-30712 as in AT5279406; together with an easement over Parts 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 17, 18, 19, 20, 22, 23, 30 and 31 66R-30712 as in AT5279407; together with an easement over Part 2, 66R-30712 as in AT5358220; together with an easement over part of Block 3, Plan 66M-2542, Part 1, Plan 66R-32009 as in AT5920908; City of Toronto

PIN 21384-0299 (LT)

Part of Block 3 Plan 66M-2514, Part 26 Plan 66R-30712; subject to an easement as in AT4350573; subject to an easement as in AT4620679; subject to an easement as in AT4661377; together with an easement over parts 3, 4, 5, 8, 9, 11, 14, 16, 18, 19, 20, 23 and 24, 66R-30712 as in AT5279405; subject to an easement in favour of parts 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 17, 18, 19, 20, 22, 23, 30 and 31, 66R-30712 as in AT5279406; together with an easement over parts 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 17, 18, 19, 20, 22, 23, 30 and 31 66R-30712 as in AT5279407; together with an easement over Part 2, 66R-30712 as in AT5358220; together with an easement over part of Block 3, plan 66M-2542, Part 1, Plan 66R-32009 as in AT5920908; City of Toronto

PIN 21384-0300 (LT)

Part of Block 3 Plan 66M-2514, Part 27 Plan 66R-30712; subject to an easement as in AT4350573; subject to an easement as in AT4620679; subject to an easement as in AT4661377; together with an easement over Parts 3, 4, 5, 8, 9, 11, 14, 16, 18, 19, 20, 23 and 24, 66R-30712 as in AT5279405; subject to an easement in favour of parts 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 17, 18, 19, 20, 22, 23, 30 and 31, 66R-30712 as in AT5279406; together with an easement over parts 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 17, 18, 19, 20, 22, 23, 30 and 31 66R-30712 as in AT5279407; together with an easement over Part 2, 66R-30712 as in AT5358220; together with an easement over part of Block 3, Plan 66M-2542, Part 1, Plan 66R-32009 as in AT5920908; City of Toronto

PIN 21384-0301 (LT)

Part of Block 3 Plan 66M-2514, Part 32 Plan 66R-30712; subject to an easement as in AT4350573; subject to an easement as in AT4620679; subject to an easement as in AT4661377; together with an easement over parts 3, 4, 5, 8, 9, 11, 14, 16, 18, 19, 20, 23 and 24, 66R-30712 as in AT5279405; subject to an easement in favour of parts 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 17, 18, 19, 20, 22, 23, 30 and 31, 66R-30712 as in AT5279406; together with an easement over parts 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 17, 18, 19, 20, 22, 23, 30 and 31 66R-30712 as in AT5279407; together with an easement over Part 2, 66R-30712 as in aAT5358220; together with an easement over part of Block 3, Plan 66M-2542, Part 1, Plan 66R-32009 as in AT5920908; City of Toronto.

2. **Artscape Weston Common (AWC)**

Lease from 2295477 Ontario Inc. to Toronto Artscape Inc., pursuant to a lease agreement dated November 1, 2016, 26 live/work residential units in a building located at the lands and premises municipally known as 31 or 33 King Street, Toronto Ontario and legally described as

PIN: 10323-0122 (LT)

Description: PART LOT 15 PLAN 38 YORK; PART LOT 6 CONCESSION 5 WYS YORK, PARTS 9, 26, 33, 34 & 36 PLAN 66R28757; SUBJECT TO AN EASEMENT OVER PART 34 PLAN 66R28757 IN FAVOUR OF PART LOT 6 CONCESSION 5 WYS YORK, PART 13 PLAN 6R28757 & PART LOTS 12, 13, 14, 15 PLAN 38 YORK, PARTS 2,8,10,14,19,20,22&24 PLAN 66R28757 AS IN AT4390065; SUBJECT TO AN EASEMENT AS IN AT5016130; TOGETHER WITH AN EASEMENT OVER PART LOT 6 CONCESSION 5 WYS YORK, PARTS 4,12, 16 & 23 PLAN 66R28757 & PART LOTS 11, 12, 14, 15 PLAN 38 WESTON, PARTS 3,8,15,17,18 & 22 PLAN 66R28757 AS IN AT4390019; CITY OF TORONTO

3. **1313 Queen Street West – the Parkdale Arts & Cultural Centre (PACC)**

Lease dated August 15, 2017 from City of Toronto to Toronto Artscape Inc.

Legal Description:

PIN 21302-0045 (LT)

Legal Description: Part of Lot 1-2 on Plan 382, Parkdale, as in EW1980 (Sixthly); City of Toronto.

**Schedule 3****Permitted Encumbrances and Assumed Liabilities****Mortgages****1. Artscape Bayside Lofts (ABL):**

- a. Charge Inst. # AT5165713 in favour of Vancity Community Investment Bank in the principal amount of \$6,200,000.00 as amended by AT5507184. The arrears under this Charge to be assumed by ANPHIAH are: \$65,193 comprised of the Aug 31, Sep 30 and Oct 31, 2023 principal and interest payments

With ancillary security AT5165713 Notice of Assignment of Rents - General

- b. Charge Inst. # AT5166075 in favour of City of Toronto in the principal amount of \$19,000,000.00

**2. Artscape Weston Common (AWC)**

- a. Charge Inst. # AT4420802 in favour of City of Toronto in the principal amount of \$4,440,000.00

With ancillary security AT442803 Notice of Assignment of Rents - General

- b. **Charge Inst. # AT5165138 in favour of Vancity Community Investment Bank in the principal amount of \$1,000,000.00. The arrears under this Charge to be assumed by ANPHIAH are: \$10,274 comprised of the Sep 20 and Oct 20, 2023 principal and interest payments**

With ancillary security AT5165139 Notice of Assignment of Rents - General

**PPSA Security**

The following personal property security interests:

- a. File No. 752132826, Registration No. 20190610 1208 1862 1136 by VANCITY COMMUNITY INVESTMENT BANK
- b. File No. 752392395, Registration No. 20190617 1534 1862 1673 by VANCITY COMMUNITY INVESTMENT BANK

**Assumed Liabilities for Tenant Deposits and Interest Thereon**

Suite / Unit No.	Deposit Balance 08/31/23	2023 Interest Accrued (Unpaid) 2.5%	Total Deposit Owed
<b>Artscape Bayside Lofts</b>			
201	1,045.66	26.14	1,071.80
202	1,024.79	25.62	1,050.41
203	2,022.61	50.57	2,073.18

Suite / Unit No.	Deposit Balance 08/31/23	2023 Interest Accrued (Unpaid) 2.5%	Total Deposit Owed
204	1,471.44	36.79	1,508.22
205	1,215.00	30.37	1,245.37
206	1,219.96	30.50	1,250.45
207	1,449.25	36.23	1,485.49
208	1,144.57	28.61	1,173.19
209	1,334.83	33.37	1,368.20
210	1,471.44	36.79	1,508.22
301	1,051.42	26.29	1,077.70
302	1,045.66	26.14	1,071.80
303	1,165.67	29.14	1,194.81
304	1,349.41	33.74	1,383.15
305	-	-	-
306	1,216.80	30.42	1,247.22
307	1,217.48	30.44	1,247.91
308	1,044.11	26.10	1,070.21
309	1,214.85	30.37	1,245.22
310	1,450.57	36.26	1,486.83
401	1,013.82	25.35	1,039.17
402	1,165.67	29.14	1,194.81
403	1,045.66	26.14	1,071.80
404	1,606.23	40.16	1,646.38
405	1,045.66	26.14	1,071.80
406	1,427.52	35.69	1,463.21

Suite / Unit No.	Deposit Balance 08/31/23	2023 Interest Accrued (Unpaid) 2.5%	Total Deposit Owed
407	1,215.00	30.37	1,245.37
408	1,024.79	25.62	1,050.41
409	1,334.83	33.37	1,368.20
410	1,471.44	36.79	1,508.22
501	1,044.11	26.10	1,070.21
502	1,045.66	26.14	1,071.80
503	1,045.66	26.14	1,071.80
504	1,351.43	33.79	1,385.22
505	1,211.38	30.28	1,241.67
506	1,359.02	33.98	1,393.00
507	1,213.20	30.33	1,243.53
508	1,045.66	26.14	1,071.80
509	1,334.83	33.37	1,368.20
510	1,471.44	36.79	1,508.22
601	1,129.39	28.23	1,157.63
602	1,165.67	29.14	1,194.81
603	-	-	-
604	1,349.41	33.74	1,383.15
605	1,213.20	30.33	1,243.53
606	1,336.82	33.42	1,370.24
607	1,334.83	33.37	1,368.20
608	2,091.32	52.28	2,143.60
609	1,842.29	46.06	1,888.34



Suite / Unit No.	Deposit Balance 08/31/23	2023 Interest Accrued (Unpaid) 2.5%	Total Deposit Owed
610	1,471.44	36.79	1,508.22
701	1,165.67	29.14	1,194.81
702	1,203.78	30.09	1,233.88
703	1,024.79	25.62	1,050.41
704	1,351.43	33.79	1,385.22
705	1,215.00	30.37	1,245.37
706	1,989.81	49.75	2,039.56
707	1,225.11	30.63	1,255.73
708	1,045.66	26.14	1,071.80
709	1,311.93	32.80	1,344.72
710	1,472.48	36.81	1,509.29
801	1,067.90	26.70	1,094.60
802	1,045.66	26.14	1,071.80
803	1,045.66	26.14	1,071.80
804	1,472.78	36.82	1,509.60
805	1,315.60	32.89	1,348.49
806	1,216.80	30.42	1,247.22
807	1,197.72	29.94	1,227.67
808	1,144.81	28.62	1,173.44
809	1,216.80	30.42	1,247.22
810	1,351.43	33.79	1,385.22
901	1,149.10	28.73	1,177.82
902	1,165.67	29.14	1,194.81

Suite / Unit No.	Deposit Balance 08/31/23	2023 Interest Accrued (Unpaid) 2.5%	Total Deposit Owed
903	1,024.79	25.62	1,050.41
904	1,474.40	36.86	1,511.26
905	1,265.71	31.64	1,297.35
906	1,216.80	30.42	1,247.22
907	1,216.81	30.42	1,247.23
908	1,165.70	29.14	1,194.85
909	1,216.80	30.42	1,247.22
910	1,471.44	36.79	1,508.22
<b>Artscape Weston Common</b>			
1	975.63	24.39	1,000.02
2	975.63	24.39	1,000.02
3	1,149.10	28.73	1,177.82
4	1,149.10	28.73	1,177.82
5	1,388.00	-	1,388.00
6	1,295.36	32.38	1,327.74
7	1,295.36	32.38	1,327.74
8	1,246.83	31.17	1,278.01
9	1,076.18	26.90	1,103.09
10	959.80	24.00	983.80
11	1,149.10	28.73	1,177.82
12	1,149.10	28.73	1,177.82
13	1,076.18	26.90	1,103.09
14	1,124.33	28.11	1,152.44
15	971.32	24.28	995.60
16	1,295.36	32.38	1,327.74
17	1,124.33	28.11	1,152.44
18	1,246.83	31.17	1,278.01
19	975.63	24.39	1,000.02
20	1,076.18	26.90	1,103.09
21	1,511.05	37.78	1,548.82
22	1,137.24	28.43	1,165.67
23	975.63	24.39	1,000.02
24	1,076.18	26.90	1,103.09
25	975.63	24.39	1,000.02

Suite / Unit No.	Deposit Balance 08/31/23	2023 Interest Accrued (Unpaid) 2.5%	Total Deposit Owed
26	975.63	24.39	1,000.02
<b>PACC (Residential)</b>			
101	1,139.24	28.48	1,167.72
102	1,729.51	43.24	1,772.75
103	999.83	25.00	1,024.82
BAY 3	65.00	N/A	65.00
BAY 2	65.00	N/A	65.00
104	1,073.73	26.84	1,100.58
BAY 4	65.00	N/A	65.00
201	1,101.90	27.55	1,129.44
BAY 5	65.00	N/A	65.00
202	923.29	23.08	946.37
BAY 6	65.00	N/A	65.00
BAY 7	-	-	-
203	1,173.14	29.33	1,202.47
204	6.74	0.17	6.91
204	1,021.55	25.54	1,047.09
BAY 8	65.00	N/A	65.00
205	1,039.57	25.99	1,065.56
BAY 9	49.11	N/A	49.11
Commercial	1,838.94	N/A	1,838.94
<b>PACC (Commercial)</b>			
QB01	610.29	N/A	610.29
QB02	883.52	N/A	883.52

Suite / Unit No.	Deposit Balance 08/31/23	2023 Interest Accrued (Unpaid) 2.5%	Total Deposit Owed
QB03	1,418.80	N/A	1,418.80
QB04	941.76	N/A	941.76
QB05	1,353.38	N/A	1,353.38
QB06	424.31	N/A	424.31

**Schedule 4**  
**Tenant Leases**

See unit #s of tenants set out in Schedule 3, above. Original leases to be delivered to ANPHIAH on or before Closing.

**Schedule 5**  
**Contracts and Equipment Leases**

**1313 Queen Street West – Coinamatic Lease**

Parties – Toronto Artscape Inc., as Landlord, and Coinamatic Canada Inc., as Tenant

Term – beginning December 1, 2017 for a period of five (5) years

Tenant to occupy the Laundry Room(s) in the Building and exclusive right to provide laundry equipment and related vending machines in the Building during the term of the Lease. Landlord responsible to provide and maintain Laundry Room, hot and cold water, gas and electrical supplies and connections, floor drains and sewer outlets, proper ventilation and ducting, sanitary cleaning and janitorial services to the Laundry Room(s).

**Schedule 6**  
**Insurance Policies**

**Schedule 7**

**Consents**

1. Consent from VCIB as mortgagee of ABL and AWC Projects
2. Consent from CMHC as mortgage insurer on ABL Project
3. Consent from City to assignment of leases of AWC, ABL and PACC Projects and assumption of Contribution Agreements on ABL and AWC Projects and related security
4. Consent from MPCT DIF DAM Residence at Weston Inc. to assignment of lease with AWC Project



**Schedule 8**  
**Excluded Assets**

All equipment, related assets and accessories that are the subject of a registration under the Personal Property Security Act (Ontario) in favour of Wells Fargo Equipment Finance Company (File No. 770402709, Registration No. 20210308 1843 5064 8408).

**Schedule 9**  
**Agency Agreement**

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THE TORONTO-DOMINION BANK v. TORONTO ARTSCAPE INC  
Applicant Respondent

Court File No. CV-23-00711609-00CL

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*ONTARIO*  
**SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

Proceedings commenced at Toronto

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**SUPPLEMENTARY AFFIDAVIT OF GRACE LEE  
REYNOLDS  
(Sworn January 10, 2024)**

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**MILLER THOMSON LLP**

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40 King Street West  
Suite 5800  
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Lawyers for the Respondent, Toronto Artscape Inc.

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THE TORONTO-DOMINION BANK  
Applicant

v.

TORONTO ARTSCAPE INC  
Respondent

Court File No. CV-23-00711609-00CL

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*ONTARIO*  
**SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

Proceedings commenced at Toronto

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**SUPPLEMENTARY MOTION RECORD OF THE  
RESPONDENT  
(returnable January 11, 2024)**

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**MILLER THOMSON LLP**

Scotia Plaza  
40 King Street West  
Suite 5800  
Toronto Ontario  
M5H 3S1, Canada

**Craig A. Mills LSO#: 40947B**

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Tel: 416.595.8596 Fax: 416.595.8695

Lawyers for the Respondent, Toronto Artscape Inc.