

**Appendix B
Revised Shareholder Direction – Build Toronto**

CITY OF TORONTO

**AMENDED AND RESTATED
SHAREHOLDER DIRECTION**

BUILD TORONTO INC.

Effective January 1, 2018

TABLE OF CONTENTS

CONTENTS

ARTICLE 1 - INTERPRETATION	4
1.1 Definitions.....	4
1.2 Calculation of Time.....	7
1.3 Authority of Applicable Law.....	7
ARTICLE 2 - OBJECTIVES AND PRINCIPLES	7
2.1 Purpose of this Shareholder Direction	7
2.2 City Objectives.....	7
2.3 Mandate of Build Toronto.....	8
2.4 Donations.....	8
2.5 Operating Principles	9
2.6 Fiscal Year.....	10
2.7 Provincial Regulation	10
2.8 Amendments to Regulation.....	12
2.9 Confidentiality	12
ARTICLE 3 - RELATIONSHIP TO THE CITY	12
3.1 Relationship of Build Toronto and the City.....	12
3.2 Not an Agent of City.....	13
3.3 Relationship to Toronto Realty Agency.....	13
3.4 Waterfront Issues.....	13
3.5 Intergovernmental Relations.....	13
3.6 No Build Toronto Employees.....	13
ARTICLE 4 - BOARD OF DIRECTORS	14
4.1 Board Responsibilities	14
4.2 Composition of the Board	14
4.3 Term	15
4.4 Contact Information	15
4.5 Vacancies	15
4.6 Conflict of Interest.....	15
4.7 Remuneration	16
4.8 Meetings	16
ARTICLE 5 - SHAREHOLDER MATTERS	17
5.1 Decisions of the City	17
5.2 Governance Liaison.....	17
5.3 Financial Liaison	17
5.4 Matters Requiring Shareholder Approval under the OBCA.....	17
5.5 Other Matters Requiring City Approval	18
ARTICLE 6 - REPORTING	19
6.1 Business Plan	19
6.2 Quarterly Reports	19
6.3 Access to Records.....	20
6.4 Audit	20
6.5 Accounting.....	20

6.6	Annual Report.....	20
6.8	Annual Update for City Council.....	21
ARTICLE 7 - FINANCIAL PERFORMANCE.....		21
7.1	Debt Financing.....	21
7.2	Dividend Policy	21
ARTICLE 8 - GENERAL.....		21
8.1	Interpretation.....	21
8.2	Amendments.....	21

SHAREHOLDER DIRECTION TO BUILD TORONTO

WHEREAS

- A. Build Toronto Inc. was incorporated on November 13, 2008 under the *Business Corporations Act* (Ontario) pursuant to s. 148 of *City of Toronto Act, 2006* and Ontario Regulation 609/06, City Services Corporations;
- B. The City of Toronto is the owner of all of the issued shares of Build Toronto Inc.;
- C. In very general terms Build Toronto Inc. is to support the Toronto Realty Agency to implement the City's real estate strategy, develop City buildings and lands for municipal purposes and deliver client-focused real estate solutions to City Divisions, Agencies and Corporations; and
- D. The City of Toronto, as the sole shareholder of Build Toronto Inc., wishes to set out its expectations, establish certain operating principles, set out certain requirements to be met by Build Toronto Inc., and inform the residents of Toronto of the City's fundamental principles and accountability mechanisms regarding Build Toronto Inc.

NOW THEREFORE THIS DIRECTION WITNESSES:

ARTICLE 1 - INTERPRETATION

1.1 Definitions

In this Shareholder Direction, the following terms will have the meanings set out below:

"ABCs" means all City agencies, boards, and commissions;

"Annual Report" means Build Toronto's annual report to its shareholder, the City, as more particularly described in section 6.7 of this Agreement;

"Applicable Law" means any statute, regulation, code, regulatory policy or order of any Governmental Authority, including all applicable by-laws;

"Auditor" means the external attest auditor of Build Toronto Inc.;

"Auditor General" means the City's Auditor General or their designate or any person acting in that capacity;

"Authorized City Signatory" means the individual or individuals who are authorized to sign a certified minute of Council, or who are otherwise authorized by Council to sign written approvals or decisions relating to Build Toronto Inc. on behalf of the City;

“Board” means the board of directors of Build Toronto Inc.;

“Build Toronto” means Build Toronto Inc.;

“Build Toronto Subsidiaries Regulation” means Ontario Regulation 295/09, the Corporations Incorporated by Build Toronto Regulation, as it may be amended or replaced from time to time;

“Business Day” means a day other than a Saturday, a Sunday, Remembrance Day, or any day that is a statutory holiday in Ontario;

“Business Plan” means a City Council approved rolling five year business plan and budget for the Toronto Realty Agency;

“CEO” means the Chief Executive Officer of the Toronto Realty Agency who shall be the ex officio Chief Executive Officer of Build Toronto;

“Chair” means the chair of the Board of Directors of the Toronto Realty Agency who shall be the ex officio Chair of the Board of Build Toronto or any director acting in that capacity;

“City” means the City of Toronto;

“City CFO” means the Chief Financial Officer of the City or the person acting in that capacity or their designate;

“City Manager” means the City’s City Manager or the person acting in that capacity or their designate;

“City Solicitor” means the City’s City Solicitor or the person acting in that capacity or their designate;

“City Staff” means a member or members of the Toronto Public Service;

“Corporate Governance Committee” means the Corporate Governance Committee of the Toronto Realty Agency;

“Council” means the Council of the City;

“DCM” means the City’s Deputy City Manager, Internal Corporate Services or the person acting in that capacity or their designate;

“Financial Statements” means, for any particular period, audited or unaudited, comprehensive financial statements of Build Toronto consisting of not less than a balance sheet, a statement of income and retained earnings, a statement of

changes in financial position, a report or opinion of the Auditor (in the case of audited financial statements), and such other statements, reports, notes and information as are required in accordance with any Applicable Law, all prepared in accordance with generally accepted accounting principles consistently applied;

“Governmental Authority” means a federal, provincial, or municipal government, or any entity, person, court or other body or organization exercising one or more executive, legislative, judicial or regulatory functions;

“Land” means land and the buildings and fixtures thereon;

“OBCA” means the *Business Corporations Act* (Ontario), as such statute may be amended or re-enacted from time to time;

“Person” means an individual, a corporation, a body corporate or a Governmental Authority;

“Regulation” means Ontario Regulation 609/06, the City Services Corporations Regulation, as it may be amended or replaced from time to time;

“Sale Agreement” means an agreement between Build Toronto and the City and/or one of its ABCs providing for a commitment to sell or otherwise dispose of Land, including a Transfer and a disposal by way of lease for a term of 21 years or more, and **“Sell”**, **“Sale”** and **“Sold”** have corresponding meanings;

“Senior Executive” means the CEO and the employee or employees that report directly to the CEO

“Toronto Realty Agency” means the City board established by City of Toronto By-law 596-2017.

“Transfer Agreement” means an agreement between Build Toronto and the City and/or one of its ABCs providing for the transfer of title to Land to Build Toronto, and **“Transfer”** and **“Transferred”** have corresponding meanings;

“Turnover Agreement” means an agreement between Build Toronto and the City and/or one of its ABCs which may include permission for Build Toronto to manage, market and initiate the development of Land, and **“Turnover”** and **“Turned Over”** have corresponding meanings. For greater certainty, Turnover Agreements may not provide for the Sale of Land to Build Toronto; and

“Waterfront Toronto” means Toronto Waterfront Revitalization Corporation.

1.2 Calculation of Time

In this Shareholder Direction, a period of days will be deemed to begin on the first day after the event that began the period and to end at 5:00 p.m. (Toronto time) on the last day of the period. If, however, the last day of the period does not fall on a Business Day, the period will terminate at 5:00 p.m. (Toronto time) on the next Business Day.

1.3 Authority of Applicable Law

In the event of any conflict between any approval, direction or requirement of Build Toronto under this Shareholder Direction and any Applicable Law, the Applicable Law shall govern. Build Toronto may seek an order from any Governmental Authority for any matter only in accordance with Article 5 of this Shareholder Direction.

ARTICLE 2 - OBJECTIVES AND PRINCIPLES

2.1 Purpose of this Shareholder Direction

This Shareholder Direction:

- (a) sets out for the Board the City's expectations of and objectives for Build Toronto and Build Toronto's mandate, scope of responsibility, and reporting requirements;
- (b) sets out the relationship between Build Toronto and the City; and
- (c) constitutes, where applicable, a declaration by the City, as the sole shareholder of Build Toronto, pursuant to subsection 108(3) of the OBCA.

2.2 City Objectives

Subject to the overall objectives of the City as set forth in _____, the objectives of the City are as follows:

- (a) The City is one of the largest Land managers in Toronto. The vast majority of this Land is used to deliver City programs. However, the City recognizes that there are opportunities to unlock the value of these Lands to further City priorities. It is the City's desire to use Lands to enhance Toronto's economic competitiveness by attracting new commercial development that creates desirable jobs and to improve the liveability of Toronto by rejuvenating neighbourhoods and providing improved infrastructure and amenities.
- (b) Build Toronto will play an integral role in supporting the Toronto Realty Agency to achieve the City's objectives while operating within a business

environment, by developing or working with the private, not-for-profit, or broader public sectors or other interests to develop properties owned by the City and its ABCs for municipal purposes or to intensify use of properties used by City programs or by developing Lands that have been declared surplus by the City in order realize value and to attract targeted industries identified by the City, stimulate creation of desirable employment, and regenerate neighbourhoods

- (c) Build Toronto will generate a reasonable net financial return to the City. Financial return may include, but not be limited to, increased assessments on developed properties, reasonable revenues generated from development activities, proceeds of sale or lease of certain properties, and other benefits and dividends.

2.3 Mandate of Build Toronto

Build Toronto will strive to achieve the objectives set out in ss. 2.2. Specifically,

- (a) Build Toronto shall develop and/or facilitate development of Lands Sold or Turned Over to Build Toronto by the City and its ABCs by complying with the provisions and intent of Land Sale and Turnover Agreements and Build Toronto shall respect the City's program requirements on Lands where City programs continue to operate.
- (b) Build Toronto shall work with the City, investors or partners as appropriate to maximize the benefit and value potential of Lands owned or managed by Build Toronto and act as a catalyst for the development of infrastructure and sustainable services in Toronto.
- (c) Build Toronto shall advise the City on the potential for development on properties of the City and its ABCs.
- (d) Build Toronto shall implement the directions of the City or the Toronto Realty Agency from time to time as contemplated by the City's new Real Estate Model.

2.4 Donations

- (a) Build Toronto shall not make donations or similar contributions to any charity or charitable organization, or to any political campaign.
- (b) Nothing in this section prohibits Build Toronto from paying membership fees to join organizations that are relevant to Build Toronto's activities or from engaging in sponsorship activities that promote Build Toronto or its objectives.

2.5 Operating Principles

The directors and officers of all OBCA corporations have a duty to act honestly, in good faith and in the best interests of the corporation. Build Toronto is wholly owned by the City and the City has established the objectives for Build Toronto, aligned with the City's interests. The following principles govern the operations, services and activities of Build Toronto in that context:

- (a) Subject to Applicable Law, Build Toronto shall and shall direct its subsidiaries to conduct their affairs and govern their operations in accordance with such rules, policies and, directives or objectives as directed by City Council from time to time.
- (b) Build Toronto shall conduct its business in a socially responsible manner that respects the public nature of its shareholder and the importance of the City's accountability to the general public;
- (c) Build Toronto shall conduct its affairs:
 - (i) on a commercially prudent basis, employing efficient cost structures;
 - (ii) in a fair, equitable, and inclusive manner;
 - (iii) in a manner that supports City goals and priorities; and
 - (iv) in accordance with industry best practices applicable to comparable activities;
- (d) Build Toronto shall develop and comply with procurement policies designed with the objective of providing good value;
- (e) Build Toronto shall establish access, equity, and human rights goals and implement human rights policies and procedures consistent with those established by City Council;
- (f) Build Toronto shall establish ethical policies related to conflict of interest, political activity and disclosure of wrongdoing and reprisal protection;
- (g) Build Toronto shall act in accordance with and be accountable for the financial performance and strategic objectives assigned to it in the Toronto Realty Agency's Council-approved Business Plan;
- (h) Build Toronto shall act in an environmentally responsible manner and will promote environmentally sustainable development;
- (i) Build Toronto shall develop protocols for community involvement as appropriate and maintain standards for architecture, design and public open space with the intent of promoting urban design innovation and excellence that is acceptable to the community; and

- (j) Build Toronto shall act reasonably to mitigate financial risks to the City.

2.6 Fiscal Year

The fiscal year end for Build Toronto shall be December 31.

2.7 Provincial Regulation

Build Toronto is responsible for adhering to all Provincial legislation and regulations that pertain to Build Toronto. The following highlights the sections of the Regulation that are most relevant to Build Toronto, and in certain instances sets out the City's specific direction regarding these requirements.

- (a) S. 20 of the Regulation provides that Build Toronto is deemed to be an institution for purposes of the *Municipal Freedom of Information and Protection of Privacy Act*.
- (b) S. 19 of the Regulation provides that the directors and officers of Build Toronto are deemed to be members for the purposes of the *Municipal Conflict of Interest Act* which imposes certain obligations relating to declaring interests and avoiding conflicts of interest and establishes consequences for failing to comply with those obligations.

The directors and officers of Build Toronto also shall comply with the conflict of interest requirements in the *Business Corporations Act* (Ontario), and any conflict of interest policies imposed by the City. The Board shall develop and maintain a code of conduct for Board members that incorporate all of these requirements. (In the event of any conflict between the *Municipal Conflict of Interest Act* and the OBCA, the *Municipal Conflict of Interest Act* shall prevail.)

- (c) Ss. 18(1) of the Regulation provides that Build Toronto is prohibited from incorporating a corporation under any act. However, s. 2 of the Build Toronto Subsidiaries Regulation provides that, despite ss. 18(1) of the Regulation, Build Toronto may incorporate a corporation if:
 - a. the corporation's purpose is to provide a system, service or thing that Build Toronto could provide;
 - b. the City has made a unanimous shareholder declaration under ss. 108(3) of the OBCA with respect to the management, business and affairs of Build Toronto, and
 - c. that declaration authorizes Build Toronto to incorporate subsidiaries.

Build Toronto may create, re-organize or wind-up subsidiaries in accordance with the Build Toronto Subsidiaries Regulation and any other conditions that the Province may impose. Build Toronto shall also comply with the following City conditions:

- (i) the Board of Directors of the subsidiary shall consist of all or a subset of the Board members of Build Toronto and may also include staff of Build Toronto;
 - (ii) the Board of Build Toronto shall approve a shareholder direction for the subsidiary that incorporates the requirements in this Shareholder Direction including any requirements for City approvals (where City approvals are required under this Shareholder Direction, City approvals are required under a shareholder direction to a subsidiary);
 - (iii) unless specifically authorized otherwise by City Council, the Shareholder Direction for the subsidiary shall require that the subsidiary conform to the same code of conduct, objectives, and principles as Build Toronto;
 - (iv) directors of any subsidiary shall receive no additional remuneration for serving on the subsidiary board; and
 - (v) any proposal to create, re-organize or wind-up a subsidiary shall be first considered by the Corporate Governance Committee and Build Toronto shall notify the Governance liaison identified in s.5.2 prior to the Board's consideration of the proposal.
- (d) Ss. 18(2) of the Regulation provides that Build Toronto may only invest in securities that on December 31, 2017, are prescribed under section 256 of the *City of Toronto Act 2006* and any regulation made under that section of the Act as that regulation read on December 31, 2017 applies to Build Toronto. However, in accordance with the Build Toronto Subsidiaries Regulation, Build Toronto may acquire, hold, guarantee, or otherwise deal with the shares of its subsidiaries, but shall not sell them.

Build Toronto is not required to adhere to any additional restrictions that the City has approved or approves in the future for City investments.

- (e) S. 21 of the Regulation provides that Build Toronto is deemed to be a local board of the City for the purposes of ss. 212(2) of the *City of Toronto Act, 2006*, which requires that Build Toronto adopt and maintain policies with respect to:
- (i) sale and other disposition of Land;
 - (ii) hiring of employees; and
 - (iii) Procurement of goods and services.

For clarity, Build Toronto is not required to adopt City policies for such matters, but Build Toronto's policies shall be developed in accordance with the Operating Principles set out in s. 2.5 of this Shareholder Direction. Further, Build Toronto will not hire any employees, with the exception of the CEO, without the express written consent of the Toronto Realty Agency.

2.8 Amendments to Regulation

Section 2.7 sets out certain obligations under the Regulation as it reads on the date of this Shareholder Direction. Build Toronto shall comply with all legislation, the Regulation, the Build Toronto Subsidiaries Regulation and any other Provincial regulation pertaining to Build Toronto as they are amended or replaced from time to time and it is the responsibility of Build Toronto to monitor and comply with an changes to such legislation or regulation.

2.9 Confidentiality

Build Toronto shall use its best efforts to ensure that no confidential information of the City, the Toronto Realty Agency or Build Toronto or any subsidiaries of Build Toronto is disclosed or otherwise made available by Build Toronto or any of its directors, officers and employees to any person, except to the extent that:

- (a) disclosure to the City's, the Toronto Realty Agency's or Build Toronto's officers, employees or agents is necessary for the performance of any of their duties or obligations under this Shareholder Direction, or in their jobs at the City, at the Toronto Realty Agency or at Build Toronto, or for the performance of duties by other parties receiving confidential information; or
- (b) disclosure is required in the course of any legal or regulatory proceedings or actions or pursuant to any Applicable Law; or
- (c) the confidential information becomes part of the public domain (other than through unauthorized disclosure by any party); or
- (d) disclosure is made in full compliance with the *Municipal Freedom of Information and Protection of Privacy Act* and the conflict of interest provisions in the OBCA.

ARTICLE 3 - RELATIONSHIP TO THE CITY

3.1 Relationship of Build Toronto and the City

The City is the sole shareholder of Build Toronto, and requires that Build Toronto take responsibility for managing, developing, marketing and value optimization of Land that has been Sold, Transferred or Turned Over to it, subject to the terms and conditions of this Shareholder Direction and subject to the specific requirements set out in any Sale, Transfer or Turnover Agreements.

Build Toronto acts on its own behalf for Lands Transferred to it and Lands acquired by Build Toronto from other sources. Lands Transferred from the City through a Transfer Agreement may be Transferred with conditions, but Build

Toronto may use or dispose of such Lands as it sees fit in compliance with such conditions. Subject to the terms of the Transfer Agreements, Build Toronto will assume responsibility for managing the property, receiving any revenues generated by the property, and paying all associated costs.

Build Toronto will act as a contractual partner with the City when providing and discharging services under a Turnover Agreement or a Sale Agreement that is not a Transfer Agreement, since the City will retain title.

3.2 *Not an Agent of City*

Build Toronto does not have the capacity to act as an agent of the City unless the City gives express written authorization to Build Toronto to do so, and Build Toronto shall not conduct itself so as to create, or purport to create, an agency relationship with the City except in accordance with such a written authorization.

3.3 *Relationship to Toronto Realty Agency*

The Toronto Realty Agency is responsible for the development and implementation of a City-wide real estate strategy. The Toronto Realty Agency will have opportunities to identify, for consideration by the City, Land that has the potential for development and that may be suitable for Sale, Transfer or Turnover to Build Toronto.

3.4 *Waterfront Issues*

Waterfront Toronto has leadership responsibilities for public sector development of Lands in the central waterfront area. Where Land within the central waterfront area has been Sold, Transferred or Turned Over to Build Toronto, Build Toronto shall ensure that its plans are consistent with Waterfront Toronto's plans and that the City's Waterfront Secretariat is fully apprised of such development before Build Toronto makes any commitments in respect of such Land.

3.5 *Intergovernmental Relations*

All relationships with other orders of government in Canada and with foreign governments will be co-ordinated by the Toronto Realty Agency with the Mayor's Office and the City Manager's Office, the Toronto Realty Agency and Build Toronto shall follow the protocols as established by those offices.

3.6 *No Build Toronto Employees*

Build Toronto shall not hire employees, other than its CEO, without the prior consent of the Toronto Realty Agency. Build Toronto will enter into a shared services agreement with the Toronto Realty Agency for the provision of those services required for the operation of Build Toronto as set out in this Shareholder Direction, including accounting, risk management, tax, finance, record keeping,

financial statement preparation and audit support; legal services; treasury functions; regulatory compliance; information systems; executive management; and corporate and other centralized services (hereinafter collectively known as the " Services").. The City Manager shall be provided with a copy of the executed shared services agreement.

ARTICLE 4 - BOARD OF DIRECTORS

4.1 *Board Responsibilities*

Subject to this Shareholder Direction and the OBCA, the Board shall supervise the management of the business and affairs of Build Toronto. In particular, the Board, or where delegation is permitted and deemed appropriate by the Board, a committee of the Board, shall:

- (a) Establish such committees of the Board as the Board determines are appropriate, and delegate to the committees such authority as the Board determines is appropriate, provided that the delegation of that authority is permitted under the OBCA and complies with, and is subject to, the provisions in s. 4.8 of this Shareholder Direction;
- (b) Appoint the officers of Build Toronto other than the CEO, the Chair and Vice-Chair (who are appointed by Council);
- (c) Establish policies for the management and protection of Build Toronto's assets and the assets of the City under its management, other policies including procurement and contracting policies that are in accordance with any Applicable Laws and this Shareholder Direction, and policies respecting signing authority limits;
- (d) Adopt a financial and risk management strategy for Build Toronto that includes developing revenue sources, establishing liquidity benchmarks, prudently managing debt and investments, establishing appropriate reserves consistent with sound financial principles, establishing financial performance objectives, and monitoring performance against objectives;
- (e) Approve and submit to the City, as Build Toronto's shareholder, such annual reports as may be required by Applicable Law and by Council;
- (f) Maintain adequate insurance coverage.

4.2 *Composition of the Board*

The City has the sole authority to establish and amend the composition of the Board, subject to the provisions in Build Toronto's articles of incorporation and

any articles of amendment, to appoint the Chair and Vice-Chair, and to fill vacancies on the Board as they arise from time to time. Subject to the foregoing, in order to be eligible to act as member of the Board a director must have been appointed by the City as a member of the board of the Toronto Realty Agency. The City, as sole shareholder of Build Toronto, hereby directs that each and every member of the Board of Directors of the Toronto Realty Agency from time to time shall be the ex officio board of directors of Build Toronto with effect from the same date as such person is appointed to the Board of Directors of the Toronto Realty Agency.

4.3 Term

Subject to applicable law, directors serve at the pleasure of Council for the term specified by Council at the time of their appointments or until their successors are appointed.

4.4 Contact Information

Build Toronto shall keep up-to-date records of every director's contact information and promptly inform the City of any changes to that information.

4.5 Vacancies

- (a) If a director ceases to be a director for any reason, the Board immediately shall so advise the City Manager, and request that the City, as the sole shareholder, appoint another director.
- (b) The Board shall declare a vacancy in any of the following situations:
 - 4.5.1 A director is absent from three consecutive Board meetings without the approval of the Board as recorded in the minutes of the meetings;
 - 4.5.2 A municipally elected official serving on the Board is not re-elected;
 - 4.5.3 A director ceases to be a member of the board of the Toronto Realty Agency;;
 - 4.5.4 A director dies;
 - 4.5.5 A director is removed from that office by its shareholder, the City; or
 - 4.5.6 A director resigns from the Board.

4.6 Conflict of Interest

Each director and officer of Build Toronto shall inform the Board immediately when he or she has an interest in a matter to be considered by the Board or a committee of the Board, and take appropriate action in accordance with the provisions of the *Municipal Conflict of Interest Act*, and any other Applicable Laws or City or Board policies. Unless contrary to applicable law, a director or

officer shall not have a conflict of interest merely by virtue of their also being a director or officer of the Toronto Realty Agency.

4.7 Remuneration

- (a) Any changes to the remuneration of the directors of Build Toronto will be determined by the City from time to time. The Board has no authority to alter the remuneration or provide any additional remuneration to directors. However, a director may elect to receive no or a reduced remuneration.
- (b) Members of the board will receive no remuneration for their service on the Board in addition to that which they receive as directors of the Toronto Realty Agency :
- (c) The Board shall establish an expense reimbursement policy to provide for the reimbursement of out-of-pocket expenses for Board members while conducting Board business. Such policy shall require that the Board pre-approve the amount and reason for all major business expenses for directors.
- (d) The Board shall report to the City the total remuneration and expenses paid for each member of the Board using the protocols established by the City CFO from time to time.

4.8 Meetings

- (a) Meetings of the Board and its committees shall be open to the public, except where matters may be considered in camera in accordance with s. 190 of the *City of Toronto Act, 2006*. Advance public notice of the agenda is required.
- (b) The Board may engage recording secretary services of an outside party which could be the City Clerk. The recording secretary shall attend all public and in camera portions of meetings. For clarity, the recording secretary is not required to attend briefings, orientation or other training sessions, or team building and planning meetings where no Board decisions are made.
- (c) The Auditor General is entitled to attend all Board meetings or any meetings of committees of the Board. Staff of the Mayor's Office, the City Manager, the City CFO and any other City official designated by the City from time to time or their designate shall be entitled to receive notice of and to attend all meetings of the Board. The Chair may, at their discretion, require City Staff, other than the recording secretary or members of the Board, in attendance during the in camera portion of the meeting to leave the meeting during discussion of sensitive personnel issues.

- (d) The Board may establish committees of the Board for any purpose and delegate decision-making to those committees as permitted by Applicable Law except:
 - (i) The Board shall not delegate to a committee or an individual any material decisions relating to disposition of Lands;
 - (ii) The Board shall not delegate decision-making to any committee unless all members of that committee are current Board members; and
 - (iii) The Board shall not delegate to a committee the power to commit Build Toronto resources unless the Board has stipulated in its by-laws monetary limits on the corporate resources that may be committed by the committee.

ARTICLE 5 - SHAREHOLDER MATTERS

5.1 Decisions of the City

Each time Build Toronto wishes to seek an approval or decision from the City, as the shareholder of Build Toronto, Build Toronto shall make a written request for the approval which includes all information necessary for the City to make an informed decision. Build Toronto shall submit its request and supporting information in a timely manner to the appropriate Toronto Realty Agency liaison.

If the decision requested requires Council approval, Build Toronto shall make its request in a timely manner to the appropriate Toronto Realty Agency liaison in order to enable City Staff to comply with deadlines for submission to committee and Council.

5.2 Governance Liaison

For matters requiring City approval or other action regarding governance matters set out in Article 4, s.5.4, ss. 5.5(e), and s. 8.2 or intergovernmental matters set out in ss.5.5 (a), the designated Toronto Realty Agency liaison is the Chief Executive Officer of the Toronto Realty Agency.

5.3 Financial Liaison

For matters set out in Articles 6 and 7, the designated City liaison is the City CFO, who is also the Authorized City Signatory for matters set out in ss. 5.5 (b) to (d).

5.4 Matters Requiring Shareholder Approval under the OBCA

Build Toronto shall not take any of the following actions without the approval of its shareholder, the City:

- (a) Amend or repeal its articles of incorporation;
- (b) Amalgamate with another corporation (other than a wholly-owned subsidiary), apply to continue as a body corporate under the laws of another jurisdiction, merge, consolidate or reorganize, or approve or effect any plan of arrangement, in each case whether statutory or otherwise;
- (c) Take or institute proceedings for any winding up, arrangement, reorganization or dissolution;
- (d) Create new classes of shares or reorganize, consolidate, subdivide or otherwise change its outstanding securities;
- (e) Sell or otherwise dispose of, by conveyance, transfer, lease, sale and leaseback, or other transaction, all or substantially all of its assets or undertaking;
- (f) Change the Auditor;
- (g) Make any changes to the number of directors comprising the Board; or
- (h) Enter into any other transaction or take any other action that requires shareholder approval pursuant to the OBCA.

The Board may make, amend, or repeal any of its by-laws and the changes take effect at such time as the Board approves. Such changes shall be submitted to the City, as shareholder, immediately upon approval by the Board for Council approval. If Council makes any amendments, the amendments take effect when approved by Council and are not retroactive.

5.5 Other Matters Requiring City Approval

Without the prior written approval of the City, Build Toronto shall not:

- (a) Seek financial support or any changes to legislation or regulation from any Governmental Authority other than the City;
- (b) Make representations or promises of any financial incentives or similar inducements that are binding on the City;
- (c) Issue publicly traded debt, or any debt instruments with real or implied recourse to, or guarantees from, the City or any borrowing that, in the opinion of the City CFO, will have a negative impact on the City's credit rating;

ARTICLE 6 - REPORTING

6.1 *Business Plan*

City Council shall approve a Business Plan for the Toronto Realty Agency and Build Toronto shall carry on its business and operations in accordance with the Business Plan which may include, in respect of the period covered by such plan:

- (a) The key objectives, priorities, and business initiatives that Build Toronto will undertake.
- (b) The metrics for monitoring accomplishments and financial performance including liquidity and debt coverage;
- (c) An operating and capital budget for the next fiscal year and an operating and capital budget projection for each subsequent fiscal year covered by the Business Plan, including the resources necessary to implement the Business Plan and any financial impact on the City;
- (d) Pro forma Financial Statements;
- (e) Any material variances in the projected ability of any business activity to meet or continue to meet Build Toronto's objectives;
- (f) Any material variances from the previous Business Plan; and
- (g) Any additional information that the City CFO may specify from time to time.

6.2 *Quarterly Reports*

Unless otherwise included in the quarterly reports prepared by the Toronto Realty Agency, within 45 days after the end of each fiscal quarter, the Board shall have prepared (on a consistent basis with the previous fiscal quarter) and shall submit to the City CFO a quarterly report. The quarterly report will include, in respect of the immediately preceding fiscal quarter:

- (a) Quarterly unaudited Financial Statements;
- (b) Such explanations, notes and information as is required to explain and account for any variances between the actual results from operations and the budgeted amounts set forth in the current Business Plan, including any material variances in the projected ability of any business activity to meet or continue to meet Build Toronto's objectives;

- (c) Information that is likely to materially affect the City; and
- (d) Information regarding any matter, occurrence or other event which is a material breach or violation of any law.

6.3 Access to Records

The duly appointed representatives of the City (as approved by Council from time to time) shall have unrestricted access to Build Toronto's books and records during normal business hours. Such representatives shall treat all information of Build Toronto with the same level of care and confidentiality as any confidential information of the City. The City Manager, the City CFO, the City Solicitor and the Auditor General are deemed duly appointed representatives of the City.

6.4 Audit

Build Toronto's consolidated and unconsolidated Financial Statements shall be audited annually.

The Auditor General also may conduct periodic operational audits. Any recommendations resulting from such audits will be presented to the Board for operational matters and to the City Executive Committee, with a copy to the Board, for any shareholder issues.

6.5 Accounting

Build Toronto shall keep detailed records of its transactions and, in consultation with the Auditor, adopt and use the accounting policies and procedures which may be approved by the Board from time to time and all such policies and procedures shall be in accordance with generally accepted accounting principles and applicable regulatory requirements.

6.6 Annual Report

The Board shall approve the audited Financial Statements and submit an Annual Report to the City CFO within 120 days after the end of each fiscal year; provided however, the Board shall use reasonable efforts to provide such approval and report within 90 days after the end of each fiscal year. The Annual Report shall include:

- (a) Audited Financial Statements;
- (b) Accomplishments during the fiscal year along with explanations, notes and information as is required to explain and account for any variances between the actual results and the Business Plan in effect for the year.

6.8 Annual Update for City Council

In addition to the requirement of the OBCA to hold an annual general meeting, Build Toronto shall provide an annual update for City Council.

ARTICLE 7 - FINANCIAL PERFORMANCE

7.1 Debt Financing

Build Toronto shall manage its corporate and development financing in a prudent manner, consistent with best practices within the real estate development industry, with due regard for liquidity and protection of the City's investment.

7.2 Dividend Policy

The City will specify a dividend policy. The dividend policy may be amended by the City from time to time.

ARTICLE 8 - GENERAL

8.1 Interpretation

Wherever there is a reference to a City official, that reference includes any person acting in that capacity, or any successor officer appointed or designated as being responsible for the service area included in that office.

8.2 Amendments

The City, in its sole discretion, may amend this Shareholder Direction from time to time. The City will provide a written amendment or the amended Shareholder Direction, as the case may be, to the Board. The amendment will come into effect on a date specified by the City.

Dated at Toronto as of the day of , 2017

CITY OF TORONTO

By: _____
City Manager (or Chief Financial Officer)

By: _____
City Clerk